

Karen Stewart

From: William Clague
Sent: Friday, July 05, 2019 10:57 AM
To: Geri Lopez
Cc: Mitchell Palmer; Alex Nicodemi; Karen Stewart; Juliet Shepard
Subject: Brownfield Area Designation Process; RLS-2019-0308
Attachments: Brownfields Procedure (CAO Comments).docx; Form Brownfield Resolution.docx

Geri:

Pursuant to the above Request for Legal Services you have asked for the advice and assistance of this Office in reviewing a draft resolution and procedure for designation of brownfields by the County. I provide the following advice in response:

1. The RLS requests our advice as to the public hearing process required under Florida Statute 376.80, which contains a somewhat confusing reference to Florida Statute 125.66. Based on our review of Florida Statute 376.80, we advise that brownfield designations should be subject to two public hearings in accordance with the reference to Florida Statute 125.66(4)(b).
2. Attached are redlined revisions to the procedure and resolution reflecting my suggested changes. Some of the changes are intended for clarification and consistency with County practices while others are substantive.
3. Note that in the resolution, I have added a finding stating the dates and times for the two public hearings, per the above advice. I have also removed the language regarding the County's "agreement" with the re-development, and qualified the language regarding compliance with the comprehensive plan and LDC, as these give rise to legal concerns regarding the quasi-judicial exercise of the County's police powers.
4. The MS Word file for the resolution includes some strange formatting, suggesting it is a carry-over from a very old document, which made it difficult to revise.

Subject to the inclusion of my suggested changes, I have no objection from a legal standpoint to the use of the procedure and form resolution. I express no opinion as to the business or policy judgment regarding the same.

This concludes my response to the RLS. Please contact me if you have any questions or concerns.

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**UNINCORPORATED MANATEE COUNTY
Procedures for BROWNFIELDS AREA DESIGNATION [DRAFT]**

Brownfields Designation Process - The County has established a procedure to assist a qualifying Brownfields project applicant to obtain designations and approvals for status as a Brownfields area pursuant to the Florida Brownfields Redevelopment Act, Sections 376.77-376.84, (F.S.). This area designation process consists of Individual Requested Designations and County Initiated Designations of Brownfields.

County Brownfields Application - The County will provide assistance to a Brownfields project applicant who completes a Brownfields Redevelopment Project Application identifying the project site, the scope of the proposed Brownfields project, and site/project information to establish qualification for assistance under the Florida Brownfields Redevelopment Act. Applications will be submitted to the Director, Redevelopment and Economic Opportunity Department for a completeness review and processing of applications and scheduling the public hearings and adoption of resolution by the Board of County Commissioners.

Program Qualifications - Brownfields projects must meet the minimum requirements of the applicable designation under the Florida Brownfields Redevelopment Act. For areas where a person who owns or controls a potential Brownfields site is requesting the designation and has agreed to rehabilitate and redevelop the site, the following qualifications must be met:

1. The rehabilitation and redevelopment of the proposed site will result in economic productivity of the area along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. The job creation requirement does not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.
2. The redevelopment of the proposed Brownfields site is consistent with the comprehensive plan and is a permissible use under the land development code;
3. Notice of the proposed designation of the Brownfields area has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this requirement must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area; and
4. The person proposing the area for designation has provided reasonable assurance to the County that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.

Public Notice and Meeting Requirements - The following are public notice and meeting requirements for a Brownfield site where a person who owns or controls a potential Brownfields site that is requesting the area designation and has agreed to rehabilitate and redevelop the Brownfields site:

1. Provided by Applicant: Notice of the proposed rehabilitation of the Brownfields area must be provided to neighbors and nearby residents of the proposed area to be designated, and

the person proposing the area for designation shall be afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this requirement must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area.

2. All County designated Brownfields Areas must satisfy the requirements of 376.80 (1) F.S. If the Brownfields area is located outside of community redevelopment areas, enterprise zones, empowerment zones, closed military bases or EPA Brownfields Pilot project areas, the applicant must conduct at least one community meeting in the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic development anticipated, neighborhood residents considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area, and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing. The applicant will be responsible to arrange, publicize and facilitate the meeting and provide a record of the meeting as a part of the Brownfields Redevelopment Application.
3. County staff shall prepare agenda items and materials, maps and resolution for the Board of County Commissioners' consideration as a part of the request for a Brownfields Redevelopment Area designation.
4. Upon substantial completion of the Brownfields Program Application, public notice and meeting requirements above, the County shall adopt a resolution to which is attached a map to clearly delineate exactly which parcels are to be included in the Brownfields area or alternatively a less-detailed map accompanied by a detailed legal description of the Brownfields area. The County shall adopt the resolution in accordance with the procedures and form as required by Florida Statute (~~s. 125.66(4)(b), which requires two public hearings.~~

