

Jason E. Brown  
County Administrator  
Indian River County  
1801 27th Street  
Vero Beach, FL 32960  
772-226-1408

[VIA E-MAIL: jbrown@ircgov.com](mailto:jbrown@ircgov.com)

May 12, 2020

Mr. Brown:

Please accept this correspondence as a formal Appeal of the County's decision to disallow a Traffic Impact Fees Credit related to the Vero Beach MOB project being developed on the west side of Indian River Boulevard between 37th Street and 41st Street (project number 2006100078, the "Project"). For reference the original application was submitted on April 15, 2020.

Vero Beach MOB, LLC is a partnership between Optimal Outcomes, LLC and the partners of Vero Orthopaedic & Neurology ("VON") – a leading, well-respected provider of orthopaedic and related services. VON serves more than 100,000 residents of Indian River County and provides immeasurable charitable care for residents who otherwise go untreated. The Project, anchored by VON, entails a new 66,000 sq. ft., two-story, Class-A medical office building and surgery center that will improve access and quality of service for thousands of Indian River County residents.

We have previously expressed our concerns with the approval process and its impact on our schedule and budget. While this Appeal relating to the Traffic Impact Fee Credit Application is entirely separate and distinct from those matters, I think it reasonable to consider and be aware of the entire history. Placing blame is not relevant since we cannot go back in time but I do want to state that the excessive turnaround times from the County, compounded by the last minute requirement for additional and not previously mentioned traffic improvements, have placed the entire project in a tenuous spot. Since the traffic improvements are obviously the issue at hand, it must also be noted that we were not made aware of those requirements until February 14, 2020. Please note that we had our first staff meeting to discuss the TIS methodology on June 17, 2019 and the methodology was approved in June 19, 2019. There were multiple subsequent submittals, telephone calls and in-person meetings between the County and our engineering team that addressed all aspects of the site plan. Somehow, not until February 14, 2020 - more than 240 days after the initial meeting to discuss the plan - was there any reference to any of these required traffic improvements. *(Please see the attached **Exhibit A** for a more detailed schedule of events, submittal reviews and days to get permits.)*

As stated, we have not and will not ask for any special treatment or entitlement. We simply want equitable treatment for costs of work that we are being required to undertake which we believe are related to capacity and therefore should be covered by Traffic Impact Fees. On that basis, we believe these costs should be credited against the total customary Traffic Impact Fees being requested. The

following is our rationale for why we are respectfully asking you to reconsider the eligibility of these costs as credit to offset our Traffic Impact Fees.

## **INDIAN RIVER TRAFFIC IMPACT FEES**

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Pursuant to IRCCDD.com, *“Impact fees are one time charges applied to new development, providing revenue for capacity producing capital improvements to accommodate the demand for those improvements generated by new development in order to maintain adopted levels of service.”* The reference to “capacity producing capital improvements” is critical to our underlying belief that we qualify for a credit for the costs for traffic and road improvements mandated by the County but paid for by us. **Specifically, the improvements we are undertaking were driven by capacity-related issues raised by the County staff.**

## **THE “NEW” REQUIRED IMPROVEMENTS VERSUS EXISTING TRAFFIC CONDITIONS:**

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Understanding the additional work that was requisite for securing our site plan approval is important but it’s equally important to be aware of the traffic conditions that were *pre-existing*: (a detailed survey showing the pre-existing conditions is attached as **Exhibit B**):

- 1) An existing access road serving the property,
- 2) An existing southbound deceleration lane that was constructed by the County, and
- 3) An existing 133” median allowing two step northbound turns into the access road.

The new capital improvements that we are required to construct include the following: (a detailed color-coded survey showing all new work is attached as **Exhibit C**):

- 1) An extension of the pre-existing southbound deceleration lane that was constructed by the County which we understand was not FDOT compliant.
- 2) The addition of a new north bound 590’ acceleration lane and taper on Indian River Boulevard including demolition and removal of the existing median, and
- 3) A new raised median “pork chop” in the existing center median cut including new markings and signage.

