



CITY OF HOLLY HILL, FLORIDA

CITY COMMISSION

MINUTES • MAY 12, 2020

City Commission Chamber

Regular City Commission Meeting

7:00 PM

CITY HALL
1065 RIDGEWOOD AVENUE
HOLLY HILL, FL 32117

City Clerk's office: (386) 248-9441 - Fax: (386) 248-9448

1. CALL TO ORDER

a. Roll Call

Attendee Name	Title	Status	Arrived
Chris Via	Mayor	Present	
John Penny	District 1 - Commissioner	Present	
Penny Currie	District 2 - Commissioner	Present	
John C. Danio	District 3 - Commissioner	Present	
Roy Johnson	District 4 - Commissioner	Present	

b. Invocation by Mayor Chris Via

c. Pledge of Allegiance

The Pledge of Allegiance was led by Mayor Via.

2. RECESS THE CC MTG & CONVENE AS THE CRA

3. CRA AGENDA ITEM

Mayor Via opened public participation. No one spoke.

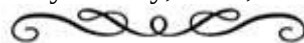
1. -2020-R-20

A Resolution of the Community Redevelopment Agency (Cra) of the City of Holly Hill, Florida, Approving Change Order #4 to the Us1 Utility Underground Project to Carter Electric and Waiving of Formal Bidding and Authorizing the City Manager to Execute the Change Order for an Amount Not to Exceed \$39,149.13 and 365 Additional Days

(Requested by Antoine Khoury, Public Works)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Penny, District 1 - Commissioner
SECONDER:	Penny Currie, District 2 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 12th day of May, 2020, in Holly Hill



4. ADJOURN AS THE CRA & RECONVENE THE CC MTG

5. PUBLIC COMMENTS

No one spoke.

6. APPROVAL OF MINUTES

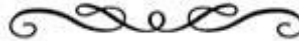
Mayor Via opened public participation. No one spoke.

1.

Minutes - April 28, 2020, Regular City Commission Meeting
(Requested by Valerie Manning, City Clerk)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Roy Johnson, District 4 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 12th day of May, 2020, in Holly Hill

**7. CONSENT AGENDA - ITEMS (1 - 2)**

Mayor Via asked if there was anyone in the audience who wishes to speak on any item on the Consent Agenda or if any member of the Commission would like to further discuss an item.

There was no one.

1. -2020-R-21 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, to Award the Bid for the "Rehabilitation of Lift Station #9 (CDBG)" to Cain Enterprises, Dba Engineering Solutions International, (ESI), as the Lowest Responsible Bidder and Approve the Contract in the Amount of \$249,999.00; Providing for Severability; and Providing for an Effective Date.

(Requested by Antoine Khoury, Public Works)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION**2020-R-21**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, TO AWARD THE BID FOR THE "REHABILITATION OF LIFT STATION #9 (CDBG)" TO CAIN ENTERPRISES, DBA ENGINEERING SOLUTIONS INTERNATIONAL, (ESI), AS THE LOWEST RESPONSIBLE BIDDER AND APPROVE THE CONTRACT IN THE AMOUNT OF \$249,999.00;

PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, TO AWARD THE BID FOR THE "REHABILITATION OF LIFT STATION #9 (CDBG)" TO CAIN ENTERPRISES DBA ENGINEERING SOLUTIONS INTERNATIONAL, (ESI) AS THE LOWEST RESPONSIBLE BIDDER AND APPROVE THE CONTRACT IN THE AMOUNT OF \$249,999.00, AUTHORIZING THE CITY MANAGER TO AWARD AND EXECUTE THE AGREEMENT; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, During an evaluation of the City's lift stations it was determined that Lift Station #9, located at 1601 Riverside Drive, is in need of refurbishment; and

WHEREAS, This lift station is over 50 years old and has not had any significant upgrades or improvements in that time; and

WHEREAS, This lift station is located within the eligible improvement area of the Community Development Block Grant (CDBG); and

WHEREAS, as low responsive/responsible bidder, Cain Enterprises DBA Engineering Solutions International (ESI) has submitted a bid in the amount of \$249,999.00 to the City of Holly Hill to rehabilitate Lift Station #9; and

WHEREAS, the City's consultant and City staff have evaluated and find the proposal to rehabilitate Lift Station #9 to be acceptable.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

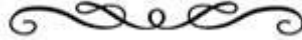
SECTION 1. Approve a contract with the lowest responsible bidder, Cain Enterprises dba Engineering Solutions International (ESI) and authorize the City Manager to award and execute a contract with ESI, for \$249,999.00 for the "Rehabilitation of Lift Station #9 (CDBG)."

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 12th day of MAY, 2020.

Enacted and approved this 12th day of May, 2020, in Holly Hill



2. -2020-R-22 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Adopting the Updated Volusia County Local Mitigation Strategy; and Providing for Severability; and Providing for an Effective Date.

(Requested by Antoine Khoury, Public Works)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John C. Danio, District 3 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2020-R-22

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, ADOPTING THE UPDATED VOLUSIA COUNTY LOCAL MITIGATION STRATEGY; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, ADOPTING THE UPDATED VOLUSIA COUNTY LOCAL MITIGATION STRATEGY; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of Holly Hill is vulnerable to the human and economic costs of natural, technological and societal disasters as evidenced in the Four (4) Presidential Disaster Declarations since 2016; and

WHEREAS, the City Commission of the City of Holly Hill recognizes the importance of reducing or eliminating those vulnerabilities for the overall good and welfare of the community; and

WHEREAS, The City of Holly Hill has been an active participant in Volusia Prepares, the Local Mitigation Strategy working group, which has established a comprehensive, coordinated planning process involving the County and its municipalities, as well as, other public, private and non-profit sector organizations, to eliminate or decrease these vulnerabilities; and

WHEREAS, Volusia County is asking for all jurisdictions to accept and endorse the Volusia County Local Mitigation Strategy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. That the City Commission of the City of Holly Hill hereby accepts,

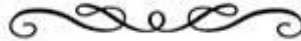
approves and endorses the Volusia County Local Mitigation Strategy.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 12th day of MAY, 2020.

Enacted and approved this 12th day of May, 2020, in Holly Hill



8. REGULAR AGENDA

1. -2020-R-23 Resolution

A Resolution of the City Commission of the City of Holly Hill, Florida, Authorizing Change Order #4 to the US1 Utility Underground Project to Carter Electric and Authorizing the City Manager to Execute the Change Order for an Amount Not to Exceed \$39, 149.13 and 365 Days for Final; Providing for Severability; and Providing for an Effective Date.

(Requested by Valerie Manning, City Clerk)

Mayor Via opened public participation. No one spoke.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John C. Danio, District 3 - Commissioner
SECONDER:	Roy Johnson, District 4 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

RESOLUTION

2020-R-23

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING CHANGE ORDER #4 TO THE US1 UTILITY UNDERGROUND PROJECT TO CARTER ELECTRIC AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER FOR AN AMOUNT NOT TO EXCEED \$39, 149.13 AND 365 DAYS FOR FINAL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING CHANGE ORDER #4 TO THE US1 UTILITY UNDERGROUND PROJECT TO CARTER ELECTRIC AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE CHANGE ORDER FOR AN AMOUNT NOT TO EXCEED \$39,149.13 AND 365 ADDITIONAL DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Holly Hill has taken steps to move forward the burying of overhead utilities underground having completed the Secondary Phase of the work; and

WHEREAS, on March 17, 2017, the City has awarded the contract to perform the burying of overhead utilities underground in accordance with Bid #13 ST 03 Phase III to Carter Electric; and

WHEREAS, additional work is required to add additional bollards, remainder of As-builts, post construction video, re-work of FPL conduit at revised pole locations, and additional survey services; and

WHEREAS, additional time has also been requested by Contractor for the additional work described above and other issues that have occurred during construction.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

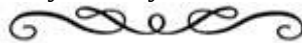
SECTION 1. That the City Commission of the City of Holly Hill does hereby authorize the City Manager to execute a change order with Carter Electric for an amount not to exceed \$39,149.13 and 365 additional days extending the contract completion to July 11, 2020.

SECTION 2. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 12th day of MAY, 2020.

Enacted and approved this 12th day of May, 2020, in Holly Hill



2. **-2020-R-24 Resolution**

A Resolution of the City Commission of the City of Holly Hill, Florida, Approving a Proportionate Fair Share Agreement with Fountainhead Developers, LLC, for the Development Located at 1200 Center Avenue, Holly Hill, Florida; Providing for Severability; Providing for Conflicting Resolution; and Providing for an Effective Date.

(Requested by Joseph Forte, City Manager)

This item was taken after the Public Hearings so that the Commission can wait upon the arrival of City Attorney Simpson.

Mr. Forte stated he's going to turn it over to Attorney Simpson but they've spent a lot of time, a long time working on the Proportionate Fair Share. Mr. Forte stated he's explained it a little bit to all of the Commissioners the best that he could. The agreement, for the most part in and of itself, has been "agreed to" in terms of the amount of the Proportionate Fair-Share dollars that have to be paid for the project in the different

phases. There's only two items that he has concern with the agreement. One is the timing of when the Proportionate Fair-Share gets paid and the other is the application fee. He will jump to the second part which is the application fee. In the Incentive Agreement there is language that says that the city would waive all fees as part of the development of this project and it references permit fees and inspection fees. At the time staff and the city attorney put that together, they never contemplated a \$5,000 application fee for Proportionate Fair-Share and he's not comfortable waiving the fee. He's made mention of this several times as they led up to this part of the application being submitted. He wasn't even going to keep it on the agenda unless the application fee was paid; it has not been paid and he kept it on the agenda for the purpose of it moving forward. He doesn't want to hold the project up any more than it absolutely needs to. So, that still has to be discussed. When he spoke to the applicant's attorney, not the one sitting in the audience (Mark Watts from Cobb Cole), if the Commission would look at on the screen, this is the language in the Incentive Agreement and it says, *"The City and Agency agree that all City fees associated with the redevelopment of the Property shall be waived to the extent the City can legally waive said fees, such as permit fees and inspections fees."* That was the content of the agreement back four or five years ago, whenever they got into this part of the agreement. When they got into this, they knew that there would be a cost. It's in the fee Resolution for prop share application fee. Mr. Forte stated he told staff he's just not comfortable waiving it. He doesn't think that was the intent of this and the amount of time that Attorney Simpson has put into it, far exceeds that application fee not to mention the rest of the staff's time, his time, and Mr. Harowski's time. If the Commission wants to waive the fee, he would rather the Commission make that decision but administratively, he's not comfortable doing it.

Mayor Via asked has the fee ever been waived by the city in his knowledge?

Mr. Forte stated this is the first time in his knowledge that they've gone through to do a Proportionate Fair-Share agreement. If they had to do it before, they would have had a template.

