

Notes for 9/23/19 City Commission Hearing

- Scott Glass, partner at Shutts & Bowen LLP, 300 S. Orange Ave., Orlando, FL 32801, serving as outside legal counsel for Cumberland Farms.
- I'm here to respectfully request that you remove the two conditions you added to proposed Ordinance No. 19-037 late in the evening on August 19, 2019.
- I would suggest that you remove the first because it violates the legislative mandate set forth in §335.184, F.S.
- I would suggest you remove the second because it violates the trust the residents placed in this Commission when you directed them to get together with the developer and Cumberland Farms to try to come up with a site plan acceptable to the majority of the residents.
- Turning to the first condition, I'd like to bring your attention to the language of §335.184(3), F.S.
- It states that, "***A property owner shall be granted a permit for an access connection to the abutting state highway, unless the permitting of such access connection would jeopardize the safety of the public or have a negative impact upon the operational characteristics of the highway. Such access connection and permitted turning movements shall be based upon standards and criteria adopted, by rule, by the department.***"
- Thus, if the FDOT finds a proposed access meets safety and operational requirements, it must issue the driveway permit, and it must be issued with turning movements consistent with FDOT standards and rules.
- Put another way, the FDOT is prohibited, by statute, from approving a driveway application onto a state road if the proposed connection would be unsafe or have a negative impact on the operation of the road in question.
- As you know, the FDOT had already approved the full access shared driveway well before your August 19th meeting.
- That means trained and experienced experts in traffic safety and operations at FDOT must have concluded a full access shared driveway is appropriate at the proposed location.
- Furthermore, while I haven't deposed anyone at FDOT regarding this, I'm pretty sure this wasn't the first application for a full-access driveway onto a two-lane state road on an island that the FDOT has ever seen.

- In fact, I suspect the FDOT has accumulated a fair amount of data over the years regarding the function and safety of such driveways.
- Even if you, or others, think restricting the center driveway to right-in, right-out and forcing traffic onto Harbour Isle Drive, against the desire of the majority of the area residents would be better, that's not the applicable standard.
- Section §335.184(3), F.S., doesn't say the FDOT shall grant whatever driveway the local commission thinks is best.
- It says, "*A property owner **shall** be granted a permit for an access connection to the abutting state highway, unless the permitting of such access connection would jeopardize the safety of the public or have a negative impact upon the operational characteristics of the highway. Such access connection **and permitted turning movements** shall be based upon standards and criteria adopted, by rule, by the department.*"
- You recognized this at the January 22nd quasi-judicial hearing and the February 4th legislative hearing on the adjacent retail site when you approved the full-access driveway as approved by FDOT.
- So what changed between then and August 19th?
- I watched the video of the January 22nd meeting and the August 19th meeting. The witnesses were essentially the same. The testimony was essentially the same. The submitted evidence was essentially the same.
- While this is a legislative hearing, the underlying decision remains quasi-judicial and, therefore, must be based on competent substantial evidence adduced at the August 19th hearing.
- How do you reach two diametrically different decisions based on the same evidence?
- How do you possibly enforce a right-in, right-out restriction against motorists going to Cumberland Farms while allowing motorists going to the retail site to make left-turns in and out?
- What is the city's legal justification for treating two similarly situated properties unequally, apparently in violation of substantive due process and the equal protection clause?
- Finally, how do you justify directing the applicant, the residents and Cumberland Farms to work together to come up with a plan acceptable to the majority of the residents and then undermine the good faith efforts of so many people by trying to do exactly the opposite of what they came up with?

City Commission Regular Meeting

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Agenda Item # 12.c.

Meeting Date: **02/04/2019**

Re: **Major Amendment to Planned Development - Harbour Isle- 825 Seaway Drive**

Submitted For: **Rebecca Grohall**

SUBJECT:

Legislative Hearing - Ordinance 19-003 - Review and approval of an application for Major Amendment to the Harbour Isle Planned Development to allow for the construction of an 11,050 sqft retail building with associated improvements for a parcel in Harbour Isle located at 825 Seaway Drive, Fort Pierce, FL. The property is currently zoned PD, Planned Development.
SECOND READING

SUMMARY:

In accordance with Section, 22-40 of the City Code, the applicant is requesting the review and approval of a Development Review (Major Amendment) to the PD as follows: Revise the previously approved site plan for property that is located at 825 Seaway Drive. The proposal is to construct an 11,050 square foot retail building with associated infrastructure.