The existence of the pre-existing traffic conditions provide support to our position. Namely, the existing improvements allowed for all operational function necessary for our Project: ingress/egress, right-in, right-out southbound turns and a two-step northbound turn. None of the newly required modifications provide any new functions. **Instead, they only modify and expand the existing conditions to accommodate additional capacity and higher projected trip counts.** These types of capital improvements are exactly what traffic impact fees are intended to cover.

## **INDEPENDENT TRAFFIC ENGINEER OPINION: Capacity Issue**

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As is customary, we retained an independent Traffic Engineering firm early in the process to analyze, assess and develop a traffic plan. We engaged Traffic Impact Group, LLC - a national firm with 30+ years of experience, licensed engineers in fifteen states, offices in 5 states (including Florida) and considerable traffic related work. The Independent Traffic Engineer, who met in-person and by telephone with County personnel in June of 2019 to discuss the traffic and access issues, opined that the existing conditions met FDOT and no modifications were required. Despite these meetings and the formal submittal of the full Site Plan in September of 2019, the County Traffic Engineer indicated for the first time on a February 14, 2020 conference call that she would not support the plan as shown. After much debate but facing the reality that; (a) we were already significantly behind schedule, and (b) we were not obtaining a site permit without conceding, we did exactly that and agreed to her requested modifications.

The disagreement on what was specifically required is no longer relevant since we conceded and are actively proceeding in the direction mandated by the County. Notwithstanding, I attach a letter from the independent Traffic Engineer provided to me this week confirming his stance. More importantly, his letter opines that the modifications required by the County approach can be considered “capacity” improvements (*attached hereto as **Exhibit D***).

We are not attempting to revisit the site plan design nor asking for any aspect to be revisited. We agreed to the work and we will proceed accordingly. The point of the original Traffic Impact Credit Fee Application and this Appeal is simply to obtain some relief for costs that were not only unexpected but that we also firmly believe represent costs for which Traffic Impact Fees are collected and earmarked. **In other words, if we are being required to pay for and implement traffic/roadway modifications related to increased capacity, it does not seem equitable or appropriate for us to pay full Traffic Impact Fees absent a credit or set-off for that work.**

## **COUNTY TRAFFIC ENGINEER OPINION: Capacity Issue**

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The County Traffic Engineer was adamant in her position that the new traffic improvements were required. She repeatedly used the rationale that she anticipated a higher traffic count than was presented by our Independent Traffic Engineer and his methodology. Both she and the Public Works Director cited, in multiple instances and in multiple communications to you, me and others that these improvements were directly attributable to the increased capacity and “trips counts”. In fact your own email to me dated Wednesday, February 19th and the Public Works Director’s email of the same date states the “*projected project volumes (92 vehicles exiting during the peak hour)*” as the basis for requiring these additional improvements. Concern over higher projected volumes is a capacity concern and improvements addressing said concerns should be considered capacity-driven improvements. **These frequent references to capacity, traffic counts and vehicle trips support IRCCD’s own description of what “Impact Fees” are intended to cover.**

During our extended debates, the County Traffic Engineer made several references to a new signal light being installed at Indian River Boulevard and Grand Harbor Boulevard. While we appreciate the need for new signals as increased traffic from development (i.e. increased capacity needs) requires modifications that address the increased capacity. The real question is whether this signal is being paid for by the County from previously collected traffic impact fees as intended or, instead, is a single property owner at that

intersection is being required to pay separately? We are singularly being asked to pay for traffic improvements on this same road and still being required to pay 100% of the assessed Traffic Impact Fees. That is not equitable absent an offset.

#### **INDIAN RIVER CODE OF ORDINANCE:**

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In the initial denial of our request for the Traffic Impact Fee credit, the notification letter provided by the Chief of Long Range Planning (*attached hereto as **Exhibit E***) includes references to Title X, Section 1010.04(6) of the Indian River Code of Ordinances. In particular he points out:

*“...no traffic impact fee credit shall be granted for site-related improvements, including but not limited to:*

- *Access roads leading to and from the development;*
- *Acceleration and deceleration lanes and right and left turn lanes leading to those roads and driveways within the development: and*
- *Traffic control devices (including signs, marking, channelization and signals) for those roads and driveways within the development.”*

We do not believe that our request contradicts the language. While there are differing opinions as to whether the Indian River Code of Ordinances is fully updated to comply with the most recent legislation, the items listed above are worthy of consideration. The first item, “access roads” is not relevant here since there are no improvements being considered there. In regards to the second and third items, each of those latter items is limited by “within the development” characterization. None of the improvements we have been required to undertake are within our development or even directly connected to our development. Instead the related improvements all are on property owned by Indian River County, not us. The roadways are public and certainly not exclusive to our Project. Even the existing access road is an easement that is shared with an assisted living facility located to the south.

