



**STAFF REPORT  
DEVELOPMENT SERVICES DEPARTMENT**

**Project Name:** Margate Care for Heroes, LLC

**Applicant:** Attorney Kyle Teal, agent for Margate Care for Heroes, LLC

**Project Location:** 603 Melaleuca Drive

**Application Type:** Rezoning

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**I. RECOMMENDATION:**

**DENY**

**The rezoning application has not demonstrated that adequate services will be available to serve the needs of the rezoned development. The proposed rezoning is inconsistent with the Margate Comprehensive Plan and does not conform with the Margate Zoning Code.**

**II. EXECUTIVE SUMMARY:**

Applicant is requesting to rezone an approximate 1-acre parcel with an existing 8,845 square foot building from Multiple Dwelling R-3 district and One-Family Dwelling R-1 district to Community Facility CF-1 district for medical rights in an I-2 building. Staff recommends denial for the following reasons:

- 1) The Development Review Committee reviewed the application and could not certify that the criteria of Section 31-35 have been satisfied; and
- 2) The application and proposal do not conform to Code of the City of Margate; and
- 3) The application and proposal are not consistent with the Margate Comprehensive Plan; and
- 4) The proposal would generate nearly four times the amount of traffic as the prior multi-family residential use which would alter the character of the neighborhood; and
- 5) The subject property does not provide sufficient parking for the proposed use; and
- 6) The subject property does not provide required buffers and would therefore negatively impact the adjacent residential neighborhood; and
- 7) The subject property does not conform to the required setbacks and therefore would negatively impact the adjacent residential neighborhood; and
- 8) The requested zoning district includes uses that would not be compatible with the existing residential neighborhood; and
- 9) The subject property is located on local roads; all other CF-1 zoning districts in Margate are located on roadways classified as Collector or Arterial.

**III. ANALYSIS:**

This portion of the staff report consists of four subsections and provides a detailed analysis of the application and subject property. The four subsections of Part III. Analysis consist of Sub-Parts A. Description, B. Compliance, C. Consistency, and D. Compatibility. Description is a statement of facts describing both the application and the subject property. Compliance provides analysis for how well the application complies with the Code of the City of Margate. Consistency provides an analysis for whether the application is consistent with the Comprehensive

Plan of the City of Margate. Compatibility provides an analysis for how well the proposed use will exist in harmony within the particular area of the City identified in the application.

## **A. Description.**

This section of the staff report provides a detailed description of the subject property, as well as a brief background to provide historical perspective ensuring a clear understanding of the pending request and current status of the subject property.

### **1. Detailed Description.**

The subject property is a 43,675 square foot (~1-acre) site located at 603 Melaleuca Drive. The subject property is currently comprised of Lots 1, 2, and 3, of Block 3, of the HAMMON HEIGHTS SECTION 2 plat (34-46), hereinafter referred to as “Subject Property.” A boundary survey has been provided by the applicant and is included with this report as **Exhibit 1**.

The property is generally located at the northwest corner of Melaleuca Drive (AKA NW 61<sup>st</sup> Avenue) and Alan Road (AKA NW 6<sup>th</sup> Street). The principal structure is an L-shaped building that is 8,845 square feet in area. The building is situated close to the north property line, with the broad side of the “L” facing the west property line.

The boundary survey depicts the following setbacks for the principal structure:

- 14.59 feet from the north property line
- 25.14 feet from the east property line
- 25.17 feet from the south property line
- 94.77 feet from the west property line

The provided survey depicts the western yard as being divided into three areas by a chain link fence. A 196 square foot metal shed is shown adjacent to the west property line, but setbacks for this building were not depicted on the survey. The survey has a stated scale of 1" = 20'. Using an engineering scale, the setback from this metal shed to the western property line appears to be 2 1/2 feet.

The parking area is depicted on the survey in the southeast corner of the property and has two gated driveway connections; one for Melaleuca Drive and one for Alan Road.

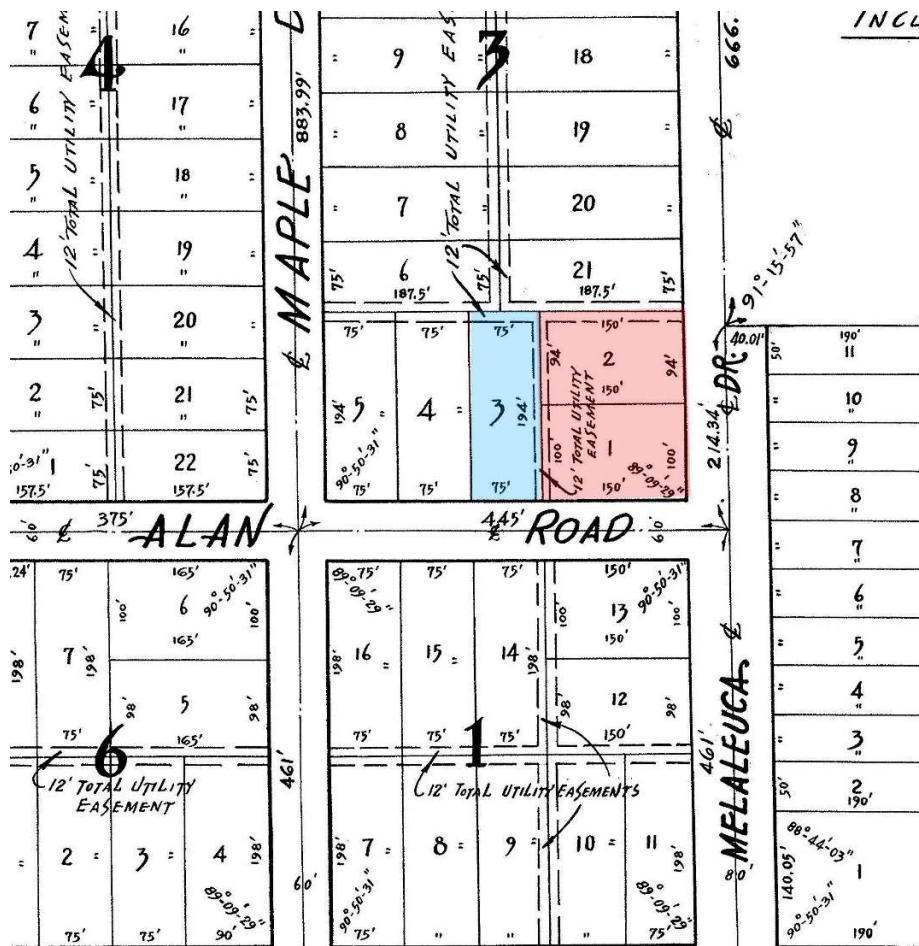
**Exhibit 2** of this Staff Report is an aerial map provided by the Broward County Property Appraiser’s website. This exhibit identifies the subject parcel in a red outline, and identifies the owner of the subject property as MMJ Financial Services, Inc.

The site originally consisted of Lots 1 and 2 of Block 3, and was originally developed as a single-story church. From 2002 to 2004, Lots 1 and 2 were redeveloped as a 10-unit apartment building under the Multiple Dwelling R-3 zoning district regulations.

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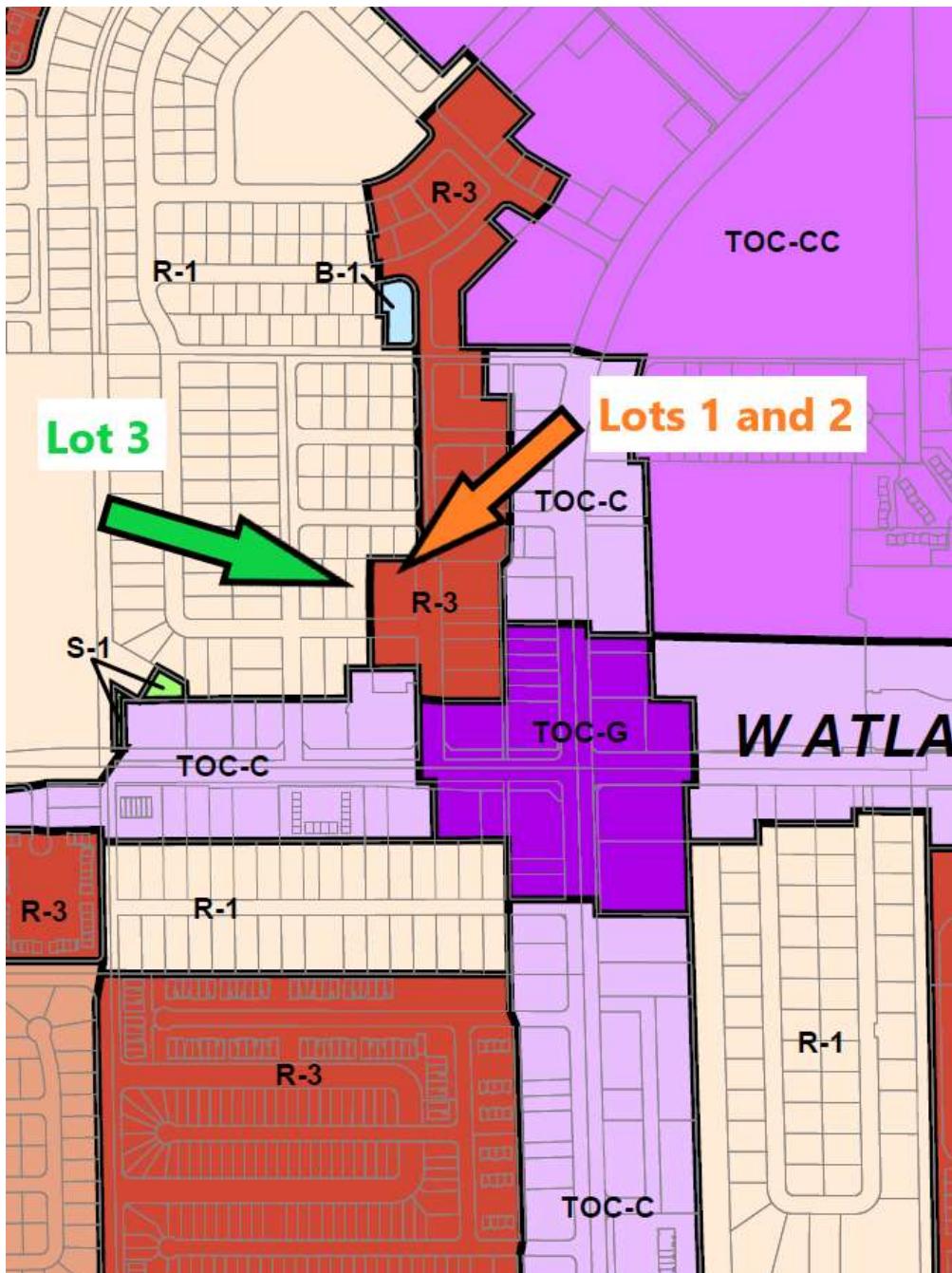
August 25, 2021

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The above image is a zoomed in portion of **Exhibit 3**, with the subject property highlighted. This visual aid was provided to clarify the references made to lots 1, 2, and 3 of Block 3, of the Hammon Heights Section 2 plat. Lots 1 and 2 are shaded in red, and Lot 3 is shaded in blue. Lots 1 and 2 of Block 3 are located in the Multiple Dwelling R-3 district. Lot 3 of Block 3 is located within the One-Family R-1 Zoning District. Zoning boundaries are depicted on the City of Margate Zoning Map, included within this staff report as **Exhibit 5**.

Lot 3 of Block 3 was previously a part of a single-family detached dwelling on a double lot (Lots 3 and 4), located at 6111 NW 6<sup>th</sup> Street. Public records available on the Broward County Property Appraiser's website indicate that as of September 25, 2019, Lot 3 of Block 3 was acquired by MMJ Financial Services, Inc and consolidated as a single parcel with Lots 1 and 2, altogether making the subject property of this application. **Exhibit 4** is a Quit Claim Deed for Lot 3, Block 3, HAMMON HEIGHTS SECTION 2 plat, and identifies Jerry Horta as the grantor of the deed, and MMJ FINANCIAL SERVICES, INC. as the grantee of the deed.



The above image is a zoomed in portion of **Exhibit 5** with the Subject Property identified by lots. This visual aid was provided to clarify the current zoning designations of the Subject Property. Lots 1 and 2 are identified with an orange arrow and text. Lot 3 is identified with a green arrow and text.

The underlying land use designation of the Subject Property is TOC Transit Oriented Corridor. At the time this rezoning application was filed, a city-initiated comprehensive plan amendment was underway, identified as Margate 2.0. Among many other things, this amendment would re-name the TOC Transit Oriented Corridor land use category to AC Activity Center. This amendment is currently pending. On April 22, 2021, the Broward County Planning Council (BCPC) provisionally recertified the Margate 2.0 Comprehensive Plan amendment; full recertification is required within one year of the date of provisional

recertification. As the filing date of Applicant's rezoning application occurred prior to the City of Margate transmitting the Margate 2.0 amendment, staff has utilized the Margate Comprehensive Plan as it existed prior to this most recent amendment. This version of the Plan was fully certified by the Broward County Planning Council and was effective at the time this rezoning application was filed. The Future Land Use Map of Element 1, of the Margate Comprehensive Plan, as it existed prior to Margate 2.0, has been attached as **Exhibit 6**.

The Subject Property is located within the boundary of the Margate Community Redevelopment Agency (MCRA). The MCRA Boundary Map has been attached to this Staff Report as **Exhibit 7**.

Attached to the Staff Report as **Exhibit 8** are photos of the Subject Property taken by staff on March 2, 2021.

## **2. Background.**

In 2014, MMJ FINANCIAL SERVICES, INC., property owner, (hereinafter referred to as "Applicant") filed an application with the Development Review Committee ("DRC") for a special exception use, to permit a group care facility in the Multiple Dwelling R-3 Zoning District with the express intent to operate an independent living facility. As part of the application review it was determined that the Subject Property was located within 1,000 feet of an existing Group Care Facility, conflicting with a Margate Zoning Code ("MZC") 1000 feet distance separation requirement for group care facilities. A variance application was submitted and subsequently recommended for approval by the Margate Board of Adjustment.

On January 21, 2015, the City Commission, approved Resolution No. 15-010, allowing a special exception use for a group care facility to operate an independent living facility with a voluntarily proffered condition that the facility would not be operated as a drug rehabilitation center.

On May 28, 2015, the Applicant filed building permit application no. 15-1248 in order to make the physical improvements to convert the 10-unit apartment building to a group care facility. The initial plan submittal was labeled "Margate Rehabilitation Center" and included features much more medically intense than what is typical or required for an independent living facility or assisted living facility.

On June 1, 2015, an article titled "Together We Make Detox Great. Melaleuca Residents Take Notice" was published by [www.margatenews.net](http://www.margatenews.net) featuring an interview with the Applicant (attached as **Exhibit 9**.) Statements by the Applicant were consistent with the submitted building plans and was contrary to the approved special exception use and accordingly, the application was rejected.

The building plans were revised and resubmitted for review, the revised plans conformed with the approved group care facility use and was approved by the zoning department in July 2015. Subsequent to the zoning review there was a series of plan revisions and the building permit was issued in April 2016 for conversion to an I-2 Institutional Group.

The building code in effect at the time of permitting was the 2014 Florida Building Code, 5<sup>th</sup> Edition. A copy of Section 308.4, Florida Building Code, 5<sup>th</sup> Edition (2014) has been attached to this Staff Report as **Exhibit 10**. The I-2 Institutional Group occupancy includes buildings and structures used for medical

care on a 24-hour basis for more than five persons who are incapable of self-preservation. Included in this group is foster care and detoxification facilities, hospitals, nursing homes, and psychiatric hospitals.

On March 13, 2017, the Applicant submitted an application for a local business tax receipt (“LBTR”) to operate a “medical assisted detox” at 603 Melaleuca Drive. The application was inconsistent with the approved zoning and was denied.

In October 2017, a certificate of occupancy (“CO”) including a restriction to operate a facility in accordance with the approval granted in Resolution No. 15-010 was issued. The CO was initially approved in March 2017 however, there was a delay while the City requested an affidavit from the Applicant acknowledging the special exception approval.

On September 27, 2017, the Applicant filed a lawsuit against the City alleging, among other claims, they had vested rights to operate a medical use/detoxification facility. In September 2018 the City’s motion for summary judgment was granted with prejudice, finding there were no vested rights to operate a medical facility.

In June 2019, the Applicant applied for an LBTR to operate a business that was presented as a group care facility consistent with the approved use however, the supporting documentation was inconsistent with the permitted use and the application was denied.

Between May 2020 and January 2021, the Applicant submitted four (4) LBTR applications. Three of the applications were denied because the business was inconsistent with the approved use for the property and one application was withdrawn upon requests by staff for supporting documentation to confirm the business was consistent with the approved uses.

On June 16, 2020 the Applicant applied for a reasonable accommodation to operate “as a Community Residential Treatment Facility to reasonable accommodate the Veterans that are suffering from Post-Traumatic Stress Disorder and Substance Use Disorder.” This request was denied by the City Manager and the decision was upheld by the City Commission in November 2020.

On June 17, 2020, the Applicant submitted an application to rezone 603 Melaleuca Drive from Multiple Dwelling R-3 (“R-3”) and One Family Dwelling R-1 (“R-1”) districts to Community Facility CF-1 Zoning District (“CF-1”), a site plan application was **not** included with the re-zoning application. The application was reviewed at the October 13, 2020, Development Review Committee (“DRC”), the committee recommended denial of the application. The DRC Comments have been included with this Staff Report as **Exhibit 12** and are included in the analysis of the rezoning request. The Planning and Zoning Board reviewed the application on June 1, 2021, and recommended approval of the rezoning request.

In the Fall of 2020, the Applicant petitioned Broward County to remove the use restriction on the CO for the Subject Property. The matter was forwarded to the Broward County Board of Rules and Appeals (“BORA”) as it pertained to a building permit issued within Broward County. BORA denied the request.

## **B. Compliance.**

This section of the Staff Report provides analysis of the application as to how the proposed rezoning does or does not comply with the Code of the City of Margate (“Code”).

Section 31-33 of the Code, provides the following definition of a development permit.

*Development permit means any building permit, as defined herein, subdivision resurvey or plat approval, rezoning, special exception, or other official action of the city having the effect of permitting the development or redevelopment of land.*

This does not include any variance or other official action necessary solely for the purpose of issuing a permit, other than a building permit, pursuant to the South Florida Building Code, or other building code in force and effect at the time.

A rezoning request is defined as a development permit and is subject to City’s development review requirements as provided in Chapter 31 of the Code.

Section 31-34 of the Code establishes the City’s Development Review Committee (“DRC”) and charges the committee with the responsibility of reviewing all applications for rezoning in order to make a statement to the Planning and Zoning Board assessing the adequacy of the proposal as to *all* city ordinances. The DRC reviewed this application for rezoning at its October 13, 2020, meeting and recommended denial. A copy of the Committee’s comments have been forwarded to the Planning and Zoning Board, and have been attached to this Staff Report. The Planning and Zoning Board reviewed this application for rezoning on June 1, 2021, and recommended approval with a 3-1 vote.

Section 31-36 of the Code establishes the determinations required prior to a change in zoning, and makes distinctions for those requirements based on whether or not the property has been platted. The Subject Property is part of the “HAMMON HEIGHTS Section 2” plat, as recorded in Plat Book 34, Page 46 of the public records of Broward County. As such, this Section provides that the City Commission shall make a determination of whether services are available to serve the development permitted in the zoning district which is being petitioned. The text continues with, “A determination that services are available shall be made when the City Commission approves a report submitted by the DRC which indicates the conditions contained in Section 31-35 of this Article have been met.” This Staff Report, including the DRC comments generated for this rezoning application, is the report referenced in Section 31-36 of the Code, submitted by the DRC.

Section 31-37 of the Code directs staff to presume that rezoning applications shall have the maximum impact permitted under applicable land development regulations for the purposes of implementing Sections 31-34, 31-35, and 31-36. Although Section 31-37(b) provides for an exception to maximum impact analysis, that exception is conditioned on submission of a site plan, the Applicant has not submitted a site plan. As such, prior to the DRC meeting held on October 13, 2020, staff requested additional information from the Applicant. Emails requesting the information have been attached to this Staff Report

as **Exhibit 11**. Reviewing the rezoning for maximum impact is covered in detail in Section IIID - Compatibility of this Staff Report.

Section 31-35 of the Code provides the criteria for which staff is charged to review rezoning applications. As this Section is largely the basis for the DRC application review, the DRC comments, as well as comments related to subsequent traffic statement submittals have been attached to this Staff Report as **Exhibit 12**. At the October 13, 2020, meeting of the DRC, this rezoning application was heard on the agenda. To summarize, the DRC was not able to find that adequate services will be available to serve the needs of the requested rezoning.