Attorney Simpson stated, right. They had to create everything. He doesn't think the city has ever done it before; not even for Marina Grande.

Mayor Via stated, okay.

Commissioner Penny stated Joe, correct me if I'm wrong, even if the City Commission were not to waive the fee, it would be reimbursable under their reimbursement contract, correct?

Mr. Forte stated that's what he was going to say before this came up. The project is also working with Attorney Mike Chiumento out of Flagler County, and he had emailed him and requested that if the fee was paid would it be a reimbursable expense under the Capital Expenditures and I said, certainly. The city would allow that to be. And then after that, he had another request to have it waived and that's when he said he's not comfortable waiving it. So, if the Commission wants to waive it, they can waive it at the Commission's discretion. If the Commission doesn't want to waive it, if the Commission agrees with the content of it, they can approve it pending authorizing the Mayor to execute the agreement after the payment is made or they waive it and execute the agreement tonight.

Mayor Via asked when was the request made for waiving the fee? Because Mr. Forte has told

him, has always said that this fee will take place.

Mr. Forte stated about a week ago.

Mayor Via stated okay, so it never came up previously.

Attorney Simpson stated, no; it came up. It was the last time it was probably mentioned.

Mr. Forte stated he doesn't know when it came up before.

Attorney Simpson stated the first time was probably the first time they said, "hey, there's an application fee." So, that would be probably in December/January 2019-2020; December 2019 (Mark Watts confirmed from the audience). So, this isn't the first time they've asked for the waiver. Attorney Simpson stated he can answer any questions anybody has about this. Obviously, what they have is a piece of property that is being developed that's going to have an impact on traffic and that impact, if they go to Exhibit "A" of the Proportionate Fair-Share Agreement in their agenda packet, the study has been done. *(Attorney Simpson continued to explain the traffic study that was done to the Mayor and City Commissioners)*. The traffic impact analysis is going to generate 3,287 trips. There was an existing development on this, which was the school. The main reason why he put so much effort into this when it came up was, he wasn't involved when they did the MDA initially, in terms of traffic. There were certain things that he dealt with and then there were certain things that he kind of took a hands-off approach like landscaping, building exterior, and traffic because Tom Harowski, at the time, was working with the County; the County was involved with this. Well then, Mr. Harowski wasn't here anymore, Mr. Walker wasn't involved in it, and he could not in good faith recommend something to the Commission, if he can't explain it to them, then he in good faith, can't recommend it to them. So, he had to try to learn as much as he could about traffic analysis. It was either that or go hire a traffic expert, one or the other. He met with Attorney Mark Watts from Cobb Cole a couple of times, he went over to the County a couple of times to meet with them because they also have the County that has traffic impact analysis that overlap the city's. What he has learned is it's not an exact science; far from it to be honest with them but in any event, they had a traffic impact study that was done. This project is projected to put out 3,287 trips. The existing, from previous development, calculated to have 2,346 so that's their vested with that amount.

Mayor Via stated even though it was empty for "x" amount of years?

Attorney Simpson stated, yes. The city's doesn't say that and he's gone back and forth with the County saying, "Does it ever phase out?"

Mr. Forte stated it's a five year phase out.

Attorney Simpson stated the city's doesn't do that though.

Mr. Forte stated the city's does not, right.

Attorney Simpson stated there's a lot of things that he's learned through this. Now that he goes back and looks at the city's Proportionate Fair-Share Ordinance, he was thinking maybe the city needs to fine tune this Ordinance a little bit. When he tells the Commissioner's this is not an exact science and he doesn't mean to insult anybody who does this for a living, this is not an exact science. So, they have that difference. They have the difference between the 3,287 and the 2,346 trips so those are the trips that need

to be paid for and this is different from the city's traffic impact fees. The city has impact fees that they're going to have to pay. The city has given them credit for that and for water, sewer, police and traffic. There's three (3) impact fees that they are still going to have to pay and those are due as a condition of getting the Certificate of Occupancy (CO). Everything they are talking about is a condition of getting a CO for Phase 1 Parcel 2. There's approximately between \$50,000 and \$60,000 of impact fees that also includes traffic impact fees. Proportionate Fair-Share deals with impacts to particular roadways, where they can view an impact fees as maybe an overall impact or as the Proportionate Fair-Share now talks about impact fee, impact on specific roadways, and that's what the analysis did, to come up with a cost of \$760,000 and if they see on Exhibit "A", there's a \$231.36 per trip cost. Well, if they take the 3,287 and divide it into the traffic impact fee analysis of what the cost is, that comes up with 231 trips. So, the question is, how do you allocate those trips with a phase development, when the city has agreed in the Development Agreement, that it would be on a first come first service basis? With concerns and discussions with Mr. Forte and his concerns, that the city doesn't want to shift it to the tail end of the development. If they put all the credits up front and they shift everything to the tail end of the development, the city doesn't want to be stuck holding a piece of property that has no credits because this whole site was developed. They are trying to address all those issues. The city has agreed and this was something that was discussed early on, because of the way the workforce housing gets funded, that having an additional cost, having them to pay for their Proportionate Fair-Share on those units, helps them in their tax credit calculations. Somehow in their financing calculations it helps them; they're able to get the money back. That's why the Commission doesn't see no exempt trips allocated to Parcel 4 because the way that whole calculation works, they get more money if they have that cost there. They get reimbursed from the State for that. It was agreed that the city wouldn't allocate any there. It was also agreed that the city would exempt out, what this does is it exempts out the trips for Phase 1 Parcel 2, what they are building now. If the Commissioner's look and they see Parcel 2, all of Parcel 2, the city has exempted 1,386 trips. They can develop Parcel 2 and use all of their exempt trips. Like he said earlier, don't confuse this with impact fees. It's different. They are still going to pay the impact fees. Parcel 2 gets developed, they have exempt trips. Basically, the city is saying, "How do we allocate those exempt fees...the excess trips and the exemptions to Parcel 1 and Parcel 3?" We came up with a calculation based on the percentage of the trips generated based on the approved plans, the square footage, because that's what they're vested, that's what they can build up to and it's based on an allocation of a percentage which is between Parcel 1 and Parcel 3 of the total trips and that's where they come up with...for Parcel 1, when they go to pull their first permit to construct a structure that puts the trips over the exempt trips for Parcel 1, they will have to pay \$53,906.88 and then they have Parcel 3 where it's the same thing. Once they pull a permit to build a structure that generates trips that exceeds the exempt trips, they will owe \$27,300.48. So, what could happen with this is, what it says is once they buy Parcels 1 and 3 from the city, at that point, the city is no longer stuck with a piece of property that we're worried about having the brunt of all of the Proportionate Fair-Share costs. They can then allocate the exempt trips as they see fit because they own all of the property. So, they're allocating within their property. What that could mean is they could probably allocate the trips that they wouldn't pay Proportionate Fair-Share of costs until they get to

the very last part of their development and that's the only smart thing to do, honestly. That's what he would do if he was them. He would allocate to not pay any Proportionate Fair-Share costs until he used up all of his exempt trips. But until they own Parcels 1 and 3, they have to pay based on the allocation formula that has been put in there.

Mayor Via asked so they can roll over the exempt trips until they own Parcels 1, 2 and 3? Attorney Simpson stated in terms of rolling over, like shifting them?

Mayor Via stated, right.

Attorney Simpson stated they cannot until they buy them. Say they buy Parcel 1; that's one of the things that could happen, they buy Parcel 1 and we still own Parcel 3. Could they shift the allocation between Parcel 2 and Parcel 1? Yes, because they own it but Parcel 3 still stands...we still have our exempt trips on Parcel 3 because we still own that. The city has the 317 exempt trips that the developer can't use on Parcels 1 and 2 because the city still owns Parcel 3. Now, once they buy Parcel 3 then they can reallocate them as they see fit. What else could happen? As he indicated...

Commissioner Penny stated so the exempt trips are set in stone.

Attorney Simpson stated, no. That's already been done. We're not actually setting that in stone. That is done through, that was actually in the MPUD that the city agreed to. That was already set in stone.

Commissioner Penny stated his fear is that Parcel 4 never gets developed with the golden goose of the affordable housing and then all of the Proportionate Fair-Share gets shifted to that parcel.

Attorney Simpson stated well, the city has already shifted all 590 trips to that.

Commissioner Penny stated, right.

Attorney Simpson stated and so, yes, if that doesn't get developed as a workforce housing, that was agreed to that that cost would be shifted to that.

Commissioner Penny asked it would shift back if it's not?

Attorney Simpson stated no, it would still be...

Commissioner Penny stated it's still exempt no matter what it is.

Attorney Simpson stated Parcel 4 has no exempt trips.

Mr. Forte stated Parcel 4 has the affordable housing project.

Attorney Simpson stated, yes.

Mr. Forte stated has no exemptions. So, they would pay the full burden of the prop share on that parcel. So, the problem that comes up is if that affordable housing never happens...

Commissioner Penny stated, right because then it's unsellable and no one is going to want to pay that.

Mr. Forte stated well, it's sellable but then they will have to modify their price based on the Proportionate Fair-Share that's been pushed to that property.

Commissioner Penny stated, okay.

Attorney Simpson stated when somebody comes in, if they don't build the affordable housing, they'll build something else and that's what, he guesses the point is, say Fountainhead, which is probably going to happen, going to come forward and say, "We want to change our development", and that change is going to be a major amendment that will have to go through, in essence, a rezoning process and come back before the Commission for approval. They may shrink the size of the development. Well, as they shrink the size of the development, they're going to have less trips and the way to, and

this was the last hurdle for him to get his head around, is the \$760,000 was based on the percentage of trips generated by this project onto a road over the overall capacity of the road to come up with the \$760,000. So, if they have less trips then that allocated percentage is less and that \$760,000 would come down proportionately, they're still at \$231,000.

Attorney Mark Watts, Cobb Cole stated, right. It's a statistically analysis.

Attorney Simpson stated that was his concern that they reduce the trips down and the city still has the impact to the road that doesn't get paid. He was like they have to recalculate all of this.

Commissioner Penny stated the trips are based upon a "what-if" plan that may or may not ever happen.

Attorney Simpson stated, right.

Commissioner Penny stated so Parcel 4 is intended to be an affordable housing building with 490 trips. Well, let's just say it turns into a bank, it's certainly going to have...is it based on square footage plus use or just purely square footage?

Attorney Simpson stated the use; the square footage and use.