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Notification to FDEP. County Staff shall notify the Florida Department of Environmental Protection (FDEP) within 30 days of the County's adoption of a resolution to designate a Brownfields area for the rehabilitation for the purposes of s. 376.77-376.86, F.S. and provide legible copies of resolutions and maps to the FDEP Southwest District Brownfields Coordinator. Board actions for a Brownfields designation under the Florida Brownfields Redevelopment Act shall be filed with the FDEP in compliance with the Florida Brownfields Redevelopment Act. In instances where a person responsible for Brownfields site rehabilitation has been identified, the County will notify FDEP of the identity of that person.

RESOLUTION NO. R- _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING BROWNFIELDS; PROVIDING FINDINGS; DESIGNATING A BROWNFIELD AREA TO BE CALLED (BF, Green Reuse area, etc.) AREA WITHIN THE COUNTY FOR PROPERTY GENERALLY LOCATED AT _____, CONSISTING OF APPROXIMATELY _____ ACRES, FOR THE PURPOSE OF ENVIRONMENTAL REHABILITATION AND ECONOMIC REDEVELOPMENT; AUTHORIZING THE COUNTY ADMINISTRATOR TO IMPLEMENT THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida, in Sections 376.77 - 376.85, *Florida Statutes*, adopted the Brownfields Redevelopment Act, the purpose of which is to encourage the redevelopment and the voluntary cleanup of real property where the expansion, redevelopment or reuse of such property may be complicated by actual or perceived environmental contamination; and

WHEREAS, the Brownfields Redevelopment Act created a process whereby a local government with jurisdiction over a brownfield area must, by resolution, notify the Florida Department of Environmental Protection of its decision to designate a brownfield area; and

WHEREAS, a local government may designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base or designated brownfield pilot project area; and

WHEREAS, Manatee County hereby finds and determines that:

1. _____ ("XYZ"), which owns a potential brownfield area generally located at _____, Manatee County, consisting of _____ acres, and described with more particularly in the legal description: attached hereto as Exhibit "A" and as depicted by the map attached hereto as Exhibit "B" (the "Proposed Brownfield Area"), is requesting the designation of the Proposed Brownfield Area as a brownfield area, and has agreed to rehabilitate and is planning to redevelop the Proposed Brownfield Area. The proposed redevelopment of the Proposed Brownfield Area by _____ includes possible _____ uses.

The rehabilitation and redevelopment of the Proposed Brownfield Area will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the Proposed Brownfield Area that are full-time equivalent

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positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the Proposed Brownfield Area. [Delete if the project will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.]

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2. The redevelopment of the Proposed Brownfield Area is consistent with the Manatee County Comprehensive Plan and is a permissible use under the Manatee County Land Development Code, subject to compliance with the requirements thereof.

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3. Notice of the proposed rehabilitation of the Proposed Brownfield Area has been provided to neighbors and nearby residents. Notice has been made in a newspaper of general circulation in the area, at least 16 square inches in size, and notice has been posted in the affected area.

4. Based upon the representations in the application, _____ has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the Proposed Brownfield Area.

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BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA:

Section 1. Findings. The recitals set forth above are true and correct and are hereby adopted as findings of the Board.

Section 2. Designation of Brownfield. The Board hereby designates the property generally located at _____, Manatee County, and described with more particularity in the legal description attached hereto as Exhibit "A" and as depicted by the map attached hereto as Exhibit "B", as a Brownfield Area for the purposes of Sections 376.77 - 376.84, *Florida Statutes*. Such designation shall not, however, render Manatee County liable for the cost of site rehabilitation or source removal, as those terms are defined in Section 376.79, *Florida Statutes*.

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Section 3. Authorization of County Administrator. The County Administrator or his designee is hereby authorized to do all things necessary and proper to make effective the provisions of this Resolution.

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Section 4. Severability. If any section, sentence, clause, or other provision of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses or provisions of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

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ADOPTED WITH A QUORUM PRESENT AND VOTING THIS THE _____ DAY
OF _____, 2019.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY

BY: _____
Chairperson

ATTEST: ANGELINA M. COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

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Section 4. This Resolution shall take effect immediately upon its adoption.¶
ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Manatee, Florida, this day of _____.

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ATTEST:¶
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Angelina Colonneso¶
Clerk¶
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ATTEST:¶
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R.B. SHORE¶
Clerk of Circuit Court¶
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By: _____¶
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EXHIBIT "A"
LEGAL DESCRIPTION OF BROWNFIELD AREA

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EXHIBIT "B"
MAP OF BROWNFIELD AREA

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