A recurring challenge reviewing this rezoning request was non-specific and vague responses from the Applicant and Applicant representatives. The description of the proposal provided on this rezoning application form consisted of, “Change of zoning to CF-1 to allow Medical Rights in a I-2 Building. This property was converted from a 10 unit apartment building to a Long Term Care Facility. Permit 15-00001248, CO 3/30/2017.” The description of the proposal provided on Applicant’s justification statement included with this rezoning application consisted of, “The plot of the Subject Property is **43,675 square feet** and the street frontage is 225 feet. The Applicant’s proposed use constitutes a long-term care facility.”

The medical or quasi-medical uses permitted in the CF-1 Zoning District are hospital, detoxification facility, and long-term care facility. The CF-1 Zoning District requires a minimum of 40,000 square feet of land area (less than one-acre) in order to operate a hospital, detoxification facility, and long-term care facility. The Subject Property has 43,670 square feet (slightly larger than one acre) in land area, notwithstanding other Code requirements such as setbacks, landscape buffers, and other criteria, this property meets the minimum land area requirements for a hospital, detoxification facility, or long-term care facility to operate on this parcel.

The property survey included with this rezoning application shows that the Subject Property is nearly squared with dimensions of 194 feet by 225 feet. The minimum required setbacks for single-story and two-story development on this property are 35 feet measured from the east property line, 40 feet measured from the north property line, 40 feet measured from the west property line, and 25 feet measured from the south property line. The CF-1 Zoning District increases side and rear setbacks by five feet for each floor above the second, and limits maximum height to four stories. If a person were to build the maximum size building permitted by the CF-1 Zoning District on the Subject Property, the applicable minimum required setbacks for a four-story building on this property would be 35 feet measured from the east property line, 50 feet measured from the north property line, 50 feet measured from the west property line, and 35 feet measured from the south property line. These setbacks leave a “buildable area” of 109 feet by 140 feet, which would allow for a building footprint of up to 15,260 square feet, which represents a lot coverage of approximately 34.9% of the lot area. The CF-1 zoning district limits lot coverage to a maximum of 25% for buildings that are four stories in height. As the lot coverage limitation is more restrictive than the minimum required setbacks of the district, the setbacks would not limit or impede the maximum development potential of a four-story building of 43,675 square feet on the Subject Property. Thus, under the direction of Section 31-37 of Code, maximum impact analysis includes CF-1 district uses up to four stories and 43,675 square feet.

### **C. Consistency.**

In addition to the analysis of the application for rezoning weighed against the Goals, Objectives and Policies of the Margate Comprehensive Plan (“MCP”) provided during the DRC review process (above in Part IIIB), staff offers the following:

As has already been established in this Staff Report, the application for rezoning of land is in fact a development permit. Similar definitions cited above are also provided in Section A. Definitions, of Part 9. Plan Implementation Requirement, of Element I – Future Land Use, of the Margate Comprehensive Plan, providing for consistency of regulations. Policy 1.10 of Element I – Future Land Use requires the City to adopt procedures to identify cumulative impacts of proposed development on public services and facilities before a development permit is issued. The City has adopted these procedures in Chapter 31 of the Code, and cited the appropriate Code sections above in this Staff Report. Staff comments provided at the DRC meeting (**Exhibit 12**) indicate that many of the conditions in Sections 31-35 of the Code have not been met. After the submittal of this rezoning application, staff requested additional information from the Applicant. There were ongoing challenges with obtaining the information necessary to review the request in accordance with the Code requirements. The requests for additional information are attached to this Staff Report as **Exhibit 11**.

#### **MCP Element I – Future Land Use**

“Policy 1.10 Implement procedures, which identify the cumulative impacts of proposed development on public services and facilities before a development permit is issued.”

Policy 5.2 of Element I – Future Land Use provides guidance for when the City may approve a development permit, such as this rezoning. Section C. Implementation Regulations and Procedures, of Part 9. Plan Implementation Requirement, of Element I – Future Land Use, of the MCP provides similar language. During the DRC review of this application, Department of Environmental & Engineering Services (“DEES”) staff was unable to conclusively determine whether or not the traffic generated by the proposed development will be safely and efficiently handled by the regional transportation network and local streets. DEES staff was also unable to perform analysis and assessment of the surface water impacts of this development, as no plan, model, or study of the site in the maximum impact condition was provided. These two specific topics are covered in both Policy 5.2 and Section C. Implementation Regulations and Procedures, below. Finally, subsection “j” of Policy 5.2 requires that a proposed development be consistent with the design criteria provided in the land development regulations of the City of Margate. The DRC comments attached as **Exhibit 12** identify 11 instances where this property does not conform to the design criteria of the Margate land development regulations, including setbacks, buffers, landscaping, and parking. Issuance of this development permit would not be consistent with the MCP.

#### **MCP Element I – Future Land Use**

“Policy 5.2 Issuance of any development permit shall only be permitted upon finding that:

- a. The proposed development is consistent with the Future Land Use Map and the permitted uses of Policy 1.2 of this Element.

- b. That potable water is available to serve the needs of the proposed development.
- c. That wastewater treatment and disposal service is available to service the needs of the proposed development.
- d. That fire protection is adequate to serve the needs of the proposed development.
- e. That police protection is adequate to serve the needs of the proposed development.
- f. That floor elevations are at or above the minimum prescribed by the National Flood Insurance Program.
- g. That the traffic generated by the proposed development will be safely and efficiently handles by the regional transportation network and local streets.
- h. That a surface water management system meeting or exceeding the design criteria of the South Florida Water Management District is provided by the proposed development.
- i. That adequate areas for local parks and recreation have been provided to meet the needs of the proposed development.
- j. That the proposed development is consistent with the design criteria specified in Policy 2.6 and elsewhere in the land development regulations of the City of Margate.”

“C. IMPLEMENTATION REGULATIONS AND PROCEDURES

1. Development Review Requirements

After the effective date of the City of Margate Land Use Plan, the City may grant an application for a development permit consistent with the certified City's land use plan when it has determined that the following requirements are met:

- a. Traffic circulation, recreational, drainage and flood protection, potable water, solid waste and sanitary sewer, and public facilities and services will be available to meet established level of service standards, consistent with Chapter 163.3202(g) Florida Statutes and the concurrency management policies included within this Comprehensive Plan.

- b. Local streets and roads will provide safe, adequate access between buildings within the proposed development and the traffic-ways identified on the Broward County Traffic-ways Plan prior to occupancy.
- c. Fire protection service will be adequate to protect people and property in the proposed development
- d. Police protection service will be adequate to protect people and property in the proposed development.
- e. School sites and school buildings will be adequate to serve the proposed development.

Development does not include a structure, or alteration thereof, that is subject to the notice requirements of Federal Aviation Regulations (FAR), Part 77, Subpart B, unless the Federal Aviation Administration issues, or has' issued within the previous ninety (90) days, a written acknowledgement that said structure or alteration would not constitute a hazard to air navigation and does not require increases to minimum obstruction clearance altitudes, or any other operational modifications at any existing airport or heliport or any planned or proposed airport as described in FAR Part 77.2(c)(2)."

Part 8 Monitoring and Updating Procedures of Element I – Future Land Use, of the Margate Comprehensive Plan provides additional guidance related to the issuance of development permits. Part 8 includes the text, "The DRC, through Chapter 16 ½ of Margate Code, makes determinations that adequate service will be available to serve the needs of the proposed development prior to approval of a development permit." Part 8 is implemented through the provisions of Chapter 31 of the Code.

During the DRC review of this application, DEES staff was unable to conclusively determine whether or not the traffic generated by the proposed development will be safely and efficiently handled by the regional transportation network and local streets. DEES staff was also unable to perform analysis and assessment of the surface water impacts of this development, as no plan, model, or study of the site in the maximum impact condition was provided. Based on the foregoing language in MCP Element I – Future Land Use Policy 1.10, 5.2 and Part 8 and 9, the approval of the development permit to rezone the Subject Property would be inconsistent with the Margate Comprehensive Plan.

## **D. Compatibility.**

### **1. Neighborhood**

The Subject Property is located at the northwest corner of Melaleuca Drive and Alan Road. This is a residential neighborhood. The Subject Property is contiguous to five single-family home sites along the north and west property lines. There are multifamily residential developments to the south, across Alan Road. There are multifamily residential developments to the northeast and southeast, across Melaleuca Drive. There is a small church directly to the east, across Melaleuca Drive. This is clearly an established residential neighborhood. An aerial view of the existing neighborhood is available in **Exhibit 2**.

When reviewing a rezoning application, all uses permitted within the requested zoning district must be considered in light of the established community character of the neighborhood where the Subject Property is located. Uses permitted by right limit the City's ability to exercise discretion regarding the type of use that may occur at the Subject Property. Uses permitted by right in the CF-1 Zoning District include the following:

- (1) Houses of worship and schools on the same plot.
- (2) Hospitals.
- (3) Detoxification facilities.
- (4) Long-term care facilities.
- (5) Municipal buildings.
- (6) Fire stations.
- (7) Libraries.
- (8) Public offices.
- (9) Parks, playgrounds, reservations, and parking.
- (10) Accessory structure or use which is clearly incidental or subordinate to the principal use and which use is located on the same plot.

### **2. Nature and Character of Area**

Although the Applicant's justification statement indicates that the proposed use is for a long-term care facility, the evaluation needs to consider the maximum impact of the zoning change notwithstanding the current owners intended use.

The eastern two-thirds of the Subject Property is presently within a multi-family zoning district, and the western one-third is within a single-family zoning district. The Subject Property is contiguous to five single-family home lots. It is important to note the context of the maximum size permitted under the CF-1 Zoning District. The CF-1 Zoning District permits up to four stories and 25% lot coverage, the maximum permissible size of a facility on the Subject Property could be as large as 43,675 square feet. This rezoning would permit uses that would have a detrimental impact on the existing nature and character of the surrounding neighborhood.

### **3. Traffic**

Applicant's traffic consultant indicated that the proposed 8,845 square feet long-term care facility with 36-beds and 49 employees would generate 144 vehicle trips per day when using the ITE Trip Generation Manual independent variable of number of employees. This number is more than four times what the prior use of 10 low-rise apartments was estimated to have generated (37 trips per day). The Subject Property currently has a perimeter fence with vehicle gates that are not automated. This means that any facility operating at the Subject Property requires staff to physically unlock and lock, and open and close the gates by hand for each vehicle entering or exiting the property. Further, the vehicle gates do not offer any on-site vehicle queueing for incoming vehicles. This means that every vehicle entering the property is going to wait in an adjacent public right-of-way while facility staff is manually unlocking and opening the vehicle gates.

Utilizing the Applicants traffic statement dated October 21, 2020 and revised traffic statement dated May 31, 2021, the indicated thirteen (13) on-site staff departures and arrivals between day and evening shifts thirteen (13) on-site employees are assumed for the analysis. The analysis does not contemplate any deliveries, visitors, per diem specialists, etc. Notwithstanding, the deficiencies in the assumptions in both traffic statements, the traffic generated from the Subject Property will queue and stack on Melaleuca Drive and Alan Road while waiting for the gates to be manually opened and closed.

The maximum intensity permitted under applicable land development regulations for the proposed CF-1 Zoning District appears to be a building that is 43,675 square feet in area. The CF-1 Zoning District permits up to 4-stories (50 feet) in building height, and at that height, plot coverage is limited to a maximum of 25%. The Subject Property is 43,675 square feet in land area, 25% of the land area is 10,918.75 square feet. Finally, multiplying 10,918.75 (25%) plot coverage times four stories yields a maximum building square footage of 43,675 square feet (10,918.75 sf x 4 stories = 43,675 sf). Staff can use this maximal square footage number to estimate traffic demands for the various uses permitted within the CF-1 Zoning District.

Both staff and the applicant's traffic consultant agree that the ITE land use code 620: Nursing Home would be the closest for the type of use proposed by the Applicant. The ITE provides several independent variables for estimating trips at this type of facility, but without any known values for things like the number of beds or staff in a facility of this size, staff can only estimate using square footage, which happens to offer the lowest trip generation rate of all variables when applied to the MCH business plan.

The CF-1 Zoning District permits a number of uses that are not permitted in either the R-1 or R-3 Zoning District. These uses have been listed in the Table below, identified by land use code provided in ITE Trip Generation Manual, and the estimated trip generation was calculated using the independent variable of square footage, based on a development of maximum impact, which on the subject property would be a building that is 43,675 square feet in area. The independent variable of square footage generally yields a

lower trip estimate than other variables, such as beds or students, so these numbers are likely lower than what the actual maximum impact would generate. The ITE Trip Generation Manual does not provide a land use code for “Detoxification Facility,” but given the operational and structural similarities, it is appropriate to apply the Land Use Code 610: Hospital to this use.

ITE Land Use	ITE Independent Variable/Trips per 1,000 square feet	Average Trips per Weekday (43,675 sf)
254: Assisted Living	4.19	183
520: Elementary School	19.52	853
522: Middle School/Junior High School	20.17	881
530: High School	14.07	615
534: Private School (K-8)	11.59	506
540: Junior/Community College	20.25	884
550: University/College	26.04	1,137
610: Hospital	10.72	468
620: Nursing Home	6.64	290
730: Government Office Building	22.59	987

As stated above in this Staff Report, the Subject Property is located at the intersection of two local roads: Melaleuca Drive and Alan Road. If this request for rezoning is approved, this volume of traffic could be forced onto a network of local roads, located within a residential neighborhood. Important to note is that the above estimates are based only on square footage. Other factors, such as the number of beds in a facility, would most likely yield higher estimates of traffic.

#### 4. Parking

The application documents state that the proposed business plan is for a long-term care facility use. As determined during the DRC review of this application, the Subject Property is grossly under-parked based on the requirements of the Margate Zoning Code (“MZC”). Based on the current size and configuration of the facility on the Subject Property, a parking nuisance for the surrounding residential neighborhood is created because of insufficient parking for the permitted uses on the CF-1 Zoning District. The site currently provides 22 parking spaces and is gated at both driveways without any on-site vehicle queueing areas for vehicles traversing the gate. The parking requirements of the MZC require no less than 57 parking spaces for the use described in the business plan submitted with this application. As described above, the vehicle gates installed by Applicant at the facility are not automated and require someone to manually open and close the gates when vehicles arrive or depart.

#### 5. Compatibility Measures in Code

Policy 2.3 of Element I – Future Land Use, of the MCP establishes that the minimum measures the zoning code and land development regulations shall establish are landscape buffers and setback requirements in order to minimize impacts between incompatible uses. The DRC comments clearly demonstrate that the Subject Property does not comply with the minimum setbacks of the CF-1 Zoning District, nor does it provide the minimum required landscape buffers.

Policy 13.9 of Element I – Future Land Use, of the MCP provides that compatibility and appropriate transitional design elements will be reviewed at time of site plan review. If the site is not redeveloped, or if a site plan is not submitted to the DRC to review the new use, then staff will not have the opportunity

to ensure that essential compatibility components of the site are properly provided. The Subject Property is located in a residential neighborhood and is contiguous to five single-family home sites. The Subject Property in its current form violates the minimum required setbacks from three out of four property lines, and does not provide the minimum landscape buffers required by the Code. These factors intensify the negative impacts associated with CF-1 uses.

#### **IV. RATIONALE:**

This portion of the staff report provides an objective analysis to help policymakers weigh and compare the reasons to approve or deny a given application. Staff was not able to identify relevant findings to support approval of this application based on the codified criteria for a change in zoning, so Subsection A includes assertions from Applicant's justification statement, with staff notes marked with an asterisk\* symbol.

##### **A. Reasons to approve:**

1. "The Applicant's proposed use is consistent with the purpose of the CF-1 district..."

*\*The criteria to rezone requires determinations about adequacy of service, consistency with the Comprehensive Plan, and conformity to the Zoning Code.*

2. The Applicant's proposed use of long-term care facility is permitted in the CF-1 district.
3. The Applicant's current structure complies with CF-1 lot coverage and height limitations.
4. "The Applicant is in compliance with all City setback requirements provided in Section 11.6(a)-(f)."

*\*Although a site plan was not submitted, the current building does not comply with the setback requirements.*

5. "Thus, to have a CF-1 site adjacent to residential property, such is the case with the Subject Property, is not unusual in Margate and in fact is a locational characteristic of 67% of the current CF-1 sites."

*\*The other areas zoned CF-1 are located on roads classified as either collector or arterial roads, the Subject Property is located on local streets.*

##### **B. Reasons to deny:**

This Staff Report elucidates the following:

1. The rezoning application does not conform to Code of the City of Margate; and
2. The subject property does not conform to the requested CF-1 zoning district requirements; and

3. A site plan has not been submitted, use of the existing facility creates a non-conforming structure which does not meet minimum required buffers, setbacks, parking, landscaping, etc; and
4. Rezoning the Subject Property to CF-1 is not consistent with the Margate Comprehensive Plan; and
5. Rezoning the Subject Property to the CF-1 district will introduce incompatible uses to a residential neighborhood; and
6. Rezoning the Subject Property to the CF-1 district will have a detrimental impact upon the nature and character of the residential area in which it is located; and
7. Operating a long-term care facility as described in the business plan that accompanied the application will nearly quadruple the amount of traffic generated by the Subject Property, which will be forced onto the local roads of the residential neighborhood where it is located. CF-1 uses have the potential to bring exponentially more traffic to this residential neighborhood; and
8. All other CF-1 zoned properties are located on roads classified as Collector or Arterial. The Subject Property is located on local roads; and
9. The higher traffic counts have a very likely potential to overflow onto local residential streets due to the manually operated (not automated) vehicle gates and lack of parking; and
10. Operating a long-term care facility as described in the business plan that accompanied the application has a serious potential to create a parking nuisance for the residential neighborhood because the Subject Property is severely under-parked relative to the described business. The site provides less than half the number of parking spaces of what is required by the Margate Zoning Code; and

### **C. Mitigating factors:**

At the June 1, 2021, Planning and Zoning Board meeting, Applicant offered an affidavit/covenant to restrict the use of the subject property if the rezoning was approved. The City Commission may choose to approve this application with the condition that Applicant executes an affidavit/covenant in order to limit the uses and the maximum size of development permitted on the Subject Property. The affidavit/covenant depicted within Applicant's PowerPoint presentation was problematic as written. Approval of this rezoning is contrary to the Margate Code and inconsistent with the Comprehensive Plan. Notwithstanding the requirement to comply with the Margate Code and pass legislation that is consistent with the Margate Comprehensive Plan, there are numerous challenges with enforcement of a restrictive covenant or affidavit. The Applicant seeking the rezoning has submitted a signed affidavit agreeing to use restrictions for the Subject Property in the past and the City has expended exorbitant resources attempting to enforce the affidavit as indicated in Section IIIA of the Staff Report.