Mr. Forte stated typically what happens if someone were to buy the entire project, all of the property, and they submitted the plans as proposed, for all of the development on all of it, they would pay that Proportionate Fair-Share right up front and that's the risk that they take for vesting that proportionate fair share. The city's Code says they have to pay that up front and if you don't build to that, that's your loss. You took the risk. Now, in a phased development, which is what this is, they're not responsible for paying a Proportionate Fair-Share on property that they don't own. Issuing credits on a first come first serve basis is the city's risk as well because as Attorney Simpson mentioned, it's possible that they don't completely build everything on Parcel 2, leaving credits on the table that would then shift to Parcel 1 and then Parcel 1, which was originally supposed to be one building, that they would pay upon application for a permit, is now three (3) buildings. So, the question comes up, "Well, we don't want to pay the Proportionate Fair-Share until we trip the nonexempt trips", which may or may not happen at some point during one of those construction points of the building. It may not be until the last building then if there's existing credits on Parcel 2, they'll shift that to Parcel 1 and maybe no Proportionate Fair-Share would be paid there.

Commissioner Penny stated but all those potential changes would have to come back to this body to be approved if it has major amendments.

Mr. Forte stated, yes. At this point...

Commissioner Penny stated it could affect the incentives.

Mr. Forte stated, correct. At this point, the staff approved some changes on their Development Agreement that maybe could have come to the Commission but staff chose to look at it as being minor amendments. Staff told the developers that the city drew the line in the sand now and said, "Any change, regardless of its size and intent, would be considered in the totality of all the changes as a major amendment and would have to come back to the Commission. Staff still has to come back to the Commission to amend the MPUD to reflect the changes that have been...the language in the PUD doesn't have to be amended?"

Attorney Simpson stated if it's a minor amendment, it doesn't have to come before the Commission.

Mr. Forte stated, okay. He fully expects that there will be a change request and staff will end up in front of the Commission looking at the total project again.

Attorney Simpson stated and he thinks, the best way that he was able to kind of get his head around it is to say they have the ability to construct improvements that generate 2,346 trips without paying any proportion fair share because that's what the exempt shows. So, regardless what they build, how they build it, the timing of when they build it, anything that they build that generates a trip generation more than 2,346 is when they will start paying the Proportionate Fair-Share and that will be at the application for that improvement.

Commissioner Penny stated in this traffic study that was done, he's assuming there is language or a formula that tells the city when these trips begin.

Attorney Simpson stated it's based on the use. The analysis that he did, Parcel 1, it would say, these are the uses that are allowed there. This many square foot of a daycare, this many square foot of a restaurant and so, it doesn't say which one gets built first but they say on Parcel 1 this is what is permitted and then they go to a traffic manual that would then tell them the number of trips, and that's what the traffic study did, based on those uses. So, he took those uses, added those trips up and said, Parcel 1 generates this many trips. Added it to Parcel 3, so he got a combined total, so he allocated the exempt trips based on the trip generation.

Mayor Via stated but he thinks the question is, is when does that take place? When they pull the permit before they even dig or when they move into the building?

Attorney Simpson stated, no. When they file an application to build a structure that goes over the exempt trips they have then they have to pay it.

Mayor Via stated, okay.

Attorney Simpson stated right now, if the city owns...if the city continues to own Parcel 3 and they just own Parcel 1 then Parcel 3 stuff stays to the side, that's the city's, and those exempt trips stay with Parcel 3 so when they develop on Parcel 1 to the extent that they generate more than 643 trips on Parcel 1 with that application, they are going to have to pay with the understanding that they may have excess on Parcel 2, there's 1,386 exempt trips, if they don't build to the full potential there may be surplus exempt trips there that this agreement would allow them to assign Parcel 1 because they own Parcel 1.

Commissioner Penny stated but one of the concerns that has been all along is that the building on Parcel 2 may never reach the square footage that has been presented. If that's true then there would be trip credits.

Attorney Simpson stated, yes and that's why he raised the issue just to let the Commissioners know.

Commissioner Penny asked is there any way to lock...to not allow those trip credits to transfer?

Attorney Simpson stated he guesses they can say that the city isn't going to agree to it but if they go back and they look at the overall intent here is to say if your product generates trips that exceed the impact that the previous development had, then you have to pay, then you don't do that because you're basically telling somebody, "Hey, too bad on Parcel 2, you didn't build to the full potential so you can't do anything. You lost those exempt trips. You do them on other parts. They look at the project as a whole.

Commissioner Penny stated and he understands that theory if this was an incentivized project. This is highly incentivized project by taxpayers dollars so, the city holds the

power, he thinks.

Attorney Simpson stated he thinks when they come back and they want to modify and they say, which the Commission may hear, is that they don't want to build a three-story, they want to build a two-story; it's going to be smaller. That's going to be a major amendment that comes back to the Commission and everything that the Commissioner Penny has said is a proper discussion item then and say, "We incentivized "x" and we're getting "y"."

Commissioner Penny stated but how can the Commission agree to this if he's hearing that there's a very good likelihood that there will be some amendments coming back. Obviously, there's been talk amongst someone, you didn't just dream of this.

Mr. Forte stated if they never exceed the number of trips that were there previously, there's no impact to pay.

Attorney Simpson stated, right. He thinks the best way to look at it is that project, that property has 2,346 trips that can be generated before they have to pay. The whole project. Commissioner Penny stated he gets that.

Mr. Forte stated but they have to pay at 2,346.

Attorney Simpson stated 2,346 is exempt. Over 2,346 they have to start paying.

Mr. Forte stated, no. Over 1,386...

Attorney Simpson stated, no; 3,287 is the total trips on this project and 2,346 is exempt.

Mr. Forte stated, okay.

Commissioner Currie stated she can't make a motion right now because they haven't gotten there but she's going to throw this out there for everybody to have some food for thought while they are going through this discussion. She believes the city is at the point where this project, we're five years in, not that she minds seeing Attorney Watts, but the city is five years into this project. They all know that there's been several changes to the project and the city's been asked, the staff has been asked over and over to conform in a way that makes it easier for the project. She thinks the city has bent over backwards to try and help. She's not seeing, over the five year plan, what the Commission was presented and she said back when they first started all of this, she loves the development, she's fearful that everything won't happen or happen in the time its warranted. She thinks there has been so many changes that the Commission should table this issue until a time certain and workshop and have Fountainhead present the Commission with updated information on the project, bring the Commission up to speed, up to date because she really doesn't have no idea now of everything that's supposed to go on over there because of the changes that have been made and she doesn't feel as though she can make a fair assessment in her decision with this item unless she has that information. That's all she has to say right now. She'll wait until after all of their discussion.

Attorney Simpson stated he wanted to make a couple of comments on that. One is the whole Incentive Agreement was set up where as if they didn't perform, they didn't get paid. The city has not given Fountainhead anything because...as Commissioner Currie indicated.

Commissioner Currie stated well, the city has given them credits.

Attorney Simpson stated, no...we've...

Commissioner Danio stated they haven't performed.

Commissioner Currie stated she's saying credits on permit fees...

Attorney Simpson stated the city's done those things...

Commissioner Currie stated things of that nature. That's what she's talking about.

Attorney Simpson stated and staff has calculated out the impact fee credits the developer is entitled to and as we did with this but in terms of incentive money...

Commissioner Currie stated oh, she knows the city hasn't...

Attorney Simpson stated the city still...

Commissioner Currie stated she knows that because they haven't met any deadlines, that's the problem.

Attorney Simpson stated that's still sitting. What seems to be a crucial timeline here and he's not saying Commissioner Currie is wrong, he's just saying for Fountainhead it's a crucial timeline, is they are pushing to get a Certificate of Occupancy (CO) for Phase 1 Parcel 2 because once they get the CO for Phase 1 Parcel 2, if the Commissioner's remember back a year ago, Fountainhead was trying to buy Parcel 1. They went through that whole process and the city had some reservations about that because it was all set up as, as you perform you buy and we kind of go through this process. So, the city is holding their feet to the fire on they need a CO before they satisfy the city's contract and gives them the option to buy Parcel 1, which then gives them the option to buy Parcel 3. It appears to him that they are trying to finish Phase 1, get the CO which then opens the door up, per the contract for them to buy Parcel 1 and then Parcel 3. That's his perception, which they are contractually entitled to do. He'll defer to Mr. Forte and Mr. Walker on how quickly Fountainhead is going to get to a CO and this is part of it. The Proportionate Fair-Share Agreement is a part of it, paying the impact fees is a part of it but they also have to build and get approval, a final CO, on what they're building.

Commissioner Currie stated Attorney Simpson, my issue is...well, not my only issue...

Attorney Simpson stated we have time, in my opinion.

Commissioner Currie stated one of her issues is that they were told they have to make this \$5,000 fee payment for the application, told some time back but here recently now they've asked the city to waive that.

Attorney Simpson stated they asked early on.

Commissioner Currie stated she thinks the city has been asked to do way too much without any significant progress. She loves the project still, don't get her wrong. She's hoping it comes through but she's a little leery at this point but she needs, she cannot even begin to approve this until she gets an update on that project.

Attorney Simpson stated and that's fine. He believes in talking with Mr. Forte and Mr. Walker, they're not, this isn't holding them up from getting a CO.

Commissioner Currie stated, okay.

Mr. Forte stated when he asked the other attorney...Mr. Forte sent the other attorney an email last week because he feels he's missing something. There seemed to be a lot of urgency to get the prop share agreement in front of the Commission and we wanted to get it on the May 12th, today, and about two weeks ago there was a rush to Attorney Watts to get it done, Attorney Simpson to get it done, and it's on the 12th so Mr. Forte sent Attorney Mike Chiumento and said, "What am I missing? What's the urgency that this has to get done because all of Exhibit "C" on Parcel 2 has to be completed before you get a CO and based on my review of the project, we're still several months out from that being done."

Commissioner Currie stated see, that just leads a hand to her point, Mayor.

Commissioner Penny stated he appreciates Commissioner Currie's sentiments. He thinks it would be helpful if they had a workshop and had a presentation with Fountainhead on

where we're at, where we're going to go, possible changes but he thinks, maybe he sent the Commission down this rabbit hole by starting discussing it first. It looks like the Commission only has two things to discuss tonight; \$5,000 or are they going to waive it or are they going to charge it and reimburse it? And the second question Mr. Forte had was when does Fountainhead pay that Proportionate Fair-Share fee and what he's hearing Attorney Simpson say, not until they pull a permit that exceeds...

Mr. Forte stated that's what Fountainhead put in the contract. Our policy says it gets paid when you buy the land you submit your application.

Commissioner Penny stated and so, in a perfect world, this all would have been done before there was a building permit issued for anything on Parcel 2, correct?

Mr. Forte stated, yes. And he can't really point a finger to blame for that.

Commissioner Penny stated, no. He gets that. It's his opinion they should pay the \$5,000, apply to get it reimbursed, case 1 and then when they pull any permit that exceeds their trips on Parcel 2, they have to pay their fair share, whether they build it all or don't build it. It's been so long. He hasn't been on the property. He drives pass the property, it looks like a war zone. He doesn't know what they're doing over there. He has no clue. They have some nice trees. He thinks, maybe Mayor Via, you can take one question and then the second question and maybe you can bring us back on track.

