



**Interoffice Memorandum**

**DATE:** May 11, 2020

**TO:** Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

**FROM:** Jon V. Weiss, P.E., Director *JW.*  
Planning, Environmental and Development  
Services Department

**CONTACT PERSON:** **Eric Raasch, DRC Chairman**  
**Development Review Committee** *err*  
**Planning Division**  
**(407) 836-5523**

**SUBJECT:** June 2, 2020 – Public Hearing  
Momtaz Barq, P.E., Terra-Max Engineering  
Davis Planned Development Substantial Change  
Case # CDR-19-12-402 / District 1

The Davis Planned Development (PD) generally located north of Lake Street, east of S. Apopka Vineland Road, and west of Ruby Lake Road. The existing PD development program includes 324 multi-family residential units on Phase 1 – Parcel 1, and Tourist Commercial, Office, and Hotel/Motel/Timeshare uses on Phase 2 – Parcels 2 and 3. The Tourist Commercial uses are permitted with a maximum Floor Area Ratio (FAR) of 0.34, the Office uses are permitted with a maximum FAR of 1.5, and the Hotel/Motel/Timeshare uses are permitted with a maximum intensity of 60 units per acre.

Through this PD substantial change, the applicant is seeking to remove cross-access between Phase 2 - Parcels 2 and 3; to remove BCC Conditions of Approval 6 and 7 from April 23, 2002, which required sloped tile roofs and that the rear façade of commercial buildings to be designed as a front façade; and to request seven waivers from the Buena Vista North Overlay within the Orange County Code to reduce the percentage of ground floor secondary facades required to be glass, to increase the number of contrasting colors, to reduce the required sidewalk width, and to reduce the building base and median landscaping requirements.

On March 11, 2020, the Development Review Committee recommended approval of the request, subject to conditions. A community meeting was held on March 2, 2020, at Sand Lake Elementary School, which was attended by 11 property owners.

Finally, the required Specific Project Expenditure Report and Relationship Disclosure Forms have been completed in accordance with the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, and copies of these and the PD/LUP may be found in the Planning Division for further reference.

**ACTION REQUESTED: Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Davis Planned Development / Land Use Plan (PD/LUP) dated "Received April 2, 2020", subject to the conditions listed under the DRC Recommendation in the Staff Report. District 1**

Attachments  
JVW/EPR/nt

**CASE # CDR-19-12-402**

Commission District: # 1

**GENERAL INFORMATION**

**APPLICANT** Momtaz Barq, P.E., Terra-Max Engineering

**OWNER** Redala, LLC

**PROJECT NAME** Davis Planned Development

**PARCEL ID NUMBER(S)** 15-24-28-6211-34-010 (affected parcel only)

**TRACT SIZE** 25.61 gross acres (overall PD)  
1.65 gross acres (affected parcel only)

**LOCATION** 8805 10<sup>th</sup> Street; Generally north of Lake Street, east of S. Apopka Vineland Road, and west of Ruby Lake Road.

**REQUEST** A PD substantial change to remove cross-access between Phase 2 - Parcels 2 and 3; and to remove BCC Conditions of Approval 6 and 7 from April 23, 2002, which required sloped tile roofs and that the rear façade of commercial buildings to be designed as a front façade. In addition, the applicant has requested the following waivers from Orange County Code:

1. A waiver from Section 38-1393.1 to allow for less than 10% of all ground floor secondary facades to be glass. This waiver would be in lieu of a requirement that all secondary facades contain a minimum of ten (10) percent of the ground floor to be windowed.

***Applicant Justification:*** *This building is planned for retail / bank / restaurant tenants. Although the main street elevation will have significantly more glass than required, the operational functions of these uses do not work efficiently with glass on the eastern portion of the building.*

2. A waiver from Section 38-1393.3 to allow for more than 3 low contrast colors as well as to allow for the use of high contrast colors. This waiver from would be in lieu of the restriction of high contrast colors as well as the limitation of building colors to a maximum of 3 low contrast colors.

***Applicant Justification:*** *Contrasting colors are expected and desired in retail environments. They are also more commonly accepted since this code was written many years ago.*

3. A waiver from Section 38-1391.3(a)(1)a. to allow for 15 feet width covered with required canopy and understory tree requirements tapering down to 5 feet and currently covered with concrete with zero landscape requirements. This would be in lieu of a median width of 20 feet.

