



## PRIVATELY INITIATED TEXT AMENDMENT AMENDMENT ROUND 20-B

**BCC INITIATION, FEBRUARY 5, 2020**

### I. General Data

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<b>Project Name:</b>	<b>Delray Marketplace Office Ag Reserve</b>
<b>Request:</b>	To amend the Comprehensive Plan to allow additional opportunities for office uses in the Agricultural Reserve Tier.
<b>Agent:</b>	JMorton Planning & Landscape Architecture
<b>Applicant/Owner:</b>	Garrett Bender, TG Land LLC
<b>Project Manager:</b>	Lisa Amara, Principal Planner
<b>Staff Recommendation:</b>	Staff recommends <i>to deny</i> the request for initiation

### II. Item Summary

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**Summary:** The item before the Board is to consider the initiation of a privately proposed amendment to the Comprehensive Plan, also considered “Phase I”. If the amendment is initiated, staff will accept the associated Future Land Use Atlas (FLUA) amendment for processing, proceed with the review and analysis of the proposed amendments, prepare a staff report, and return to the Board with the text and FLUA amendment through the public hearing process as part of “Phase II”.

**Associated FLUA Amendment:** The subject site is a 2.05 acre preserve area of the Delray Marketplace Traditional Marketplace Development (TMD) with a conservation easement. The applicant proposes this text amendment in order to proceed with a future land use change to the Commercial future land use, then to remove the 2.05 acre site from the TMD, remove the conservation easement, add 2.05 acres of preserve area to the TMD from another property, and to rezone the subject site to a zoning district that would allow medical office.

**Request:** The applicant proposes two options for consideration to allow additional medical office in the Ag Reserve Tier. Option 1 proposes to increase the commercial cap. Although the commercial cap has been reached, the unique circumstances of this site warrant consideration for the proposed small increase. Option 2 proposes to exempt the Commercial Low-Office designation. This change is problematic since it is impossible to measure the impacts and size of future requests that may apply for Commercial Low Office. Option 2 does not allow the subject site to remain within the Delray Marketplace TMD as a commercial development area.

**Recommendation:** Staff recommends that the Board deny the request for initiation. The site currently is a preserve with a conservation area that is part of the Delray Marketplace TMD. The proposal to remove the conservation easement and preserve, to develop this site as a free-standing, 133-foot wide parcel with office uses is inappropriate. However, if the Board chooses to initiate an amendment, Option 1 (to increase the commercial cap for this site) should be considered. This change would allow this small parcel the opportunity to remain part of the TMD and allow replacement of the preserve area off site.

### III. Meeting History

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**Planning Commission (PLC):** *To recommend initiation of Option 1*, motion by Spencer Siegel, seconded by Edwin Ferguson, passed in a passed in a 7 to 6 vote with David Dinin, Barbara Roth, Lori Vinikoor, Alex Garcia, Dagmar Brahs and Evan Rosenberg dissenting, at the January 10, 2020 meeting. Under discussion, commission questioned the need for more commercial and the office square footage allowed at the hospital. Under discussion, several commission members suggested that the County re-examine, and possibly update, the Ag Reserve Tier as a whole considering the changes that have occurred over the past 20 years since the Master Plan was completed, and the characteristics of remaining lands and corridors. One member of the public spoke in support.

**Board of County Commissioners (BCC):** *Scheduled for February 5, 2020.*

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## IV. Private Text Amendment Request

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The applicant is requesting that the Board initiate a text amendment to the Comprehensive Plan to revisit the commercial cap in the Agricultural Reserve Tier in order to allow the processing of a future land use amendment. The applicant owns a 2.05 acre parcel located immediately west of the Delray Marketplace on Atlantic Avenue, and is seeking the ability to apply for a future land use amendment to develop the site with medical office uses. Since the adoption of the amendments to implement the Agricultural Reserve Master Plan were adopted in 2001, the Plan has limited the amount of commercial retail, service, and office uses in the Tier. The commercial cap in the Tier has been reached, and no additional square footage is allowed. The Comprehensive Plan requires that the Board of County Commissioners initiate a proposed text amendment prior to processing a future land use amendment that would violate a policy in the Plan.

**Note to reader:** *The original request included 3 options for consideration. Following the publication of the Planning Commission report for the December 13, 2019 meeting, the applicant submitted a request to remove Option 3. This option has been removed from consideration in this report.*

### Proposed Text Amendment

The applicant proposes two options detailed in strike out and underline in Exhibit 1.

- **Option 1** proposes to increase the commercial cap to allow additional commercial on the specific subject site, and to allow medical office uses to be developed without a planned development.
  - This option would allow the applicant to proceed with an amendment requesting the **Commercial Low** future land use designation.
- **Option 2** proposes to limit the commercial cap to only the Commercial Low future land use designation, establish location criteria for Commercial Low-Office in the Tier (limiting to sharing a common property line with a commercial property), and to establish a .15 FAR for Commercial Low-Office sites without an MUPD.
  - This option would allow the applicant to proceed with an amendment requesting the **Commercial Low-Office** future land use designation.