Rather than try and decipher or dispute the language employed in the Code, our position is simple. The traffic improvements we are being asked to undertake on Indian River Boulevard are modifications (extensions, expansions, and betterments) to existing conditions on a County Road justified by a traffic methodology and calculation that determined these are needed as a result of increased traffic (i.e. “capacity”). **To that end, we believe strongly the costs thereof should deserve an offset against the requested Traffic Impact Fees. Traffic Impact fees are collected to pay for exactly these type of improvements.**

#### **COSTS: Partial Cost Credit Request**

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In the same denial letter from the Chief of Long Range Planning, it was pointed out that the cost estimate included as part of the original application (“Engineer’s Estimate of Probable Costs”) was not certified by a licensed Florida Engineer. This was an oversight and has since been executed by Aaron Bowles, P.E., VP, MBV Engineering. (*These certified costs are now included herewith as **Exhibit F**.*)

Please note that the costs included in the Engineer’s Estimate of Probable Costs are nowhere near the actual costs of these improvements to our Project. MBV Engineering informed us of the County’s standard

allowable costs and the underlying methodology. **Our actual costs per our General Contractor are approaching \$500,000 while the possible credit shown is only \$213,488.**

Without over-complicating this situation, this requested credit would still result in our “supplementing” the normal traffic impact fee burden. Irrespective of the County’s format, our costs are real and have to be paid. There are no categories that we can simply exclude from our contractor’s invoicing and we will pay for all materials and services related to the work – a figure far higher than what we are asking for as a credit.

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**SUMMARY:**

I am hopeful that the information provide herein will cause you to reexamine and reconsider the decision regarding our Traffic Impact Fee Credit Application. We feel the objective data and facts support that the capital road improvements we are required to construct were based on capacity and the related costs therefore are duplicative to the Traffic Impact Fees that are being assessed.

We appreciate you taking the time to review this Appeal and encourage you to reach out should you have any questions or wish to discuss anything contained herein. Thank you for your time and consideration in advance.

Respectfully,



Patrick Marston

On Behalf of **Vero Beach MOB, LLC**

**EXHIBIT A:**

19-0021	Vero Beach MOB, LLC											
	SUBMITTED	COMMENTS	SENT BACK	COMMENT 2	RESPONSE 2	COMMENT 3	RESPONSE 3	COMMENT 4	RESPONSE 4	ISSUED	Days IN review	
<b>INDIAN RIVER COUNTY:</b>												
<b>Pre-App</b>	2/28/19	3/26/19									26 Days	
County Review Timeframe		26										
Developer Response			N/A									
<b>Major Site Plan</b>	6/19/19	8/14/19	9/19/19	11/14/19	12/12/19	1/28/20	2/7/20	2/22/20	2/26/20	3/16/20	271 Days	
County Review Timeframe		56		56		47		15				
Developer Response			36		28		10		4			
<b>Land Clearing</b>	6/19/19									3/20/20	275 Days	
County Review Timeframe												
Developer Response												
<b>Tree Removal</b>	6/19/19									3/20/20	275 Days	
County Review Timeframe												
Developer Response												
<b>Cond. Concurrency</b>	6/19/19									3/2/20	257 Days	
County Review Timeframe												
Developer Response												
<b>TIS Review</b>	6/19/19	8/14/19	9/19/19	11/25/19	12/11/19	1/28/20	2/7/20	2/22/20	2/27/20	3/16/20	271 Days	
County Review Timeframe		56		67		48		15				
Developer Response			36		16		10		5			

\*TIS methodology only submittal Full TIS Report was held at County's request until Developer provided full response to all TRC meeting comments.