---

Andrew Pinney, AICP  
Senior Planner  
Development Services Department  
City of Margate

Margate Care For Heroes, LLC Rezoning – 603 Melaleuca Drive

August 25, 2021

Page 17

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8/23/2021

Andrew Pinney, AICP  
Senior Planner  
Development Services Department  
City of Margate

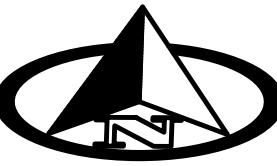
## **STAFF REPORT EXHIBITS**

- Exhibit 1: Boundary Survey of 603 Melaleuca Drive
- Exhibit 2: Broward County Property Appraiser Aerial Map
- Exhibit 3: Hammon Heights Section 2 Plat
- Exhibit 4: Quit Claim Deed for Lot 3, Block 3 of Hammon Heights Section 2
- Exhibit 5: City of Margate Zoning Map
- Exhibit 6 : Margate Future Land Use Map (prior to adoption of Margate 2.0)
- Exhibit 7: Margate Community Redevelopment Agency Map
- Exhibit 8: Photos of subject property
- Exhibit 9: "Together We Make Detox Great" Margatenews.net article
- Exhibit 10: Section 308.4, Florida Building Code, 5<sup>th</sup> Edition (2014)
- Exhibit 11: Emails from Development Services Staff Requesting Information from Kyle Teal
- Exhibit 12: Development Review Committee Comments

## Exhibit 1

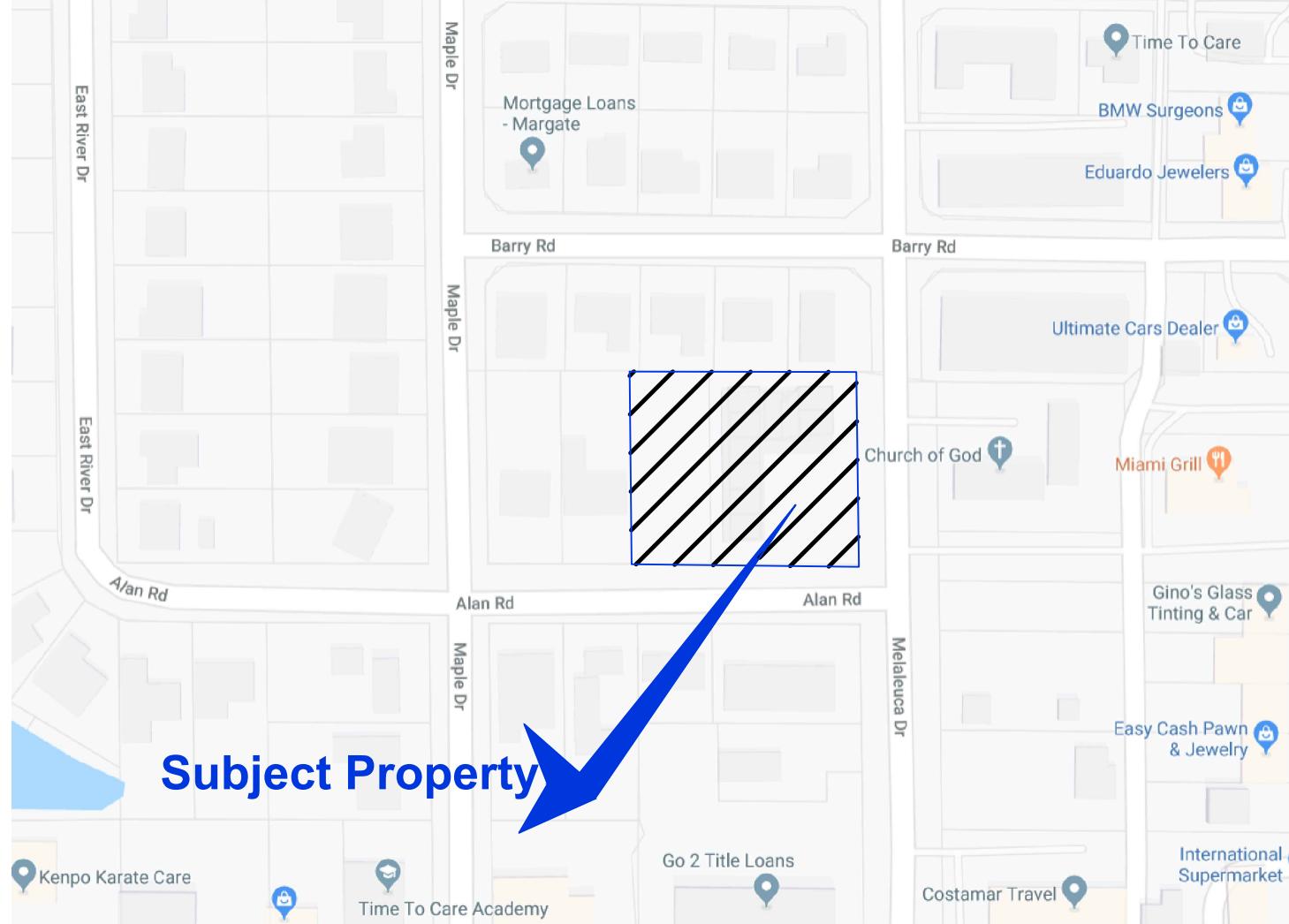
### Boundary Survey of 603 Melaleuca Drive

# MAP OF BOUNDARY SURVEY



0 10 20

SCALE: 1" = 20'

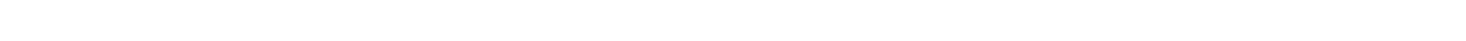


## LOCATION MAP

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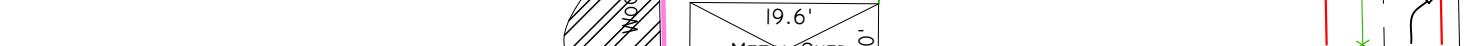
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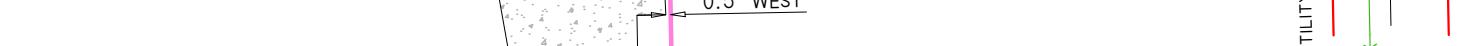
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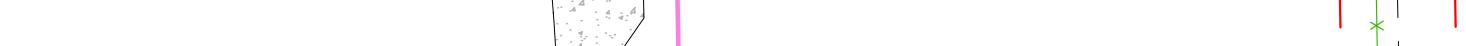
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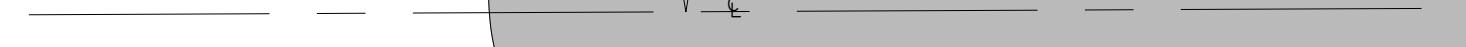
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## Exhibit 2

### Broward County Property Appraiser Aerial Map

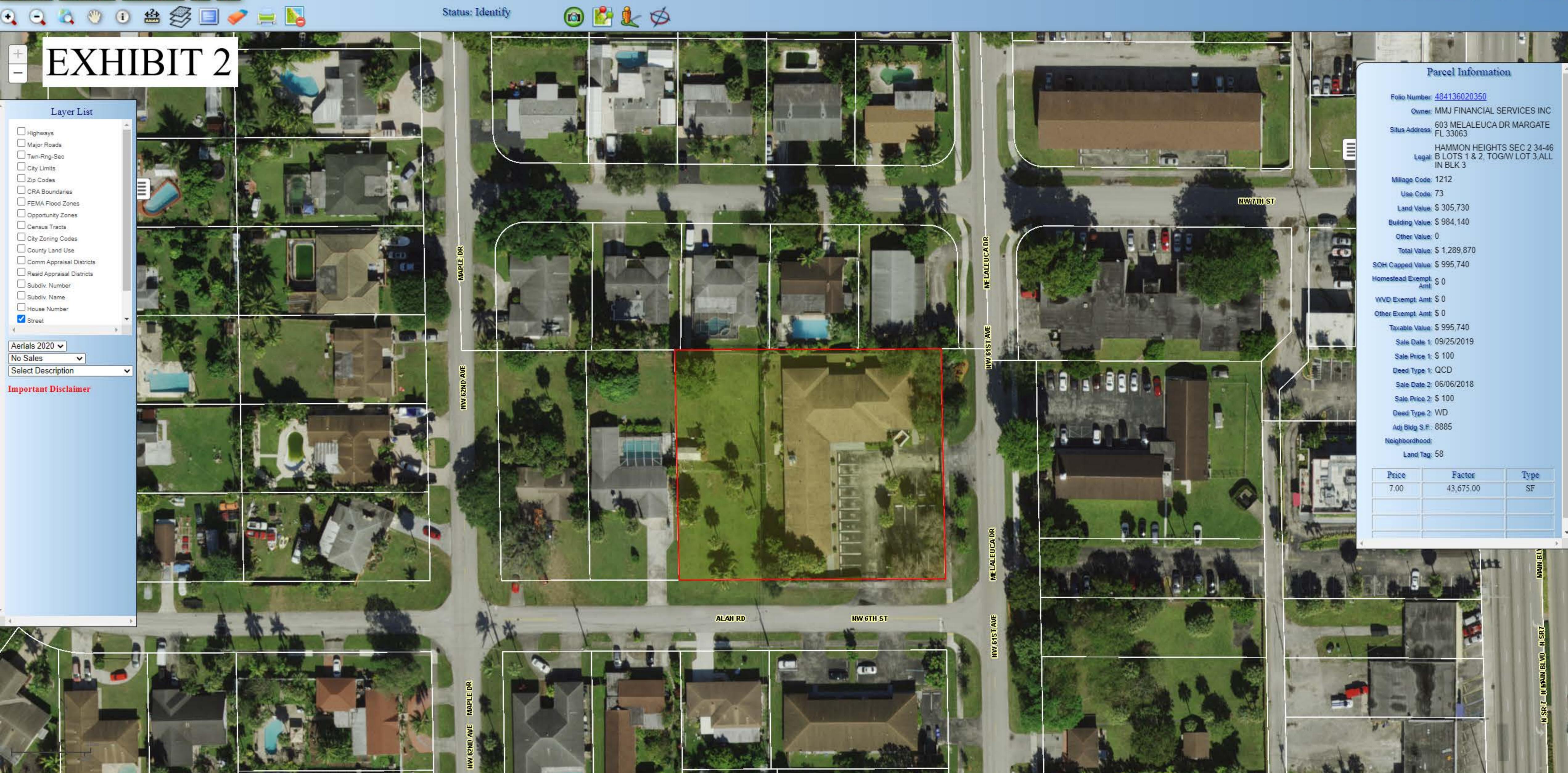


Exhibit 3

Hammon Heights Section 2 Plat

DESCRIPTION: The  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of SECTION 36, TWP 48S, RGE 41E, lying WEST of STATE ROAD No. 7, excepting therefrom, the following described parcel. Commence at the NORTH WEST Corner of the  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of said SECTION 36; thence EAST along the NORTH boundary of the said  $\frac{1}{2}$  of NE  $\frac{1}{4}$  a distance of 1045.02 feet to the point of beginning, thence SOUTH and parallel to the WEST boundary of the said  $\frac{1}{2}$  of NE  $\frac{1}{4}$  a distance of 666.23 feet; thence EAST with an included angle of  $91^\circ 15' 57''$  a distance of 460.44 feet, to the E. of STATE ROAD No. 7, thence NORTHERLY along the E. of STATE ROAD No. 7 to an intersection with the NORTH boundary of the said  $\frac{1}{2}$  of NE  $\frac{1}{4}$ ; thence WEST along the said NORTH boundary, a distance of 525 feet to the point of beginning, said lands situate, lying and being in

BROWARD COUNTY, FLORIDA

### DEDICATION

STATE OF FLORIDA  
COUNTY OF BROWARD } 55

KNOW ALL MEN BY THESE PRESENTS: That HAMMON HEIGHTS, INC., a FLORIDA Corporation, owner of the lands shown and included on this PLAT has caused said lands to be subdivided and platted as herein shown; said subdivision to be known as "HAMMON HEIGHTS SECTION 2". All Streets, Avenues, Courts and Public Ways shown on Said PLAT are hereby voided, cancelled and superseded by this PLAT.

IN WITNESS WHEREOF, HAMMON HEIGHTS, INC., has caused this dedication to be signed in its name by its PRESIDENT and SECRETARY, this 10<sup>th</sup> day of MAY, 1954.

WITNESSES:

Walter Fair  
R. W. Gheen

Victor H. Semet (SEAL)  
PRESIDENT  
Florence R. Semet (SEAL)  
SECRETARY

### ACKNOWLEDGEMENT

STATE OF FLORIDA  
COUNTY OF BROWARD } 55

I HEREBY CERTIFY: That on this day personally appeared before me, an Officer duly authorized to administer oaths and take acknowledgements, VICTOR H. SEMET and FLORENCE R. SEMET, President and Secretary of HAMMON HEIGHTS, INC., and they acknowledged before me, that they executed the foregoing dedication as such Officers of said Corporation, in the name of said Corporation.

WITNESS: My hand and Official Seal at FORT LAUDERDALE, in the COUNTY OF BROWARD, STATE OF FLORIDA, this 10<sup>th</sup> day of MAY, 1954.

W. M. Farber  
NOTARY PUBLIC STATE OF FLORIDA  
My Commission Expires: Feb 16 1955

### CIRCUIT COURT CLERK'S CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD } 55

I HEREBY CERTIFY: That this PLAT Complies with the provisions of "AN ACT TO REGULATE THE MAKING OF SURVEYS AND FILING FOR RECORD OF MAPS AND PLATS IN THE STATE OF FLORIDA", approved by the Governor, June 11th, 1925.

FRANK H. MARKS  
CLERK OF CIRCUIT COURT

By: Dorothy Adams  
DEPUTY CLERK

STATE OF FLORIDA  
COUNTY OF BROWARD } 55

This instrument filed for RECORD this 23 day of JULY, 1954, and recorded in BOOK 34 of PLATS, at PAGE 16, RECORD VERIFIED.

FRANK H. MARKS  
CLERK OF CIRCUIT COURT

By: Dorothy Adams  
DEPUTY CLERK

STATE OF FLORIDA  
COUNTY OF BROWARD } 55

I HEREBY CERTIFY: That this PLAT of "HAMMON HEIGHTS SECTION 2", is a true and correct representation of a SURVEY made by me, and that PERMANENT REFERENCE MONUMENTS have been set as indicated.

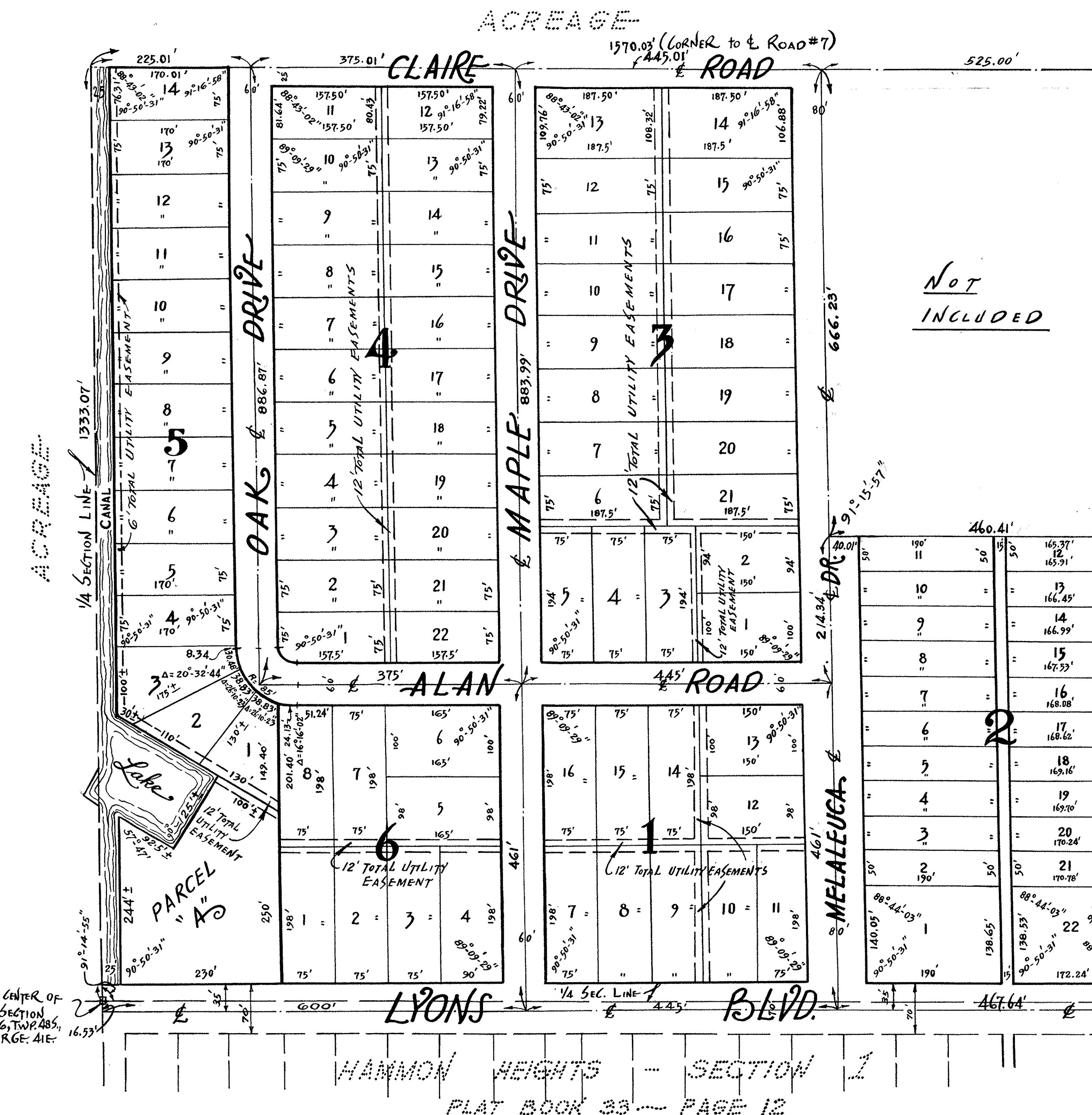
Dated at FORT LAUDERDALE, FLORIDA, this 10<sup>th</sup> day of MAY, 1954.

O. W. McFarber  
REGISTERED LAND SURVEYOR NO. 1713  
STATE OF FLORIDA

### COUNTY ENGINEER'S CERTIFICATE

APPROVED FOR RECORD:

R. G. Dunn  
COUNTY ENGINEER



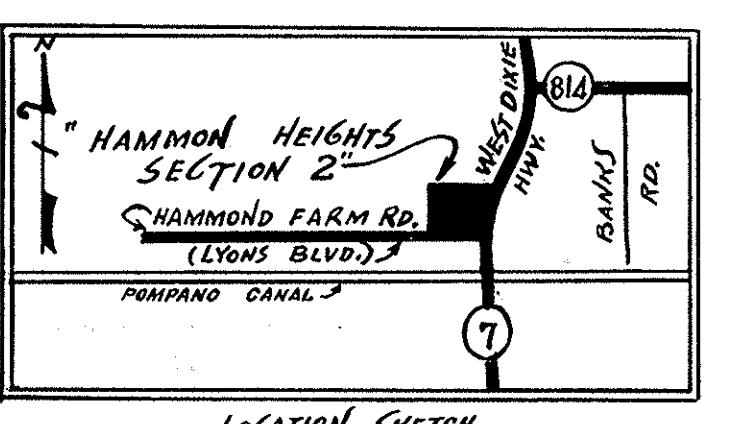
# "HAMMON HEIGHTS

Section 2  
SEC. 36, TWP. 48S, RGE. 41E.  
BROWARD COUNTY, FLORIDA

0 25 50 75 100 150 200 300

SCALE IN FEET  
1" = 100'

J. W. McLAUGHLIN ~ CIVIL ENGINEER  
FORT LAUDERDALE, FLORIDA  
MAY 1954



LOCATION SKETCH

## Exhibit 4

Quit Claim Deed for Lot 3, Block 3 of Hammon Heights Section 2

[Space Above This Line For Recording Data]

## Quit Claim Deed

This Quit Claim Deed made this 25 day of September, 2019, between Jerry Horta, a single man, whose post office address is 8964 New Hope Court, Royal Palm Beach, FL 33411, grantor, and MMJ Financial Services, Inc. a Florida Corporation, whose post office address is 5379 Lyons Rd., 154 Coconut Creek, FL 33073, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

**Witnesseth**, that said grantor, for and in consideration of the sum TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim to the said grantee, and grantee's heirs and assigns forever, all the right, title, interest, claim and demand which grantor has in and to the following described land, situate, lying and being in Broward County, Florida to-wit:

Lot 3, Block 3, Hammon Heights Section 2, according to the Plat thereof, as recorded in Plat Book 34, at Page 46, of the Public Records of Broward County, Florida.

Parcel Identification Number: 484136020381

**To Have and to Hold**, the same together with all and singular the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of grantors, either in law or equity, for the use, benefit and profit of the said grantee forever.

(2)

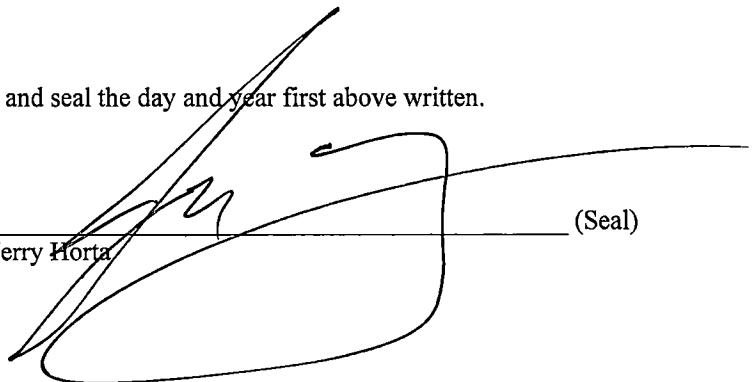
**In Witness Whereof**, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:



\_\_\_\_\_  
Witness Name: MIRACELLY PENEZ

\_\_\_\_\_  
Witness Name: Alex Valencia

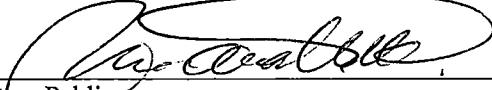


(Seal)

Jerry Horta

STATE OF Fl  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 25 day of September, 2019, by Jerry Horta, who is personally known to me or has produced a \_\_\_\_\_ as identification.