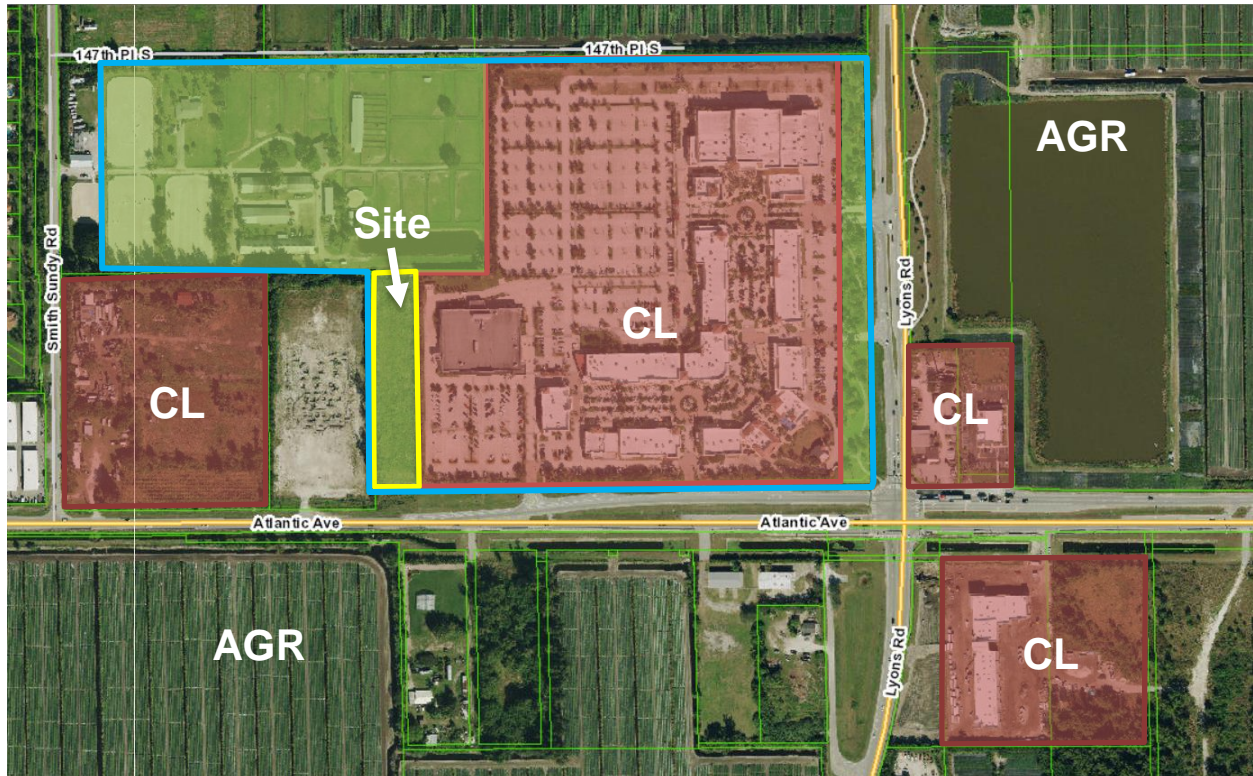
### Associated Future Land Use Atlas Amendment

The purpose of the text amendment is to allow the processing of a future land use amendment on a 2.05 acre site that is currently a preserve parcel (with a recorded conservation easement) within the Delray Marketplace TMD (Control number 2004-00616). The initial amendment for the Delray Marketplace TMD was adopted on August 25, 2005, by Ordinance (Ord. 2005-040), which changed the future land use designation on the commercial portion of the site from AGR and Special Agriculture (SA), to Commercial Low with an underlying Agricultural Reserve (CL/AGR). Subsequently, the commercial land within the boundaries of the TMD were rezoned to TMD Development Area, and the preserve portions were rezoned to TMD Preserve Area. The Delray Marketplace TMD was subject to several development approvals and amendment revisions. In 2014, the County approved an amendment to add land area to the commercial portion of the TMD by changing the future land use designation on a 3.9 acre Preserve Area from AGR to CL/AGR, retaining the maximum allowable square footage of 320,000 square feet and revising previously adopted conditions of approval to increase the allowable units from 86 to 96, as well as other modifications. This change was accompanied by a zoning application that rezoned the preserve area to development area, with the addition of preserve area in another portion of the Ag Reserve. Excluding

right of way dedications, the Delray Marketplace is currently 92.32 acres total, with 36.72 acres of development area and 55.60 acres of preserve area. The site is approved for 278,940 square feet of commercial uses and 73 residential units.

The applicant proposes this text amendment in order to proceed with a future land use change to a Commercial future land use, and a development order request to remove the 2.05 acre site from the Delray Marketplace TMD, remove the conservation easement, add 2.05 acres of preserve area to the TMD from another property, and to rezone the subject site to a zoning district that would allow medical office. However, if the Board approves initiation, the 2.05 acre subject site cannot proceed through the amendment process unless the Board first takes action to remove the conservation easement and the zoning is changed to eliminate the preserve area. The 2.05 acre site would need to be replaced with a minimum of 2.05 acres of preserve area on a separate site in order to keep the 60/40 preserve of the TMD intact. The graphic below shows the site in yellow border, with blue border around the TMD. The commercial portion of the TMD is in red shading, and the preserve is in green shading.

**Map 1 – Future Land Use Designations**



### **ULDC Implications**

Unified Land Development Code revisions will not be required for Option 1 or Option 2 as these are revising Comprehensive Plan limitations but will require a development order amendment for the Delray Marketplace TMD to replace the preserve.

## V. Policy Background

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### A. Agricultural Reserve Tier

The subject site is located within the Agricultural Reserve Tier, an area of the County with specific limitations on development options in the Comprehensive Plan that were largely established to implement the Agricultural Reserve Master Plan that was completed in 1999 through the adoption of policies in 2001. The purpose of the Tier is captured in the adopted Objective 1.5.

***OBJECTIVE 1.5, The Agricultural Reserve Tier.*** *Palm Beach County shall preserve the unique farmland and wetlands in order to preserve and enhance agricultural activity, environmental and water resources, and open space within the Agricultural Reserve Tier. This shall be accomplished by limiting uses to agriculture and conservation with residential development restricted to low densities and non-residential development limited to uses serving the needs of farmworkers and residents of the Tier. The Agricultural Reserve Tier shall be preserved primarily for agricultural use, reflecting the unique farmlands and wetlands within it.*

### B. Agricultural Reserve Tier Commercial Policies

Commercial policies were established in the Master Plan and Comprehensive Plan to limit the amount of commercial development in the Tier from serving as a regional draw. The intent was to limit commercial development to the demand generated by the residents and farmworkers of the Tier, and to limit commercial development to two mixed use centers to serve as non-residential hubs on either side of the Tier. These two centers are located at the intersection of Lyons Road and Boynton Beach Boulevard and Lyons Road and Atlantic Avenue.