***Applicant Justification:*** Due to the existing median being 15 feet in width tapering down to 5 feet as described.

4. A waiver from Section 38-1391.3(a)(1)b. to allow for the existing 5 foot sidewalk to be used. This would be in lieu of proposed 8 foot width sidewalk.

***Applicant Justification:*** There is a 5-foot-wide sidewalk currently adjacent to the street right of way which will remain and this will allow for the required 18-foot-wide landscape parkway on each side of the roadway.

5. A waiver from Section 38-1391.3(a)(3) to allow a 7 foot width landscape adjacent property line buffer with 1 canopy tree per each 40 linear feet. This would be in lieu of the 11-foot-wide landscape parkway and landscape requirements.

***Applicant Justification:*** The east side of the project is currently wooded; therefore, we request for the adjacent property line buffer requirements instead of the right of way buffer requirements along this property line.

6. A waiver from Section 38-1394.1(a)(2) site landscape to allow for 0.4 canopy trees for each one hundred (100) square feet of green space around the building base in lieu of the one (1) canopy tree for each one hundred square feet of green space around the building base stipulated in the code.

***Applicant Justification:*** The number of required trees will not fit in the green space around the proposed retail building.

7. A waiver from Section 38-1392.2(2)(c) to allow for 4-foot wide landscape strips along either side of a direct pedestrian access path in lieu of the 10-foot wide landscape strip along one side of said path.

***Applicant Justification:*** This will allow for a more symmetrical site layout.

**PUBLIC NOTIFICATION** A notification area extending beyond one thousand hundred (1,000) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Fifty-eight (58) notices were mailed to those property owners in the notification buffer area. A community meeting was held on March 2, 2020, at

Sand Lake Elementary School, as summarized in this report below.

## **IMPACT ANALYSIS**

### **Special Information**

The Davis PD was originally approved on November 10, 1992, with a development program of 387 multi-family residential units, and 13,000 square feet of neighborhood commercial uses. Throughout various amendments and an expansion to the PD in 1992, the currently approved development program includes 324 multi-family residential units on Phase 1 – Parcel 1, and tourist commercial, office, and hotel/motel/timeshare uses on Phase 2 – Parcels 2 and 3. The tourist commercial uses are permitted with a maximum Floor Area Ratio (FAR) of 0.34, the office uses are permitted with a maximum FAR of 1.5, and the hotel/motel/timeshare uses are permitted with a maximum intensity of 60 units per acre. As part of the PD amendment in 2002, which included the subject property, Commissioner Jacobs requested that Conditions of Approval 6, 7, and 8 be added at the BCC hearing. The language for those conditions is found below:

6. *The rear façade of the commercial structures shall be designed as a front façade for the purposes of meeting the BVN Standards and the Commercial Design Standards, whichever is more restrictive.*
7. *All commercial structures shall have tile roofs for not less than 80 percent of the roof seen from the right-of-way, consistent with that of the Shoppes of Lake Avenue Planned Development.*
8. *To the extent reasonable, all commercial development shall maintain the existing vegetation and trees between the commercial structures and the single-family residences.*

Through this PD substantial change, the applicant is seeking to remove cross-access between Phase 2 - Parcels 2 and 3; to remove BCC Conditions of Approval 6 and 7 from April 23, 2002; and to request seven (7) waivers from Orange County Code to reduce the percentage of ground floor secondary facades required to be glass, to increase the number of contrasting colors, to reduce the required sidewalk width, and to reduce the building base and median landscaping requirements. In addition, DRC also recommended striking Condition of Approval 8 from the 2002 action, as the applicant has proposed a buffer of natural vegetation on the plans that will range from 24' to 30' in width.

### **Land Use Compatibility**

The proposed PD substantial change would not adversely impact any adjacent properties or result in an incompatible land use pattern.

### **Comprehensive Plan (CP) Consistency**

The subject property has an underlying Future Land Use Map (FLUM) designation of Activity Center Mixed Use (ACMU). The Davis PD was approved in 1992 and includes such uses as multi-family, tourist commercial, and office. The proposed Change

Determination Request (CDR) is consistent with the designation and all applicable CP provisions; therefore, a CP amendment is not necessary.