Mayor Via stated that's what he was going to do but he wants to give Attorney Watts an opportunity to come before the Commission and speak for a bit.

Mark Watts, Attorney from Cobb Cole, 231 N. Woodland Boulevard, DeLand, stated he appreciates staff and all the time spent in bringing this document to the Commissioner's this evening. He wants to simplify it as much as he can. This type of an agreement and what they're doing in this exercise is really the intersection of constitutional law and algebra, which you really think those things should never really intersect. But this is really all about constitutional exactions. When they're dealing with road capacity, when they're dealing with impact fees and everything else, what they're really talking about is a statistic approach to exacting something out of a property owner in exchange for their ability to develop their property. What they do with an impact fee typically, is they exact out a fee that's based on a statistical analysis for every trip that you're putting on the road, how much does it cost the city? How much does it cost to expand the road? In the context of redevelopment they have to look at things a little bit different. Think about it as a bucket. You have a bucket that holds the volume associated with what's already on that property. The road network is that bucket, in this case, there was a middle school there and it generated a certain number of trips and those trips were in the bucket at one point in time and so, they can't then go back and exact additional dollars out of that land owner or out of that developer until you need a bigger bucket. So, when the original Traffic Impact Analysis (TIA) that was submitted, they came up with that \$760,000 on the prop share. What that did is it looked at the PUD and what are the total impact of the PUD and then what does it cost to put that many trips on the road. The next step of the analysis, which is what staff and himself have had to go through is when they're talking about that in the context of a redevelopment when they already had trips from that property on the road, they then have to net out the prior trips. So, he thinks they actually improved on what was in the PUD as they went through this process because there are a couple of things and they've been mentioned briefly, the PUD says we're going to basically use those exempt trips on a first come first serve basis. As the property in the

PUD is developing, we're going to start using those exempt trips first and it didn't allocate it that a certain amount that was going to be saved for this parcel and a certain amount was going to be saved for this parcel. He thinks that Mr. Forte, Attorney Simpson and Mr. Walker had a very valid concern that sooner or later the city is left holding a golden anchor that cost too much to offset the impacts of the traffic so that nobody is ever going to develop it if Fountainhead never bought it. They looked at the PUD and himself and Attorney Simpson have spent a lot of time together going through a bunch of different calculations on it. What they did is they tried to come up with something, he thinks, was fair. A fair approach to the allocation that looks at the PUD, the approved PUD agreement, looks at the uses that were allocated to the different parcels based on that and said, "Okay, let's take these exempt trips and let's per rata and allocate them across the properties so that they don't have that golden anchor. Now, the tax credit finance affordable housing project you treat a little bit different because the developer there actually gets more money from the State the more expensive the project is. So, if he has to pay that full freight on the prop share payment there, his 9% tax credits that he gets from the housing authority is increased because he is 9% of that \$130,000 as well, on top of his project cost. That's why it made sense to leave that in place there. That's really kind of what this exercise has been. It's been how do we create something that's fair that accurately accounts for the prior development that was on the property. He will give them an example. Himself, Mr. Forte, and Attorney Simpson kind of talked about this a lot during their meetings but they did something very similar with the One Daytona project and the Speedway. If they recall the Speedway and One Daytona where that sits now was the GE (General Electric) park, the old research park and then they also had across the street the track, they had the old back stretch, which had all those seats. Well, each of those seats, there was an impact fee associated with it so there were trips associated with each of those seats. They actually, when they were working on that project, had to create a pool of exempt trips that then get drawn against for either the One Daytona project or things that they do across the street at the Speedway. This has been really a different scale but the exact same exercise. Ultimately, what they came up with is looking at the ITE manual (*Trip Generation Manual*) and applying the trip generation rates that were used in the study of the TIA (Traffic Impact Analysis) and kind of applying them to the project and the costs. That's how they ultimately came up with that \$231.36 per trip and then allocated it across the overall property. What the Commissioners have here now is very much just kind of that. How do they apply that math? How do you take the PUD and divide up that responsibility and those exemptions across the property in a way that's fair to the city and honors the intent of what the PUD currently says. In regards to the timing of the payment, if they look on page 3 of 7, it says, "*Payment due for the number of non-exempt trips associated with a particular phase of development shall be paid upon application for a building permit authorizing construction of any improvements for that phase of development that includes non-exempt trips*". Basically, again, going back to the what's their legal basis for charging any dollars here. It's that constitutional exaction analysis. Your legal basis for is you're starting to have an impact based on non-exempt trips going in and you needing that bigger bucket or the County needing that bigger bucket to handle the traffic. Attorney Watts stated they've set this up so that the first time there's a building permit that comes in for those non-exempt trips then they have to make the payment for the prop share.

Mr. Forte asked did One Daytona do the same thing? Did they pay when they tripped the non-exempt or did they pay upfront?

Attorney Watts stated they pay when they run out of exempt trips. Actually, in that case, when you get to the end of the full build-out of One Daytona, there's 15,000 trips still left in the bucket.

Mr. Forte stated so they'll never make it.

Attorney Watts stated because they had so many associated with the prior development there. He thinks there was something like 53,000 trips in the bucket to begin with. So, that's how the city got here. The last point and he doesn't discount at all that there probably out to be, and he doesn't know, he is sort of in and out of this project at times so he doesn't know what the consistent conversations are. He does think, certainly, there are other conversations coming with regards to what the overall build-out looks like and everything else. He thinks the intent is still to very much have something that the city and Fountainhead is going to be proud of with regards to the redevelopment. If the Commissioners have been in the buildings over there, he knows the outside kind of looks a little rough at times but if they've been in the buildings over there, he thinks they've done a really great job on the reuse of the facilities that are there. Attorney Watts asked if the City Clerk could pull up the Incentive Agreement. He just wanted to speak to the question of the \$5,000 application fee. This, he thinks, came up when they first starting having the conversation about getting the Proportionate Fair-Share Agreement.

Mayor Via stated asked if Commissioner Penny had a question before they move on.

Commissioner Penny stated, yes. He's just trying to get his ahead around the math but they can look at that in a minute.

Attorney Watts stated the reason that, he thinks, Mr. Meyer and Fountainhead team were looking at this, the last section in that paragraph of the Incentive Agreement, *"The City and Agency agree that all City fees associated with the redevelopment of the Property shall be waived to the extent the City can legally waive said fees, such as permit fees and inspections fees. Fees that cannot be legally waived, such as impact fees, shall be considered an Eligible Redevelopment Costs to the extent such fees are paid by the Developer"*. He believes when they filed the application for the PUD, for example, they didn't pay the application fee. That was all part of what...the fee waiver that's part of the Incentive Agreement in their view of things. The \$5,000 was just, simply, he thinks Mr. Meyer has looked at this and said, "I have an agreement that says all city fees that can legally be waived are waived." Now, the continuation there in the Incentive Agreement where it says, *"Fees that cannot be legally waived, such as impact fees, shall be considered an Eligible Redevelopment Costs to the extent such fees are paid by the Developer"*. When they're dealing with something such as an impact fee, again, they have to go back to that constitutional exaction analysis. When you adopt an impact fee...let him just say this. Impact fees cannot legally be waived. Period. An impact fee is either charged to the person who is, under the Ordinance, responsible for paying that fee or it's paid on their behalf by someone else. Otherwise, what they end up with is if you say, "We're going to waive impact fees." You have an impact fee that's based on a statistical analysis that says each trip cost "x" for the government or for whoever is having to pay "x". If you waive it, the next person who doesn't get it waived, their fee now is "x" plus something and so now you have skewed the entire system because you are now shifting the cost that somebody was responsible for onto somebody else.

Anytime they have an impact fee there has to be a pass-to-pass which is called a *Dual Rational Nexus Test*. There has to be a causal connection and there has to be a proportionality between the fee that's being charged to one person and the costs that are being incurred or the fees that are being charged to someone else. When they waive an impact fee, they start to run afoul of that constitutional test. That's why the language here in the Incentive Agreement it says, "*Fees that cannot be legally waived, such as impact fees..*", they can't legally waive an impact fee. But an application fee, in our view, falls under the first part of that language there in the Incentive Agreement, "*all City fees associated with the redevelopment of the Property shall be waived.*" That's why they got into the discussion of the \$5,000. It was just viewed as one of the fees that, it's an application fee, it's like the rezoning application fees that weren't paid. That's a fee that was waived by the Incentive Agreement.

Commissioner Currie stated basically, Attorney Watts is asking the Commission to shift around for the different parcels and credit and not have to pay Parcel 1 at permit, Parcel 2 at permit, Parcel 3 at permit and so on. Is that correct?

Attorney Watts stated, no. What the agreement, what the Proportionate Fair-Share Agreement does is really just an exercise and what does this project create from a road impact standpoint. What does that cost and how is it paid. The Prop Share Agreement here has to take into account the property was previously developed as something else. All this is, is a math exercise.

Commissioner Currie stated but Fountainhead doesn't want to have to pay the total amount due for each parcel at the time of permit. That's what Fountainhead doesn't want to do.

Attorney Watts stated well, let him flip that. He doesn't think you can legally assess, he doesn't think the city or the County or anybody else can legally assess costs or collect a fee for an impact that doesn't exist yet. So, here, until they pass trip 2,346 because that's what they all agreed is the exempt number, until they pass that number of trips, and this is not a new concept here. If they look at, for example, the...and he's not as familiar with Holly Hill's impact fee Ordinance, but if they look at the County's impact fee Ordinance it says if the property is previously developed and that's demolished then you don't pay a fee from an impact fee standpoint until you exceed the prior amount of development that was there. So, if he has a 10,000 square foot building that's here now and he builds 12,000 more, he doesn't pay fees except until he gets to that 12,000...that extra 2,000, if it's the same use.

Commissioner Currie stated Attorney Simpson, because you know our Ordinance, I'm trying to get this clear in my head. In other words, Parcel 1 the \$53,000 is due typically and by our Ordinance, when?

Attorney Simpson stated the city doesn't address phasing.

Mr. Forte stated, no.

Attorney Simpson stated or a situation like this.

Commissioner Currie stated, okay because she was under the impression it was due at permitting.

Mr. Forte stated actually, it's due...in Section 86-38 - Proportionate fair-share agreements (b) "*Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable.*" So, it's due even before a permit is requested.

Commissioner Currie stated, okay.

Attorney Simpson stated the main thing here is that...

Commissioner Currie stated but Fountainhead is asking not to do that.

Attorney Simpson stated well, no...

Commissioner Currie stated she's trying to get it clear on what they are asking.

Attorney Simpson stated there's one thing that's really unique about this, the city owns the property. The city owns Parcel 1 and the city owns Parcel 3, so the city can't ask Fountainhead to pay impact fees on development that's on the city's property.