In 2014, the BCC directed a “Roundtable” to consider changes to the Tier policies following a set of proposed changes presented by a group of property owners. At a workshop in March 2015, the BCC considered the input received during the Roundtable and directed staff to proceed with several different actions, including a text amendment to allow additional opportunities for neighborhood serving commercial projects at a smaller scale within the Tier. The County adopted commercial policy changes by Ordinance 2016-28 to this end that eliminated the requirement for commercial to be developed as Traditional Marketplace Developments, eliminated the preserve requirement for small commercial sites, increased the commercial cap from 750,000 s.f. to 980,000 s.f., and eliminated the maximum number of acres for commercial in the Tier. Over the following 18 months, the County approved several privately proposed future land use amendments up to the commercial cap. In 2017, the BCC adopted a privately proposed text and site specific amendment, Three Amigos LGA 2017-018, to increase the cap by 35,000 s.f, bringing the commercial cap to 1,015,000 s.f., in order to accommodate the expansion of another one of the ‘pre-existing’ commercial sites. The current cap of 1,015,000 s.f. has been reached with the commercial approvals within the Tier.

Newly proposed sites requesting commercial future land use in the Agricultural Reserve must meet requirements regarding form and design, preserves, location, maximum quantity, and timing. Each of the regulations is summarized below.

- **Form and Design**

- Commercial development is limited to uses which serve the residents and farm workers of the Tier, and must be either Commercial Low or Commercial Low Office.
- New commercial development must be in the form of a planned development that is designed at a scale consistent and compatible with the character of the area, that is pedestrian oriented, and that provides a sense of community.

- **Preserve area**
  - New commercial development greater than 16 acres must provide a minimum of 60% of the total land area as preserve. The preserve areas allow civic uses such as schools, fire rescue and sheriff stations.
- **Location**
  - New Commercial Low must be located within ¼ mile of the intersections of Lyons Road and either Boynton Beach Boulevard or Atlantic Avenue.
- **Intensity**
  - New commercial Traditional Marketplace Developments (TMD) can achieve a floor area ratio (FAR) of up to .40 over the total land area.
  - New commercial Multiple Use Planned Developments (MUPD) can achieve an FAR of up to .20 over the total land area.
  - Pre-existing commercial sites are limited to .10 FAR unless developed as an MUPD.
- **Maximum Quantity**
  - New commercial retail and office uses are capped at a maximum of 1,015,000 square feet within the Tier.

### C. Commercial Approvals in the Agricultural Reserve

Table 1 below identifies the commercially designated properties in the Agricultural Reserve Tier, including the acreage and square footage approved.

**Table 1 - Commercial Approvals in the Ag Reserve**

Site	Adoption	Acres	Built Sq. Ft.	Approved SF
Canyons Town Center	2004	26.75	195,494	211,933
Delray Marketplace	2004	33.20	278,940	278,940
Small CL Sites	Pre-1999	1.83	22,712	22,712
Pre-existing Commercial	Pre-1999	19.29	28,007	76,625
	<b>Pre-2016</b>	<b>81.07</b>	<b>525,153</b>	<b>590,210</b>
Alderman	2016-B	15.34	112,779	133,642
Homrich	2016-B	13.44	0	29,400
Delray Growers	2016-B	11.15	0	86,744
Feurring	2016-C	4.91	34,885	42,776
Smigiel (additional)	2016-C	4.35	0	26,670
Stop & Shop (additional)	2016-D	5.11	32,818	32,020
Seneca Commercial	2017-A	4.51	0	38,538
Three Amigos (additional)	2017-D	3.60	0	35,000
	<b>Post-2016</b>	<b>62.41</b>	<b>180,482</b>	<b>424,790</b>
	<b>Total</b>	<b>143.48</b>	<b>705,635</b>	<b>1,015,000</b>

## **VI. Issues and Implications**

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The purpose of this Phase I report is to identify potential issues and implications of the concept proposed by the text amendment for the Board to consider when making the policy decision on whether to initiate the privately proposed text amendment. The applicant provides a Justification Statement in Exhibit 2. The justification and policy considerations are discussed below.

### **Option 1 Policy Consideration – Increasing Cap on Commercial Development**

The Agricultural Reserve is the only Tier or other geography in the County where there is a finite cap placed on the amount of development. The cap was identified as a necessity as part of the development of the Agricultural Reserve Master Plan in order to establish that the amount of commercial in the Tier would not exceed the demand projected for the population stemming from the 1 unit per acre residential development potential of the Tier. The Master Plan, and subsequently adopted policies in the Plan, specifically limit commercial development to uses which serve the needs of the farm worker community, existing and future residents, in order to discourage commercial in the Tier from exceeding local demand, thereby drawing customers from outside the Tier.

At the time the cap was initially identified in the Master Plan, a square footage figure of 750,000 square feet was established. With the amendments to incorporate the Master Plan into policies in the Comprehensive Plan, a maximum acreage (80 acres) and limitation to Traditional Marketplace Development (TMD) only was added as well. With the subsequent revisions to the Plan to implement Board direction to allow small neighborhood serving commercial sites, the cap was increased and the TMD requirement and acreage limitations were deleted. A full history of the commercial cap in the Tier is provided in Exhibit 3.