**Overlay Ordinance**

The subject property is located within the Buena Vista North Overlay District.

**Rural Settlement**

The subject property is not located within a Rural Settlement.

**Joint Planning Area (JPA)**

The subject property is not located within a JPA.

**Environmental**

Development of the subject property shall comply with all state and federal regulations regarding wildlife and plants listed as imperiled species (endangered, threatened, or species of special concern). The applicant is responsible to determine the presence of these concerns and to verify and obtain, if necessary, any required habitat permitting of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).

All storm drain inlets constructed as part of new development projects in Orange County shall have metal medallion inlet markers installed. Text on the marker shall be evenly spaced and read "No Dumping, Only Rain in the Drain". Markers must be commercial grade stainless steel, aluminum, brass or bronze and either stamped from sheet metal or cast. Metal marker color must be non-reflective blue or green. Aquatic creature or symbol shown on marker shall be consistent throughout the subdivision. Markers must be affixed to a clean, prepared surface with adhesives, fasteners, or heat as recommended by the manufacturer. Markers shall be aligned with the center of drainage inlets at the top of the curb. Lettering must be between 0.4 - 0.5 inches and the total diameter of the marker between 3.75 - 4.25 inches.

**Transportation Concurrency**

Orange County Transportation Planning reviewed the request did not identify any issues or concerns.

**Community Meeting Summary**

A community meeting was held on March 2, 2020, at Sand Lake Elementary School, which was attended by eleven area residents. Discussion at the meeting included where the proposed access points would be, what type of tenants would occupy the building, exactly how many different colors are proposed, and how much existing vegetation on the site would be retained. It was stated that in addition to the subject property's access onto Apopka Vineland Road, there would be cross-access to the Winn-Dixie shopping center to the south. Residents expressed concern that the request included removing the requirement that the rear of the building be treated as a front façade, and that future development on the properties behind the proposed development would then have to face the unsightly rear of this building. The applicant contended that the development would maintain a 35' buffer of natural vegetation in the rear of the property. Additional concerns brought up at the meeting were that the Buena Vista North Overlay standards were created for a reason and it didn't make sense to deviate from them.

**Schools**

Orange County Public Schools (OCPS) reviewed the request and determined that it will not impact public school capacity.

**Parks and Recreation**

Orange County Parks and Recreation reviewed the request and did not identify any issues or concerns.

**Specific Project Expenditure Report and Relationship Disclosure Forms**

The original Specific Project Expenditure Report and Relationship Disclosure Form are currently on file with the Planning Division.

**ACTION REQUESTED**

**Development Review Committee (DRC) Recommendation – (March 11, 2020)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Davis Planned Development / Land Use Plan (PD/LUP), dated "April 2, 2020", subject to the following conditions:**

1. Development shall conform to the Davis PD Land Use Plan (LUP) dated "Received April 2, 2020," and shall comply with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. Accordingly, the PD may be developed in accordance with the uses, densities, and intensities described in such Land Use Plan, subject to those uses, densities, and intensities conforming with the restrictions and requirements found in the conditions of approval and complying with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. If the development is unable to achieve or obtain desired uses, densities, or intensities, the County is not under any obligation to grant any waivers or modifications to enable the developer to achieve or obtain those desired uses, densities, or intensities. In the event of a conflict or inconsistency between a condition of approval and the land use plan dated "Received April 2, 2020," the condition of approval shall control to the extent of such conflict or inconsistency.
  
2. This project shall comply with, adhere to, and not deviate from or otherwise conflict with any verbal or written promise or representation made by the applicant (or authorized agent) to the Board of County Commissioners ("Board") at the public hearing where this development received final approval, where such promise or representation, whether oral or written, was relied upon by the Board in approving the development, could have reasonably been expected to have been relied upon by the Board in approving the development, or could have reasonably induced or otherwise influenced the Board to approve the development. In the event any such promise or representation is not complied with or adhered to, or the project deviates from or otherwise conflicts with such promise or representation, the County may withhold (or postpone issuance of) development permits and / or postpone the recording of (or refuse to record) the plat for the project. For purposes

of this condition, a "promise" or "representation" shall be deemed to have been made to the Board by the applicant (or authorized agent) if it was expressly made to the Board at a public hearing where the development was considered and approved.

3. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit, or any other development order, if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
4. Developer / Applicant has a continuing obligation and responsibility from the date of approval of this land use plan to promptly disclose to the County any changes in ownership, encumbrances, or other matters of record affecting the property that is subject to the plan, and to resolve any issues that may be identified by the County as a result of any such changes. Developer / Applicant acknowledges and understands that any such changes are solely the Developer's / Applicant's obligation and responsibility to disclose and resolve, and that the Developer's / Applicant's failure to disclose and resolve any such changes to the satisfaction of the County may result in the County not issuing (or delaying issuance of) development permits, not recording (or delaying recording of) a plat for the property, or both.
5. Property that is required to be dedicated or otherwise conveyed to Orange County (by plat or other means) shall be free and clear of all encumbrances, except as may be acceptable to County and consistent with the anticipated use. Owner / Developer shall provide, at no cost to County, any and all easements required for approval of a project or necessary for relocation of existing easements, including any existing facilities, and shall be responsible for the full costs of any such relocation prior to Orange County's acceptance of the conveyance. Any encumbrances that are discovered after approval of a PD Land Use Plan shall be the responsibility of Owner / Developer to release and relocate, at no cost to County, prior to County's acceptance of conveyance. As part of the review process for construction plan approval(s), any required off-site easements identified by County must be conveyed to County prior to any such approval, or at a later date as determined by County. Any failure to comply with this condition may result in the withholding of development permits and plat approval(s).
6. Prior to mass grading, clearing, grubbing or construction, the applicant is hereby notified that this site must comply with habitat protection regulations of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).
7. All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination (CAD) and a Conservation Area Impact (CAI) Permit. Approval of this plan does not authorize any direct or indirect conservation area impacts.



8. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a capacity encumbrance letter prior to construction plan submittal and must apply for and obtain a capacity reservation certificate prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan/preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.
9. The developer shall obtain water and wastewater service from Orange County Utilities subject to County rate resolutions and ordinances.
10. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing water and wastewater systems have been designed to support all development within the PD.
11. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code, Buena Vista North (BVN) Standards.
12. Tree removal/earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision Plan and/or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
13. The following waivers from Orange County Code are granted:
  - a. A waiver from Section 38-1393.1 to allow for less than 10% of all ground floor secondary facades to be glass. This waiver would be in lieu of a requirement that all secondary facades contain a minimum of ten (10) percent of the ground floor to be windowed.
  - b. A waiver from Section 38-1393.3 to allow for more than 3 low contrast colors as well as to allow for the use of high contrast colors. This waiver would be in lieu of the restriction of high contrast colors as well as the limitation of building colors to a maximum of 3 low contrast colors.
  - c. A waiver from Section 38-1391.3(a)(1)a. to allow for 15 feet width covered with required canopy and understory tree requirements tapering down to 5 feet and currently covered with concrete with zero landscape requirements. This would be in lieu of a median width of 20 feet.
  - d. A waiver from Section 38-1391.3(a)(1)b. to allow for the existing 5 foot sidewalk to be used. This would be in lieu of proposed 8 foot width sidewalk.
  - e. A waiver from Section 38-1391.3(a)(3) to allow a 7 foot width landscape adjacent property line buffer with 1 canopy tree per each 40 linear feet. This would be in lieu of the 11-foot-wide landscape parkway and landscape requirements.

- f. A waiver from Section 38-1394.1(a)(2) site landscape to allow for 0.4 canopy trees for each one hundred (100) square feet of green space around the building base in lieu of the one (1) canopy tree for each one hundred square feet of green space around the building base stipulated in the code.
  - g. A waiver from Section 38-1392.2(2)(c) to allow for 4-foot wide landscape strips along either side of a direct pedestrian access path in lieu of the 10-foot wide landscape strip along one side of said path.
14. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated April 23, 2002 shall apply:
- a. Master stormwater management, water, reclaimed water and wastewater plans, including preliminary calculations, shall be approved for development on the east side of Apopka-Vineland Road prior to approval of construction plans.
  - b. Unless otherwise waived by BCC, any portion of the plan not consistent with the Buena Vista North (BVN) and the Commercial Design Standards is not approved. The project shall comply with BVN Standards and the Commercial Design Standards, whichever is more restrictive.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (April 23, 2002)**

Upon a motion by Commissioner Jacobs, seconded by Commissioner Johnson, and carried with all members present and voting AYE by voice vote, the Board made a finding of consistency with the Comprehensive Policy Plan; and further, approved the Davis Planned Development Amendment, to rezone from Rural Country Estate (R-CE) to Planned Development (PD) subject to conditions.