Commissioner Currie stated she's not talking about on...

Attorney Simpson stated the city can't look at it from a standpoint of when we filed the first plat, they have to pay the impact fees for the whole property because...

Commissioner Currie stated that's not what she's looking at. She's looking at...

Attorney Simpson stated he's just saying, what Mr. Forte read to the Commission.

Commissioner Currie stated, okay.

Attorney Simpson stated so, now...

Commissioner Currie stated but Parcel 1...

Mr. Forte stated the issuance of the development order.

Commissioner Currie stated, okay, hang on...

Attorney Simpson stated the issuance of the development order was when the city did the rezoning. The city owns most of the property in the rezoning. The city can't charge Fountainhead an impact fee on land that the city owns.

Mr. Forte stated, right. But once they buy it...

Attorney Simpson stated let him put it to the Commission this way. If on Parcel 2 they build and they have trips of 1,386, those are exempt.

Commissioner Currie stated but her question is, Parcel 1, when they purchase it, they want to be able to wait to pay \$53,000 and not pay at the time of purchase.

Attorney Simpson stated right because they have not filed an application.

Commissioner Currie stated but the city does require that that's paid then, right?

Attorney Simpson and Mayor Via stated at the time of permit.

Commissioner Currie stated that's what she said earlier.

Commissioner Penny stated but not until...

Attorney Simpson stated they come in and file the application, if they file an application...

Commissioner Currie stated she got her information now because that's what she was asking. If it was due at the time of permit but they're not wanting to do that.

Attorney Simpson and Attorney Watts stated no, they are.

Commissioner Penny stated only if they exceed the trips.

Attorney Simpson stated let him put it to the Commission this way. If they come in, if they use 1,386 trips on Parcel 2 and then they come in and they submit an application to build a structure that's going to generate 876 trips, they will pay \$53,000 when they submit that application.

Commissioner Danio stated so what are they asking for?

Attorney Simpson stated the agreement allocates...

Attorney Watts stated it memorializes this.

Attorney Simpson stated the spreading this over the phases as they do it. What has been discussed that could be...where it gets grey, as you will, say on Parcel 2 they don't build

a structure that generates 1,386 trips, now they have exempt trips on Parcel 2 that they didn't use. They will then carry those over to Parcel 1. So, instead of having to pay when they exceed 643 trips, it might be 743 trips because they have 100 trips they didn't use on Parcel 2.

Commissioner Danio asked how can the city protect that from happening?

Attorney Simpson stated well, the city has to allow it to happen because they contractually agreed and he's glad Attorney Watts brought it up, the city contractually agreed that all of this would occur on a first come first serve basis.

Commissioner Penny stated if you read the contract and we already agreed to that, we don't really have any discussion about this.

Mayor Via stated, right.

Attorney Simpson stated so, really what Fountainhead is offering the city, he means, honestly, the fee is sort of a concession.

Mr. Forte stated, right.

Attorney Simpson stated the city said first come first serve, that's what the agreement says, first come first serve. First come first serve on the impact fees, we were thinking about that because our impact fees would exceed and you would still owe the money but proportionate fair-share, we were relying on the County to do all this. We really were. So, now the first come first serve, if you go by the agreement we have, they don't have to pay until they use up all of the exempt trips.

Commissioner Penny stated, exactly.

Attorney Simpson stated they are proposing to say let's allocate them. They're making a concession to the city by saying, "We'll allocate it so we won't impact your exempt trips on Parcel 3 until we buy it."

Commissioner Penny stated, right.

Attorney Simpson stated so you still have it. So, what we had to come up with is how do we allocate these exempt trips between Parcels 1, 2, and 3? With the understanding that Parcel 4 gets none, which is not something he initially agreed to. When I read it I said, "Why are we not allocating something to Parcel 4" and then they talked to Mr. Forte and Parcel 4 gets no allocation. Fountainhead is agreeing to allocate exempt trips. Fountainhead can hold our feet to the fire and say, "Per the MPUD Agreement its first come first serve, we don't have to allocate."

Mayor Via stated, right.

Attorney Simpson stated the city has a concession here that protects the city.

Commissioner Currie stated let her try to clear this up. You're actually required to pay the fee upon a development plan for that parcel being presented. The developer is wanting to wait until what they have built, trips...

Attorney Simpson and Mr. Forte stated planning to build.

Commissioner Currie stated, okay. They want to wait and push off paying the \$53,000 until further into the development.

Attorney Watts stated, correct.

Commissioner Currie asked what's to protect the city that they are actually going to...she doesn't have any idea what they're planning to do now. That's why she says she needs a workshop to figure all this out.

Attorney Watts stated and he understands Commissioner Currie's point and where's she's going to and he thinks he can explain it. The protection is, there's not a protection for the

city to collect the money...

Commissioner Currie stated there's not.

Attorney Watts stated there's no money due until you're creating new trips.

Commissioner Currie stated but it's due by the city's Ordinance when they submit the plan.

Attorney Watts stated let him give the Commission an example. Let him use an example of another phase project. Again, one of the things they have to do, they have an Ordinance that says one thing but one of the things they've talked about in the course of this is it doesn't necessarily contemplate that phase project. So, let's talk about Minto, the Margaretville project is one.

Commissioner Currie stated, right.

Attorney Watts stated when they looked at the Margaretville traffic impact analysis with the County and the City of Daytona, obviously if they get to 6,000 houses, there's a lot of impacts over the course of building out 6,000 houses but we don't know how long it's going to take to get to that point. So, for Minto, he thinks their first trigger, the first point in which a payment was required was when they got their 500 CO, he may be off on the numbers a little bit but because it's a phased project they have to kind of implement it slowly. Now, they built in a protection here, and they haven't touched on that tonight but he will mention it in a second but for a project like that, again, thinking about this from a standpoint of this is a constitutional...the city is balancing the obligations that the city has as a government to provide for the citizens was against the private property interest that the city is taking if they take too much too soon. Here, they're talking about doing it as a phased basis because the city has certain amounts of exemptions here because of the prior development. Even if this was the city...

Commissioner Currie stated she doesn't have a problem with each phase.

Attorney Watts stated, right.

Commissioner Currie stated she's not saying they have to pay the city \$217,000 now that they don't even own half the parcels.

Attorney Watts stated, right.

Commissioner Currie stated she's referring to when they do purchase a parcel, they're not wanting to pay the payment when they submit the plan for that parcel.

Attorney Watts stated his point on that is because you have the vested trips from the prior development, you legally can't collect the payment. One of the reasons why, we have a TIA that says \$760,000 was the amount of the impact of the project from a dollar standpoint when you distribute that across the network, they ended up with \$217,709.76. The reason that there's a difference between \$760,000 and \$217,000 is because that delta, you can't legally collect.

Commissioner Penny stated you have a \$542,000 credit because you have 2,346 trips.

Attorney Watts stated, exactly because those trips were already on the network and whether it was him standing here for Fountainhead or whether it was...

Commissioner Currie stated she's not arguing the trips.

Attorney Watts stated or anything else coming in, those exemptions would legally have to be registered (?).

Commissioner Currie stated she doesn't argue that, she doesn't argue the exemptions. What she is trying to get squared away in her head is the requirement for that to be paid and what you're wanting to do.

Attorney Watts stated what we're saying here is that we recognize the exemptions and the first time, so consistent with the city's Ordinance, the first time they are requiring new trips, now they have the liability for those new trips and the offsetting costs associated with them under those. The other thing that they did and this is something that hadn't been done in previous agreements but they incorporated it in here because the County is starting to do it now. The new County impact fee ordinance has an index factor. So, their \$231.36 is a static number based on a study that was finished almost two years ago now. What we've done is we added in the same language that the County's impact fee looks at here and we've got it between a 3% and 8% inflation rate that applies to that on an annual basis so that number will continue to go up until it's paid. Again, it was a fair thing to do to account for the fact that some things happen over time in a phased project. But he doesn't think from the standpoint of what we're asking with how we've got this agreement structured, the city's prop share Ordinance says when there's an impact to our system that requires a prop share payment then the payment has to be made when a development order is issued for that project and that's exactly what we say here but we have to account for the vested trips first. They consume the vested trips, the first time we submit for a permit that's above the vested trip amount now the prop share liability is there and it has to be paid in order to get the payment.

Mr. Forte stated let him ask it this way. On Parcel 1, originally there was proposed a building that had multiple uses in it. If they were to come in and pull a permit for that building with all of those uses, how would that trigger that?

Attorney Watts stated because you would be vesting because all of those uses represent 876 trips.

Mr. Forte stated now the assumption is that one building that we originally looked at is now going to be three separate buildings. So, now what the developer can do in reality is they could potentially build two of those and not trip.

Attorney Watts stated conceivably, yes.

Mr. Forte stated so then the city may never see the third building built.

Attorney Watts stated it's possible.

Mr. Forte stated so, really it comes down to the original intent was, here's one building and if you were going to start to build this building because of the totality of the uses, it would be projected that you would have to pay it upon that application but now that the building is being broken up into three parts, well, we may never build the daycare so we never trip it. Then you're right about one thing. It comes down to the next amendment to the PUD and the Commissioners tolerance for changes to that PUD. So, if that's the case then I say, "go ahead".

Mayor Via stated, right but...

Mr. Forte stated allow this but now the Commission will be on the spot for approving any changes to the future PUD in its "totality".

Mayor Via stated right but he thinks to Commissioner Currie's point, is what both attorneys are agreeing on and saying is that the vested trips are there and the city has already agreed to them regardless.

Commissioner Currie stated, right.

Mayor Via stated there's no money to be paid until they go over those trips.

Attorney Simpson stated he thinks one thing that's important, two ways it could occur. One, per the PUD and one per the Proportionate Fair-Share Agreement that's before the

Commission. Per the MPUD its first come first serve. So, they can build all of Parcel 2 and that would be 1,386 exempt trips taken away. They could build all of Parcel 1, that would be another 876 trips and that's getting them pretty close but they still have a few exempt trips left and they can stick it to Parcel 3.

Commissioner Penny stated they stick it to Parcel 3 and the city wins.

Attorney Simpson stated and so, Parcel 3 is when...understand, we amend our regulations per plan developments. Their planned development agreement says first come first serve. So, back in December 2019/January 2020 Mr. Forte said, "Wait a minute, I'm worried about this cost getting shifted to the end." So, Fountainhead came back and said, "Let's just vest Parcel 2, our first part of our development then we'll proportionally do Parcel 1 and 3. Therefore, if we never buy Parcel 3 the exempt trips associated with Parcel 3 stay with it and the city is still protected and the city has some trips over there.

Commissioner Currie stated, okay.