On August 5, 2004, the City Commission granted approval for the Planned Development know as Harbour Isle at Hutchinson Island. This PD consisted of both residential and commercial components. The commercial aspects of the project were located along seaway drive. One of the commercial developments proposed was a 15,000 square foot retail building. This commercial development was never built and the property remains vacant.

The applicant has revised the site plan for this section of the Planned Development and is proposing one building that will be 11,050 square feet in size. The remaining square footage that was allotted for the site will be used for a second commercial development on the adjacent parcel.

There is proposed to be two driveways on the property along Seaway Drive. One driveway will be ingress (right-in only) only and the second driveway will be both ingress and egress. The egress for the second driveway will be a right-in and a right-out only. There will be no driveway that connects to the interior of the Harbour Isle development, instead there will be a pedestrian path with a secure electronic gates that only the Harbour Isle residents will have access to.

The Planning Board at their meeting on December 11, 2018 voted 5-0 to recommend approval with conditions as outlined in the Staff report.

RECOMMENDATION:

The requested Application for Development Review (Major Amendment) meets the requirements of the City Code specifically section 22-40, Planned Development; therefore Staff recommends that the City Commission approval the request with one condition along with Ordinance 19-003.

1. A six (6) foot wall or opaque fence is constructed on the property line that borders the residential component of Harbour Isle. The landscaping that is currently on this property line must also stay in place.

ALTERNATIVES:

Approve with Alternate Conditions
Deny

RESPONSIBLE STAFF:

Brandon C. Creagan, LEED Green Associate, Planner

COORDINATED WITH:

Technical Review Committee

Fiscal Impact

OTHER INFORMATION:

N/A

Attachments

[19-003 Updated with Conditions Staff Report](#)
[Application & Supporting Documents](#)
[Aerial Map](#)
[Zoning Map](#)
[TRC Comments](#)
[TRC Comment Response from Applicant](#)
[Affidavit of Notification and Mailing](#)
[Public Certification Notification](#)
[Letter Regarding Meeting with Harbour Isle Residents](#)
[Proof of Publication](#)

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Form Review

Inbox

City Manager
City Manager

Reviewed By

Kaitlyn Ballard
Nick Mimms

Date

01/16/2019 01:18 PM
01/17/2019 09:53 AM

Form Started By: Brandon Creagan

Started On: 01/11/2019 01:38 PM

Final Approval Date: 01/24/2019

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ORDINANCE NO. 19-003

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA; MODIFYING THE HARBOUR ISLE PLANNED DEVELOPMENT TO REVISE THE PREVIOUSLY-APPROVED SITE PLAN FOR A RETAIL BUILDING ON PROPERTY GENERALLY LOCATED AT 825 SEAWAY DRIVE; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Pierce Code of Ordinances ("City Code") Section 22-40, Planned Development Zone (PD), sets forth a procedure for major modifications to a planned development; and;

WHEREAS, on August 4, 2004, the City Commission granted approval for the Planned Development known as Harbour Isle at Hutchinson Island ("Harbour Isle"), and

WHEREAS, on July 26, 2006, the plat for the Harbour Isle subdivision was recorded in Plat Book 43, Pages 31, 31A, & 31B of the Public Records of St. Lucie County, Florida; and

WHEREAS, the current property owner, Harbour Isle Development Commercial, LLC, has submitted a development review application for a major amendment to the Planned Development to allow for one (1) modification and

WHEREAS, City Code Section 22-40 requires an applicant for a major modification to follow the same procedure as set forth for a new planned development request.

WHEREAS, the City of Fort Pierce Planning Board, at its December 11, 2018, meeting, voted to recommend approval of the application for major amendment to the City Commission; and

NOW, THEREFORE BE IT ORDAINED by the City Commission of the City of Fort Pierce, Florida as follows:

SECTION 1. The preceding "whereas" clauses are true and correct, and are incorporated herein as the legislative intent of this ordinance.