Contacted Commissioners and Administrator requesting assistance (2/18/2020)

← improvements required on Indian River Blvd. (2/14/2020 - 240

Stated turnaround time (21 days) was not met on a single submittal prior to email to Commissioners and Administrator

There is no dispute from County that there was no mention of any traffic light, secondary entrance, or road improvements to Indian River Boulevard in any comments until after the 2/14/2020 meeting.

The cost of improvements first mentioned 240 days into the process is entailing additional costs to the project of in excess of \$400,000.

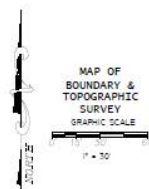
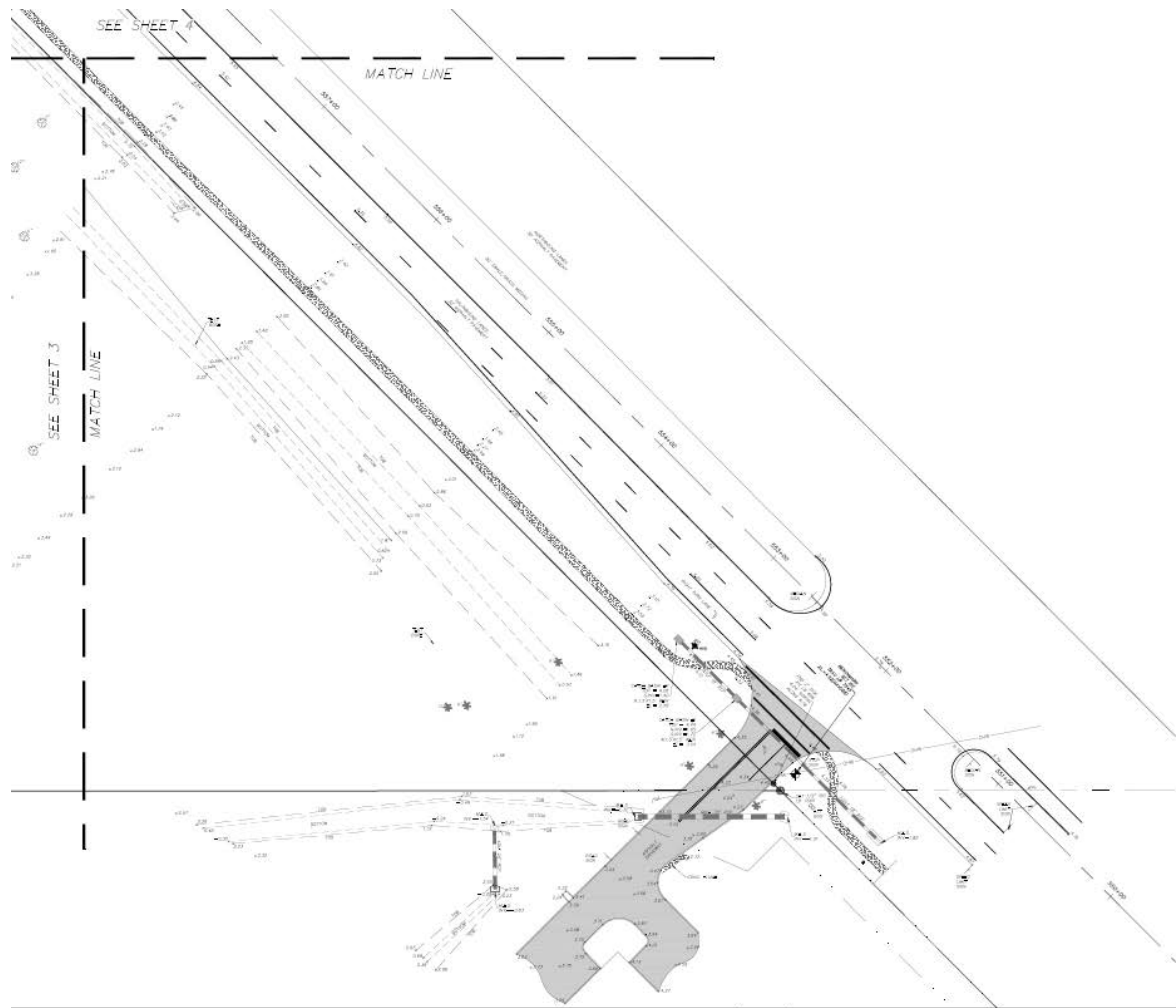
Obtaining Site Plan approval took 271 days.