Notary Public

Printed Name: MARIA J. LIBBY

My Commission Expires: 7/30/2023

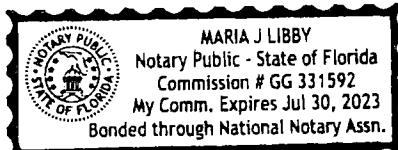
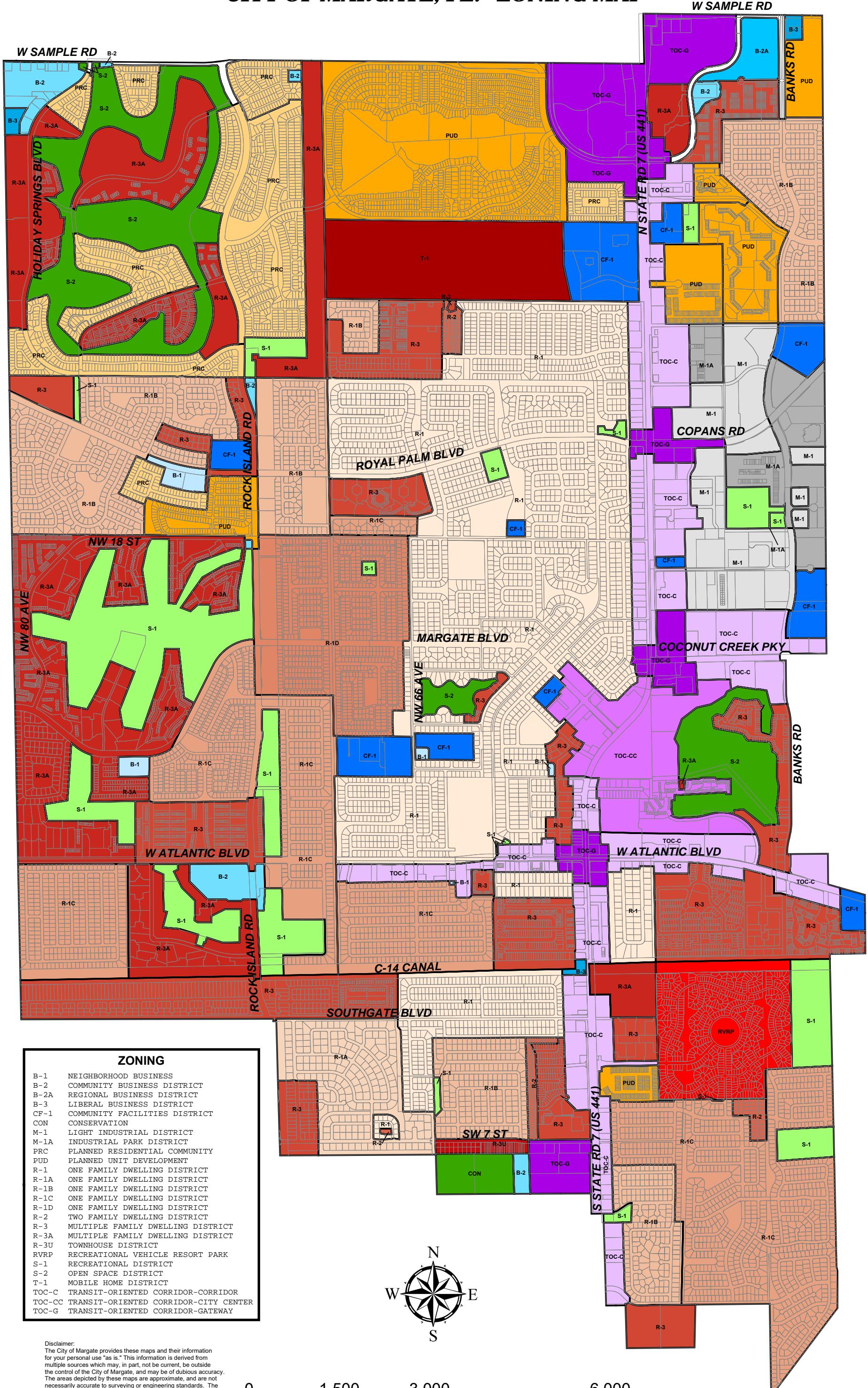


Exhibit 5

City of Margate Zoning Map

# CITY OF MARGATE, FL: ZONING MAP

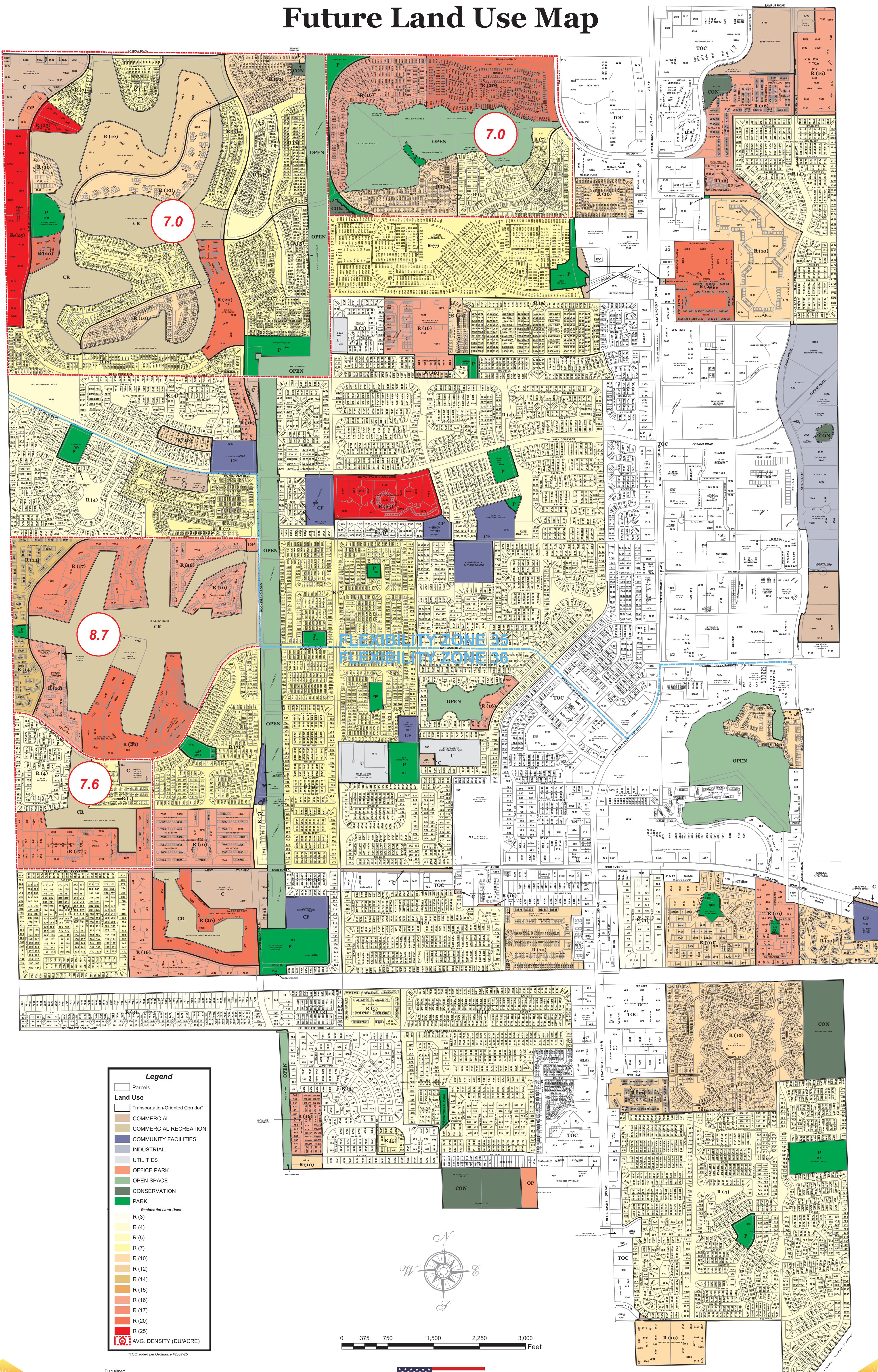


## Exhibit 6

Margate Future Land Use Map (prior to adoption of Margate 2.0)

# City of Margate, Florida

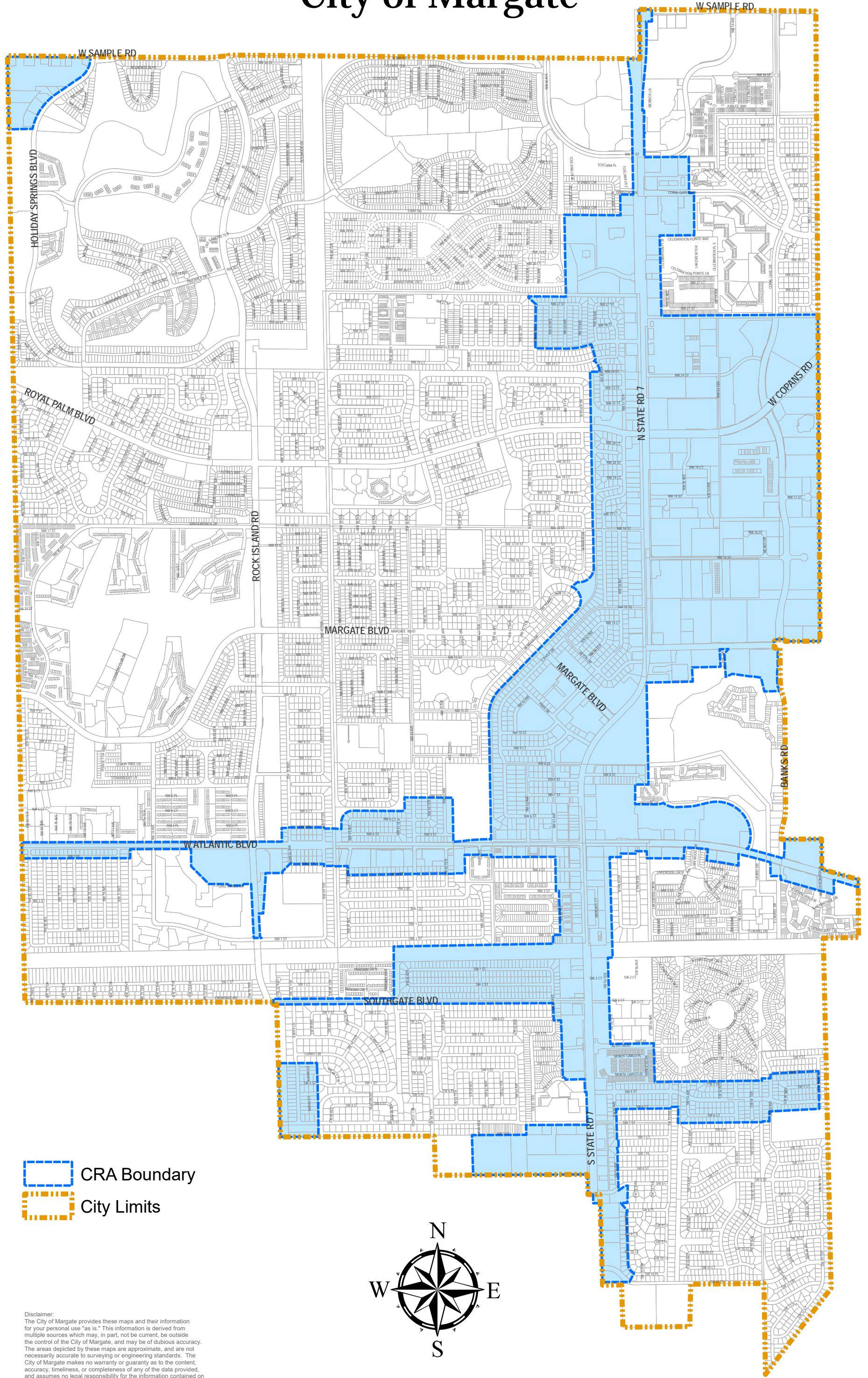
## Future Land Use Map



## Exhibit 7

### Margate Community Redevelopment Agency Map

# City of Margate



**Disclaimer:**  
 The City of Margate provides these maps and their information for your personal use "as is." This information is derived from multiple sources which may, in part, not be current, be outside the control of the City of Margate, and may be of dubious accuracy. The areas depicted by these maps are approximate, and are not necessarily accurate to surveying or engineering standards. The City of Margate makes no warranty or guarantee as to the content, accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Please notify the GIS staff of any discrepancies by contacting the Department of Environmental and Engineering Services at (954) 972-0828.

Exhibit 8

Photos of subject property





MILLWOOD DR  
NW 6 ST

MELALEUCA DR  
NW 61 AV

NW 6 ST.  
ALAN RD









## Exhibit 9

“Together We Make Detox Great” Margatenews.net article

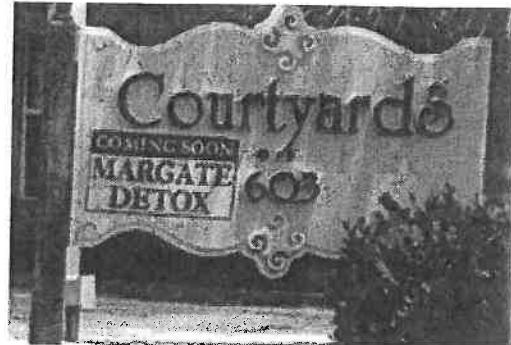
## Together We Make Detox Great. Melaleuca Drive residents take notice

June 01, 2015

| By Mitchell Pellecchia

The detox industry in Margate is set to make strides if all goes well for a couple of proposed detox facilities within feet of each other on Melaleuca Drive in Margate.

The first, an apartment building at 603 Melaleuca Drive, was approved by city commissioners in January for a Special Exception. The owner of the building said it was difficult to find good tenants and was looking to convert the 10-unit building into an independent living facility for the elderly\*. Commissioners approved the group home without first seeing a detailed business plan and with only verbal assurance from the owner that the building wouldn't be converted to a detox facility once it's approved for elderly housing.



"If I had planned to make it a drug rehab I could have done it honestly and the attorney knows - If I wanted to make it into a halfway house I don't even need you guy's permission. Because you can't block it because you cannot discriminate. I would have done it already. I'm protected under ADA. I didn't go that route because I didn't want to," building owner, Miryam, Jimenez, told commissioners at her land use hearing in January.

But that's not what a new sign at 603 Melaleuca Drive says. It reads "Margate Detox."

Jimenez told MargateNews.net last week that she did indeed change her plan. She said there are fewer complications in opening a detox center, making the use more financially viable than an independent or assisted living facility for the elderly. She also said that with the drug problems on her street the community could use a detox center, which is what another building owner a few hundred feet wants to open.

Going before the Planning and Zoning Board (P&Z) Tuesday, June 2nd will be two buildings - 6101 Atlantic Boulevard and 519 Melaleuca Drive - both looking to be rezoned from transit oriented corridor to a community facilities use. The plan: a 32-bed detox facility with patient stays of between five and seven days. And while the petitioner for these two buildings in theory has a well-conceived business plan, Planning and Zoning officials will be charged with deciding first whether a 32-bed detox facility is a healthy choice down the street from Margate Middle School and around the corner from a children's academy, and, second, if two detox centers should be allowed so close to one another. That is if Jimenez sticks to her plan and is allowed by law to open a detox center in lieu of the elderly housing she represented to commissioners in January.

Notwithstanding, the proposed "Atlantic Medical Center" going before P&Z Tuesday will employ 30 persons during any one shift and contribute \$100,000 in additional water and sewer impact fees. [\(Click to view plan\)](#)

Margate resident, Annette Bright, lives in the neighborhood and attended the January land use hearing.

Other than people cutting across her yard from nearby apartment buildings "like it was a freeway," she said, the neighborhood is a good one.

As far as her feelings regarding a detox center a few doors down from her home:

"That can't be. That would make it even worse than somebody saying we have a bad neighborhood," Bright told commissioners.

---

*\*Detox centers are licensed by the state's Department of Children and Family Services while assisted living facilities are licensed by the Agency for Healthcare Administration. Each come with the own rules and requirements.*

*(Below: 6101 W. Atlantic Blvd. and 513 Melaleuca Drive to make up 32-bed detox facility)*



## Exhibit 10

Section 308.4, Florida Building Code, 5<sup>th</sup> Edition (2014)

**[F] 307.6 High-hazard Group H-4.** Buildings and structures which contain materials that are health hazards shall be classified as Group H-4. Such materials shall include, but not be limited to, the following:

- Corrosives
- Highly toxic materials
- Toxic materials

**[F] 307.7 High-hazard Group H-5.** Semiconductor fabrication facilities and comparable research and development areas in which hazardous production materials (HPM) are used and the aggregate quantity of materials is in excess of those listed in Tables 307.1(1) and 307.1(2) shall be classified as Group H-5. Such facilities and areas shall be designed and constructed in accordance with Section 415.10.

**[F] 307.8 Multiple hazards.** Buildings and structures containing a material or materials representing hazards that are classified in one or more of Groups H-1, H-2, H-3 and H-4 shall conform to the code requirements for each of the occupancies so classified.

## SECTION 308 INSTITUTIONAL GROUP I

**308.1 Institutional Group I.** Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

**308.2 Definitions.** The following terms are defined in Chapter 2:

### 24-HOUR CARE.

### CUSTODIAL CARE.

### DETOXIFICATION FACILITIES.

### FOSTER CARE FACILITIES.

### HOSPITALS AND PSYCHIATRIC HOSPITALS.

### INCAPABLE OF SELF-PRESERVATION.

### MEDICAL CARE.

### NURSING HOMES.

**308.3 Institutional Group I-1.** This occupancy shall include buildings, structures or portions thereof for more than 16 persons who reside on a 24 hour basis in a supervised environment and receive *custodial care*. The persons receiving care are capable of self preservation. This group shall include, but not be limited to, the following:

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- Convalescent facilities
- Group homes*
- Halfway houses
- Residential board and *custodial care* facilities
- Social rehabilitation facilities

**308.3.1 Five or fewer persons receiving care.** A facility such as the above with five or fewer persons receiving such care shall be classified as Group R-3 or shall comply with the *Florida Building Code, Residential* provided an *automatic sprinkler system* is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *Florida Building Code, Residential*.

**308.3.2 Six to sixteen persons receiving care.** A facility such as above, housing not fewer than six and not more than 16 persons receiving such care, shall be classified as Group R-4.

**308.4 Institutional Group I-2.** This occupancy shall include buildings and structures used for *medical care* on a 24-hour basis for more than five persons who are *incapable of self-preservation*. This group shall include, but not be limited to, the following:

- Foster care facilities*
- Detoxification facilities*
- Hospitals*
- Nursing homes*
- Psychiatric hospitals*

**308.4.1 Five or fewer persons receiving care.** A facility such as the above with five or fewer persons receiving such care shall be classified as Group R-3 or shall comply with the *Florida Building Code, Residential* provided an *automatic sprinkler system* is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *Florida Building Code, Residential*.

**308.5 Institutional Group I-3.** This occupancy shall include buildings and structures that are inhabited by more than five persons who are under restraint or security. An I-3 facility is occupied by persons who are generally *incapable of self-preservation* due to security measures not under the occupants' control. This group shall include, but not be limited to, the following:

- Correctional centers
- Detention centers
- Jails
- Prerelease centers
- Prisons
- Reformatories

Buildings of Group I-3 shall be classified as one of the occupancy conditions indicated in Sections 308.5.1 through 308.5.5 (see Section 408.1).

**308.5.1 Condition 1.** This occupancy condition shall include buildings in which free movement is allowed from sleeping areas, and other spaces where access or occupancy is permitted, to the exterior via *means of egress* without restraint. A Condition 1 facility is permitted to be constructed as Group R.

**308.5.2 Condition 2.** This occupancy condition shall include buildings in which free movement is allowed from sleeping areas and any other occupied *smoke compartment* to one or more other *smoke compartments*. Egress to the exterior is impeded by locked *exits*.

**308.5.3 Condition 3.** This occupancy condition shall include buildings in which free movement is allowed

## Exhibit 11

### Emails from Development Services Staff Requesting Information from Kyle Teal

---

**From:** Teal, Kyle B. <kyle.teal@bipc.com>  
**Sent:** Thursday, September 17, 2020 9:14 AM  
**To:** Alexia Howald; Miryam Jimenez  
**Cc:** Elizabeth Taschereau; Andrew Pinney; Teal, Kyle B.  
**Subject:** RE: Rezoning Submittal for Margate Care for Heroes

Good morning, Ms. Howald.

