
TO: Drew Smith, Attorney for City of Flagler Beach

FROM: Sean S. Moylan, Deputy County Attorney

CC: Michael Chiumento, Attorney for Developer of Veranda Bay

DATE: December 4, 2024

SUBJECT: Veranda Bay Master Planned Development Agreement

The Board of County Commissioners requested that our office communicate with the City regarding the second hearing of the Master Planned Development Agreement for Veranda Bay (MPDA). These comments are based on the version of the Master Planned Development Agreement published with the City's November 14 workshop. First, I want to thank the City Commission for hearing the concerns of the County government and community stakeholders and working through issues with the developer of Veranda Bay. The MPDA now addresses almost all of the issues I raised on behalf of the County Commission at the City Commission's first hearing of the MPDA:

1. Wetland buffer along Bulow Creek and Graham Swamp: 25' minimum; 75' average.
 - MPDA §10(k)
2. In addition, a 75' minimum wetland buffer along two portions of Bulow Creek where the waterway is particularly close to the uplands. (Note however, the exhibit depicting the two areas was not published for the November 14 workshop.)
 - MPDA §10(k) and Exhibit G
3. Buffer along John Anderson Highway: 25' minimum; 50' average.
 - MPDA §10(f)
4. Prohibition on wells on private residential lots.
 - MPDA §10(f)
5. Potential to swap land with the developer to create public access to the future Bulow Creek Park.
 - MPDA §§4(c) and 9(g)

This list is the result of collaborative dialogue among the City, County, and Developer and will help protect our environment and quality of life into the future. Below are three additional issues the County requests the City to address.

Spine Road Construction, MPDA §9(e)

There has been extensive discussion about the timing of the construction of the Spine Road. The MPDA presented at the November 14 workshop requires the road to be completed by the completion of the 600th home. The MPDA prohibits the construction of more than 600 homes until the Spine Road is complete.

The County supports this requirement and prohibition because the Spine Road will take pressure off John Anderson Highway and its intersection with S.R. 100. However, as currently written, the cap only applies to single family homes and would not account for multifamily residential units. The MPDA should be revised so that the cap is 600 “residential units” whether multifamily or single family because both types of residential units will put the traffic on John Anderson Highway which the 600-unit cap is intended to alleviate.

Transportation Impact Fees, MPDA §9(d)

The Agreement also provides transportation impact fee credits to the developer for construction of the Spine Road. However, the developer has an existing obligation to construct the Spine Road, without impact fee credits, in consideration of the vested right to construct 453 residences, a golf course, and over 200,000 square feet of commercial development.

To my knowledge, the City does not levy transportation impact fees, nor does the City collect County transportation impact fees by way of interlocal agreement. We have requested the City to take ownership of the portion of John Anderson Highway within the City’s jurisdiction, our first preference, or in the alternative, to collect the County’s transportation impact fees by way of an interlocal agreement the same way the City collects County EMS impact fees. Such fees would help the County accommodate the impact of the development on the County’s transportation system.

Because it remains an open question whether the City Commission will take ownership of John Anderson Highway or collect County transportation impact fees, and because the obligation to construct the Spine Road already exists, the simplest solution at the moment is to delete the sentence providing impact fee credits. Another solution would be to allow for such credits but to specify that the credit would only apply to any City, not County, transportation or mobility impact fees that may be levied in the future.

Stormwater, MPDA §§9(f) and 10(e)

Stormwater remains a concern of the County. Bulow Creek is an Outstanding Florida Water (OFW), meaning a water body designated by the State as worthy of special protection because of its natural attributes. John Audubon himself visited the creek and Bulow Plantation before it was

destroyed in the Second Seminole War in 1836. The protection of Bulow Creek by the County was a springboard for the various environmentally sensitive land protections and acquisitions that residents and visitors to Flagler County now enjoy. It is a treasure of Flagler County, and the County Commission plans to build a passive recreation park along the creek with interconnectivity to the County's greater trail system.

Much of Veranda Bay west of John Anderson Highway will be constructed *directly within the floodplain* making proper treatment of stormwater runoff imperative.

The State's stormwater rules require a 95 percent reduction in average annual load of pollutants for OFW's. However, studies have shown the rules fail to consistently meet the 95 percent reduction, and algal blooms have worsened. As a result, in 2020 the Legislature passed the Clean Waterways Act, requiring the Florida Department of Environmental Protection (DEP) and the water management districts (WMD's) DEP to update stormwater regulations. The DEP and WMD's undertook a three-year rulemaking process.

In the most recent legislative session, the Florida House of Representatives ratified the new stormwater rules in a 114 – 0 vote. The Florida Senate ratified the rules 37 – 0.

As currently written, the MPDA would allow the Veranda Bay to develop under the old stormwater rules based on grandfathering provisions, or at least the Developer would try to make that case with the WMD. Veranda Bay's MPDA should expressly require the development to comply with current, updated stormwater rules already in effect so that Bulow Creek remains a treasure for future generations.