SECTION 2. The Harbour Isle Planned Development as recorded in Plat Book 43, Pages 31, 31A, & 31B, is hereby amended as follows and as shown in Exhibit "A:"

1. Revise the previously-approved Site Plan for a new 11,050-square foot retail building with associated infrastructure; and
2. The following condition imposed by the City Commission during first reading on January 22, 2019: a six (6) foot wall or opaque fence is to be constructed on the property line that borders the residential component of Harbour Isle and such fence extends to the end of the property. The landscaping that is currently on this property line must also stay in place.

SECTION 3. All other aspects of the original Harbour Isle Planned Development remain in full force and effect.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. All ordinances or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 6. This Ordinance shall become effective immediately upon final passage.

APPROVED AS TO FORM & CORRECTNESS:

Peter J. Sweeney
City Attorney

STATE OF FLORIDA
COUNTY OF ST. LUCIE

WE, THE UNDERSIGNED, Mayor Commissioner and the City Clerk of the City of Fort Pierce, Florida, do hereby certify that the foregoing and above Ordinance No. 19-003 was duly advertised in accordance with Section 171.044(2) of the Florida Statutes in

the St. Lucie News Tribune on Sunday, January 7, 2019; copy of said Ordinance was made available at the office of the City Clerk to the public upon request; said Ordinance was duly introduced, read by title only, and passed on first reading by the City Commission of the City of Fort Pierce, Florida, on January 22, 2019; and was duly introduced, read by title only, and passed on second and final reading February 4, 2019, by the City Commission of the City of Fort Pierce, Florida.

IN WITNESS HEREWITH, we hereunto set our hands and affix the Official Seal of the City of Fort Pierce, Florida, this February 4, 2019.

Linda Hudson
Mayor Commissioner

ATTEST:

Linda W. Cox
City Clerk

(CITY SEAL)

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EXHIBIT A
Site Plan
Major Modification to Planned Development

City Commission Regular Meeting

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Agenda Item # 11.d.

Meeting Date: 05/06/2019

Re: **Approval of Minor Site Plan Modifications - Harbour Cay Shoppes - 825 Seaway Drive**

SUBJECT:

Notification of a Minor Amendment to the Planned Development Site Plan for the Harbour Isle Shoppes owned by Harbour Isle Development Commercial, LLC located 825 Seaway Drive, Fort Pierce, FL.

SUMMARY:

The original site plan was approved on January 21, 2019, as part of a Major Amendment to the Planned Development for Harbour Isle. The property owner, Harbour Isle Development Commercial, LLC and the adjacent property owner to the west were unable to come to a signed agreement regarding cross access. Because of this the driveway will need to be located 100% on the property owned by Harbour Isle Development Commercial, LLC instead of shared with the property owner to the west. This reconfiguration of the driveway will also cause the building that was approved to be downsized by 520 square feet. The previous building was approved to be 11,050 square feet and this minor amendment will see the building downsized to 10,530 square feet.

RECOMMENDATION:

Acceptance of the Staff Approval

ALTERNATIVES:

Do not accept the Staff Approval

RESPONSIBLE STAFF:

Brandon C. Creagan, LEED Green Associate, Planner

COORDINATED WITH:

Technical Review Committee

Fiscal Impact

OTHER INFORMATION:

N/A

Attachments

[Approved Minor Site Plan Amendment](#)

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Form Review

Inbox
City Manager

Reviewed By
Nick Mimms

Date
04/26/2019 09:35 AM

City Commission Regular Meeting

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Agenda Item # 12.d.

Meeting Date: 01/22/2019

Re: Major Amendment to Planned Development - Harbour Isle- 825 Seaway Drive

Submitted For: Rebecca Grohall

SUBJECT:

Quasi-Judicial Hearing - Ordinance 19-003 - Review and approval of an application for Major Amendment to the Harbour Isle Planned Development to allow for the construction of an 11,050 sqft retail building with associated improvements for a parcel in Harbour Isle located at 825 Seaway Drive, Fort Pierce, FL. The property is currently zoned PD, Planned Development. FIRST READING

SUMMARY:

In accordance with Section, 22-40 of the City Code, the applicant is requesting the review and approval of a Development Review (Major Amendment) to the PD as follows: Revise the previously approved site plan for property that is located at 825 Seaway Drive. The proposal is to construct an 11,050 square foot retail building with associated infrastructure.