CDR-19-12-402



Overall PD

Subject Property



Subject Property

### Future Land Use Map

FLUM: Activity Center Mixed Use (ACMU)

APPLICANT: Momtaz Barq, P.E., Terra-Max Engineering

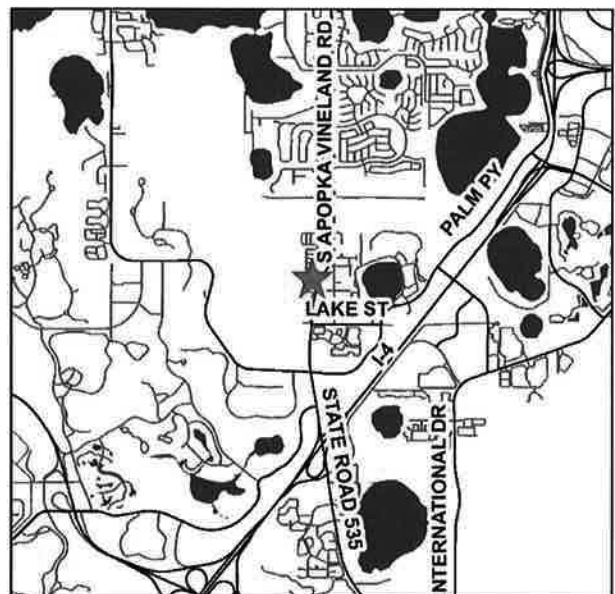
LOCATION: 8805 10th Street; Generally north of Lake Street, east of S. Apopka Vineland Road, and west of Ruby Lake Road.

TRACT SIZE: 25.61 gross acres (overall PD)  
 1.65 gross acres (affected parcel only)

DISTRICT: # 1

S/T/R: 15/24/28

1 inch = 600 feet



CDR-19-12-402



Overall PD

Subject Property



Subject Property

### Zoning Map

**ZONING:** PD (Planned Development District)

**APPLICANT:** Momtaz Barq, P.E., Terra-Max Engineering

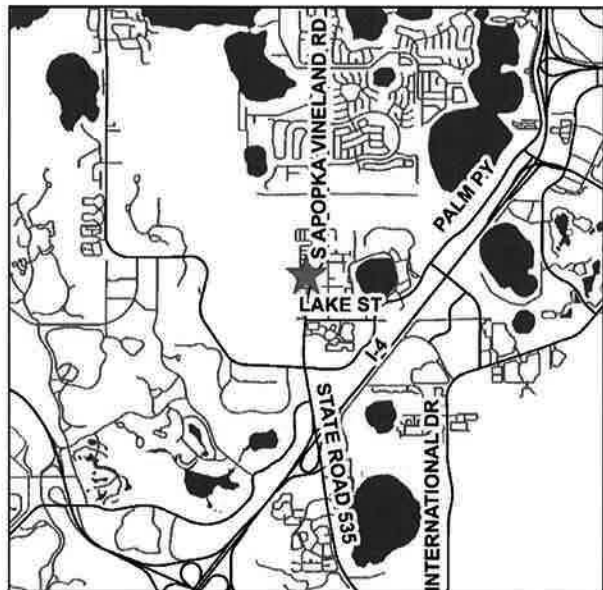
**LOCATION:** 8805 10th Street; Generally north of Lake Street, east of S. Apopka Vineland Road, and west of Ruby Lake Road.