For most sites, there would be no basis for Option 1, which proposes a generic increase in the commercial cap, since the majority of the approved commercial square footage in the Tier remains unbuilt. However, the unique circumstances of this site warrant consideration for the proposed small increase. This option would allow the site to be developed as part of the existing Delray Marketplace TMD or freestanding.

### **Option 2 Policy Consideration – Exempting the Commercial Low Office designation**

There is no basis for Option 2, which proposes to exempt the Commercial Low Office future land use designation from the commercial cap. As discussed in Exhibit 3, the commercial cap multiplier has always been intended to serve as a limitation on commercial uses in commercial future land use designations. Further, this option would not allow the incorporation of the site into the Delray Marketplace TMD, requiring a standalone development of just over 2 acres which is inconsistent with Policy 1.5.1-a which requires commercial development to be built in the Ag Reserve as planned developments. This site does not meet the 3 acre minimum lot size to be developed as a CL-O Multiple Use Planned development. This option includes applicant-proposed revisions to this policy to and exemption from the planned development requirement for sites *“less than 3 acres, utilized for medical office and which share a common property line with commercial future land use on Atlantic Avenue”*.

### **Policy Consideration - Removal from the Delray Marketplace TMD**

As previously stated, the applicant proposes this text amendment in order to proceed with a future land use change to a Commercial future land use, and a development order request to remove the 2.05 acre site from the Delray Marketplace TMD, remove the conservation easement, add 2.05 acres of preserve area to the TMD from another property, and to rezone the subject site to a zoning district



that would allow medical office. The subject site is approximately 133 feet wide by approximately 670 feet deep. The Agricultural Reserve Master Plan fostered the concept that commercial development would be clustered within ¼ mile of the intersection of Boynton Beach Boulevard and Lyons Road and Atlantic Avenue and Lyons Road. Since this site is just outside the ¼ mile, it appears that this portion of the overall Delray Marketplace fell outside the boundary for commercial development.

By proposing to remove this parcel from the Delray Marketplace TMD, commercial development on this site would be exempt from the 60% preserve area requirement. If the site was granted commercial future land use by this text amendment, the amount of land needed for preserve would increase if the site remained within the TMD.

- **Site removed from the TMD.** The applicant would need to add 2.05 acres of preserve to replace the loss of the site as a preserve area, and would be able to develop the site without a preserve area requirement since the Comprehensive Plan exempts parcels less than 16 acres from preserve.
- **Site remains within the TMD.** The applicant would need to add 5.12 acres of preserve to the TMD, since 1) the 2.05 acres of preserve would need to be replaced; and 2) the additional development area would need to be offset by additional preserve area of 3.07 acres. The total acres of the TMD would need to increase to 97.44 acres with 38.77 acres development area and 58.67 acres preserve.

The removal of the site from the TMD would circumvent the Comprehensive Plan policies requiring 60% preserve area for commercial development, and allow the development of a free-standing narrow parcel adjacent to an existing commercial parcel. This change would trigger policy issues such as piecemeal development, since the property owner has ties to the adjacent commercial portion of the TMD. However, the applicant states that incorporating commercial uses on the site while remaining part of the Delray Marketplace TMD is not possible due to factors such as being unable to meet the block structure design guidelines, exceeding the maximum square footage for free-standing buildings, inability to front on the 'main street', and inability to meet the TMD architectural guidelines such as requiring building transparency and pedestrian arcades.

## **VII. Staff Recommendation**

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As demonstrated in this report, the applicant proposes two options for consideration to allow additional medical office in the Ag Reserve Tier. Option 1 proposes to increase the commercial cap. Although the commercial cap has been reached, the unique circumstances of this site warrant consideration for the proposed small increase. Option 2 proposes to exempt the Commercial Low-Office designation. This change is problematic since it is impossible to measure the impacts and size of future requests that may apply for Commercial Low Office. Option 2 does not allow the subject site to remain within the Delray Marketplace TMD as a commercial development area.

Staff recommends that the Board deny the request for initiation. The site currently is a preserve with a conservation area as part of the Delray Marketplace TMD. The proposal to remove the conservation easement and preserve, to develop this site as a free-standing, 133-foot wide parcel with office uses is inappropriate. However, if the Board chooses to initiate an amendment, Option 1 (to increase the commercial cap for this site) should be considered. This change would allow this small parcel to become part of the TMD and allow replacement of the preserve area off site.



<b>Exhibits</b>	<b>Page</b>
1. Applicant's Proposed Text Amendment	E-1
2. Applicant's Justification	E-3
3. Commercial Policy Changes in Ag Reserve Tier	E-7
4. Disclosure	E-10

## Exhibit 1

### Applicant's Proposed Text Amendment

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#### A. Future Land Use Element, Delray Marketplace Office Ag Reserve

The applicant has presented two options for consideration.

##### Option 1.

**Commercial Cap Increase.** This option would increase the commercial cap in the Agricultural Reserve to accommodate the specific square footage proposed for the subject site. The revisions are numbered below, and shown with the added text underlined.

##### OBJECTIVE 1.5 The Agricultural Reserve Tier

**Policy 1.5-n:** The County shall ensure a sustainable development pattern is achieved in the Agricultural Reserve by allowing commercial uses while ensuring that the supply of commercial square footage does not exceed the demand of the farm workers and residents of the Tier. The County may approve a maximum of ~~1,015,000~~ 1,028,400 square feet of commercial uses (retail, service and office) within the Tier.

##### Option 2.

**Commercial Low Office Exemption.** This option would exempt self-storage uses from the commercial cap in the Agricultural Reserve Tier. The revisions are numbered below, and shown with the added text underlined.

##### OBJECTIVE 1.5 The Agricultural Reserve Tier

**Policy 1.5-n:** The County shall ensure a sustainable development pattern is achieved in the Agricultural Reserve by allowing commercial uses while ensuring that the supply of commercial square footage does not exceed the demand of the farm workers and residents of the Tier. The County may approve a maximum of 1,015,000 square feet of commercial uses (retail, service and office) in the Commercial Low future land use designation within the Tier.

