

INDIAN RIVER COUNTY
M E M O R A N D U M

TO: Jason E. Brown
County Administrator

THROUGH: Stan Boling, AICP
Community Development Director

FROM: Roland M. DeBlois, AICP
Chief, Environmental Planning

DATE: May 25, 2018

RE: Consideration to Approve an Agreement with RedevGroup, Inc., to Release a Conservation Easement on Indian River Mall Lot 5 in Exchange for Conveyance of Title to the County of Conservation Land at an Alternate Site and Establishing Certain Special Development Restrictions

It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of June 12, 2018.

DESCRIPTION AND CONDITIONS

On July 19, 1994, Indian River County adopted Resolution 94-93, constituting a Development Order and approving the Indian River Mall as a Development of Regional Impact (DRI). A condition of the Resolution 94-93 Development Order required that the Mall developer dedicate a conservation easement over approximately 4.7 acres of cabbage palm hammock within the DRI property. That conserved hammock, now being Lot 5 of The Mall Subdivision, is located on State Road 60 near the Mall's main entrance, west of and adjacent to the existing Wendy's Restaurant (see aerial, Attachment 1 to this report).

As explained in Condition 17 of the Development Order, the intent of the Lot 5 conservation easement requirement was to:

- 1) Provide for wildlife and upland habitat protection;
- 2) Provide protection to an endangered species of hand fern and other listed plant species occurring in the hammock; and
- 3) Assist in the County's effort to maintain State Road 60's "quality entrance and gateway character" (see pages 6 and 7 of County Resolution 94-93, Attachment 2 to this report).

The Lot 5 conservation easement property is currently zoned CG, General Commercial, with a Comprehensive Plan Future Land Use Designation of RC, Regional Commercial.

County staff has been contacted by Mr. Joe Cataldo, representing RedevGroup, Inc., requesting that the County consider releasing the conservation easement on Lot 5 in exchange for fee-simple title

conveyance to the County of alternate conservation land of equal or greater environmental value. In addition, RedevGroup is proposing to execute a Declaration of Restrictive Covenants with certain special development design restrictions to preserve State Road 60's entrance quality and gateway character. The purpose of the easement release request is to allow RedevGroup, Inc. to commercially develop Lot 5, subject to the special design restrictions described later in this report. To facilitate the easement release and exchange, RedevGroup has submitted a proposed agreement for the Board's approval consideration (Attachment 7 to this report).

ANALYSIS

As previously explained herein, the purpose of the Lot 5 conservation easement, as described in Condition 17 of the Development Order, was to provide for wildlife and upland habitat protection, including protection of hand fern (that existed at the time the easement was recorded), and to maintain "quality entrance and gateway character." Language in the recorded conservation easement indicates that the easement "*shall be perpetual and shall run with the land and shall be binding upon all subsequent owners of the servient estate*" (see page 3 of the conservation easement, Attachment 3 to this report). The easement also provides, however, that:

"In the event Grantee and Grantor (or subsequent owners of the servient estate) mutually agree that the intent of Development Condition 17 in the Development Order can be fulfilled by the designation of and use of alternative preserve property, this Conservation Easement may be released on terms and conditions mutually acceptable to the parties."

As such, if the Board agrees that alternative conservation property fulfills the intent of Condition 17 of the Development Order, the easement can be released consistent with the Development Order and with the language of the easement. County staff has coordinated with Treasure Coast Regional Planning Council (TCRPC) staff on the subject proposal and TCRPC staff indicated that they will have no review of the matter and would have no objection even if they were to comment.

Alternative Property

RedevGroup, Inc. is proposing to convey to the County title of one of two alternative preserve properties in exchange for release of the 4.7 acre Lot 5 conservation easement (see aerial maps, Attachment 4):

- Alternative Property 1: "The Alice Siew Property," approximately 9.17 acres (4 contiguous tax parcels) of riverfront coastal wetlands north of and adjacent to the County-owned Oyster Bar Marsh Conservation Area; or
- Alternative Property 2: "The Kinner Property," approximately 10.3 acres of riverfront coastal wetlands south of Quay Dock Road, north of Spoonbill Marsh, adjacent to conservation land owned by the Indian River Land Trust (IRLT).

RedevGroup has submitted an ecological comparison of the Lot 5 parcel, the Siew property, and the Kinner property, conducted by Kimley Horn and Associates, Inc. (see Attachment 5). Following is a summary of the Kimley-Horn report findings:

- The Mall Lot 5 parcel no longer contains listed hand fern, has invasive species encroachment (Brazilian pepper and umbrella tree), and is surrounded by urban development, diminishing its ecological value. The property contains seven oak trees that are of a size to meet the County Code's definition of specimen trees. A stormwater pond fronting SR 60 (south of the hammock and not within the conservation easement) is unmaintained and overgrown with willows and

cattails. [Note: 15 to 20 years ago county staff verified by a series of site inspections that hand fern, which was verified in the mid-1990s, had gradually declined and then disappeared entirely from the site.]

- The Siew property (Alternative Property 1) is north of and adjacent to the County-owned Oyster Bar Marsh Conservation Area. The property, consisting of 4 contiguous tax parcels, largely consists of mangrove marsh within the Oyster Bar impoundment. A portion of the property (approximately 1 acre) consists of uplands developable as a single-family residential lot fronting Hidden Pearl Place. The Siew property is adjacent to approximately 129 acres of conservation land that is planned for public access improvements. The property is larger than the Lot 5 parcel, and provides more ecological value and passive recreational access value than the isolated Lot 5 parcel.
- The Kinner property (Alternative Property 2), is located south of Quay Dock Road and north of 63rd Street on the riverfront. The majority of the property consists of mangrove swamp. Unlike the Siew property, the Kinner property is unimpounded, directly interfacing with the lagoon and subject to daily tidal fluctuations. The property is adjacent to conservation lands owned by the Indian River Land Trust (IRLT). The Kinner property is approximately twice the size of the Mall Lot 5 parcel and has higher ecological value.