On August 5, 2004, the City Commission granted approval for the Planned Development know as Harbour Isle at Hutchinson Island. This PD consisted of both residential and commercial components. The commercial aspects of the project were located along seaway drive. One of the commercial developments proposed was a 15,000 square foot retail building. This commercial development was never built and the property remains vacant.

The applicant has revised the site plan for this section of the Planned Development and is proposing one building that will be 11,050 square feet in size. The remaining square footage that was allotted for the site will be used for a second commercial development on the adjacent parcel.

There is proposed to be two driveways on the property along Seaway Drive. One driveway will be ingress (right-in only) only and the second driveway will be both ingress and egress. The egress for the second driveway will be a right-in and a right-out only. There will be no driveway that connects to the interior of the Harbour Isle development, instead there will be a pedestrian path with a secure electronic gates that only the Harbour Isle residents will have access to.

The Planning Board at their meeting on December 11, 2018 voted 5-0 to recommend approval with conditions as outlined in the Staff report.

RECOMMENDATION:

The requested Application for Development Review (Major Amendment) meets the requirements of the City Code specifically section 22-40, Planned Development; therefore Staff recommends that the City Commission approval the request with one condition along with Ordinance 19-003.

1. A six (6) foot wall or opaque fence is constructed on the property line that borders the residential component of Harbour Isle. The landscaping that is currently on this property line must also stay in place.

ALTERNATIVES:

Approve with Alternate Conditions
Deny

RESPONSIBLE STAFF:

Brandon C. Creagan, LEED Green Associate, Planner

COORDINATED WITH:

Technical Review Committee

Fiscal Impact

OTHER INFORMATION:

N/A

Attachments

[Staff Report](#)
[Ordinance #19-003](#)
[Application & Supporting Documents](#)
[Aerial Map](#)
[Zoning Map](#)
[TRC Comments](#)
[TRC Comment Response from Applicant](#)
[Affidavit of Notification and Mailing](#)
[Public Certification Notification](#)
[Letter Regarding Meeting with Harbour Isle Residents](#)

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Form Review

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City Manager
City Manager

Reviewed By

Kaitlyn Ballard
Nick Mimms

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01/16/2019 01:18 PM
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Started On: 01/11/2019 01:38 PM

Final Approval Date: 01/17/2019

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WHEREAS, on July 26, 2006, the plat for the Harbour Isle subdivision was recorded in Plat Book 43, Pages 31, 31A, & 31B of the Public Records of St. Lucie County, Florida; and

WHEREAS, the current property owner, Harbour Isle Development Commercial, LLC, has submitted a development review application for a major amendment to the Planned Development to allow for one (1) modification and

WHEREAS, City Code Section 22-40 requires an applicant for a major modification to follow the same procedure as set forth for a new planned development request.

WHEREAS, the City of Fort Pierce Planning Board, at its December 11, 2018, meeting, voted to recommend approval of the application for major amendment to the City Commission; and

NOW, THEREFORE BE IT ORDAINED by the City Commission of the City of Fort Pierce, Florida as follows:

SECTION 1. The preceding "whereas" clauses are true and correct, and are incorporated herein as the legislative intent of this ordinance.

SECTION 2. The Harbour Isle Planned Development as recorded in Plat Book 43, Pages 31, 31A, & 31B, is hereby amended as follows and as shown in Exhibit "A:"

1. Revise the previously-approved Site Plan for a new 11,050-square foot retail building with associated infrastructure.

SECTION 3. All other aspects of the original Harbour Isle Planned Development remain in full force and effect.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. All ordinances or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 6. This Ordinance shall become effective immediately upon final passage.