Attorney Simpson stated now, when they come in...he thinks, that's a benefit to the city. He interprets that as a benefit because the city is protecting Parcel 3. When they come in and with Mr. Forte's example, they have one building now they propose three different ones. One that will take the Commission's approval but say they only build two of the three buildings, the impact of the third building never occurred, the traffic impact. So, they didn't build it, the impact didn't occur so there's no reason to charge them for an impact that didn't occur.

Mayor Via stated and the city legally cannot.

Attorney Simpson stated, right. So, what we've tried to do with this is say protect the city until they start buying parcels. If they buy Parcel 1, okay between Parcel 1 and Parcel 2 that the city owns, the city can allocate based on that but the city can't touch Parcel 3 until the city owns it. The city wants it's exempt trips protected. Once the city buys Parcel 3 then the city can allocate with the exempt trips within the parcels the city owns. Mr. Forte and himself just wanted to make sure that everyone understood. Likely, they would shift them all to the beginning of the project and so the city may not see the money until Parcel 3 is built but they own all the land.

Commissioner Currie stated she gets that but as Attorney Simpson stated and Mr. Forte stated, there's this parcel that now Fountainhead is putting or are supposed to be putting three buildings on...

Mr. Forte stated they haven't submitted for a formal application.

Commissioner Currie stated, no. That's her point. This project has gone so far from what it was originally intended, she needs to know...

Attorney Simpson stated and there's a big difference between what changes the staff has actually approved and the things we're talking about.

Commissioner Currie stated but she needs to know how this project has changed...

Attorney Simpson stated, right.

Commissioner Currie stated because there is a lot our citizens monies vested in this and she needs to make sure as the District 2 Commissioner that she is being frugal with taxpayer money.

Attorney Simpson stated and that's a completely understanding...

Mayor Via stated and he thinks right now, he agrees with Commissioner Currie that they should have a workshop. Unless there's an objection to put together that workshop, Mr.

Forte, if you could get with Synergy and their attorneys to set that up some time before a regular scheduled City Commission meeting so that way the Commission can see what's going on, what's been done...

Commissioner Currie stated, absolutely.

Mayor Via stated what's the direction and he believes that Synergy wanted that anyway.

Mr. Forte stated he even better understands this now of the exempt trips and he's not as opposed to holding off on paying it until they exceed those non-exempt trips.

Mayor Via stated, right.

Mr. Forte stated but like he said, that pressure is going to come onto the Commission when they come to submit their plan for Parcel 1 and they say, "This is what we want to build and the Commission says, "Well, wait a second, that's not what we thought. We're not going to approve that. We're going to approve a big building."

Mayor Via stated that's where the debate is going to be.

Mr. Forte stated, right. So, he doesn't have a problem moving forward with this as presented.

Commissioner Penny stated he didn't have a clear understanding of all of this and he thought, if this is a change, it's not good. But correct him if he's wrong, he thinks they can all agree that the city cannot charge the developer any more money for this until they exceed 2,346 trips, that's a credit. So, however it gets to that...

Mr. Forte stated well, that's not necessarily true because if it were a project...

Attorney Simpson stated because of the allocation, you could.

Attorney Watts stated now you can. Under the existing PUD, it's first come first serve to get to 2,346.

Mayor Via stated so this is better for the city.

Commissioner Penny stated, right. So, the city can't charge anyone any more money until those trips are exceeded. Now, under the current agreement, the developer can first come first serve. So, if they take Parcel 2 at 1,386 trips and Parcel 2 at 876 trips, that's 2,262 trips, which leaves only 84 exempt trips available for Parcel 3 because there are no exempt trips from Parcel 4. Right now, the city is getting an additional 233 exempt trips...think of worst case scenario, if Fountainhead does not purchase Parcel 3 the city is going to have to sell it to someone else and then there's going to be a financial obligation of 200 of whatever it is per trip times 233 trips, that will be passed on to the next developer that comes in.

Mr. Forte stated depending on the use.

Attorney Simpson stated he looks at it as exempt trips depending on...the cost could change because if they came in with a new development they would have to do a new traffic impact.

Commissioner Penny stated, okay.

Attorney Simpson stated so he thinks the cost per trip could change but there are that many exempt trips on that property.

Commissioner Penny stated right but when Attorney Watts said this is a concession to the city, he actually sees that this...because when he talked to Mr. Forte he was like, "Well, if they build two...but the city can't charge them anymore until they exceed the exempt trips."

Attorney Watts stated this agreement, basically, memorializes that we are giving up that first come first serve language and allocating 40% of the exempt trips to the city parcels

until they are required.

Commissioner Penny stated and that's how he understands it and he doesn't have any heartburn over it right now.

Commissioner Danio stated he just wanted to point out that had these last five years gone in a different direction of promising and delivering, he doesn't think they would have wasted the last 45 minutes talking about this.

Commissioner Currie stated, agreed.

Commissioner Danio stated he's not holding Attorney Watts responsible. He's just saying, had Synergy been a little bit more on their game, the Commission wouldn't have the doubts that we have now.

Commissioner Currie agreed.

Attorney Watts stated and he doesn't disagree with them at all. He will say from the standpoint of and he has the fortune or misfortune of having been raised around all of this stuff. His dad handled the cases that the Florida Supreme Courts set the precedent on how you do legal impact fees in Florida, so he's grown up around it. He tends to understand how you can and cannot do it. The agreement they have here today, they would have this conversation whether it was with Synergy or anybody else. You still have the same facts there.

Commissioner Danio stated that's not what he's saying. He's just saying, it would have been chewed up a little bit differently and taken a little bit differently in context had the Commission had a little bit better track record.

Attorney Watts stated, yes.

Commissioner Danio stated because there's a lot of skepticism amongst this panel and Attorney Watts can see it. It's pretty obvious.

Attorney Watts stated and he thinks the workshop is a great idea because he thinks everybody needs to understand where the project is headed.

Mayor Via stated and now just the two things. They kind of worked the second part about the proportionate share question enough to where the Commission can make a decision. The first is to waive the \$5,000 fee that's in their schedule fee. He believes Commissioner Penny stated he would be against waiving that?

Commissioner Penny stated well, he was until the attorney read the contract to him.

Mayor Via asked the waiving of the fee? The \$5,000?

Commissioner Penny stated where it says, *"will waive permits and fees that will legally be able to"* and then it mentions, *"impact fees shall be considered for eligible reimbursement."* So, he thinks this is a fee. A permit fee.

Attorney Watts stated it's an application fee.

Commissioner Currie stated she does not believe that was...at least that wasn't her intent, she can't speak for the rest of the Commission. It was not her intent, in that language, to exempt something like this. She had no idea something like this even existed. So, she can't have the intent to have included this, didn't know about it. Her intent in this language was for the permitting, the simpler fees, if you will, and permitting. Her intent was not to waive something like this. She had no idea.

Commissioner Penny stated he doesn't think it was the intent of anyone to waive a proportional fair share application fee because he doesn't think that we were even discussing it because if we were discussing it, we hadn't even considered proportionate fair share or application fees or we would have addressed this at that time.

Mr. Forte stated that's right. It was not in contract.

Commissioner Currie stated she was not aware of it.

Commissioner Penny stated he knows it wasn't the intent to waive it because we weren't even discussing it. So, he has to go back and rely on attorneys and judges and things that are going to interpret this language. He thinks, unfortunately, the Commission has to live with that language.

Commissioner Currie stated well, she thinks the intent also has to apply to that. You have to have intent and the intent's not there. None of the Commissioners knew about it, maybe some of the Commissioners did but she had no idea about it.

Commissioner Penny stated but they have to live with what they signed.

Commissioner Currie stated not if it wasn't her intent. That was not in there.

Attorney Simpson stated he can kind of tell them from a pure legal perspective, when you interpret contracts, you don't get to the intent unless there is an ambiguity. If the documents clear on the face then that's what you intend.

Commissioner Currie stated so you're telling me the document is clear on its face no matter...

Attorney Simpson stated before you get to intent. It doesn't say application fee. It says...

Attorney Watts stated all fees.

Attorney Simpson stated it says all fees, permit fees such as permit and inspection fees. After...he can probably make an argument that waiving any fee is illegal to be perfectly honest with them. For instance, he found out afterwards that we did this, we can't waive inspection fees. Building inspection fees; the building inspection fee has to be used to fund the building department. So, if you waive it to your economic development, that's not being used for the building department and that's in the State Law. So, arguably, waiving the inspection fees wasn't even legal but he didn't realize that at the time we did this because everybody does it.

Mr. Forte stated, right.

Attorney Simpson stated but there are cases, and it usually comes up when...

Mr. Forte stated when the developers complain.

Attorney Simpson stated well, when you have more money than...like, it happened in New Smyrna where they were collecting so much in inspection fees, the fees they were collecting exceeded the cost of operating their department and they were transferring the money out to fund other operations. You can't do that. All the money has to be used for building and inspection services. So, here, if we waive a building inspection fee, are we now not using it for building and inspection purposes but using it for economic development purposes? I mean, you can make that argument.

Commissioner Currie stated, right.

Attorney Simpson stated the thing that he threw out, sort of in between, how much money are we holding of CRA funds, \$18,000?

Mr. Forte stated about \$8,000.

Attorney Simpson stated about \$8,000; we're holding about \$8,000, which Fountainhead is entitled to make a claim for reimbursement purposes and they're in the process of evaluating those expenses. He suggested that the city will just take it out of the money they're holding for Fountainhead so that they don't have to come out of pocket and pay a fee and wait for the city to reimburse them.

Commissioner Currie stated well, they still would be paying it.

Attorney Simpson stated they're still paying it but they don't have to come out of pocket to pay the city and wait until they actually get reimbursed for it because they have other reimbursables that would use that up now. That's a third option. That's something that he threw out there a while back just so the Commission knows. The city will just take it out of the money they're holding.

Commissioner Danio stated unfortunately, he has to agree with Commissioner Penny. The Commission kind of missed their term right there. The city might not have intended but the city kind of dropped the ball when they put that "all city fees", and if Fountainhead is going to get their money back anyway, the city's intention might be...but unfortunately, the city has to go by what was written.

Commissioner Penny stated, yes. It says, "all".

Commissioner Danio stated that's what he's saying.

Commissioner Currie stated again, that was never anything that was even brought up as a thing that the Commission would have to go over later. It was never fee that the Commission was aware of.

Attorney Simpson stated we've never done a proportionate fair share analysis in this city.

Attorney Watts stated but we didn't pay application fees for the rezoning.

Attorney Simpson stated, right.

Mr. Forte stated he can see the direction that this is going and he has no objection. He's just telling the Commission, he's not...he was not comfortable making the decision but he will tell the Commission after several years of doing this, any amendment to the PUD is going to open up the Incentive Agreement and we're going to have a long discussion about the contents of the Incentive Agreement.

Mayor Via stated, right. That's when a lot of discussion is going to occur. Attorney Watts, what Attorney Simpson threw out, that third option idea, is that something that your client would be interested in doing it that way?