Yes, please consolidate all documents we've submitted related to the rezoning application. Thank you.

Regards,

Kyle

**Kyle B. Teal, Esq.**  
**Buchanan Ingersoll & Rooney PC**  
305 347 5912 (o)  
305 766 4580 (m)

---

**From:** Alexia Howald <ahowald@margatefl.com>  
**Sent:** Wednesday, September 16, 2020 11:10 AM  
**To:** Teal, Kyle B. <kyle.teal@bipc.com>; Miryam Jimenez <miryamjimenez@vaqualityoflife.com>  
**Cc:** Elizabeth Taschereau <ETaschereau@margatefl.com>; Andrew Pinney <apinney@margatefl.com>  
**Subject:** Rezoning Submittal for Margate Care for Heroes

[This Email Originated From [ahowald@margatefl.com](mailto:ahowald@margatefl.com) Which Is External To The Firm]

Hello Mr. Teal and Ms. Jimenez,

On **June 17, 2020**, the first submittal for the rezoning application was received electronically via email from Mr. Teal with the following items:

1. Application forms for Rezoning
2. Justification Statement
3. Survey (not signed/sealed)
4. Hand delivered payment (checks in the amount of \$1,500, \$250, and \$150)

On **August 26, 2020**, I sent an email asking for paper originals and the following DRC requested supplemental information:

1. Applicant is seeking CF-1 zoning designation in order to allow “medical rights” of an I-2 building. Section 31-35 of the Code of the City of Margate describes determinations required prior to approving a development permit. Section 31-37 of the Code of the City of Margate provides that a development permit is presumed to have maximum impact.
  - a. Clarify statement of proposed use of property. Clarify whether condition 1 or 2 under the I-2 occupancy that they are applying. FBC 308.4
  - b. Include detailed floor plan showing use and occupant load in each room, approved by AHCA with application.
  - c. Provide documentation from AHCA stating maximum number of beds permitted at this facility.
2. Provide traffic impact statement signed and sealed by a traffic engineer, per Section 31-35 of the Code of the City of Margate.

3 paper sets of back up material (1 original + 2 copies) and 1 compact disc in pdf format must be submitted with 1 original application cover sheet to the Development Services Department at least 30 days prior to DRC meeting.

On **September 11, 2020**, Mr. Teal sent via email the following electronic documents requested by DRC addressing the August 26 email:

1. Traffic Statement
2. Business Plan
3. (1) Permit Tracking Sheet for permit #15-1248 dated 4/26/16
4. (1) Certificate of Occupancy Checklist for Permit #15-1248
5. Applicant is seeking CF-1 zoning designation in order to allow “medical rights” of an I-2 building. Section 31-35 of the Code of the City of Margate describes determinations required prior to approving a development permit. Section 31-37 of the Code of the City of Margate provides that a development permit is presumed to have maximum impact.
  - a. Clarify statement of proposed use of property. Clarify whether condition 1 or 2 under the I-2 occupancy that they are applying. FBC 308.4 (**Applicant provided a statement via email on September 11, 2020**)
  - b. Include detailed floor plan showing use and occupant load in each room, approved by AHCA with application. (**Applicant provided a statement in lieu of requested plans via email on September 11, 2020**)
  - c. Provide documentation from AHCA stating maximum number of beds permitted at this facility. (**Applicant provided a statement in lieu of requested information via email on September 11, 2020**)

3 paper sets of back up material (1 original + 2 copies) and 1 compact disc in pdf format must be submitted with 1 original application cover sheet to the Development Services Department at least 30 days prior to DRC meeting.  
**(Applicant provided a statement via email on September 11, 2020)**

On **September 15, 2020**, the submittal of 3 paper sets for the rezoning application was received with the following items (1-5):

1. Application forms for rezoning
2. Justification Statement
3. Survey (signed but not sealed)
4. Business Plan
5. Traffic Statement
6. (1) compact disc in pdf format for the rezoning application was received with the following items:
  - a. Application forms for Rezoning
  - b. Justification Statement

The compact disc in pdf format was received on 9/15/20 and did not include the survey, business plan, and the traffic statement as required. Am I to presume that the survey, business plan, and the traffic statement previously submitted as indicated above are to be incorporated with the 9/15/20 CD submittal?

Additionally, two documents from your email on 9/11/20, the Permit Tracking Sheet and the CO Checklist, were not included in the 3 paper sets or CD submittal. Are those two documents to be included as part of the submittal?

Please confirm if I am to consolidate all documents for distribution.

Thank you.

Regards,  
**Alexia Howald**  
Associate Planner  
Development Services  
City of Margate  
901 NW 66th Ave.  
Margate, FL 33063  
[ahowald@margatefl.com](mailto:ahowald@margatefl.com)  
954-884-3685 direct



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Please Note: The City of Margate is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. All e-mail messages sent and received are captured by our server and retained as public records.

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**From:** [Andrew Pinney](#)  
**To:** [Teal, Kyle B.](#)  
**Cc:** [Elizabeth Taschereau](#); [CityAtty](#); [Miryam Jimenez](#); [Alexia Howald](#)  
**Date:** Monday, September 14, 2020 11:34:58 AM  
**Attachments:** [image006.png](#)

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Mr. Teal,

Please coordinate submission of the back-up for this application with Alexia Howald. I've copied her on this email. If you can bring in the required documentation by 4 p.m. tomorrow, 9/15/2020, the rezoning can be scheduled for October 13, 2020.

**Andrew Pinney, AICP**

Senior Planner  
City of Margate, Development Services Dept.  
901 NW 66<sup>th</sup> Ave.  
Margate, FL 33063  
[apinney@margatefl.com](mailto:apinney@margatefl.com)  
954-884-3684



MARGATE Census logo3



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**From:** Teal, Kyle B. [mailto:[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)]  
**Sent:** Friday, September 11, 2020 6:05 PM  
**To:** Andrew Pinney <[apinney@margatefl.com](mailto:apinney@margatefl.com)>  
**Cc:** Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)>; CityAtty <[cityatty@margatefl.com](mailto:cityatty@margatefl.com)>; Miryam Jimenez <[miryamjimenez@vaqualityoflife.com](mailto:miryamjimenez@vaqualityoflife.com)>; Teal, Kyle B. <[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)>  
**Subject:** RE: Rezoning Application

Mr. Pinney,

Thank you for your email. Assuming that the DRC requested the information, please find below the clarifications to be provided to the DRC members for the intended use of the property. Also refer to the Business Plan (attached again) for more specific information on the use. Find the explanation to Alexia's email in red text below.

1. Completed DRC Application form. **Already provided**
2. Application fee (This has been provided) **Agreed.**
3. Justification statement for re-zoning **Already provided**
4. Large 24" x 36" Survey of subject property (no less than 5 years old). **We tendered these documents months ago in paper form and the City rejected them. Instead, we provided them in electronic form, as the City directed. We will tender the paper copies once again in light of your most recent instruction. To whom should we deliver them and when?**
5. Applicant is seeking CF-1 zoning designation in order to allow "medical rights" of an I-2 building. Section 31-35 of the Code of the City of Margate describes determinations required prior to approving a development permit. Section 31-37 of the Code of the City of Margate provides that a development permit is presumed to

have maximum impact.

a. Clarify statement of proposed use of property. Clarify whether condition 1 or 2 under the I-2 occupancy that they are applying. FBC 308.4

See business plan. Again, the building has already been constructed in accordance with I-2 standards under the FBC. The City signed off on the plans, the certificate of occupancy checklist and the certificate of occupancy for an I-2 compliant facility. The property was constructed in 2016; therefore, the FBC 2014 5th Edition was used which is fully compatible with the FBC 2017 Edition. The only difference is that FBC 2014 5th Edition did not separate Condition 1 and Condition 2. Both Conditions are together. Therefore, the building was constructed to meet both conditions.

However, because in the 2017 FBC 308.4 Condition 1 does not expressly permit Substance Use Disorder Treatment, which will be a part of the facility treatment in the event the rezoning is permitted, one could speculate (as you are) that the use will meet Condition 2. However, Condition 2 includes Hospital Use, including surgery, which the 603 Melaleuca facility will never provide for many reasons regarding land use and practical considerations. Thus, because MCH will never operate a hospital – whether CF-1 or not – hospital use cannot be applied to analyze maximum impact for traffic or parking requirements because a hospital will not be permitted to operate on the property and the applicant is not proposing to operate a hospital. The City has admitted that rehab facilities are not the same as hospitals.

Margate's zoning code provides the following allowable uses in CF-1 (assuming land use compatibility) – Houses of worship, schools, hospitals, detoxification facilities, long-term care facilities (not including correctional, mental institutions, or veterinary hospitals), municipal buildings, fire stations, libraries, public offices, parks, playgrounds, reservations, and parking.

Of course, some of those land uses probably wouldn't be compatible at this particular property, such as hospitals or schools. But long term care facilities and/detox facilities are certainly compatible.

As you are aware, MCH has never submitted an application to operate a hospital. Nevertheless, the City has denied MCH any use of its property whatsoever. It has denied various applications for residential facilities that would offer incidental medical care and services. All applications submitted have been consistent with R-3 zoning designation standards and yet have inexplicably been denied.

b. Include detailed floor plan showing use and occupant load in each room, approved by AHCA with application.

The license required from AHCA does not require the occupant load in each room. The application is to be done online and needs to have the Zoning Letter to be completed prior to submitting. Please see below the list of Supporting Documents to be provided with the application. The program narratives can be found in the business plan for the services to be provided (attached again). Accreditation is done approximately 90 days after the facility is licensed and operational.

**Supporting Documents (Application Type: All, unless otherwise specified)**

- General and Professional Liability Insurance (Application Types: I, Renewal ,CHOW, and C)
- Fire Safety Inspection Report (Application Types: I, Renewal and CHOW)
- Department of Health Septic System or Water Supply Evaluation Report (Application Types: I and CHOW)
- Department of Health Sanitation Report (Application Types: All)
- Documentation from local government proving compliance with local zoning requirements (Application Types: I, C and CHOW)
- Program Narrative (Application Types: I and CHOW)
- Accreditation report (if applicable)
- Property Occupancy; examples Lease, Mortgage, and/or Transfer Agreement (if applicable)
- Health Care Licensing Application Addendum, AHCA Form 3110-1024
- Required disclosures related to actions taken by Medicare, Medicaid or CLIA, if applicable (Application Types: I, R & CHOW)
- Approved repayment plan, if applicable (Application Types: I, R & CHOW)

c. Provide documentation from AHCA stating maximum number of beds permitted at this facility.

The number of beds permitted is not a specific requirement from AHCA, but the number of beds that the facility is applying for is irrelevant to the extent the license payment is calculated by the number of beds. FBC 2014 5th Edition and FBC 2017 have the same 60 sf per bed requirement. The number of beds was approved by Broward County when they received the order of commencement with the plans for an 18 room Rehabilitation Facility. It was then accepted by Margate Building Department when they approve the change of occupancy from a 10 residential apparent building to the I-2 Occupancy with Building Permit number 15-00001248.

Attached.

6. Provide traffic impact statement signed and sealed by a traffic engineer, per Section 31-35 of the Code of the City of Margate.

See attached report from Thomas Hall also submitted in support of MCH's reasonable accommodation request.

3 papers sets of back up material (1 original + 2 copies) and 1 compact disc in pdf format must be submitted with 1 original application cover sheet to the Development Services Department at least 30 days prior to DRC meeting.

We tendered these documents months ago in paper form and the City rejected them. We provided them in electronic form, as the City directed. We will tender the paper copies once again in light of your most recent instruction. To whom should we deliver them and when?

Regards,

**Kyle B. Teal, Esq.**  
**Buchanan Ingersoll & Rooney PC**  
305 347 5912 (o)  
305 766 4580 (m)

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**From:** Andrew Pinney <[apinney@margatefl.com](mailto:apinney@margatefl.com)>  
**Sent:** Thursday, September 10, 2020 2:04 PM  
**To:** Teal, Kyle B. <[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)>  
**Cc:** Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)>; CityAtty <[cityatty@margatefl.com](mailto:cityatty@margatefl.com)>  
**Subject:** FW: Rezoning Application

Mr. Teal,

The reason that Development Services (DSD) sent the request for additional information is because DSD is the department charged with coordinating the DRC meetings. DSD staff sent out this request for information on behalf of other DRC members. In essence, DSD was acting as a liaison between the applicant and committee. The DRC members requested the information in order to determine if services are available to serve the development permitted in the requested CF-1 zoning district. In order to make that determination, DRC members asked for a clarification of the intended use of the property.

You wrote in your email that you are not clear on what is being requested, so I've copied Alexia's email below. Understanding that AHCA cannot issue approval without local government approval, the DRC members are requesting any information that has been submitted to AHCA and/or DCF related to the subject property, and the results of any type of preliminary review of the AHCA and/or DCF application(s). If nothing has been submitted to date, then please submit a preliminary application of your intended use to AHCA and DCF and provide the City with a copy of that application and the results of both entities' preliminary review.

Please coordinate with Alexia Howald to deliver the requested hard copies and confirm whether the requested information will be provided with that delivery. Once submitted, we will schedule the item for a DRC meeting.

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"From: Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)<mailto:ahowald@margatefl.com>>  
Sent: Wednesday, August 26, 2020 4:47 PM  
To: Teal, Kyle B. <[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)<mailto:kyle.teal@bipc.com>>  
Cc: Elizabeth Taschereau  
<[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)<mailto:ETaschereau@margatefl.com>>  
Subject: Rezoning Application

[This Email Originated From [ahowald@margatefl.com](mailto:ahowald@margatefl.com)<mailto:ahowald@margatefl.com> Which Is External To The Firm]

Hello Mr. Teal,

The City has recently re-activated the Development Review Committee (DRC) and it is now accepting paper applications and scheduling meetings. Applicants who wish to proceed to a formal DRC review must submit a complete application consisting of three paper sets and one electronic version in pdf format. The application submission will be considered incomplete without all of the following required material:

1. Completed DRC Application form
2. Application fee (This has been provided)
3. Justification statement for re-zoning
4. Large 24" x 36" Survey of subject property (no less than 5 years old)
5. Applicant is seeking CF-1 zoning designation in order to allow "medical rights" of an I-2 building. Section 31-35 of the Code of the City of Margate describes determinations required prior to approving a development permit. Section 31-37 of the Code of the City of Margate provides that a development permit is presumed to have maximum impact.
  - a. Clarify statement of proposed use of property. Clarify whether condition 1 or 2 under the I-2 occupancy that they are applying. FBC 308.4
  - b. Include detailed floor plan showing use and occupant load in each room, approved by AHCA with application.
  - c. Provide documentation from AHCA stating maximum number of beds permitted at this facility.
6. Provide traffic impact statement signed and sealed by a traffic engineer, per Section 31-35 of the Code of the City of Margate.

3 papers sets of back up material (1 original + 2 copies) and 1 compact disc in pdf format must be submitted with 1 original application cover sheet to the Development Services Department at least 30 days prior to DRC meeting.

Thank you.

Regards,  
Alexia Howald  
Associate Planner  
Development Services  
City of Margate  
901 NW 66th Ave.  
Margate, FL 33063  
[ahowald@margatefl.com](mailto:ahowald@margatefl.com)  
954-884-3685 direct"

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**Andrew Pinney, AICP**

Senior Planner  
City of Margate, Development Services Dept.  
901 NW 66<sup>th</sup> Ave.  
Margate, FL 33063  
[apinney@margatefl.com](mailto:apinney@margatefl.com)  
954-884-3684



**From:** Teal, Kyle B. [<mailto:kyle.teal@bipc.com>]

**Sent:** Friday, September 4, 2020 10:31 AM

**To:** Andrew Pinney <[apinney@margatefl.com](mailto:apinney@margatefl.com)>; Elizabeth Taschereau <[ETtaschereau@margatefl.com](mailto:ETtaschereau@margatefl.com)>

**Cc:** Miryam Jimenez <[miryamjimenez@vaqualityoflife.com](mailto:miryamjimenez@vaqualityoflife.com)>; Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)>;  
CityAtty <[cityatty@margatefl.com](mailto:cityatty@margatefl.com)>; McDonald, Angela <[angela.mcdonald@bipc.com](mailto:angela.mcdonald@bipc.com)>; Teal, Kyle B.  
<[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)>

**Subject:** RE: Rezoning Application

Mr. Pinney,

Regarding the rezoning application (not our separate reasonable accommodation request), as I've noted before, we'll jump through any reasonable hoops, including a DRC meeting. But building permits are for applicants who intend to build something. I don't understand why we are expected to request a development permit. You quoted Section 31-33 of the code, which is applicable, but if you read the entire sentence, it makes it very clear that we have no need for a development permit (your highlights are in yellow; mine are in red):

**Sec. 31-33. - Definitions**

**Development permit** means any building permit, as defined herein, subdivision resurvey or plat approval, rezoning, special exception, or other official action of the city **having the**

**effect of permitting the development or redevelopment of land.**

Again, we are not developing or redeveloping land. The mention of a rezoning in the code provision is attached to that qualifying condition that the requested action have the effect of permitting development or redevelopment. An applicant can certainly submit for a rezoning without submitting a concurrent application for a development permit.

But as you and Mr. Nixon know better than most, we've already built our facility to I-2 standards under the FBC. Your signature approved it on behalf of the P&Z dept. See CO checklist attached. This checklist shows that the building was constructed as a medical building, even though it is the city's position that, because it is zoned R-3, it can't provide medical services therein (particularly detox). We agree in light of the Court order, except that we know we are allowed currently provide incidental medical care and services, as the Court also expressly ruled. Hence, the rezoning application – we are trying to make our zoning designation consistent with the already constructed facility and to be permitted to provide medical services (incidental or otherwise) in that medical facility.

Even assuming that FBC standards for I-2 buildings have changed dramatically since 2017 (they haven't), we don't even need to construct an I-2 compliant facility to change our zoning to CF-1. If we didn't already have one built, we could seek to change our zoning to open a medical facility in the future. For example, where there is a showing of zoning compatibility, applicants can change the zoning of their *vacant* property, which I've done so that clients have more marketable property in the event they decide they want to sell (e.g., residential to commercial). I am curious – why do we suddenly need to submit all of this information regarding the building (which you already have) when the City hasn't required it with any other applicants? See Rick Riccardi's attached change of zoning application which was approved by the City.

As long as it's recognized that our application was submitted in June, we can provide certain supplemental info but please clarify exactly what you are asking for. I'm not exactly clear on what it is you need – we have the paper copies and we're happy to deliver those if the City will finally accept them. We tried to do that before. We can provide another copy of the business plan and Cathy Claud can answer any questions regarding the operational characteristics. The business plan will include all of the relevant licensure info. You know we can't get AHCA approval because the City hasn't allowed it, so I don't know what that request is about.

I know you disagree on this, but we're not even requesting a new use – our current business plan falls within the 2015 definition of a group care facility and has virtually the same characteristics of an ALF. And we have retained our rights as a group care facility from the 2015 code – a federal judge and the city's attorney agreed on this point.

In any case, we are expecting your recommendation to deny our change of zoning. Given your history with this property, I don't think there is anything we could possibly submit to you that would result in a favorable recommendation. We're not operating under any illusion that our application will be treated fairly and objectively at this point in time. So, please give us your inevitable recommendation for denial and kindly put us on an agenda. Thanks.

Regards,

Kyle

**Kyle B. Teal, Esq.**  
**Buchanan Ingersoll & Rooney PC**  
305 347 5912 (o)  
305 766 4580 (m)

**Sent:** Thursday, September 3, 2020 5:36 PM

**To:** Teal, Kyle B. <[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)>; Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)>

**Cc:** Miryam Jimenez <[miryamjimenez@vaqualityoflife.com](mailto:miryamjimenez@vaqualityoflife.com)>; Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)>;

CityAtty <[cityatty@margatefl.com](mailto:cityatty@margatefl.com)>

**Subject:** RE: Rezoning Application

Mr. Teal,

As provided in my email below, the information requested by the DRC, described in Alexia's email sent on 8/26/2020, is required by Sections 31-35 and 31-36 of the Code of the City of Margate. Please confirm that you will not be providing the required information and we will proceed accordingly.

**Andrew Pinney, AICP**

Senior Planner

City of Margate, Development Services Dept.