The last minute costs being forced upon the Project seem to fall within the categories outlined in HB-7301 and eligible credit for Traffic Impact Fees

None of the recently required improvements are on Project's land but are rather are located on Indian River Boulevard - County Owned.

Rational, equitable and compliant position would be to offset these costs against Impact Fees.

# EXHIBIT B: Pre-existing Traffic Conditions



**LEGEND**

1. = 1/4" = 1' SCALE	11. = 1/4" = 1' SCALE
2. = 1/4" = 1' SCALE	12. = 1/4" = 1' SCALE
3. = 1/4" = 1' SCALE	13. = 1/4" = 1' SCALE
4. = 1/4" = 1' SCALE	14. = 1/4" = 1' SCALE
5. = 1/4" = 1' SCALE	15. = 1/4" = 1' SCALE
6. = 1/4" = 1' SCALE	16. = 1/4" = 1' SCALE
7. = 1/4" = 1' SCALE	17. = 1/4" = 1' SCALE
8. = 1/4" = 1' SCALE	18. = 1/4" = 1' SCALE
9. = 1/4" = 1' SCALE	19. = 1/4" = 1' SCALE
10. = 1/4" = 1' SCALE	20. = 1/4" = 1' SCALE

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**INDIAN RIVER SURVEY, INC.**  
 PROFESSIONAL SURVEYING AND MAPPING  
 CERTIFICATE OF AUTHORIZATION No. LB 7545  
 1835 20TH STREET, VERO BEACH, FLORIDA 32960  
 PHONE (772) 569-7880 FAX (772) 778-3617