**TRACT SIZE:** 25.61 gross acres (overall PD)  
 1.65 gross acres (affected parcel only)

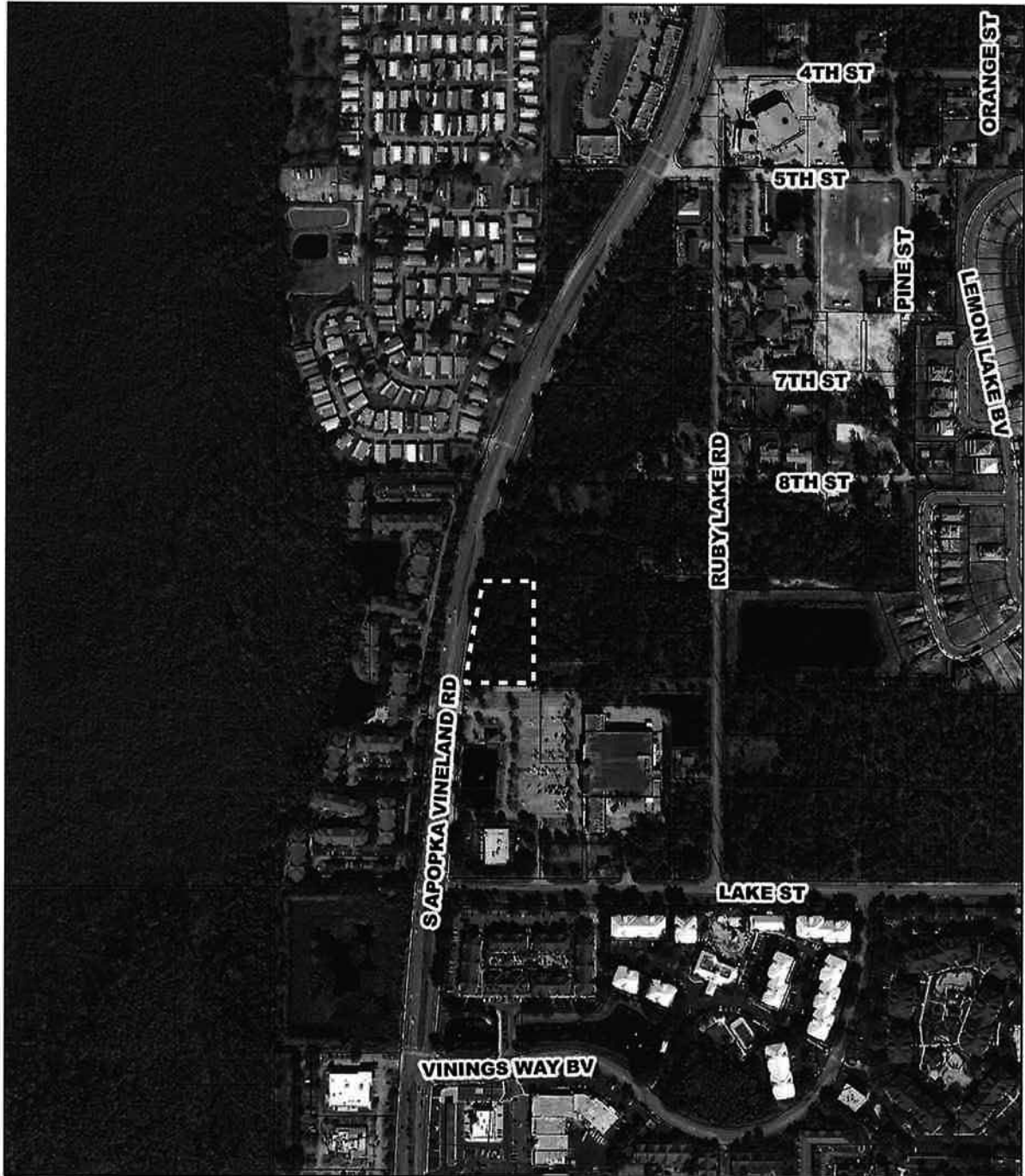
**DISTRICT:** # 1

**S/T/R:** 15/24/28

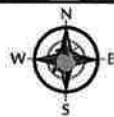
1 inch = 600 feet



CDR-19-12-402



 Subject Property

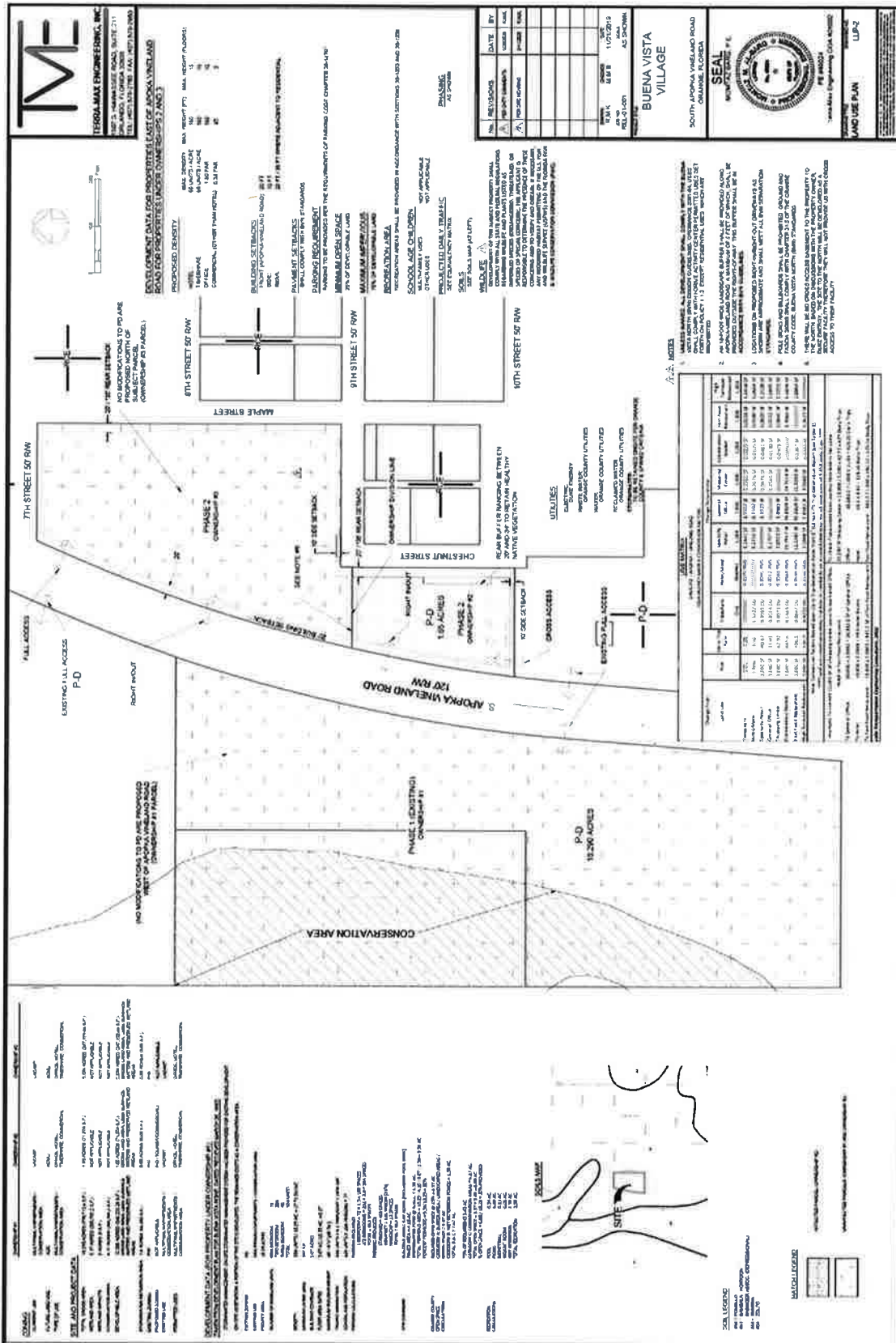


1 inch = 450 feet





Davis PD / LUP

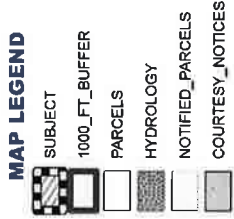


Notification Map

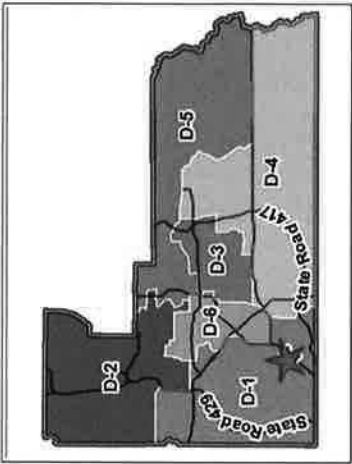
**Public Notification Map**



Davis PD\_CDR-19-12-402



**BUFFER DISTANCE: 1000**  
**# OF NOTICES: 58**  
**RESIDENTIAL ADDRESSES: 11**



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