901 NW 66<sup>th</sup> Ave.

Margate, FL 33063

[apinney@margatefl.com](mailto:apinney@margatefl.com)

954-884-3684



MARGATE Census logo3



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**From:** Teal, Kyle B. [<mailto:kyle.teal@bipc.com>]

**Sent:** Wednesday, September 2, 2020 6:26 PM

**To:** Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)>

**Cc:** Miryam Jimenez <[miryamjimenez@vaqualityoflife.com](mailto:miryamjimenez@vaqualityoflife.com)>; Andrew Pinney <[apinney@margatefl.com](mailto:apinney@margatefl.com)>; Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)>; CityAtty <[cityatty@margatefl.com](mailto:cityatty@margatefl.com)>

**Subject:** Re: Rezoning Application

Nope. Nice try but I have the emails accepting our electronic application. You know this. That's all we need. It was accepted and the City has sat on it all summer. Pinney's letter — though erroneous — was sent before the city accepted our electronic application. I look forward to hearing when we'll finally make an agenda. Please advise.

Sent from my iPhone

On Sep 2, 2020, at 6:19 PM, Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)> wrote:

Mr. Teal,

Immediately following are Andrew Pinney's responses to the emails recently received by you and Ms. Jimenez. There is no need for me to reiterate any information.

Thank you for your time.

Elizabeth "Liz" Taschereau

Director of Development Services  
O: 954-884-3686 | C: 954-218-9798  
[etaschereau@margatefl.com](mailto:etaschereau@margatefl.com)  
City of Margate  
901 NW 66th Avenue  
Margate, FL 33063  
[www.margatefl.com](http://www.margatefl.com)

From: Andrew Pinney  
Sent: Wednesday, September 2, 2020 5:28 PM  
To: Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)>  
Cc: Richard Nixon <[rnixon@margatefl.com](mailto:rnixon@margatefl.com)>; Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)>;  
Subject: RE: Rezoning Application

Liz,

I understand that you would like to respond to questions and statements issued by the property owner and legal counsel for 603 Melaleuca Drive in reference to a rezoning application for same.

To address Mr. Teal's and Ms. Jimenez's comments:

Prior to the time the rezoning application was submitted, Mr. Teal was informed in writing that the City's boards were closed as part of the Essential Operations Plan that was enacted in response to the covid pandemic, thus the City was not accepting applications. Please see attached correspondence. My understanding is that the applicant handed an application to staff working in a different department and asked that person to deliver it to this department. As only electronic copies had been obtained to date from all other applicants, the paper copies were returned. Subsequently, an electronic copy was requested and received. Ms. Howald did send an email stating that the application was accepted. At no time did this department give any indication that the application was "complete." This occurred while I was out of the office on annual leave. To the applicant's benefit, this department took possession of the application and began coordinating with other departments for a completeness check of the materials. As a result of the coordinated interdepartmental reviews, additional information was requested, which is supported by City Code.

In order to move the application forward, please ask Mr. Teal to submit original paper versions of the documents previously submitted, plus two paper copies. In addition to the three sets of the initial documentation submitted for this application, please include three paper sets and one electronic (in pdf format on a CD) of the supplemental information that was requested on 8/26/2020.

After being informed by staff that a DRC review is required for the rezoning application, Mr. Teal continues to assert that a DRC review is not necessary for this rezoning application and that a development permit is not necessary for this rezoning application. Please understand that a rezoning application is an application for a development permit, and the Code of the City of Margate requires the Development Review Committee to review and make statements to both the Planning and Zoning Board and City Commission before a rezoning application can be approved. Please see applicable code language and citations, below.

#### Sec. 31-33. - Definitions

Development permit means any building permit, as defined herein, subdivision resurvey or plat approval, rezoning, special exception, or other official action of the city having the effect of permitting the development or redevelopment of land.

This does not include any variance or other official action necessary solely for the purpose of issuing a permit, other than a building permit, pursuant to the South Florida Building Code, or other building code

in force and effect at the time.

Sec. 31-34. - Development review committee.

The development review committee, as to all proposed plats, subdivision resurveys, land use plan amendments, and rezonings, shall make a statement to the planning and zoning board assessing the adequacy of the proposal as to all city ordinances. The statements assessing the adequacy of any proposed subdivision or rezoning shall be considered by both the planning and zoning board and the city commission.

Sec. 31-36. - Determinations required prior to a change in zoning.

(2) A change in zoning on platted land which need not be replatted prior to issuance of a building permit shall be permitted after a determination has been made by the city commission that services are available to serve the development permitted in the zoning district which is being petitioned. A determination that services are available shall be made when the city commission approves a report submitted by the development review committee which indicates the conditions contained in section 31-35<[https://library.municode.com/fl/margate/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH31PLSUOTLAUSRE\\_ARTIIDERE\\_S31-35DEREPRAPDEPE](https://library.municode.com/fl/margate/codes/code_of_ordinances?nodeId=PTIICOOR_CH31PLSUOTLAUSRE_ARTIIDERE_S31-35DEREPRAPDEPE)> of this article have been met.

A request for information related to proposed AHCA licensing, which is necessary, was made in order to clarify the intended use of the property. As provided above, Section 31-36(b)(2) of the Code of the City of Margate it is required that the conditions in Section 31-35 of the Code of the City of Margate be met before there can be a change in zoning on platted land. Many of the adequacy determinations require specific details, which is why the AHCA licensing additional information was requested. The change in requested zoning envisions that a different development will be operated than that which was previously approved and the proposed development must be reviewed as having the presumed maximum impact allowed under the new zoning and comprehensive plan. Although AHCA may not approve a license for a facility without local zoning approval, the facts of the AHCA application submitted or to be submitted are material to the development review. Thus, the information requested must be provided for the DRC review to move forward.

I consulted with the Building Official for clarification on the request for information regarding the I-2 occupancy. The certificate of occupancy was issued for 603 Melaleuca Drive in 2017 for “a group care facility only,” however the business never opened. Now a new use is being requested. The new use constitutes a change of occupancy and is subject to the code in effect. A building permit will be required to demonstrate the existing building is in conformance with the current requirements of the Florida Building Code in order to issue a new certificate of occupancy without restriction.

Andrew Pinney, AICP  
Senior Planner  
City of Margate, Development Services Dept.  
901 NW 66th Ave.  
Margate, FL 33063  
[apinney@margatefl.com](mailto:apinney@margatefl.com)<<mailto:apinney@margatefl.com>>  
954-884-3684  
<image004.jpg>  
<image003.jpg>

From: Elizabeth Taschereau

Sent: Wednesday, August 26, 2020 7:57 PM  
To: Andrew Pinney <[apinney@margatefl.com](mailto:apinney@margatefl.com)<mailto:apinney@margatefl.com>>  
Subject: Re: Rezoning Application

Let's all discuss together tomorrow so she may learn communication importance.  
Elizabeth "Liz" Taschereau  
954-218-9798  
Director Development Services Dept.  
Sent from my iPhone

On Aug 26, 2020, at 7:03 PM, Andrew Pinney  
<[apinney@margatefl.com](mailto:apinney@margatefl.com)<mailto:apinney@margatefl.com>> wrote:

I only asked her to send the additional information requested by DEES and Building, however, we will need the paper back-up to move forward.

Andrew Pinney, AICP  
Senior Planner  
City of Margate, Development Services Dept.  
901 NW 66th Ave.  
Margate, FL 33063  
[apinney@margatefl.com](mailto:apinney@margatefl.com)<mailto:apinney@margatefl.com>>  
954-884-3684  
<image001.jpg>  
<image004.jpg>

From: Elizabeth Taschereau  
Sent: Wednesday, August 26, 2020 5:23 PM  
To: Andrew Pinney <[apinney@margatefl.com](mailto:apinney@margatefl.com)<mailto:apinney@margatefl.com>>  
Subject: Fwd: Rezoning Application

Was this the message she was supposed to send  
Elizabeth "Liz" Taschereau  
954-218-9798  
Director Development Services Dept.  
Sent from my iPhone

Begin forwarded message:  
From: "Teal, Kyle B." <[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)<mailto:kyle.teal@bipc.com>>  
Date: August 26, 2020 at 5:13:02 PM EDT  
To: Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)<mailto:ahowald@margatefl.com>>  
Cc: Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)<mailto:ETaschereau@margatefl.com>>,  
Miryam Jimenez  
<[miryamjimenez@vaqualityoflife.com](mailto:miryamjimenez@vaqualityoflife.com)<mailto:miryamjimenez@vaqualityoflife.com>>  
Subject: RE: Rezoning Application

Ms. Howald,

We submitted our application electronically on June 2nd. We were told that the City accepted the electronic application. Are these supplemental requests from the City or is it the City's position now that it has not yet received our rezoning application? We had three paper copies of everything done and we tried to deliver them but we were told that this wasn't necessary and that the electronic submission was sufficient. Please advise whether this has changed.

- We completed the DRC form. However, please note that we do not need a development permit because

the construction of the medical facility has already been completed in accordance with City approved permits. Is it still necessary to go before the DRC and request a development permit we have no use for?

- The Justification Statement has been provided.
- We can provide the supplemental info the City is now requesting, including the traffic report, except for the requests that require AHCA approval. My understanding is that AHCA will not approve anything until the City provides us with the letter approving the proposed use. That's why we've been requesting the City's permission. So, the AHCA requests are impossible to fulfill without the City's permission.

Please advise. Thank you.

Regards,

Kyle

Kyle B. Teal, Esq.  
Buchanan Ingersoll & Rooney PC  
305 347 5912 (o)  
305 766 4580 (m)

From: Alexia Howald <[ahowald@margatefl.com](mailto:ahowald@margatefl.com)<mailto:ahowald@margatefl.com>>  
Sent: Wednesday, August 26, 2020 4:47 PM  
To: Teal, Kyle B. <[kyle.teal@bipc.com](mailto:kyle.teal@bipc.com)<mailto:kyle.teal@bipc.com>>  
Cc: Elizabeth Taschereau <[ETaschereau@margatefl.com](mailto:ETaschereau@margatefl.com)<mailto:ETaschereau@margatefl.com>>  
Subject: Rezoning Application

[This Email Originated From [ahowald@margatefl.com](mailto:ahowald@margatefl.com)<mailto:ahowald@margatefl.com> Which Is External To The Firm]

Hello Mr. Teal,

The City has recently re-activated the Development Review Committee (DRC) and it is now accepting paper applications and scheduling meetings. Applicants who wish to proceed to a formal DRC review must submit a complete application consisting of three paper sets and one electronic version in pdf format. The application submission will be considered incomplete without all of the following required material:

1. Completed DRC Application form
2. Application fee (This has been provided)
3. Justification statement for re-zoning
4. Large 24" x 36" Survey of subject property (no less than 5 years old)
5. Applicant is seeking CF-1 zoning designation in order to allow "medical rights" of an I-2 building. Section 31-35 of the Code of the City of Margate describes determinations required prior to approving a development permit. Section 31-37 of the Code of the City of Margate provides that a development permit is presumed to have maximum impact.
  - a. Clarify statement of proposed use of property. Clarify whether condition 1 or 2 under the I-2 occupancy that they are applying. FBC 308.4

b. Include detailed floor plan showing use and occupant load in each room, approved by AHCA with application.

c. Provide documentation from AHCA stating maximum number of beds permitted at this facility.

6. Provide traffic impact statement signed and sealed by a traffic engineer, per Section 31-35 of the Code of the City of Margate.

3 papers sets of back up material (1 original + 2 copies) and 1 compact disc in pdf format must be submitted with 1 original application cover sheet to the Development Services Department at least 30 days prior to DRC meeting.

Thank you.

Regards,  
Alexia Howald  
Associate Planner  
Development Services  
City of Margate  
901 NW 66th Ave.  
Margate, FL 33063  
[ahowald@margatefl.com](mailto:ahowald@margatefl.com)<<mailto:ahowald@margatefl.com>>  
954-884-3685 direct

<image005.jpg>  
<image004.jpg>

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<Email Response Letter.pdf>

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## Exhibit 12

### Development Review Committee Comments



# INTEROFFICE MEMORANDUM

## FROM THE DEVELOPMENT SERVICES DEPARTMENT

DATE: October 13, 2020  
TO: Kyle Teal, Agent  
FROM: Elizabeth Taschereau, Director of Development Services  
SUBJECT: DRC Agenda Item # 2020-338

**DRC 2020-338: CONSIDERATION OF A REZONING FROM A ONE-FAMILY DWELLING (R-1) DISTRICT AND MULTIPLE DWELLING (R-3) DISTRICT TO COMMUNITY FACILITY (CF-1) ZONING DISTRICT**

**LOCATION:** 603 MELALEUCA DRIVE, MARGATE, FL 33063

**ZONING:** MULTIPLE DWELLING (R-3) DISTRICT

**LEGAL DESCRIPTION:** LOTS 1, 2 AND 3, BLOCK 3, HAMMON HEIGHTS SECTION 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 34, PAGE 46, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

**PETITIONER:** ATTORNEY KYLE TEAL, AGENT FOR MARGATE CARE FOR HERO'S, LLC

Approved

Approved subject to conditions and safeguards

Denied

Other: \_\_\_\_\_

DEPARTMENT	SIGNATURE OF APPROVAL	DATE
Building	<i>Richard Nixon</i>	10/15/2020
CRA	<i>Craig Stoeckel</i>	10/14/20
Engineering	<i>Howard</i>	10/15/20
Fire	<i>John R. B.</i>	10/14/2020
Planning	<i>Edgar P. Cauthen</i>	10/15/2020
Police	<i>James P. Cauthen</i>	10/15/2020
Public Works	<i>Pedro S.</i>	10/15/2020
Utilities		

  
Elizabeth Taschereau, Director

*10.15.2020*  
Date



## Development Services Department

901 NW 66<sup>th</sup> Avenue, Suite C, Margate, FL 33063 • Phone: (954) 979-6213

[www.margatefl.com](http://www.margatefl.com) • [dsd@margatefl.com](mailto:dsd@margatefl.com)

# CITY OF MARGATE

## DEVELOPMENT REVIEW COMMITTEE (DRC) REVIEW #1

***October 13, 2020***

<b>PROJECT NAME:</b>	Margate Care for Heroes, LLC		
<b>PROJECT NUMBER:</b>	2020-338		
<b>LOCATION:</b>	603 Melaleuca Drive		
<b>APPLICANT/AGENT:</b>	Kyle Teal, Esq., agent for Miryam Jimenez, MMJ Financial Services, Inc.		
<b>REVIEW/APPLICATION</b>	Rezoning		
DISCIPLINE	REVIEWER	EMAIL	TELEPHONE
DRC Chairman	Elizabeth Taschereau – Director	<a href="mailto:etaschereau@margatefl.com">etaschereau@margatefl.com</a>	(954) 884-3686
Planning	Andrew Pinney – Senior Planner	<a href="mailto:apinney@margatefl.com">apinney@margatefl.com</a>	(954) 884-3684
Planning	Alexia Howald – Associate Planner	<a href="mailto:ahowald@margatefl.com">ahowald@margatefl.com</a>	(954) 884-3685
Building	Richard Nixon – Building Official	<a href="mailto:rnikon@margatefl.com">rnikon@margatefl.com</a>	(954) 970-3004
Engineering	Pedro Stiassni – Engineer	<a href="mailto:pstiassni@margatefl.com">pstiassni@margatefl.com</a>	(954) 884-3635
Fire	David Scholl – Fire Department	<a href="mailto:dscholl@margatefl.com">dscholl@margatefl.com</a>	(954) 971-7010
Public Works	Mark Collins – Director	<a href="mailto:mcollins@margatefl.com">mcollins@margatefl.com</a>	(954) 972-8126
CRA	Vacant		
Police	Lt. Ashley McCarthy – Police Department	<a href="mailto:amccarthy@margatefl.com">amccarthy@margatefl.com</a>	(954) 972-1232

**Below, please find written comments for the above referenced DRC application.**

## DEPARTMENTAL COMMENTS

### BUILDING

1. With respect to the rezoning I have no comments. However, while the space was built to the I2 standards of 2015 the building was not approved for that use by Zoning. If the applicant intends to now occupy and operate the business as an I2 occupancy they will need to comply with the code in effect at the time of submittal. Additionally, outside agencies approvals will also be required.

### FIRE

1. With the zoning proposed the building (if not already installed) will require a fire alarm, fire sprinkler and standby generator.

## ENGINEERING

The Director of the Department of Environmental and Engineering Services, or his qualified designee, has conducted a review of the submitted documentation in accordance with 31-35(2), 31-37, and other relevant sections of the City's Code of Ordinances and finds the following:

### **A. AVAILABILITY OF POTABLE WATER**

Potable water service is available to serve the needs of the proposed development. The water treatment plant has sufficient available capacity to satisfy the potable water needs of the proposed development as well as those of other developments in the service area which are occupied; available for occupancy; hold active, valid building permits; or have already reserved capacity. Please note that this determination shall not be construed as a reservation of capacity for the development unless a developer's agreement has been executed with the City specifically reserving water treatment capacity.

### **B. AVAILABILITY OF WASTEWATER TREATMENT AND DISPOSAL SERVICES**

Wastewater treatment and disposal service is available to serve the needs of the proposed development. The wastewater treatment plant has sufficient available capacity to satisfy the wastewater treatment and disposal needs of the proposed development as well as those of other developments in the service area which are occupied; available for occupancy; hold active, valid building permits; or have already reserved capacity.

Please note that this determination shall not be construed as a reservation of capacity for the development unless a developer's agreement has been executed with the City specifically reserving wastewater treatment and disposal capacity.

### **C. TRAFFIC IMPACTS**

For the reasons outlined below, we could not conclusively determine whether or not the traffic generated by the proposed development will be safely and efficiently handled by the regional transportation network and local streets.

1. In accordance with Sec. 31-37(a) of the Code, a proposed development shall be presumed to have the maximum impact permitted under applicable land development regulations.
2. Note that paragraph 31-317(b) requires a site plan to be presented when a rezoning application is submitted, and no site plan was included with the application, so this section is not applicable for this review.
3. The independent variables chosen by the traffic consultant appear to be the variables that would appear to generate the MINIMUM impact from the development, rather than the MAXIMUM impact. To assess MAXIMUM IMPACT, as required by Code, the study may need to be re-

worked with an independent variable of “Residents” for in the existing condition (The American Community Survey of 2018 shows Margate with an average of 2.56 residents per dwelling unit) and an independent variable of “Employees” for the proposed condition.

4. The study shows a difference between the daily trips “in” versus the daily trips “out”. If these two quantities are not equal, that would indicate that, on average, the site is gaining or losing cars each day, which is an unlikely condition.
5. Provide a parking study, or at least a discussion of the parking requirements, as they relate to the maximum number of employees, residents, outside vendors, and visitors who will be on site at any given time, to demonstrate sufficient parking is provided.
6. In accordance with 31-35(2)c of Margate’s Code of Ordinances and 61G15-23.001(1) and (3) F.A.C., the traffic statement shall be signed and sealed by a licensed Professional Engineer who shall have been in responsible charge of the preparation and production of the document and who has expertise in traffic engineering.

#### **D. SURFACE WATER MANAGEMENT**

Analysis and assessment of the surface water impacts could not be performed, as no plan, model, or study of the site in the maximum impact condition was provided.

#### **E. STREETS, SIDEWALKS, PUBLIC PLACES**

The public sidewalk abutting the south property line of the parcel must be extended to the western limits of the site.

Other streets, sidewalks, and public places appear to be “existing to remain”. They appear to be in good condition and do not appear to be in distress. To the best of our knowledge and understanding, these public improvements were previously constructed under permits from the City. Accordingly, they are deemed to meet the minimum standards set forth in Chapters 31 and 35 of this Code.

#### **F. WATER DISTRIBUTION SYSTEM**

To the best of our knowledge and understanding, the water distribution system meets or exceeds the minimum standards and requirements of the following:

1. Chapter 39 of the City’s Code of Ordinances
2. AWWA Standards
3. Broward County Environmental Protection and Growth Management Division

Connection charges and/or impact fees will be determined once the number of beds can be established for the maximum impact condition.

## **G. WASTEWATER COLLECTION AND TRANSMISSION SYSTEM**

To the best of our knowledge and understanding, the wastewater collection and transmission system meets or exceeds the minimum standards and requirements of the following:

1. Chapter 39 of the City's Code of Ordinances
2. AWWA Standards
3. Broward County Environmental Protection and Growth Management Division

## **H. GENERAL**

1. Provide an accessible route from the public right-of-way to the front door.
2. Provide at least 1 h/c accessible parking space for every 25 parking spaces or fraction thereof. The accessible space shall have an accessible aisle in accordance with the requirements of the FBC, Accessibility.
3. Accurately show on your survey the location and routing of the public sidewalk at the north end of the east property line, where the sidewalk jogs to the east. This is not accurately shown on the survey, and may impact the connection of the interior sidewalk to the public sidewalk.
4. Please provide a response letter identifying how and where (what document, page, etc.) you have addressed each comment.