APPROVED AS TO FORM & CORRECTNESS:

Peter J. Sweeney
City Attorney

STATE OF FLORIDA

COUNTY OF ST. LUCIE

WE, THE UNDERSIGNED, Mayor Commissioner and the City Clerk of the City of Fort Pierce, Florida, do hereby certify that the foregoing and above Ordinance No. 19-003 was duly advertised in accordance with Section 171.044(2) of the Florida Statutes in the St. Lucie News Tribune on Sunday, January 7, 2019; copy of said Ordinance was made available at the office of the City Clerk to the public upon request; said Ordinance was duly introduced, read by title only, and passed on first reading by the City Commission of the City of Fort Pierce, Florida, on January 22, 2019; and was duly

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Page 3

introduced, read by title only, and passed on second and final reading February 4, 2019,
by the City Commission of the City of Fort Pierce, Florida.

IN WITNESS HEREWITH, we hereunto set our hands and affix the Official Seal of
the City of Fort Pierce, Florida, this February 4, 2019.

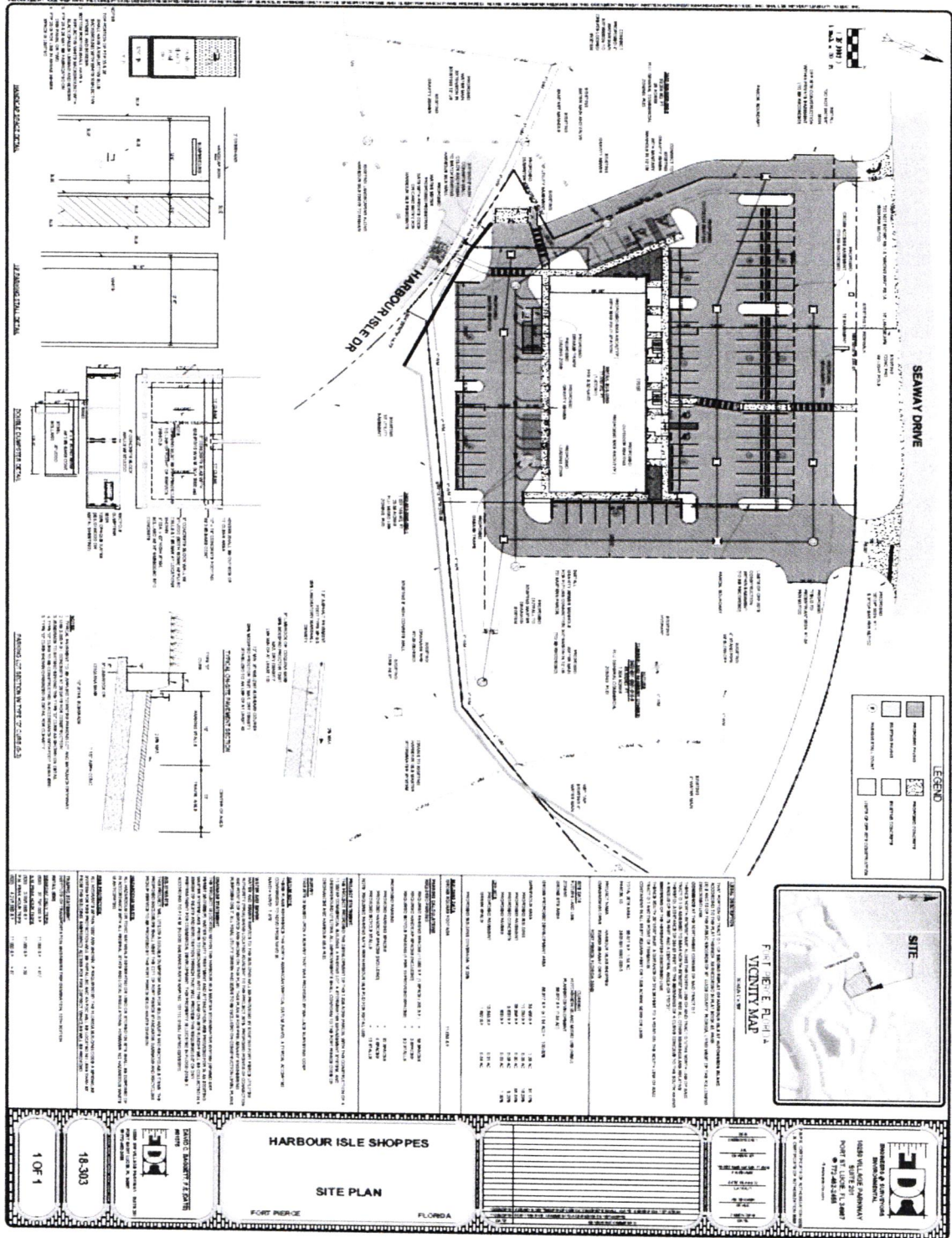
Linda Hudson
Mayor Commissioner

ATTEST:

Linda W. Cox
City Clerk

(CITY SEAL)

EXHIBIT A Site Plan Major Modification to Planned Development



Keith Madsen

From: Keith Madsen <madsenk1@verizon.net>
To: anetrudd <anetrudd@aol.com>
Subject: Fwd: Cumberland Farms decision
Date: Mon, Sep 23, 2019 12:09 pm

Sent from my iPhone

Begin forwarded message:

From: Keith Madsen <madsenk1@verizon.net>
Date: September 17, 2019 at 12:03:10 PM EDT
To: psweeney@cityoffortpierce.com
Cc: m112842@yahoo.com, RalfBrookes@gmail.com
Subject: Cumberland Farms decision

Dear Mr Sweeney,

This is to clarify that the intervenors remain opposed to the construction of the Cumberland Farms on this site.

Also, we are opposed to any changes to the conditions of approval established by the Commissioners at the first reading.

Sincerely,

Keith Madsen

Sent from my iPhone



THE SUNRISE CITY
FORT PIERCE
ENGINEERING
DEPARTMENT

Florida

Keith Madsen

TO : Nicholas Mimms, P.E., City Manager
FROM : John R. Andrews, P.E., City Engineer
RE : Traffic Calming at Harbour Isle Roundabout
DATE : August 6, 2019

Received
August 6 2019
City of Fort Pierce
City Manager's Office

As requested, this department has evaluated the suggestion of a local business owner to install "speed bumps" on the approaches to the Harbour Isle roundabout. Following please find the facts and professional opinions of this department:

- A1A is a Florida Department of Transportation maintained roadway. All permitting and design would be reviewed and approved by FDOT.
- Extra measures have already been implemented to make drivers aware of the roundabout. Currently, flashing beacon signs warning drivers of the approaching roundabout exist on the east and west bound approaches. These advance warning signs are also supplemented by rumble strips on the pavement to warn drivers.
- The posted speed limit for this section of roadway is 35 MPH and reduced to 15 MPH within the roundabout.
- Speed bumps would impede the traffic flow of **an already taxed corridor**. In addition, A1A is a hurricane evacuation route in which time is of the essence.
- Speed bumps also led to increased liability to the maintaining agency when vehicles fail to slow for the speed deterrent.
- Speed bumps tend to increase dramatically the number of rear-end collisions when installed.
- Possible alternatives to increase awareness of the roundabout would be the installation of an additional series of rumble strips on the east and west approaches and the installation of high intensity LED lighting on the roundabout ahead signage, replacing the single flashing beacon currently utilized.

Annette Rudd

Resources

**Commercial Development & Property Value of Nearby Residences
September 23, 2019**

**City of Fort Pierce Police Department: Incident call log: June 1,
2018 - June 22, 2019**

**St. Lucie County Sheriff's Department: Incident call log: June 1,
2018 - June 22, 2019**

Zillow.com

**Rosen Study (1974) Value of a home is determined by its
characteristics including neighborhood amenities and
disamenities**

**Peterson & Boyle Study (2002) Examined the impact on home
prices of direct visibility of commercial land use. Researchers
conclude that visibility of development significantly detracts from
property values.**

**Wiley Study (April, 2015) "The Impact of Commercial
Development on Surrounding Residential Property Values"**

**Aydin, Crawford & Smith "Commercial Development Spillover
Effects Upon Residential Values" "Negative impacts that are likely
to occur from commercial developments are limited to areas of
very close proximity."**

**Mathews, John W. (2006) "Retail Proximity and Residential
Values"**

**Klein, Richard (2019) Initial Strategy Analysis: Harbour Isle
Preservation & Cumberland Farms**