Attorney Watts stated he can't answer for what...he hasn't had that conversation with him.

Mayor Via stated, okay.

Attorney Watts stated he thinks that is certainly something that could be talked about. He can tell the Commission on the agreement right now that, that is based on our discussions internally with our client, "all fees" was "all fees" and although he appreciates the points that have been raised, including, that may be something that comes up as discussion when they talk about the PUD revisions. They look at it as the current language as "all fees" were waived. The practice to this point has been, when they had application fees with the PUD rezoning, they weren't paid because that was part of the "all fees".

Mayor Via stated, okay.

Attorney Simpson asked if the Commission wants his recommendation?

Mayor Via and Commissioner Danio stated yes, they do.

Attorney Simpson stated his recommendation would be waive it and the reason he says that is, if he's a judge, yeah, you didn't know about it but it says the word "all".

Commissioner Currie stated well, that just puts another dot in her not trust box.

Attorney Simpson stated he wouldn't say it's a not a trust...

Commissioner Currie stated no, it does because she wasn't aware of it when they first approved the agreement and there's just been so much going on with this project in a negative manner. Attorney Watts, it's not your fault. I'm not...

Mr. Forte stated he's not going to say that they intentionally knew that.

Commissioner Currie stated she's not saying they intentionally knew it. However, it's just been a collaborative process that's been building and building and building and she's at the point now, she's very disappointed.

Mayor Via stated and he thinks a workshop will go a long way with that but he thinks, right now, it's prudent, legally for \$5,000 to protect ourselves so that there could be no recourse on that.

Mr. Forte stated the city will stick to the letter of the contract...

Commissioner Currie stated, okay.

Mayor Via stated the word "all" has a lot of weight to it.

Attorney Simpson stated probably starting in December, was the first time he ever heard the word proportionate fair share.

Commissioner Currie stated she's never heard of it.

Attorney Simpson stated the first time...because a lot of the little cities they don't have these issues like this. They don't get these projects that trip this type of stuff.

Commissioner Danio asked when was the last time they heard the word "all"?

Attorney Simpson stated it "all fees". It wasn't like the city was presented with a list of all their fees and these are the ones you're going to waive. We were just thinking of all the fees we're used to waiving. Now, he knows that Mr. Forte is unhappy with how many inspections they've been asking for too. Remember, the city tried to address that in the last amendment a year ago.

Mr. Forte stated but the city isn't doing inspections any more. It's the plans reviews.

Attorney Simpson stated, the plan reviews. There were so many more...

Mr. Forte stated, reviews.

Attorney Simpson stated so much staff time was being used for this project than the city reasonably anticipated when they agreed with that provision. But, same thing, the city agreed with it.

Attorney Watts stated and frankly, he would agree with Attorney Simpson in that it's taken a lot more to get where their client is now than they anticipated being in.

Commissioner Johnson stated it's pretty clear that it's written here on this paragraph here, which is down at the bottom of their long drawn out agenda tonight, 1100 pages or something, that it says, "all fees will be waived" and even if they're not waived, they still get reimbursed. So, what is the difference? He means, if they charge them now or reimburse them later, what difference does \$5,000 make on a reimbursement? The same thing with the impact thing. It comes right down to the point where you're really not charging the impact fee until you know you're going to be impacted. It's not like you're doing it way up in advance; okay, well now I'm coming into this project and this is going to cause the impact and cause the police to have more cars on the road or whatever, that's when you charge the fee. It's really pretty simple. He means, they can get upset, it doesn't matter. They still have to go with...

Commissioner Currie stated she's not upset Commissioner Johnson.

Commissioner Johnson stated, passionate.

Commissioner Currie stated she's always passionate and she's been dealing with this project for five years.

Commissioner Johnson stated it's pretty clear that the way it's written in the law or the ordinance is written. It says right there that "all fees will be waived" and even if they're

not waived, they're still reimbursed. The city still isn't going to collect them and keep them. The city might collect them and give them back.

Mayor Via stated he thinks it's that upfront cost that Synergy is looking for. Mayor Via asked if there were any other questions for staff or the applicant and there was none.

Mayor Via opened public participation. No one spoke.

Commissioner Currie made a motion that the Commission TABLE THIS AGENDA ITEM UNTIL AFTER THE WORKSHOP. DIED FOR LACK OF SECOND.

Commissioner Danio made a motion to APPROVE DOCUMENT AS PRESENTED WITH THE WAIVER OF THE \$5,000 APPLICATION FEE CONSISTENT WITH THE INCENTIVE AGREEMENT, seconded by Commissioner Johnson.

PASSED, 4-1. (Currie voted Nay)

RESULT:	ADOPTED [4 TO 1]
MOVER:	John C. Danio, District 3 - Commissioner
SECONDER:	Roy Johnson, District 4 - Commissioner
AYES:	Via, Penny, Danio, Johnson
NAYS:	Currie

RESOLUTION

2020-R-24

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, APPROVING A PROPORTIONATE FAIR SHARE AGREEMENT WITH FOUNTAINHEAD DEVELOPERS, LLC, FOR THE DEVELOPMENT LOCATED AT 1200 CENTER AVENUE, HOLLY HILL, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA, APPROVING A PROPORTIONATE FAIR SHARE AGREEMENT WITH FOUNTAINHEAD DEVELOPERS, LLC, FOR THE DEVELOPMENT LOCATED AT 1200 CENTER AVENUE, HOLLY HILL, FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in connection with the site plan review, the Owner has performed a Traffic Impact Analysis ("TIA") of the existing road network in the vicinity of the Project in order to determine the availability of roadway capacity to serve the Project; and

WHEREAS, the results of the TIA indicated that a proportionate fair share payment ("PFS Payment") was required to ensure that the Project mitigates any traffic concurrency deficiency and has sufficient roadway capacity to serve the traffic demand created by the phased buildout of the Project; and

WHEREAS, as a redevelopment project that has vested trips that are exempt from the calculation of traffic concurrency and therefore must be offset from the cost of the PFS

Payment; and

WHEREAS, the City and Owner have agreed to the allocation and preservation of exempt trips as more particularly set forth herein and the manner in which such exempt trips should be offset against the PFS Payment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. The City Commission hereby approves the Proportionate Pair Share Agreement attached for the property located at 1200 Center Avenue, Holly Hill, Florida 32117 and authorizes the Mayor to execute the agreement.

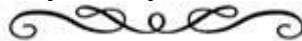
SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 3. That all resolutions made in conflict with this Resolution are hereby repealed.

SECTION 4. That this Resolution shall become effective immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 12th day of MAY, 2020.

Enacted and approved this 12th day of May, 2020, in Holly Hill



9. PUBLIC HEARINGS

1. -2020-O-3026 Ordinance

SECOND READING - 1541 Garden Avenue - an Ordinance of the City of Holly Hill, Florida Amending, the Land Development Regulations, by Amending the Official Zoning Map to Designate the Property Described in Exhibit "A" from R-3 (Medium Density Single Family Residential) to CC-1 (Commercial Corridor District); Providing for Conflicting Ordinances; Providing for Severability; and Providing an Effective Date.

(Requested by Brian Walker, City Planner)

Brian Walker, City Planner, gave a brief staff report on 1541 Garden Avenue to amend the official zoning map of the Land Development Regulations to designate the property from a R-3 medium density single family residence to a CC-1 commercial corridor district. The CC-1 zoning district is a commercial district allowing a wide variety of commercial, retail and light industrial uses. The applicant is requesting the rezone in order to utilize the subject property for light industrial activities related to an existing sign manufacturing operation that abuts the property. The future land use designation of the land is Wholesale Commercial and Industrial and the requested zoning district is

compatible with the existing future land use.

The Board of Planning and Appeals met on Monday, May 4th and have unanimously recommended approval of the request.

Mayor Via opened public participation. No one spoke.

RESULT:	APPROVED AT 1ST READING [UNANIMOUS]	Next: 5/26/2020 7:00 PM
MOVER:	Roy Johnson, District 4 - Commissioner	
SECONDER:	Penny Currie, District 2 - Commissioner	
AYES:	Via, Penny, Currie, Danio, Johnson	

ORDINANCE

2020-O-3026

SECOND READING - 1541 GARDEN AVENUE - AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA AMENDING, THE LAND DEVELOPMENT REGULATIONS, BY AMENDING THE OFFICIAL ZONING MAP TO DESIGNATE THE PROPERTY DESCRIBED IN EXHIBIT "A" FROM R-3 (MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL) TO CC-1 (COMMERCIAL CORRIDOR DISTRICT); PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, BY AMENDING THE OFFICIAL ZONING MAP TO DESIGNATE THE PROPERTY DESCRIBED IN EXHIBIT "A" FROM R-3 (MEDIUM DENSITY SINGLE FAMILY RESIDENTIAL) TO CC-1 (COMMERCIAL CORRIDOR DISTRICT); PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Holly Hill, Volusia County, Florida, has adopted a comprehensive plan pursuant to, and in compliance with 163.3161 et. Seq., Florida Statutes; and

WHEREAS, the City Commission, as authorized by 163.3202, Florida Statutes, has enacted and does enforce the Land Development Regulations, based on, related to, and as a means to implement its adopted comprehensive plan; and

WHEREAS, the City Commission has determined that it is necessary to amend

its Land Development Regulations as herein provided in order to more effectively implement its adopted comprehensive plan; and

WHEREAS, the City Commission has determined that the proposed amendment to the Land Development Regulations is consistent with its adopted comprehensive plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLY HILL, FLORIDA:

SECTION 1. The Official Zoning Map of the City of Holly Hill is hereby amended to designate the property described in Attachment “A” as CC-1 (Commercial Corridor District.)

SECTION 2. Development of the property described in Attachment “A” shall conform to the Land Development Regulations of Holly Hill.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 4. That all ordinances made in conflict with this Ordinance are hereby repealed.

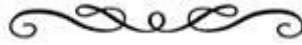
SECTION 5. That this Ordinance shall become effective immediately upon its adoption.

APPROVED AND AUTHENTICATED on this 26th day of MAY, 2020 for second and final reading.

ATTACHMENT "A"**LEGAL DESCRIPTION:**

Lot 3, except the easterly 25 feet, thereof, Block 3, Pine Cluster, as per map recorded in Plat Book 21, page 94 of the Public Records of Volusia County, Florida, and Lot 4, Block 3, Pine Cluster, as per map recorded in Plat Book 21, page 94 of the Public Records of Volusia County, Florida, and the northerly one half of Lot 23 and all Lot 24, Block 3, Pine Cluster, as per map recorded in Plat Book 21, page 94 of the Public Records of Volusia County, Florida.

Enacted and approved this 12th day of May, 2020, in Holly Hill



2.