REVISIONS	DATE

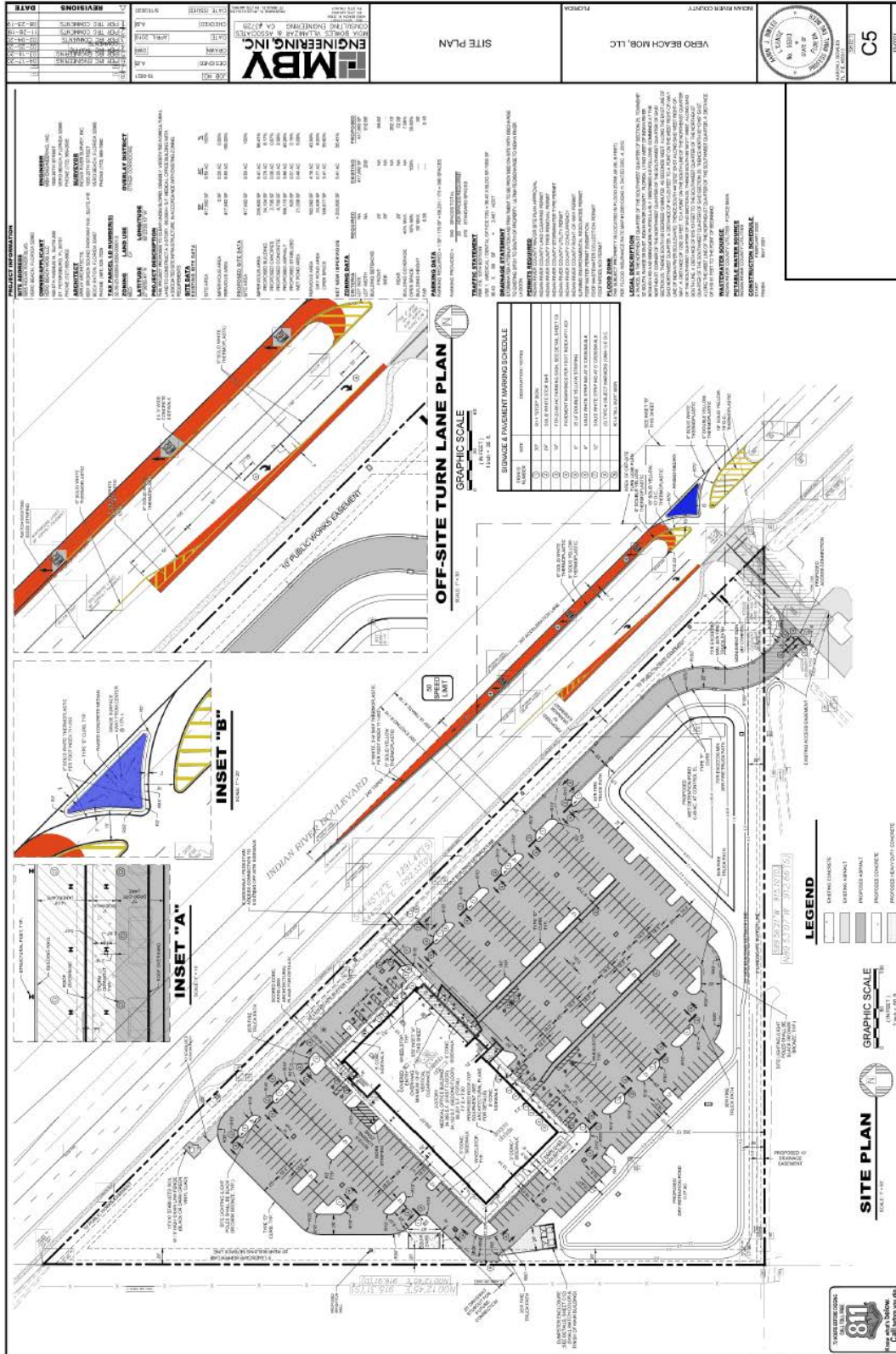
3955 INDIAN RIVER BOULEVARD

FIELD BOOK No. 978	DRAWN DWT	SHEET	4
PROCESSED 02-04 02-08	SCALE 1"=30'	2	OF
FIELD DATE 6/2/10	DESIGNED 02/18/04		

NOT VALID WITHOUT ALL SHEETS 1 THROUGH 4



# EXHIBIT C: New Required Traffic Improvements (Colored Portions Only)





## EXHIBIT D: Professional Engineer Letter



TO: Patrick Marston, Optimal Outcomes  
FROM: Scott Israelson, P.E., PTOE  
DATE: 11 May 2020  
RE: Required Improvement  
Medical Office Building TIA  
Vero Beach, FL

Dear Mr. Marston,

This letter serves as a reply to your previous email, in which you asked three questions regarding the Vero Beach Medical Office Building *Traffic Impact Analysis*, the document's conclusions, and subsequent improvement requirements from Indian River County.

*(1) Do you still disagree with the County's process, assumptions, or conclusions?*

During our discussions with County staff, our analysis showed that vehicles turning left out of the development to head north on Indian River Boulevard would experience acceptable levels of service (LOS). This analysis used a two-step left-turn movement that one commonly experiences across divided highways. County staff, however, disagreed with that analysis. Based on a "one-step" left-turn movement, the projected left-turn movement out of the driveway would experience LOS F. To answer your question, there is still disagreement between our analysis and County staff.

*(2) Do you still maintain those improvements were not required pursuant to the data, standards, and processes you typically see in Florida?*

During our discussions with County staff, I maintained that the exit movement would function acceptably as proposed. However, the County has the authority and responsibility to make requirements of developers and this is no exception. The proposed improvement (left-turn acceleration lane), however, is not commonly found in Florida although I suppose there are some locations where it exists.

*(3) Do you believe the position the County took was based on "capacity" or "operational" drivers?*

County staff directed the analysis to examine a "one-step" left turn out of the development. That analysis resulted in LOS F. The County determined that it was deficient, therefore, the improvement can be considered a "capacity" improvement.

Please contact me at [scott@traffic-impact.com](mailto:scott@traffic-impact.com) or by phone at 407.607.6985 with any questions.