## DEVELOPMENT SERVICES

1. This application is for a rezoning and is therefore subject to the requirements of Chapter 31 of the Code of the City of Margate.

### **Sec. 31-35. - Determinations required prior to approval of a development permit.**

A determination that adequate services will be available to serve the needs of the proposed development shall be made when the following conditions are met:

(1) *Director of development services.* The director of development services determines:

- a. That the proposed development is consistent with the Margate Comprehensive Plan.
- b. That the proposed development is in conformity with the Margate Zoning Code.
- c. In the case of site plans, that the proposed development is in conformity with the provisions of chapter 23 of this Code.

### **Sec. 31-36. - Determinations required prior to a change in zoning.**

(a) *Unplatted land.* A change in zoning on unplatted land shall be made with the express condition that upon platting of the property, the plat shall be subject to development review procedures outlined in this article and that the city, at the time of the rezoning, makes no explicit or implied guarantees that services or facilities are available to serve the proposed development at the time of rezoning.

(b) *Platted land:*

(1) A change in zoning on any platted land which according to Section 2.08 of the Margate Land Use Plan, or Section 3.11 of the zoning code must be replatted or resurveyed prior to issuance of a building permit may be approved in the same manner as a change in zoning on unplatted land.

(2) A change in zoning on platted land which need not be replatted prior to issuance of a building permit shall be permitted after a determination has been made by the city commission that services are available to serve the development permitted in the zoning district which is being petitioned. A determination that services are available shall be made when the city commission approves a report submitted by the development review committee which indicates the conditions contained in section 31-35 of this article have been met.

### **Sec. 31-37. - Development presumed to have maximum impact permitted; use of site plan to assess maximum impact.**

(a) For the purpose of implementing sections [31-34](#), [31-35](#), and [31-36](#), a proposed development shall be presumed to have the maximum impact permitted under applicable land development regulations such as zoning regulations and the land use element of the Margate Comprehensive Plan.

(b) If a site plan is presented when a proposed plat, subdivision resurvey or rezoning application is submitted, it *may* be used as the basis to assess the maximum impact of the development. In the event that an application for a building permit is submitted which, in the opinion of the building official, provides more intensive uses than those indicated on the site plan or substantially deviates from the approved site plan, the application shall be referred to the development review committee for assessment.

Based on the above three Code sections, Development Services staff must compare the application to the adequacy determinations described in Section 31-35 of the Code of the City of Margate under the presumption that the proposed rezoning will have maximum impact under the applicable land development regulations and the land use element of the Margate Comprehensive Plan.

#### Subject Property:

The subject property is a 43,675 square foot (~1-acre) site located at 603 Melaleuca Drive. The property is generally located at the northwest corner of Melaleuca Drive (AKA NW 61<sup>st</sup> Avenue) and Alan Road (AKA NW 6<sup>th</sup> Street). The subject property has 194 feet of frontage on Melaleuca Drive and 225 feet of frontage on Alan Road. As this is a corner plot, the front plot would be considered the plot line along Melaleuca Drive as it is the shorter of the two street frontages. This interpretation is consistent with the definition of “plot line, front” that is provided in Section 2.2 of the Margate Zoning Code.

The subject property is currently comprised of Lots 1, 2, and 3, of Block 3, of the HAMMON HEIGHTS SECTION 2 plat (34-46). Lots 1 and 2 are within the R-3 zoning district, and Lot 3 is within the R-1 zoning district. The subject property is located within the TOC Transit Oriented Corridor land use category. The principal structure is an L-shaped building that is 8,885 square feet in area. The subject property was originally developed as a 10-unit multi-family structure on Lots 1 and 2. Lot 3 was acquired by the property owner in September of 2019. The building is situated close to the north property line, with the broad side of the “L” facing the west property line. The site provides vehicular access from both Alan Road and Melaleuca Drive.

#### Nature of CF-1 District

Section 2.2 of the Margate Zoning Code defines ‘residentially zoned property’ as “Any land or water area that has a zoning district classification of R-1, R-1A, R-1B, R-1C, R-1D, R-2, R-3, R-3A, R-3U, PRC, PUD RVRP, or T-1.” The requested zoning district is not considered residential under the terms of the Margate Zoning Code.

Section 23-2 defines ‘nonresidential property’ as, “all land that is used for commercial, industrial, and/or community facility uses, and does not permit persons to reside on said land.” This definition specifically identifies “community facility uses.” The CF-1 district provides for a plethora of community facility uses, not all of which permit persons to reside on said land. Under the direction of Section 31-37, staff must presume that the rezoning will have maximum impact, and therefore, the CF-1 zoning district shall be considered nonresidential for this analysis.

## **I. CONFORMITY WITH CODE**

### **A. CF-1 Zoning Requirements:**

2. In 2014, the property owner filed an application for a special exception use as a group care facility. The specific type of group care facility was represented as an “independent living facility” (ILF) on written application forms for the special exception, and was also represented as an assisted living facility (ALF) under sworn testimony provided to the City Commission during the special exception use public hearing. Shortly after receiving approval for an ILF/ALF, property owner posted a sign on the subject property which read, “COMING SOON MARGATE DETOX.” During permitting, property owner submitted a sworn affidavit, which in part read, “I will not operate a detoxification facility from the Property without the prior approval of the City of Margate, Florida.” After the physical modifications to the building were complete, property owner filed a federal lawsuit in an attempt to force the City to allow a detoxification facility at the subject property. Property owner built a facility to the I-2 occupancy group standards under false pretenses during 2014-2017 and now intends to rezone the property for more intensive uses of the property. This is confirmed in an email sent to Andrew Pinney (Margate staff) on June 5, 2020 when counsel for the applicant wrote:

“As you know, we are not seeking a building permit because there is no new development necessary for this change of zoning. Nothing in the structure or outside of the structure is being altered. The City already approved the construction for the building as it exists today. The building is ready to serve as a care facility in its current form. The rezoning is sought to bring the property’s zoning up-to-date with its current physical configuration.”

Staff finds this method of development inconsistent with the purpose of the CF-1 district, as it does not represent an orderly pattern of development.

#### **Section 11.2. - Purpose of district.**

The community facility district is intended to provide for the orderly development of those educational, cultural, religious, health care, recreational, and governmental facilities required to meet the needs of the community in which they are located.

3. The subject property presently provides a front yard setback of 25.14 feet, Section 11.6 of the Margate Zoning Code requires 35 feet. The front setback is not in conformity with the Margate Zoning Code.

4. The subject property is contiguous to residentially zoned property along its (north) side property line. The subject property presently provides a setback of 14.59 feet from residentially zoned property to the north, Section 11.6 of the Margate Zoning Code requires this setback to be at least 40 feet. The side setback from residentially zoned property is not in conformity with the Margate Zoning Code.

5. The subject property is contiguous to residentially zoned property along its rear (west) property line. The subject property presently contains a freestanding storage building which provides a setback of approximately 2 ½ feet from residentially zoned property to the west, Section 11.6

requires this setback to be 40 feet. The rear setback from residentially zoned property is not in conformity with the Margate Zoning Code.

### **Section 11.6. - Setbacks.**

- (a) There shall be a front yard of not less than thirty-five (35) feet.
- (b) There shall be side yards of not less than twenty-five (25) feet.
- (c) There shall be a rear yard of not less than twenty-five (25) feet.
- (d) There shall be a corner-side setback of twenty-five (25) feet except where a greater setback is required under another provision of this Code.
- (e) Side and rear setbacks shall be increased by five (5) feet for each story above the second story.
- (f) No building or roofed structure shall be located within forty (40) feet of any residentially zoned property, nor shall any parking areas be located within twenty (20) feet of any residentially zoned property.

### **B. Off-street Parking Requirements**

6. Based on the requirements of Section 33.3 of the Margate Zoning Code, the facility described in the attached justification statement and business plan having 36 patient beds and 49 employees requires 57 parking spaces. The subject property provides 22 parking spaces. The subject property is deficient of required parking by 35 spaces, or 159%.

#### **Off-street Parking Requirements:**

### **Section 33.3. - Amount of off-street parking.**

The off-street parking required by this article shall be provided and maintained on the basis of the following minimum requirements:

(6) *Convalescent homes, nursing homes, retirement homes, and other similar institutions for the care of the aged and infirm:* One (1) parking space for each five (5) beds for patients or inmates, and one (1) parking space for each employee.

(7) *Uses not specifically mentioned:* The requirements for off-street parking for any residential uses not specifically mentioned in this section shall be the same as provided in this section for the use most similar to the one sought, it being the intent to require all residential uses to provide off-street parking as described above. All non-residential uses shall be required to provide off-street parking, in accordance with an approved Master Parking Plan.

(8) *Fractional measurements:* When units or measurements determining number of required off-street parking spaces result in requirements of fractional space, any such fraction shall require a full off-street parking space.

7. The subject property has two vehicle gates which do not provide the required 3 vehicle reservoir spaces to allow for adequate vehicle stacking, and therefore do not conform to the requirements of Section 33.11 of the Margate Zoning Code. Important to note, the Board of Adjustment granted variance BA-12-2015 on April 7, 2015 which allowed the property owner to install vehicle gates without the required vehicle reservoir areas.

### **Section 33.11. - Vehicular reservoir areas for drive-through facilities.**

(A) All facilities which render goods and/or services directly to patrons within vehicles shall be required to provide reservoir areas for inbound vehicles. The purpose of these areas is to ensure that the vehicles using the facility do not interfere with the flow of vehicular and pedestrian traffic within public rights-of-way, nor interfere with parking circulation or loading within the facility.

(B) Each reservoir area required pursuant to this article shall be a minimum of ten (10) feet wide by twenty (20) feet long and each reservoir area shall not block parking stalls, parking aisles, driveways or pedestrian ways. For the purposes of this section, the space occupied by the vehicle being served by the facility is considered one (1) reservoir area.

(C) The number of reservoir areas required shall be provided and maintained on the basis of the following minimum requirements:

Number of Vehicle Reservoir Areas	
Automatic car wash, spaces per service lane	4
Child care center, day nursery, nursery school, spaces at drop-off point	3
Drive-through beverage or food sales, spaces per service lane	4
Drive-in bank, savings and loan, spaces per service lane	4
Dry cleaning pickup station, spaces per service lane	2
Filling station, spaces per side, each island	3
Gatehouse or ticket booth, spaces inbound and outbound	3
Package stores, spaces per service lane	2
Pharmacies with drive-through prescription facilities, spaces per service lane	3
Photograph developing, spaces per service lane	2
Self-service car wash, spaces per wash stall	2

Skating rink, bowling alley, spaces at drop-off point	3
Valet parking, spaces at drop-off point	3

### C. Required Improvements to Public Right-Of-Way

8. The portion of the subject property consisting of Lot 3 does not provide a public sidewalk on the Alan Road right-of-way, and therefore does not conform to Sections 32.2, 32.3, and 32.4 of the Margate Zoning Code.

#### Required Improvements on Adjacent Public Right-Of-Way:

##### **Section 32.2. - Right-of-way use.**

(A) All street rights-of-way shall contain sidewalks, parkways, paved street with curb and gutters, sanitary sewers, underground storm drains, water mains, fire hydrants, street lights and/or any other necessary utilities.

(B) All utility service stubs must be installed and extended not less than one (1) foot beyond the right-of-way side lines prior to street paving.

##### **Section 32.3. - Street paving [standards; improvements performance bonds; permits required.]**

(C) *Performance bonds.* It shall be necessary for any person, developer, owner or owners to furnish to the City of Margate a good and sufficient performance bond for all of the required street pavement, sidewalks and drainage facilities to be constructed within dedicated or proposed rights-of-way. Said bond shall also secure proper installation of water and sewer lines in accordance with approved specifications and plans. The required performance bond shall be calculated at one hundred twenty-five (125) per cent of the construction costs of the above-required facilities.

Said bond shall be furnished by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent in Broward County. Provided, however, that the subdivider, owner or owners may, at his or their option, furnish cash or government bond security in the same amount. The subdivider may also submit an irrevocable letter of credit to the city in place of the preceding forms of security. All irrevocable letters of credit shall be such as are acceptable at a reasonable prudent lending institution and shall be acceptable only with the approval of either the city manager or his designee.

All improvements shall be completed within a period not to exceed eighteen (18) months. However, the city may extend the time of completion based upon a showing of good cause.

The subdivider, owner or owners shall be responsible for the paving and other improvements mentioned above until said work is accepted by the city and the bond released.

Minimum standards and permits for the excavation and construction of all canals, ditches and swales as provided for herein shall be adopted by separate ordinance, which separate ordinance shall be construed in conjunction with this section.

The performance bond required hereby shall not be released until, in addition to compliance with all of the requirements of the subdivision and platting regulations and ordinances of the city, all street lights and street markers are in place within the subdivision.

#### **Section 32.4. - Sidewalks.**

All sidewalks shall be constructed of two thousand five hundred (2,500) psi concrete not less than five (5) feet in width for public dedicated rights-of-way and four (4) feet for private rights-of-way, or as specified in each TOC district, and having a thickness of not less than four (4) inches, provided, however, that all sidewalks crossing a vehicular driveway shall have a thickness of not less than six (6) inches.

(1) *Location.* All sidewalks shall be parallel to and extend not less than five (5) feet from the street right-of-way side line into the street right-of-way and parallel to street curbing and pavement.

(2) *Rough grading.*

(a) *Clearing.* Scarify the area where vegetation occurs to a minimum depth of six (6) inches until all vegetation and other unsuitable materials are loosened and removed from the site.

(b) *Grade.* To proper elevation for specified minimum thickness of all sidewalks.

(c) *Additional fill.* If required shall be clean foundation sand mechanically compacted to achieve a solid grade.

#### **D. Landscaping Requirements**

9. The subject property does not provide the required right-of-way buffer on Lot 3, along Alan Road, as required in Section 23-6 of the Code of the City of Margate. On lots 1 and 2, this buffer ranges from 4 feet to 6 feet wide around the parking area along both Melaleuca Drive and Alan Road, which does not meet the minimum required width of 10 feet. This buffer is an essential compatibility measure applied by the Code in order to enhance views from the public right-of-way and alleviate the impacts of incompatible uses. The subject property does not conform to the landscape buffer requirements of Section 23-6 of the Code of the City of Margate.

#### **Sec. 23-1. - Objectives.**

The objectives of these regulations are to beautify the city, and improve the quality of life for its citizens by requiring Florida friendly landscaping that will conserve water, soften the hardscape of modern development, provide tree canopy, natural

habitat, and shade areas. These objectives further include the maintenance of high quality air and water resources the provision of buffer areas between and among various land uses, the preservation of residential property values, the revitalization of existing commercial areas, and the preservation of indigenous vegetation.

**Sec. 23-6. - Driveway limitations, landscaping abutting right-of-way, visual clearance.**

(B) *Required landscaping abutting rights-of-way.* On the site of a building or vehicular use area directly fronting on a public right-of-way, with the exception of single-family detached dwellings and duplex detached dwellings, there shall be landscaping provided between the site and the right-of-way as follows:

(1) In non-residential districts and multi-family residential districts, a strip of land at least ten (10) feet in width, adjacent to and parallel with the right-of-way, shall be landscaped. Within said strip there shall be planted at least one (1) shade tree for every forty (40) lineal feet of frontage or portion thereof. In addition, a hedge shall be planted within the landscape strip and parallel with the street. All hedges must be planted a minimum of two (2) feet back from any public sidewalk. The remaining area of this strip shall be covered with ground covers and turf. Ground covers shall cover at least fifty (50) per cent of the landscaping strip not occupied by trees and shrubs.

10. The subject property was developed without the required buffer wall and landscaping along the north and west property lines. This buffer is required by Section 23-11 of the Code of the City of Margate. This buffer is an essential compatibility measure applied in order to alleviate the impacts of incompatible uses and protect sensitive land uses. The lack of adequate buffers plays a key role in determining compatibility of the CF-1 district in this particular area of the City, adjacent to these particular uses and districts. The subject property does not conform to the buffer requirements of Section 23-11 of the Code of the City of Margate.

**Sec. 23-11. - Minimum landscape requirements for zoning districts.**

(C) Nonresidential districts.

(1) In cases of commercial, mixed use, or industrial development or redevelopment, on that portion of the site which is directly abutting residentially zoned or designated property, the nonresidential property owner shall create a buffer zone along the common property line in order to screen light, noise, traffic and trash from the residential parcel.

(2) The nonresidential site shall create a fifteen-foot wide unpaved strip along the common property line. This buffer strip shall provide a six-foot high unpierced decorative masonry wall, constructed in conformance to applicable building codes and stuccoed and painted on both sides and maintained in good condition. Said wall shall be located wholly on the nonresidential site adjacent to the common property line and running its full length. Walls within the same subdivision shall conform to a uniform appearance. One (1) category 1 non deciduous tree shall be planted for

every twenty-five (25) lineal feet of the strip. Trees shall be planted in a staggered pattern, but in no instance shall a tree be permitted to be planted within five (5) feet of the required wall or a paved area.

(3) Where a structure within a nonresidentially zoned property has been permitted without a buffer adjacent to residentially zoned property under unified control, prior to development permits being issued on the residential property, it shall be the responsibility of the residential property owner to comply with the following conditions:

- a. The residential site shall provide a six-foot high unpierced decorative masonry wall, constructed in conformance to applicable building codes and stuccoed and painted on both sides and maintained in good condition. Such wall shall be located wholly on the residential site adjacent to the common property line and running its full length. Walls within the same subdivision shall conform to a uniform appearance. The residential site shall create a 15-foot wide landscape strip adjacent to the wall within the residential side. One (1) category 1 non deciduous tree shall be planted for every twenty-five (25) lineal feet of the common property line. Trees shall be planted in a staggered pattern, but in no instance shall a tree be permitted to be planted within five (5) feet of the required wall or a paved area.
- b. This section shall not apply to the installation of additions/alterations to previously permitted residential property.

#### E. Fence Regulations

11. The subject property has a wrought iron fence erected along its front and street side property lines, a wood fence along the north property line and a chain link fence along the west property line. The wrought iron fence placement does not conform to Section 3.14 of the Margate Zoning Code because it was installed in the front yard. Important to note, the Board of Adjustment granted variance BA-13-2015 on April 7, 2015 which allowed a fence to be installed in the front yard. The wood fence along the north property line and the chain link fence along the west property line do not conform to the material requirements of Section 3.14 of the Margate zoning Code because where nonresidential property abut residential property only decorative masonry walls are permitted on the nonresidential property.

#### **Section 3.14. - Construction of fences, walls and/or hedges.**

(16) In commercial, mixed use, and industrial districts, no fence or wall shall be erected or maintained in any front yard, except when used on a temporary basis to secure an active construction site. Otherwise, fences and walls may be erected to a height not exceeding seven (7) feet above the established grade. Where nonresidential property directly abuts a residential parcel, only decorative masonry walls shall be permitted on the nonresidential parcel along the common property line. Chain link or other similar style fences shall not be permitted within any TOC

zoning district, except when used on a temporary basis to secure an active construction site. No fence or wall shall be erected within any TOC zoning district that isolates any property, or otherwise inhibits connectivity and the availability of shared parking, with the exception of residential-only developments.

#### F. General

12. In the Justification Statement provided with this application, applicant points to other properties with the CF-1 zoning designation for the purpose of persuading the City that rezoning the subject property to CF-1 would be customary and consistent with City Code. Staff disagrees and finds that the CF-1 districts are not similarly situated. The subject property is located at an intersection of two local roads. All other properties within the CF-1 zoning designation are located on higher road classifications, such as collectors and arterials. These larger road classifications are better designed to manage additional trips that may be generated by community facility uses. The Broward County Trafficways Plan identifies the following road types within Margate:

- State Road 7 – Arterial
- Atlantic Boulevard - Arterial
- Banks Road – Arterial
- Copans Road – Arterial
- Royal Palm Boulevard – Arterial
- Rock Island Road - Arterial
- Margate Boulevard – Arterial
- Northwest 18<sup>th</sup> Street (from NW 66<sup>th</sup> Ave to SR7) – Collector
- Northwest 66<sup>th</sup> Avenue – Collector
- Melaleuca Drive – Local Road (not included in the Trafficsways Plan)
- Alan Road - Local Road (not included in the Trafficsways Plan)

## **II. CONSISTENCY WITH COMPREHENSIVE PLAN, ELEMENT I**

13. The Goals, Objectives, and Policies of Element I Future Land Use, of the Margate Comprehensive Plan, copied below, are applicable to the subject rezoning application, as the subject property is covered by the Margate Comprehensive Plan and this application has the potential bring new land uses together by introducing a CF-1 zoning district into a residential neighborhood. Under the guidance of Policy 2.3, staff reviews applicable landscape buffering and setback requirements of the CF-1 zoning district. As stated above in this document, the subject property does not conform to CF-1 setbacks, does not provide adequate off-street parking, and does not provide required landscape buffers. The proposed rezoning, therefore, *IS NOT CONSISTENT* with the above Goals, Objectives, and Policies of the Comprehensive Plan.