**Policy 1.5-v:** Commercial Low-Office future land use designations in the Agricultural Reserve Tier shall be limited to sites which share a common property line with a property designated as Commercial Low or Commercial Low-Office.

**Policy 1.5.1-a:** In order to preserve and enhance agricultural activity, environmental and water resources, open space, and sustainable development within the Agricultural Reserve Tier, all new residential, commercial, industrial, and/or mixed use developments shall be developed as an Agricultural Reserve Planned Development that contributes to the fulfillment of these objectives by meeting the preserve area requirements, subject to the provisions of this Element, with the exception of 1) Residential subdivisions predating the Ag Reserve Tier and those that are subdivided at 1 unit per 5 acre density; 2) pre-existing commercial sites identified in Policy 1.5-i which develop at the square footages identified within the Policy; ~~and~~ 3) the sites which received an industrial future land use designation as part of the adoption of the 1989 Comprehensive Plan; and 4) are sites less

than 3 acres, utilized for medical office and which share a common property line with commercial future land use located on Atlantic Avenue.

**Table III.C.2 Maximum Floor Area Ratios (FARs)  
For Non-Residential Future Land Use Categories and Non-Residential Uses**

Future Land Use	FLU Category	Tier				
		U/S	Exurban	Rural	AGR	Glades
Commercial Low (Neighborhood Commercial)	CL-O	.35	.20	.20	<u>.15 w/o MUPD</u> .20 w/ MUPD <sup>4</sup>	.10

## **Exhibit 2**

### **Applicant's Justification**

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#### **Purpose**

Allow development of additional professional and medical office square footage within the Ag Reserve Tier. The options being proposed include: Option 1 - increasing the commercial square footage cap for the proposed office project; and Option 2 - exempting Commercial Low-Office (CL-O) from the Ag Reserve Tier square footage cap.

#### **Justification**

Many changes have been made to the Agricultural Reserve Tier since its original adoption. The commercial square footage cap has been increased in order to meet the demand for retail, restaurants and other services by the residents of the Agricultural Reserve. This has allowed for more commercial parcels to be developed in addition to the two TMDs located at Boynton Beach Boulevard and Lyons Road and Atlantic Avenue and Lyons Road.

Small 5-acre preserve parcels are now permitted to meet the preserve requirements for planned developments. This change has allowed for additional acreage to be utilized as development parcels and therefore increased the number of residential units built in the Ag Reserve. The current Ag Reserve Tier reflects a patchwork development pattern. The properties are squeezed in between development and preserve parcels which has resulted in incompatible and unsustainable development patterns. The increasing number of residents moving into the Ag Reserve creates more traffic along the main thoroughfares because the residents are required to drive east for services. In addition, the car and resident traffic conflicts with farm vehicles and other farming activity.

The proposed text amendment will allow a 2.05-acre parcel to be developed with office uses. The Property is currently one of the preserve parcels for the Delray MarketPlace TMD and is located immediately to the west of the Delray MarketPlace and east of a vet clinic/kennel. The Applicant intends to remove the Property from the Delray MarketPlace TMD and replace that preserve acreage with another property in the Ag Reserve.

As a preserve parcel of the Delray MarketPlace TMD, the Property is not consistent with Policy 1.5.1-n. This Policy states that any portion of the preserve area “shall be utilized for crop production; pasture; equestrian purposes; if designated by the South Florida Water Management District as Water Preserve Area, or to serve regional water management purposes as certified by either Lake Worth Drainage District, or for water management purposes not directly related to the AgR-TMD; or, if approved by the Department of Environmental Resources Management, managed for environmental resource values.” This 2.05-acre Property is not utilized for any of the cited uses, thus is not consistent with this preserve parcel policy and never should have been designated as a preserve parcel.

The subject Property is currently a small 2.05 acre preserve squeezed in between the Delray MarketPlace TMD to the east and approved kennel currently under construction to the west. Next

to the kennel is an additional 10 acre parcel with a Commercial Low (CL) Future Land Use designation. The series of land uses and development along Atlantic Avenue demonstrates a patchwork development pattern. The Property is not appropriate for a farming operation as it is very narrow in width, located between two developed parcels and has been fallow for too long to be farmed. Although the Applicant is able to provide the additional preserve acreage to incorporate the Property into the TMD, it is not appropriate to incorporate this Property into the approved Delray MarketPlace TMD due to the numerous site design requirements for Traditional Marketplace Developments. The proposed office buildings would not be able to meet the block structure design guidelines and would therefore be a free-standing building which is not allowed in the TMD. The existing TMD already exceeds the maximum square footage for free-standing buildings. The requirement for buildings to front on the main street is no possible because the main street terminates approximately 450 feet away and is blocked from being extended by an existing building and the Public parking lot. Additionally, the TMD has strict architectural guidelines such as requiring building transparency and pedestrian arcades.

The Applicant would provide cross access and connections to the approved Delray MarketPlace TMD should the developer and Publix agree to providing a connection in the future. In addition, the architectural style and landscape details can be included to create a consistent and cohesive design for the project.

Sustainable development patterns are those that keep services located near the residents that utilize those services thus reducing the number and length of trips on the roads and reducing the amount of carbon dioxide released into the air. The proposed text amendment will allow for the development of office uses within the western Atlantic Avenue Corridor, thus meeting the needs of the surrounding communities and reducing their trips east on Atlantic Avenue.

The Applicant is proposing two options for amending the Comprehensive Plan text each option is further described and justified below.