## EXHIBIT E: Rejection Letter



**INDIAN RIVER COUNTY**  
**COMMUNITY DEVELOPMENT DEPARTMENT**  
1801 27th Street, Vero Beach FL 32960  
772-226-1237 / 772-978-1806 fax  
[www.ircgov.com](http://www.ircgov.com)

April 24, 2020

Aaron Bowles, P.E.  
MBV Engineering, Inc.  
1835 20<sup>th</sup> Street  
Vero Beach, FL 32960

**RE:** Patrick Marston/Vero Beach MOB, LLC Application for Traffic Impact Fee Credit Agreement for Acceleration Lane, Deceleration Lane, Raised Median Island, and Landscape Repair in Indian River Boulevard ROW to Access Property Parcel # 32-39-25-00000-5000-00001.0

Dear Mr. Bowles:

This is to inform you that your Application on behalf of Vero Beach MOB, LLC for a Traffic Impact Fee (TIF) Credit Agreement for acceleration lane, deceleration lane, raised median island, and landscape repair in Indian River Boulevard Right-Of-Way (ROW) to access the above referenced property parcel was electronically received by Planning Division staff on April 21, 2020 and was subsequently reviewed for completeness and for eligibility consistent with Title X of the Indian River County Code of Ordinances.

With respect to application completeness, please be advised that Planning Division staff reviewed the application submittal and found it to be incomplete. Item IV.2.b) of the application states that an "estimated construction cost prepared and certified by a duly qualified and licensed Florida Engineer" be provided. While the submission includes an "Engineer's Opinion of Probable Cost" sheets, those sheets are not certified by a duly qualified and licensed Florida Engineer. However, in an effort to be responsive to the applicant, staff has proceeded with a review of the application for eligibility as submitted.

With respect to eligibility, please be advised that Title X, Section 1010.04(6) of the Indian River County Code of Ordinances states that no traffic impact fee credit shall be granted for site-related improvements, including but not limited to:

- access roads leading to and from the development;
- acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways within the development; and
- traffic control devices (including signs, marking, channelization and signals) for those roads and driveways within the development.

Planning Division staff coordinated with Rich Szyrka, County Public Works Director on this requirement and the proposed improvements and confirmed that the proposed improvements do not qualify for traffic impact fee credit.

Should you have any questions, feel free to contact me at (772) 226-1250.

Sincerely,

A handwritten signature in blue ink that reads "Bill Schutt".

Bill Schutt, AICP  
Chief, Long-Range Planning

# EXHIBIT F: Certified Engineer's Estimate of Probable Cost



## ENGINEER'S OPINION OF PROBABLE COST 19-0021 Vero Beach MOB Off-Site Road Improvements - Decel and Accel lanes

Item No.	MASTER-FORMAT (48-DIVISIONS)	FDOT Pay Item	Description	Quantity	Unit	Unit Price	Amount
<b>I. LANDSCAPE CONTRACTOR (All Right-of-Way repair)</b>							
1		0570 1 2	800 LF of SOD x 15' W	12,000	SF	\$0.30	\$3,600.00
2		0570 1 2	Water Truck	4	EA	\$500.00	\$2,000.00
<b>Landscaping Subtotal</b>							<b>\$5,600.00</b>
<b>II. DECEL LANE (Southbound - IRB)</b>							
3	11600	0102 1	Maintenance of Traffic	1	LS	\$14,435.00	\$14,435.00
4	11700	0104 13 1 0104 13 2	Silt Fence	300	LF	\$3.15	\$945.00
5	11800	0327 70 1	Sawcut Edge of Asphalt	241	LF	\$3.05	\$735.05
6	11900	0327 70 30	Demo/Remove Existing Asphalt & Base	95	SY	\$23.40	\$2,223.00
7	12000	0120 4	Strip & Remove Topsoil	35	CY	\$41.25	\$1,443.75
8	12100		Rough Grade to Subgrade	1	LS	\$4,183.00	\$4,183.00
9	12200		Import spread & Compact Fill	120	CY	\$23.85	\$2,862.00
10	12300		Final Grade Off-site Area	1	LS	\$2,620.00	\$2,620.00
11	12400	0160 6	12" Stabilized Subgrade Compacted to 98% of Max.	287	SY	\$22.25	\$6,385.75
12	12500	285706	8" Coquina LBR 100, Compacted to 98% of Max.	235	SY	\$23.30	\$5,475.50
13	12600		Prime Coat	210	SY	\$2.80	\$588.00
14	12700	0334 1 11	1.5" Asphalt Type SP-12.5 1st Lift	210	SY	\$22.70	\$4,767.00
15	12800		Tack Coat	210	SY	\$1.95	\$409.50
16	12900	0334 1 11	1" Asphalt Type SP-9.5 2nd Lift	210	SY	\$20.40	\$4,284.00
17	13000	E706 1 42	Remove Existing Striping by Grinding / Sandblasting	1	LS	\$518.30	\$518.30
18	13100	0709 11101	6" White Thermo. w/ Temp Paint	480	LF	\$1.30	\$624.00
19	13200	0709 11122	8" White Thermo. w/ Temp Paint	50	LF	\$1.50	\$75.00
20	13300	0709 11124	18" White Thermo. w/ Temp Paint	38	LF	\$4.30	\$163.40
21	13400	0711 11170	Arrows - Thermo. W/ Temp Paint	2	EA	\$91.50	\$183.00
22	13500	0916707 1	RPM's	16	EA	\$5.20	\$83.20
<b>Decel Lane (Southbound - IRC) Subtotal</b>							<b>\$53,003.45</b>
<b>III. MEDIAN - RAISED MEDIAN (ISLAND)</b>							
23	11600	0102 1	Maintenance of Traffic	1	LF	\$2,000.00	\$2,000.00
24	11800	0327 70 1	Sawcut Edge of Asphalt	300	LF	\$3.15	\$945.00
25	11900	0327 70 30	Demo / Remove Existing Asphalt	280	SY	\$14.00	\$3,920.00
26	12400	0160 6	12" Compacted Subgrade	280	SY	\$6.00	\$1,680.00
27		0520 2 8	Type E Curb	300	LF	\$24.50	\$7,350.00
28		0350 3 1	6" Concrete Inside Island	280	SY	\$46.00	\$12,880.00
<b>Raised Median (island) Subtotal</b>							<b>\$28,775.00</b>