#### GOAL STATEMENT

*ENSURE THAT THE CHARACTER AND LOCATION OF LAND USES  
MAXIMIZE THE POTENTIAL FOR ECONOMIC BENEFIT AND THE*

***ENJOYMENT OF NATURAL AND MAN-MADE RESOURCES BY CITIZENS WHILE MINIMIZING THE THREAT TO HEALTH, SAFETY AND WELFARE POSED BY HAZARDS, NUISANCES, INCOMPATIBLE LAND USES, AND ENVIRONMENTAL DEGRADATION.***

Objective 2 Develop and implement land use programs to encourage the elimination or reduction of existing incompatible land uses and prevent future incompatible land uses.

Policy 2.3 Impacts of existing incompatible land uses shall be minimized through the requirements of land use codes and regulations, such as landscape buffering and setbacks.

14. In an email sent to Andrew Pinney (Margate staff) on September 11, 2020, counsel for the applicant wrote the following:

“Margate’s zoning code provides the following allowable uses in CF-1 (assuming land use compatibility) – Houses of worship, schools, hospitals, detoxification facilities, long-term care facilities (not including correctional, mental institutions, or veterinary hospitals), municipal buildings, fire stations, libraries, public offices, parks, playgrounds, reservations, and parking.

*Of course, some of those land uses probably wouldn’t be compatible at this particular property, such as hospitals or schools. But long term care facilities and/detox facilities are certainly compatible.”* [emphasis added]

Staff agrees with counsel’s assessment that some of the CF-1 uses are not compatible at the subject property. Under the direction of Section 31-7 of the Code of the City of Margate, staff is required to review this rezoning application under the presumption that the proposed development will have the maximum impact permitted under applicable land development regulations such as zoning regulations and the land use element of the Margate Comprehensive Plan. Hospitals are a use permitted by right within the CF-1 zoning district when located on a plot that is at least 40,000 square feet and at least 200 feet of street frontage. The subject property meets the acreage requirement for this use, and other CF-1 uses. When a use is permitted by right, the property owner need not seek further approval from the City Commission. This rezoning application is the only opportunity that the City Commission would have to exercise discretion over such incompatible uses.

As the subject property of this rezoning does not adhere to the adopted compatibility requirements of the Comprehensive Plan or the applicable Zoning and Land Development Regulations, and considering the fact that counsel for the applicant has admitted that CF-1 uses are not compatible at the subject property, this rezoning application *IS NOT CONSISTENT* with Policy 4.1 of Element I Future Land Use, of the Margate Comprehensive Plan.

Policy 4.1 Residential neighborhoods should be preserved and protected by rezoning existing districts which conflict with adopted land use categories. New residential districts should not be permitted adjacent to a existing non-compatible

use district, nor should a new non-compatible use district be permitted adjacent to an existing residential district.

15. An application for a rezoning is a development permit, as defined in Chapter 31 of the Code of the City of Margate and 163.3164, Florida Statutes. A rezoning is a means to provide a material change in the use of a property. As the subject property of this rezoning does not adhere to the adopted compatibility requirements of the Comprehensive Plan or the applicable Zoning and Land Development Regulations, this rezoning application *IS NOT CONSISTENT* with Policy 7.2 of Element I Future Land Use, of the Margate Comprehensive Plan.

Policy 7.2 All proposed development, shall be compatible with adjacent land uses.

16. The site was originally developed as a 10-unit, single story multi-family building. This application would drastically change the permissible uses of the property. A site plan application has not been filed with the Development Review Committee for the subject property since its initial development as a residential building. Counsel for the applicant has made it clear that there is no intention of filing a building permit for any improvements in the event this rezoning is approved. In an email sent to Andrew Pinney (Margate staff) on June 5, 2020, counsel for the applicant wrote the following:

“As you know, we are not seeking a building permit because there is no new development necessary for this change of zoning. Nothing in the structure or outside is being altered.”

Since a site plan application will not be reviewed by the DRC, staff cannot ensure compatibility of the potential new uses offered by the CF-1 zoning district and staff cannot ensure that the appropriate transitional design elements are incorporated into the subject property. Therefore, the subject rezoning application *IS NOT CONSISTENT* with Policy 13.9 of Element I Future Land Use of the Margate Comprehensive Plan.

Policy 13.9 Existing and proposed residential development shall be designed to be integrated into the existing neighborhoods created through the implementation of the TOC. Compatibility and appropriate transitional design elements will be reviewed at time of site plan review, consistent with the land development regulations adopted to implement the TOC land use category. Such regulations and review shall ensure that existing industrial uses will not become incompatible with new development and that new development shall provide buffers and site design in light of the existing land uses and continue to protect areas that may be located within a wellfield protection zone. Single-family detached dwellings units may be permitted as part of an overall residential mixed-use project consistent with the adopted land development regulations.

### **III. COMPLIANCE WITH FLORIDA STATUTES**

17. Under state law, this rezoning application is an application for a development permit. Approval or denial of a development permit would be considered a development order. All actions taken in regard to development orders by governmental agencies in regard to land covered by an adopted comprehensive plan or element shall be consistent with such plan or element as adopted. The subject property is covered by the Margate Comprehensive Plan. As has been demonstrated above, the rezoning application is not consistent with the adopted Margate Comprehensive Plan. Approving this rezoning application would be a violation of Florida Statute 163.3194.

#### 163.3164 Community Planning Act; definitions

“(15) “Development order” means any order granting, denying, or granting with conditions an application for a development permit.

(16) “Development permit” includes any building permit, zoning permit, subdivision approval, *rezoning*, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.”

#### 163.3194 Legal status of comprehensive plan

(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.



## ENGINEERING PLAN REVIEW COMMENTS

Project Name:	Margate Care for Heroes, LLC
Address:	603 Melaleuca Drive, Margate, FL
Permit Type:	DRC – Traffic Statement Review for Rezoning Application
Utility:	N\A
Project Number:	DRC 2020-338
Contractor:	T.B.D.
Review Date:	March 16, 2021
Revision Number:	2 <sup>nd</sup> Review
Reviewer:	Randy L. Daniel, P.E., PMP, CFM
Review Result:	Rejected
Contact:	Margate Care for Heroes, LLC Miryam Jimenez 954-608-4067

## D.E.E.S.\ Engineering Review

The Director of the Department of Environmental and Engineering Services, or his qualified designee, has conducted a review of the submitted documentation in accordance with Article IV, Chapter 31 of the City of Margate's Code of Ordinances and finds the following:

### A. TRAFFICWAYS

***As a preamble to the following discourse and review, the Department of Environmental and Engineering Services (DEES) hereby indicates dissatisfaction with the accuracy of the Traffic Statement (TS) that was submitted for review. As a consequence, there may be additional inaccuracies in the Statement that were not discovered and therefore not discussed below. Furthermore, based on the discrepancies found in the report, DEES is not confident that the Traffic Statement was diligently prepared, despite the required oversight provided by Professional Engineer Partington.***

1. Paragraph 3 of the TS states that “an analysis of trips expected to be generated by both the prior and the proposed developments was conducted”. Please provide the details of the analysis and the results that compared the prior development with the proposed; clearly illustrate the increase/decrease in trip counts in accordance with the selected parameters.
2. Section 31-37 in the City’s code clearly requires that “a proposed development shall be presumed to have the maximum impact permitted under applicable land development regulations...”. Replace average value with the value that has the greatest impact for use in Table 1.



## ENGINEERING PLAN REVIEW COMMENTS

3. Please explain how the data in Table 1 was derived from Tables 2-13.
4. Tables 2 -13 indicate that the greatest impact to the trip generation characteristic, of the four (4) characteristics analyzed, is the number of employees, with an associated number of 144 new daily trips generated. Accordingly, please reconcile the number of new trips generated by employees (144) and the number recorded in table 1 (31).
5. Paragraph 5 speaks to “common practice of traffic engineering around the nation” in regards to the decision to use “dwelling units as the independent variable” in the analysis. Please provide supporting documentation for this claim.
6. Both Policy 2.1.2 in Element II - Transportation of the City’s Comprehensive plan (pp II-80 /II-81) and Section 31-48 (C) of the City’s Code of Ordinances require the Level of Service (LOS) for Local Roads to be “C”. Melaleuca Drive is a local road but the Traffic Statement inaccurately states that LOS “D” shall be the Level of Service required for local roads. Please redo the analysis using LOS “C”.
7. Melaleuca Drive is not a signalized roadway, yet Table 4 of the TS references “State Signalized Arterials”. Please redo analysis and omit references to signalized intersections. Melaleuca Drive is not an arterial road.
8. Parking is not required for the Traffic Statement and should be removed. Parking requirements are stipulated in Section 33.3 of the City Code of Ordinances.

### **B. POTABLE WATER AND WASTEWATER**

Previously addressed in Review # 1.

### **C. DRAINAGE**

Previously addressed in Review # 1.

### **D. SOLID WASTE**

Previously addressed in Review # 1.

### **E. RECREATION**

Not applicable to this development.



## ENGINEERING PLAN REVIEW COMMENTS

Permit Number:	DRC 2020 –338 Melaleuca Drive
Address:	603 Melaleuca Drive, Margate, FL
Permit Type:	DRC – Traffic Statement Review
Utility:	N\A
Project Number:	N\A
Contractor:	T.B.D.
Review Date:	May 17, 2021
Revision Number:	3rd Review
Reviewer:	Randy L. Daniel, P.E., PMP, CFM
Review Result:	Rejected
Contact:	Margate Care for Heroes, LLC Miryam Jimenez 954-608-4067

## D.E.E.S.\ Engineering Review

The Director of the Department of Environmental and Engineering Services, or his qualified designee, has conducted a review of the submitted documentation in accordance with Article IV, Chapter 31 of the City of Margate is Code of Ordinances and finds the following:

### PREAMBLE

The Department of Environmental and Engineering Services (DEES) is concerned with the quality of the Traffic Study (TS) that continues to be submitted in support of this project. The first TS was submitted on August 25 2020 and stated that the “the proposed residential rehabilitation facility is expected to generate a decrease of -14 daily trips, zero (0) change in a.m. peak-hour trips , and minus one (-1) p.m. peak hour trip”. After two reviews and as many revised studies, the latest April 27, 2021 version acquiesces in paragraph 7 that “the project site is expected to generate 70 additional daily trips”.

The property is currently zoned as R-1/R-3 and the request is to change the zoning to CF-1. The CF-1 zoning district allows development up to 4 stories and whilst this particular project may not utilize a 4 story building, the fact that one is allowed behooves the applicant to analyze impacts from such possible future developments. The TS does not take into account the maximum development impact that is allowed under a CF-1 zoning district change.



## ENGINEERING PLAN REVIEW COMMENTS

### A. TRAFFICWAYS

*For ease of reference the comments on the October 21<sup>st</sup> 2020 TS are italicized below. Comments on the April 27 revision are in red.*

1. *Paragraph 3 of the TS states that “an analysis of trips expected to be generated by both the prior and the proposed developments was conducted”. Please provide the details of the analysis and the results that compared the prior development with the proposed; clearly illustrate the increase/decrease in trip counts in accordance with the selected parameters.*

Comment: Completed; the net increase in daily trips is 70.

New Comment: The Study continues to defend the use of an independent variable that has “the largest and best supporting database” although that variable may not necessarily represent the MAXIMUM impact. Staff comments dated 10/13/2021, in reference to the August 2020 TS indicated that City Code required use of design parameters with MAXIMUM IMPACT. Design parameters with the “most statistical validity” are not controlling. Rewrite or modify this section accordingly.

2. *Section 31-37 in the City’s code clearly requires that “a proposed development shall be presumed to have the maximum impact permitted under applicable land development regulations...” Replace average value with the value that has the greatest impact for use in Table 1.*

Comment: Completed; the maximum impact of proposed development is based on the controlling independent variable “employees”, which results in the maximum number of 70 total new trips for proposed use of existing facility.

3. *Please explain how the data in Table 1 was derived from Tables 2-13.*

Comment: Completed; explanation provided.

4. *Tables 2 -13 indicate that the greatest impact to the trip generation characteristic, of the four (4) characteristics analyzed, is the number of employees, with an associated number of 144 new daily trips generated. Accordingly, please reconcile the number of new trips generated by employees (144) and the number recorded in table 1 (31).*

Completed. The maximum impact of proposed development is based on the independent variable “employees”, which results in the maximum number of 70 total new trips for proposed use of existing facility.

5. *Paragraph 5 speaks to “common practice of traffic engineering around the nation” in regards to the decision to use “dwelling units as the independent variable” in the analysis. Please provide supporting documentation for this claim.*

Comment: Completed; the claim was deleted.



## ENGINEERING PLAN REVIEW COMMENTS

6. Both Policy 2.1.2 in Element II - Transportation of the City's Comprehensive plan (pp II-80 /II-81) and Section 31-48 (C) of the City's Code of Ordinances require the Level of Service (LOS) for Local Roads to be "C". Melaleuca Drive is a local road but the Traffic Statement inaccurately states that LOS "D" shall be the Level of Service required for local roads. Please redo the analysis using LOS "C".

Comment: Completed.

7. Melaleuca Drive is not a signalized roadway, yet Table 4 of the TS references "State Signalized Arterials". Please redo analysis and omit references to signalized intersections. Melaleuca Drive is not an arterial road.

Comment: Not Completed; although the October TS designation of arterial road for Melaleuca Drive is not used in the April 27 version, the April TS continues to reference Table 4 for signalized arterial roads; Melaleuca Drive is not an arterial road.

New Comment: Redo analysis and delete any reference to table 4; Redo analysis using the percentage of ADT contributed by the project.

Arterial roadways by definition have limited access and provide for greater vehicle capacity. Melaleuca Drive is categorized as a Local Road; it does not have limited access. The data from table 4 is for Arterials and Freeways, which is not applicable to Melaleuca Drive nor to this project.

The local road system, in comparison to collectors and arterial systems primarily provide access to land adjacent to the collector network and serves travel over relatively short distances. According to the 2004 Edition of "A policy on Geometric Design of Highways and Streets", 80% of local roads have ADT of less than 400 vehicles.

The April TS attempts to calculate the % increase in ADT (475 used in April TS) and presents this increase as 1.89%. However, the % increase in ADT appears to be irrelevant. It is possible that the author intended to calculate the project's contribution to ADT, and this may be determined as follows:

The total number of trips for the project is expected to be 144.

$$\begin{aligned} \text{The \% of ADT due to the project} &= 144/400 \times 100 \\ &= 36 \% \end{aligned}$$

8. Parking is not required for the Traffic Statement and should be removed. Parking requirements are stipulated in Section 33.3 of the City Code of Ordinances.

Comment: Completed; section on parking removed.

9. In the April 27 version, the author asserts that in respect of the ITE variables "dwelling units is the independent variable with the most statistical validity based on the size of the supporting database", and suggests that despite what the other ITE variables may conclude, "we have continued to use dwelling units as the independent variable in our analysis".

This may be construed as poor engineering judgement.



## ENGINEERING PLAN REVIEW COMMENTS

### 10. The logic in paragraphs 8 and 11 of the April 27 2021 TS appears flawed.

*Paragraph 8: "Because clients arrive and depart by means of chauffeurs and will not drive themselves, the actual maximum net new trips generated by the development is expected to be lower than that estimated by using any of the ITE rates".*

*Chauffer driven clients will double the traffic trips not lower them: every client drop off will be accompanied by a vehicle entering and departing the property, and hence twice as many trips would occur as opposed to self-driving clients who parked their vehicles on site. The ITE land use code 620 already accounts for residents who do not drive. Accordingly, paragraph "8" should be deleted in its entirety or modified.*

*Paragraph 11: "Traffic signals reduce the capacity of a given roadway as they introduce stops. Therefore applying the reduction factors to the "signalized roadway "capacity is a conservative estimation of a local roadway's capacity".*

*It may be deemed poor engineering to utilize an inappropriate design parameter (signalized roadways) to create a conservative design. To be clear the use of signalized roadway parameters in the analysis of the local roadway that has no traffic signals is unacceptable.*

*The idea that is also conveyed in this paragraph is that local roads do not have stops; this of course is not correct.*

*Moreover, Section 31-45 in the City Code requires that traffic analyses must be technically sound. Based on the foregoing this Traffic Study cannot be considered to be technically sound.*

### B. POTABLE WATER AND WASTEWATER

Previously addressed in 1<sup>st</sup> Review.

### C. DRAINAGE

Previously addressed in 1<sup>st</sup> Review.

### D. SOLID WASTE

Previously addressed in 1<sup>st</sup> Review.

### E. RECREATION

Not applicable to this development



## ENGINEERING PLAN REVIEW COMMENTS

Address:	603 Melaleuca Drive, Margate, FL
Permit Type:	DRC – Traffic Statement #4
Utility:	N\A
Project Number:	N\A
Contractor:	T.B.D.
Review Date:	August 16, 2021
Revision Number:	4 <sup>th</sup> Review
Reviewer:	Randy L. Daniel, P.E., PMP, CFM
Review Result:	Rejected
Contact:	Margate Care for Heroes, LLC Miryam Jimenez 954-608-4067

### D.E.E.S.\ Engineering Review

The Director of the Department of Environmental and Engineering Services, or his qualified designee, has conducted a review of the submitted documentation in accordance with Article IV, Chapter 31 of the City of Margate is Code of Ordinances and finds the following:

#### PREAMBLE

The Department of Environmental and Engineering Services (DEES) is concerned with the quality of the traffic studies that were submitted in support of this project. To illustrate, the first traffic study was submitted on August 25 2020 and stated that the “the proposed residential rehabilitation facility is expected to generate a decrease of 14 daily trips”. After four reviews and as many revised studies, the May 31<sup>st</sup>, 2021 version finally declared that “the project site is expected to generate 107 net new additional daily trips”.

#### REVIEW SUMMARY

None of the traffic studies accounted for the maximum development impact that is allowed in a CF-1 zoning district, and the project is rejected because the request to re-zone the property to a CF-1 district cannot be evaluated. The property is currently zoned as R-1/R-3 (that is, one family dwelling/multifamily dwelling) and a zoning change to CF-1, will allow buildings with a maximum of 4 stories. Although this project may never utilize a 4 story building, a future developer may be allowed to construct such a building and the applicant is obligated to analyze maximum development impacts as a prerequisite for approving re-zoning application.



## ENGINEERING PLAN REVIEW COMMENTS

Section 31-45 in the City Code requires traffic analyses to be technically sound. The apparent lack of engineering diligence coupled with an incomplete analysis, renders this traffic study technically flawed.

### A. TRAFFICWAYS

New Comment (1): The May 31<sup>st</sup> Traffic Study incorrectly states that “this trip generation analysis is the same whether used to consider a re-zoning application or a request for reasonable accommodation”.

This logic is flawed as shown below:

- (a) Re-zoning from R-1/R-3 to CF-1 will permit buildings with 4 stories on property where single family and multifamily dwellings are currently allowed.
- (b) Applications for reasonable accommodation are required to “demonstrate that the proposed accommodations being sought are reasonable and necessary to afford handicapped/disabled persons equal opportunity” and are specific to building design elements.
- (c) Trip generation based on a handicapped population of the Margate Cares for Heroes project will not be the same as trips generated by occupants of a 4 story building.
- (d) Reasonable accommodation is not synonymous with re-zoning and does not alter the character of a neighborhood as a change in zoning.
- (e) There is no correlation between the concepts of “reasonable accommodation” and “re-zoning” and any claim to the contrary is inaccurate and misleading.

New Comment (2):

Section 31-45 in the City Code requires the traffic analysis to be technically sound. As a result of apparent flawed logic, this traffic study is again considered to be technically unreliable.

### B. POTABLE WATER AND WASTEWATER

Previously addressed in 1<sup>st</sup> Review.

### C. DRAINAGE

Previously addressed in 1<sup>st</sup> Review.

### D. SOLID WASTE

Previously addressed in 1<sup>st</sup> Review.



## ***ENGINEERING PLAN REVIEW COMMENTS***

### **E. RECREATION**

Not applicable to this development