From staff's perspective, of the two alternative sites the Siew property provides more public benefit due to its location adjacent to the County managed Oyster Bar Marsh Conservation Area that is slated for public access improvements. While Kimley-Horn finds the Kinner property to also have higher ecological value than the Mall Lot 5 parcel, the Kinner parcel does not lend itself to public access and is not adjacent to county ownership with planned public access improvements. If the Kinner property is to be accepted as a secondary alternative to the Siew property, staff recommends that the site exchange be supplemented with funding that the County can use toward public access improvements on county managed conservation lands. RedevGroup has been advised of staff's recommendation, and has agreed to supplement title conveyance of the Kinner site with a payment of \$291,819.00 to be used for conservation land access improvements, an amount based on the estimated tax assessed value difference between the Siew and Kinner properties.

Lot 5 Restrictive Covenants

In addition to conveying title to the County of one of the two alternative properties, RedevGroup, Inc. is proposing to record a Declaration of Restrictive Covenants which will establish special development restrictions for Lot 5 to address the aesthetic concerns covered under D.O. Condition 17. The proposed restrictions include the following standards:

- The combined pervious and storm water areas are not to be less than 44% of the total property area. No building or pavement shall be constructed within the southernmost 75' of property (this area shall be used for landscaping, water retention and signage). [Note: normal standards would allow 25% green area and parking within 20' of the site's SR 60 front property line.]
- A minimum of six (6) specimen trees shall be preserved. [Note: normal tree removal standards would allow fee-in-lieu payment to remove many of the specimen trees.]
- No single building footprint shall exceed 7,200 square feet, and onsite buildings shall be separated by a minimum of 50 feet. [Note: normal standards would allow a single, large commercial building.]

- State Road 60 Corridor criteria, parking, setbacks and buffers shall apply per code (normal standards).

The purpose of these covenant restrictions is to address the Development Order Condition 17 intent to maintain SR 60's gateway character, by providing more greenspace fronting SR 60 and more greenspace to accommodate tree preservation than would typically be required under County development regulations. Attachment 6 to this report provides a conceptual development plan that illustrates the greenspace and "bluespace" stormwater management standards that would be provided in association with a typical development design of Lot 5 consistent with the proposed covenant restrictions.

Conditions of the Proposed Exchange Agreement

To facilitate the exchange and easement release, the proposed agreement spells out a number of steps to be undertaken by RedevGroup, Inc. ("Developer") and the County, summarized as follows:

1. On or before December 20, 2018, Developer shall cause to be conveyed to the County title to one of the following described properties; free and clear of all liens, save property taxes and assessments which are not due:

Property 1: "The Alice Siew Property" or

Property 2: "The Kinner Property," together with \$291,819.00.

Developer shall pay documentary stamps on the conveyance, and property taxes shall be pro-rated to the date of closing. County may elect to purchase title insurance at its own cost and expense.

2. Simultaneously with delivery of title of one of the above-described properties by Developer, County shall release Lot 5 from the Development Order and from the Conservation Easement, by execution of a document which shall be recorded in the Public Records of Indian River County, Florida.
3. Also simultaneously, Developer shall record a Declaration of Restrictive Covenants which will restrict the development of Lot 5 with the following standards:
 - a. The combined pervious and storm water areas are not to be less than 44% of the total property area. No building or pavement shall be constructed within the southernmost 75' of property (this area shall be used for landscaping, water retention and signage).
 - b. A minimum of six (6) specimen trees shall be preserved.
 - c. No single building footprint shall exceed 7,200 square feet, and onsite buildings shall be separated by a minimum of 50 feet.
 - d. State Road 60 criteria, parking, setbacks and buffers shall apply per code.

In the proposed agreement, Developer acknowledges that in addition to the restrictions described above, all other provisions of the Indian River County Land Development Regulations applicable to site plan approval for Lot 5 shall apply.

The agreement provides that it is contingent upon Developer's ability to deliver to the County good and marketable title to either Property 1 or Property 2 (together with \$291,819.00) on or before the date specified, failure of which shall operate as a termination of the agreement (unless modified in writing by the parties), releasing each party from all obligations hereunder.

In staff's opinion, the proposed conservation land exchange and special development restrictions will satisfy the purpose and intent of D.O. Condition 17, will provide greater ecological value to the public compared to the existing unmanaged site, and will provide for public access to conservation lands compared to the existing site which provides no access.

RECOMMENDATION

Staff recommends that the Board of County Commissioners approve the proposed Agreement with RedevGroup, Inc. to release the conservation easement of Indian River Mall Lot 5 in exchange for RedevGroup's conveyance of title to the County of alternate conservation land, and subject to establishing certain special Lot 5 development restrictions and other conditions more particularly described in the proposed Agreement.

ATTACHMENTS

1. Aerial Map of Indian River Mall Lot 5.
2. County Resolution 94-93 (Indian River Mall DRI Development Order).
3. Conservation Easement.
4. Aerial Maps of Alternate Conservation Sites (Siew Property and Kinner Property).
5. Environmental Assessment and Comparison of Mall Lot 5 and Alternate Conservation Sites
6. Lot 5 Conceptual Development Plan
7. Proposed Agreement.