### **Option 1 – Text amendment to raise the commercial cap**

The Ag Reserve Master Plan identified a need for various commercial uses within the Ag Reserve Tier to serve the workers and residents of the Tier. These commercial uses were intended to include retail, services and office. Much of the existing commercial square footage has been allocated to retail uses, therefore a need for office still exists within the Tier, especially along Atlantic Avenue.

### **Option 2 – Exempt CL-O from the commercial cap**

Commercial Low-Office (CL-O) is a future land use designation that is consistent with the Goals and Objectives of the Ag Reserve Tier. Commercial Low-Office can serve as a transitional use between Commercial Low and agriculture or residential uses. Should Option 2 be the preferred text amendment, the Applicant is proposing to limit Commercial Low-Office designations to be adjacent to existing Commercial Low or Commercial Low-Office future land use designations.

The addition of language to FLUE Policy 1.5.1-a will require small infill commercial development to co-locate adjacent to existing mixed-use commercial developments, rather than develop as small free-standing projects scattered within the Ag Reserve Tier.

The Comprehensive Plan defines Commercial Low-Office as a category which “*shall include a limited range of neighborhood-oriented office and accessory uses intended to provide services to adjacent residential areas.*” Therefore, it is the Applicant’s intent to provide additional land and square footage to meet the needs and demands of the residents and workers of the Agricultural Reserve Tier as originally intended by the Master Plan.

## **Consistency**

This proposed Comprehensive Plan Text Amendment is consistent with the intent, objectives and policies of the Comprehensive Plan, as follows:

### ***Characteristics of a Livable Community***

*Among the County Directives is the concept of a Livable Community. A Livable Community comprises certain characteristics that contribute to sustainability and a high quality of life. The primary characteristics include:*

*For all tiers:*

...

*2. Employment opportunities...*

*Commercial centers addressing the neighborhoods daily needs include:*

*1. Limited mix of neighborhood-based commercial uses compatible with the character of the tier...*

**Response:** The amount of residential development within the Agricultural Reserve Tier has significantly grown over the past 10 years. Allowing additional office uses within the Ag Reserve Tier contributes to potential employment opportunities thus ensuring that the residents of the Tier do not need to travel outside of the Tier for work or to locate their business. Additionally, office uses will provide the opportunity for a variety of services to be available to the residents of the Tier. Currently lawyer, accountant, insurance and doctor offices compete for the limited amount of available commercial space with retailers, restaurants, etc.

The additional office square footage will contribute to the continuation of the Ag Reserve as a livable community.

**Objective:** *Palm Beach County shall preserve the unique farmland and wetlands in order to preserve and enhance agricultural activity, environmental and water resources, and open space within the Agricultural Reserve Tier. This shall be accomplished by limiting uses to agriculture and conservation with residential development restricted to low densities and non-residential development limited to uses serving the needs of farmworkers and residents of the Tier.*

**Response:** The proposed text amendment to allow additional office uses will not negatively impact preservation of farmland or wetlands. Commercial office uses are generally low impact uses which provide needed services and opportunities for adjacent residents to work close to home. Well planned communities are those that incorporate office uses as transitional uses between residential and more intense uses such as farming, commercial or industrial uses. It is anticipated that the additional office square footage will serve the residents and workers within the Ag Reserve. It is the Applicant’s intent to replace the preserve acreage for the approved TMD concurrent with the removal from the TMD, thus remaining consistent with this Objective of the Agricultural Reserve Tier.

***Policy 1.5-k:*** *Commercial and mixed uses in the Agricultural Reserve Tier shall be located central to the Tier and designed at a neighborhood or community scale in order to be limited to serving the needs of the farmworker community, existing residents, and future residents of the Tier.*

**Response:** The Applicant is proposing to change the 2.05-acre parcel located immediately adjacent to the Delray MarketPlace TMD. This specific property location is central to the Tier. If County Staff and/or the BCC initiates the proposed text amendment, the Applicant is proposing location criteria which will ensure that the office uses are located central to the Tier and adjacent to existing commercial nodes. As previously indicated, the small Property is very narrow and squeezed in between two developed parcels. Allowing the Property to develop with office will create an infill development along the Atlantic Avenue corridor.

***Commercial Office Uses – Commercial Low and Commercial High.*** *The CL-O category shall include a limited range of neighborhood-oriented office and accessory uses intended to provide services to adjacent residential areas. The CH-O category shall include higher intensity office and accessory uses, intended to serve a community and/or regional commercial demand. Offices for administrative, professional and business purposes; banking and financial institutions; membership organizations; and, uses that are accessory to the office use including restaurants, personal services and health clubs may be permitted in any of the four Commercial categories.*

**Response:** The proposed office use will provide office space in close proximity to where people live. All of the uses classified as office will ensure that the residents of the Ag Reserve have access to a variety of services such as dentists, chiropractors, and primary care physicians within close proximity of their homes while minimizing the number of trips on the roadways.

## **ULDC Changes**

Option 3 would require ULDC Changes as proposed below:

- An amendment to Article 4-Use Regulations, Table 4.B.2.A to allow Medical Office within the IPF and MUPD Zoning District in the Ag Reserve Tier.