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321.253.1510  
Fax: 321.253.0911

1 of 2

806 Delaware Avenue  
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Fax: 772.778.3617

901 Martin Downs Blvd, Suite 203  
Palm City, FL 34990  
772.426.9959  
Fax: 772.778.3617





Item No.	MASTER-FORMAT (48-DIVISION)	FDOT Pay Item	Description	Quantity	Unit	Unit Price	Amount
<b>IV. ACCELERATION LANE (Northbound - IRB)</b>							
29	11600	0102 1	Maintenance of Traffic	1	LS	\$10,000.00	\$10,000.00
30	11700	0104 13 1 0104 13 2	Silt Fence	600	LF	\$3.35	\$2,010.00
31	11800	0327 70 1	Sawcut Edge of Asphalt	580	LF	\$3.15	\$1,827.00
32	11900	0327 70 30	Demo/Remove Existing Asphalt & Base	65	SY	\$24.00	\$1,580.00
33	12000	0120 4	Strip & Remove Topsoil	280	CY	\$45.75	\$11,895.00
34	12100		Rough Grade to Subgrade	1	LS	\$12,000.00	\$12,000.00
35	12200		Import Spread & Compact Fill	390	CY	\$26.00	\$10,140.00
36	12300		Final Grade Median Area	1	LS	\$8,000.00	\$8,000.00
37	12400	0160 6	12" Stabilized Subgrade	800	SY	\$22.25	\$17,800.00
38	12500	285706	8" Coquina Baserock	720	SY	\$23.30	\$16,776.00
39	12600		Prime Coat	650	SY	\$2.80	\$1,820.00
40	12700	0334 1 1 1	1.5" Asphalt Type SP 12.5 1st Lift	650	SY	\$22.70	\$14,755.00
41	12800		Tack Coat	650	SY	\$1.95	\$1,267.50
42	12900	0334 1 1 1	1" Asphalt Type SP 9.5 2nd Lift	650	SY	\$20.40	\$13,260.00
43	13400	0709 11124	Thermo. w/ Temp Paint & Signage	1	LS	\$2,000.00	\$2,000.00
<b>Acceleration Lane (Northbound - IRB) Subtotal</b>							<b>\$125,110.50</b>

**TOTAL OF IMPROVEMENTS \$212,488.95**

Certified by:

Aaron Bowles, P.E.



5/11/2020  
Date