1730 Birmingham Avenue - Request for a Side Yard (North) Setback Variance from Eight (8) Feet to Zero (0) Feet, and a Rear Yard Setback Variance from Twenty (20) Feet to Eight (8) Feet, in Order to Build a Two Car Garage, an Attached Carport Structure, and a Covered Porch.

(Requested by Brian Walker, City Planner)

Brian Walker, City Planner, gave a brief staff report on the variance request for 1730 Birmingham Avenue. The request is for two variances from the Land Development Regulations of Holly Hill, Sec. 114-765, in order to build a two car garage, an attached carport structure, and a covered porch that will offer protection from golf balls. The requested variances are as follows: (1) a side yard (north) setback variance from eight (8) feet to zero (0) feet, (2) a rear yard setback variance from twenty (20) feet to eight (8) feet. The property is zoned R-2 (Low Medium Density Single-Family Residential District) and located on the northwest end of Birmingham Avenue and more particularly known as 1730 Birmingham Avenue. The property abuts an 18 hole golf course known as the Riviera Country Club. The home has no protective separation from the golf course, and because of its location relative to the golf course, the home and automobiles have been hit several times by golf balls. The home and cars have suffered broken windows and damage to the paint and exterior surfaces. Golf balls land in the side and backyard which interferes with the applicant's enjoyment of the yard. In order to ameliorate this situation, the applicant is proposing to build an attached carport on the north side of their home, and a two car garage and covered porch to the west, in back of the home.

The Board of Planning and Appeals met on Monday, May 4th and have recommended the following: approval of the variance request for the rear-yard setback and approval of the variance request for the side-yard setback. Staff also finds that the applicant has met all of the criteria as stated above to grant the two requested variances.

Mayor Via opened public participation.

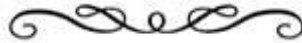
Heidi Heller, Holly Hill, spoke about the golf balls coming through his windows and coming onto his property. Asked if someone is liable for putting up some type of screening to prevent it from happening. Is the city required to put up a screen or something?

Mayor Via stated he doesn't believe so. It's the property owner's responsibility to protect their property.

Mayor Via closed public participation.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Penny Currie, District 2 - Commissioner
SECONDER:	John Penny, District 1 - Commissioner
AYES:	Via, Penny, Currie, Danio, Johnson

Enacted and approved this 12th day of May, 2020, in Holly Hill



10. COMMUNICATIONS

A. City Manager & Staff Comments

Mr. Forte asked if they are going to do a workshop on the Overhead to Underground and they are going to do an update on the Fountainhead project?

Mayor Via stated, yes.

Mr. Forte stated staff is anticipating opening City Hall back to the public back on Monday, June 1st and staff is putting the precautions in place to do that. He has his staff who has been working to reduce their budgets in anticipation of not knowing what the city's revenues are going to be. In these next couple of months, at the end of this current fiscal year and going into the next fiscal year, each of the departments, has gone through...he met with mostly everyone and trimmed it even a little bit more so they're getting there. The money is not going to go back into the General Fund, it's going to be held in their departmental accounts that if the city doesn't need to pull and the city can still do whatever the projects are then they will but if they can't then the money is there to protect ourselves and we'll look at that as we go into planning the budget for next year. Again, a lot of unknowns still coming up. As part of that, the Commissioners training budget item was pulled. He doesn't think anybody is planning to go to South Florida in August for the League of Cities conference. The other item that staff took out of there was also the painting of the water tower, which he thinks was like \$16,000, so staff pulled that out as well. Staff just wanted to make sure the Commission was aware of that.

Mayor Via asked about the Veterans Memorial. Is that still in?

Mr. Forte stated that's on hold. Anything that is a Capital construction item, staff has pulled back on it. If it hasn't already been ordered, like a delivery of something then it's been pulled.

Commissioner Danio stated when you say Memorial, I take it there's not going to be Memorial Day events.

Mr. Forte stated he is going to say he doesn't think so that there will be a Memorial Day activity here at City Hall.

Commissioner Danio stated, okay.

Mayor Via asked we won't permit it? We won't allow it?

Mr. Forte stated he doesn't think the city would permit it depending upon the crowd.

Mayor Via stated, okay. Depending on where we are.

Commissioner Danio stated because that's next weekend.

Mayor Via asked what if the city found a grant that paid for...

Mr. Forte asked pay for what?

Mayor Via stated the Veterans Memorial out front?

Mr. Forte stated we tried. If you remember that one woman from the Mayor's neighborhood was searching for a grant for the city.

Mayor Via stated, yes. She wasn't able to find anything.

Mr. Forte stated if the city can find grant money, by all means...

Mayor Via stated then we can do it. Just double checking.

Mr. Forte stated tonight was a good discussion. Again, his position, he was just not comfortable doing it from an administrative process. He doesn't ever want the Commission to come back and go, "Well, why did you do that?". He didn't say that. It was a good discussion. It was lively. If we are going to focus on the word "all", then when we get to the next part of, when we talk about "all", when it says, *"Your final Certificate of Occupancy will be issued when 'all' of the items are on Parcel 2 Exhibit C are completed."* Mr. Forte stated he expects "all" to be upheld then as well.

Commissioner Danio stated there you go.

Mr. Forte stated he will just leave the developer with that and "all" will come back to "all" of the Commissioners.

Commissioner Danio stated that's right.

B. City Attorney Comments
None.

C. City Commission Comments

Commissioner Penny stated something that we may be asked for support as a city coming up. That is the Volusia League of Cities had a board meeting today and we were asked to support a Resolution to present to the County Council to put ECHO and Volusia Forever on the ballot. There's been a lot of citizen requests for that and no action taken by the

County Council. There may be a group that comes to the Commission at a later date, probably sooner than later, as ballots will be printed sooner than later.

Mayor Via stated he thought the County was going to put that on.

Commissioner Penny stated at a workshop. They haven't taken formal action. It may come to the Commission. The Volusia League of Cities voted today to support that. Let voters choose if they want to do it.

Mr. Forte asked if the Commission wanted to take action on that now?

Mayor Via stated yes, just in case it comes up in a week from now or a week out. Is there any objection of supporting from any members of the Commission? **There was consensus in support.** Mayor Via stated he thinks the Volusia League of Cities have done a lot of good for the cities.

Commissioner Penny stated if they look at a lot of the projects that are funded, wouldn't happen without them.

Mayor Via stated Commissioner Penny has the authority to give the Commissioners support.

Mr. Forte stated if they do that in a form of a motion, if he gets a request that says will the City of Holly Hill send a letter, you if already do it then I'll provide a letter without having to come back to you.

Commissioner Penny made a motion that the City of Holly Hill formally support ECHO and Volusia Forever being placed on the ballot, seconded by Commissioner Johnson.

Mayor Via opened public participation. No one spoke.

PASSED, 5-0.

Commissioner Penny thanked the Mayor for the leniency and the format. She also wants to clear up that she wasn't angry. She does get passionate and everybody is well aware of that and this is an issue she's passionate about because for five years now, she's been hearing from several of her constituents "what's happening at Fountainhead? Why isn't the project moving along? What is this? What is that?" Commissioner Currie stated she can't answer them anymore because she really doesn't know what's going on with that project. That's why she didn't even want to vote on that item until the workshop happened but it landed where it did. She thinks the Commission made the right decision to have a workshop because all of the Commissioners need to be updated. There's been so many changes. She has no clue anymore. She just wanted to clear that up. There's a difference between her anger and her passion. They will know when she gets angry, which she tries not to do anymore now that she's older. She appreciates the loyal public coming out (*referring to Heidi Heller and her friend*) to the meetings through the coronavirus and she appreciates that. She appreciates everybody putting up with me on that topic. She apologizes for taking so long but she thinks it needed to be said.

Commissioner Danio stated the devil's advocate is always welcome on this Council because it stirs the conversation that points out a lot of good and a lot of bad and we need that so don't be apologetic. Commissioner Currie said a lot of what we're all thinking and you just said it. Commissioner Danio stated the city has to keep Synergy accountable because that's where we lost the trust. It's been going on too long. Driving the City Manager crazy and that's not good. We have to keep his sanity over there.

Commissioner Currie stated, no.

Commissioner Danio stated other than that, continue social distancing and let's hope we get a little closer to the end. He's afraid, he's seen some things going on that just worry him and he's all for getting back to normal but they just have to be careful.

Commissioner Johnson stated he is just glad to see that somebody else is taking interest in LPGA widening and he read that Avalon Park is going to build a bridge for the city for free. He thinks the TPO and the DOT had an agreement with them for about eight years or so, maybe ten. He would like to push that LPGA project, that's a really good thing. Another thing is too, they just have to keep moving ahead. Although we're in a shutdown on so many things, they have to open back up. They have to get going again. They just have to be careful and not take any unnecessary chances and keep things going. He thinks it will be better but we just have to be so careful in the economy right now because there are so many projects that they want to do and it was so easy to get them done before because everybody had the funding and everything was going forward and now it's a possibility that things could come to a halt in certain areas and it's a little scary to think about it. He remembers what happened in 2008, 2009 and 2010 when they were in a real recession and it was hard to get anything done but being a mayor during a recession isn't easy. He thinks they will move ahead. Pictona is still on schedule. The gymnasium is pretty much still on schedule.

D. Mayor's Comments

Mayor Via stated as Mr. Forte said, tonight was a little different on this item. He appreciates the Commissioner's input and the way that they can have a discussion instead of it being too formal and asking for a motion and then discussing. He thinks that's a better way to do it on complicated issues that the Commission can foresee.

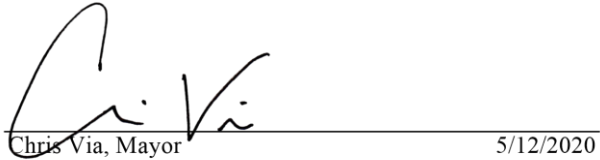
Commissioner Currie stated she appreciates the leniency in the discussion.

Mayor Via stated he was approached by Georgia McKeown. Some of the Commissioners may know her. She's a lobbyist in Tallahassee and she's working on a project for the County that has to do with LPGA widening, not in Holly Hill, but West of the highway. It's two lanes and they want to go to, he believes, four lanes. They have to do an environmental study and a few other preparation things and they applied for a grant, he believes it's a Federal grant, and so they asked Daytona, Ormond and Chambers for a letter of support. He was asked as the Mayor for Holly Hill to show support to that. We have one drafted up. Other than the effect of that traffic out there, there's no impact to the city adversely by the city supporting it. He thinks it's a good thing. He thinks it needs to be expanded. Unless there's an objection, he would like to sign that letter of support for that grant. ***There was no objection from the Commission.***

11. ADJOURNMENT

The meeting adjourned at approximately 9:00 PM.


Valerie Manning, City Clerk, CMC 5/12/2020


Chris Via, Mayor 5/12/2020