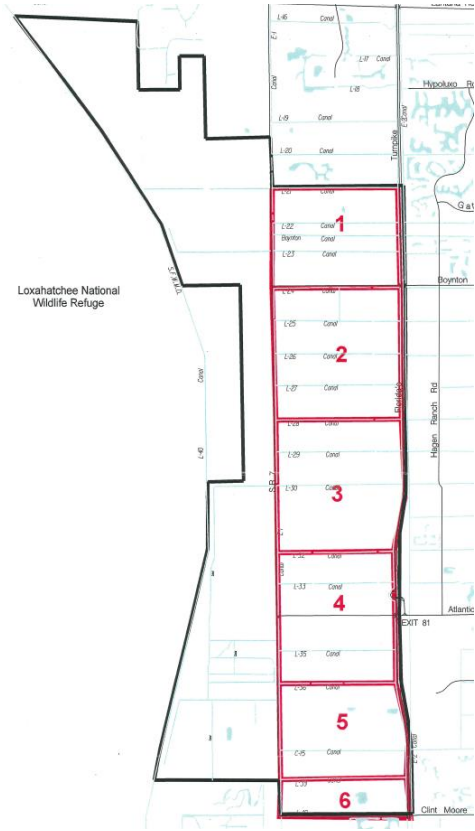


## Exhibit 3

### Agricultural Reserve Commercial History

#### History of the Commercial maximum square footage.

The Phase II Report included a comprehensive examination of the maximum development potential envisioned by the actual Master Plan Graphic as shown in the table below. The Phase II report, the Consultant recommended the following under 5.5.1.2 The 60/40 Development Option: *“The amount of non-residential developments in the entire Ag Reserve should be limited to 500,000 square feet of retail, 600,000 square feet of office, and 330,000 square feet of industrial uses. The amount of civic uses should not be restricted within the two development areas.”* This totaled 1,100,000 million square feet of commercial uses. Phase II report indicates that these figures had been derived from the appropriate ratio of non-residential development to the 14,000 dwelling units that were considered to be the maximum number of new units under the “Status Quo” Development Alternative. Therefore, taking the total maximum number of units considered by the Consultants (14,000 new units) and the maximum number of square footage (1,100,000), the ratio of total new commercial square footage for each new units can be calculated as a maximum of 79 square feet per dwelling unit ( $1,100,000 \text{ sf} / 14,000 \text{ du} = 79 \text{ sq.ft}$ ). The numerical description of the master plan graphic included the following mix of uses as the maximum potential is described in the table below.



**Phase II Master Plan Graphic Status Quo Potential Build-out**

	Total	1 No. of BB	2 South of BB	3 Central	4 Atlantic	5 Far So. AA	6 Clint Moore
Single Family	7,280	1,680	1,840	-	1,040	2,080	640
Townhouse	4,200	1,440	720	-	1,680	360	-
Apartments	2,520	600	600	-	1,320	-	-
<b>Units</b>	<b>14,000</b>	<b>3,720</b>	<b>3,160</b>	<b>-</b>	<b>4,040</b>	<b>2,440</b>	<b>640</b>
Retail	502,440	125,000	125,000	-	250,000	2,440	-
Offices over shops	375,030	93,758	93,758	-	187,515	-	-
Office Park	244,970	122,485	122,485	-	-	-	-
<b>Commercial</b>	<b>1,122,440</b>	<b>341,243</b>	<b>341,243</b>	<b>-</b>	<b>437,515</b>	<b>2,440</b>	<b>-</b>
Industrial Park	330,000	-	165,000	-	165,000	-	-
<b>Total Non-Res</b>	<b>1,452,440</b>	<b>341,243</b>	<b>506,243</b>	<b>-</b>	<b>602,515</b>	<b>2,440</b>	<b>-</b>

**Final Master Plan.** The Final Master Plan summarizes and expresses staff and Board support for placing the cap on the Tier, stating: *“The Consultants identified a need for no more than 1,100,000 square feet of commercial retail and office space in the Ag Reserve. They recommended that this space be evenly divided between the two mixed use center locations which were identified, and that all development seeking to utilize this development option be required to establish a preserve area, similar to the clustered residential development requirements, with the ratio of preserve area to developed area for the commercial developments established 60/40. The minimum acreage recommended for the developed area of a commercial development was recommended to be 10 acres, with a 15 acre preserve area.”*

**Initial Adoption into the Comprehensive Plan.** The 01-1 staff report which adopted the amendments to implement the Master Plan carries forward these theme of capping commercial development, but establishes an acreage requirement in addition to a square footage limitation, stating: *“This policy caps the maximum acreage and square footage that may be developed as Commercial in the Agricultural Reserve Tier to ensure that the uses are restricted to those which serve the needs of Tier residents and farmworkers. Establishing these caps on the intensity of commercial development, which were determined by the County’s Consultants on the Agricultural Reserve Master Plan, ensures that the supply of commercial space will not exceed the demand, which could suggest that the development pattern in the Agricultural Reserve Tier was indicative of sprawl in violation of State regulations.”* At the time of transmittal, the maximum square footage was 1,100,000 million square feet, but between transmittal and adoption the staff report was revised to reflect a cap of 750,000 square feet. There is no explanation for this reduction in the staff report, although a subsequent email from County Planner Alex Hansen to Planning Director Frank Duke in 2002 indicates that the reduction in square footage was made to reflect the reduction in demand due to the reduction in dwelling units from the passing of the Bond referendum and County land purchases with retirement of development rights.

**Commercial Policy Changes in 2016.** The new maximum of 980,000 s.f. proposed with the 2016 County Initiated amendment was based upon the calculation of 79 square feet per each of the up to approximately 13,000 dwelling units which may be allowed today. Currently the maximum development potential in the Ag Reserve ranges from 10,744 dwelling units to 12,904 dwelling units. This figure is based upon a total of approved dwelling units total of 10,204 added to approximately 2,700 acres of land that is uncommitted which can yield anywhere between 1 unit per 5 acres to 1 unit per acre (540 to 2,700 acres respectively) depending upon the individual approvals. The proposed 980,000 square foot cap was proposed to maintain both the ratio envisioned by the Master Plan documents and would also be consistent with the current square foot/units built ratio that exists within the Tier today. The ratio between the current total built units in the Tier (6,924 units) to the built commercial square footage (522,504 sf) is approximately 75.46 square feet per unit ( $522,504 \text{ sf} / 6,924 \text{ du} = 75.46 \text{ sf/unit}$ ).

Specific changes to the adopted policies adopted by the 2016 amendment include the following changes:

- B.3. REVISED Policy 1.5-k:** In order to facilitate community growth, reduce traffic, and maintain open space, the County shall limit the locations of new commercial and mixed use future land use designations within the Agricultural Reserve Tier to within two commercial-mixed use centers. These centers are central to the Tier and intended to combine neighborhood shops, community commercial, offices, civic institutions, and housing opportunities. The two commercial-mixed use centers define the areas The County shall not approve any land within the Agricultural Reserve Tier for the Commercial Low designation unless the property is within 1/4 mile of the intersections of Lyons Road and with either Boynton Beach Boulevard, and the intersection of Lyons Road and or Atlantic Avenue. The County shall not approve any land within the Agricultural Reserve Tier for the Commercial Low-Office designation unless development area of the property is within 1/4 mile of the northeast quadrant of the intersection of State Road 7 and Clint Moore Road. In addition, the pre-existing commercial properties identified in Policy 1.5-i are allowed, and the County may consider future land use amendments for sites that share a common property line with pre-existing commercial properties identified in Policy 1.5-i to square off those locations.
- B.4. DELETE Policy 1.5-l:** ~~The County may approve a maximum of 80 acres within the Agricultural Reserve Tier with a Commercial Low designation. This maximum acreage shall not include the acreage required as the preserve area of an Agricultural Reserve Traditional Marketplace Development (AgR-TMD) pursuant to Future Land Use Policy 1.5.1-n.~~
- B.5. REVISE Policy 1.5-m:** The County shall ensure a sustainable development pattern is achieved in the Agricultural Reserve by allowing commercial uses while ensuring that the supply of commercial square footage does not exceed the demand of the farm workers and residents of the Tier. The County may approve a maximum of 980,000 square feet of commercial uses (retail, service and office) within the Tier. All new Commercial Low development in the Agricultural Reserve Tier shall be developed in the form of an AgR-TMD, as described in the Traditional Marketplace Development provisions in this Element and shall not exceed a total of 750,000 square feet of Commercial Low uses for the entire tier.
- B.6. DELETE Policy 1.5-n:** ~~A Commercial Low-Office development in the Agricultural Reserve Tier is not required to be in the form of an AgR-TMD. However, approval of a Commercial Low-Office development must comply with the preserve area requirements for TMDs included in Future Land Use Policies 1.5.1-m and 1.5.1-n.~~

## Exhibit 4

### Disclosure

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PALM BEACH COUNTY - ZONING DIVISION

FORM # 09

#### DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY

*[TO BE COMPLETED AND EXECUTED BY THE PROPERTY OWNER(S) FOR EACH APPLICATION  
FOR COMPREHENSIVE PLAN AMENDMENT OR DEVELOPMENT ORDER]*

**TO: PALM BEACH COUNTY PLANNING, ZONING AND BUILDING EXECUTIVE  
DIRECTOR, OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared  
Garrett Bender, hereinafter referred to as "Affiant," who  
being by me first duly sworn, under oath, deposes and states as follows:

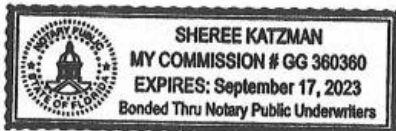
1. Affiant is the ☐ individual or ☒ Manager *[position - e.g.,  
president, partner, trustee]* of TG Land LLC *[name and type of  
entity - e.g., ABC Corporation, XYZ Limited Partnership]* that holds an ownership  
interest in real property legally described on the attached Exhibit "A" (the "Property").  
The Property is the subject of an application for Comprehensive Plan amendment or  
Development Order approval with Palm Beach County.
2. Affiant's address is: 506 Andrews Avenue  
Delray Beach, FL 33483
3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of  
every person or entity having a five percent or greater interest in the Property.  
Disclosure does not apply to an individual's or entity's interest in any entity  
registered with the Federal Securities Exchange Commission or registered pursuant  
to Chapter 517, Florida Statutes, whose interest is for sale to the general public.
4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County  
policy, and will be relied upon by Palm Beach County in its review of application for  
Comprehensive Plan amendment or Development Order approval affecting the  
Property. Affiant further acknowledges that he or she is authorized to execute this  
Disclosure of Ownership Interests on behalf of any and all individuals or entities  
holding a five percent or greater interest in the Property.
5. Affiant further acknowledges that he or she shall by affidavit amend this disclosure to  
reflect any changes to ownership interests in the Property that may occur before the  
date of final public hearing on the application for Comprehensive Plan amendment  
or Development Order approval.
6. Affiant further states that Affiant is familiar with the nature of an oath and with the  
penalties provided by the laws of the State of Florida for falsely swearing to  
statements under oath.

7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Garrett Bender, Affiant  
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 17th day of September, 2019, by Garrett Bender, [ ☒ ] who is personally known to me or [ ☐ ] who has produced N/A as identification and who did take an oath.



  
\_\_\_\_\_  
Notary Public

Sheree Katzman  
\_\_\_\_\_  
(Print Notary Name)

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: 9/17/2023

**EXHIBIT "A"**  
**PROPERTY**

Lot Tract C, Delray Market Place Preserve 3, as recorded in Plat Book 111, Page(s) 95-97, according to the plat thereof on file in the Clerk of the Circuit Court in and for Palm Beach County, Florida.

**EXHIBIT "B"****DISCLOSURE OF OWNERSHIP INTERESTS - PROPERTY**

Affiant must identify all entities and individuals owning five percent or more ownership interest in the Property. Affiant must identify individual owners. For example, if Affiant is an officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

**Name****Address**Garrett Bender 506 Andrews Avenue, Delray Beach, FL 33483Teri Gevinson 3299 Harrington Drive, Boca Raton, FL 33496
