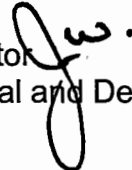




Interoffice Memorandum

September 7, 2017

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director 
Community, Environmental and Development
Services Department

CONTACT PERSON: David Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1405

SUBJECT: September 19, 2017 – Public Hearing
Brownfield Area Applications for Brixton Landing, Ltd. and
Wellington Park, Ltd.

Reason for Public Hearing

Two applicants, Brixton Landing, Ltd. ("Brixton") and Wellington Park, Ltd. ("Wellington"), have requested that their properties be designated as brownfield areas (BFAs) to be known as Brixton Landing Green Reuse Area: ROCC (Redeveloping Orange County Communities) and Wellington Park Green Reuse Area: ROCC, respectively.

The proposed Brixton BFA includes parcel ID: 15-21-28-0000-00-015 and is located at 442 E. 13th Street, Apopka within unincorporated Orange County. The proposed Wellington BFA property consists of parcel ID: 11-21-28-0000-00-007 and is located at 1225 Apley Circle, Apopka. Property location maps are provided in the proposed resolutions (Attachments A and B). The subject properties are located in Orange County Commission District 2.

In accordance with section 376.80(2)(c), Florida Statutes (F.S.), which covers requests for BFA designation by persons other than a governmental entity, this request is being brought to the Board of County Commissioners (Board) for consideration.

Background

Receipt and Initial Review of Applications

The applications requesting BFA designation were submitted to the Environmental Protection Division (EPD) by the applicants' agent on December 9, 2016 for Brixton and December 14, 2016 for Wellington, respectively. (Attachments C and D)

An application review conference call occurred on January 6, 2017 between EPD staff and representatives from the applicants' authorized agent, The Goldstein Environmental Law Firm, P.A. (Goldstein Firm). Following the call, a request for additional information was submitted by EPD staff to the Goldstein Firm. On January 9, 2017 the supplemental information was received through email correspondence. (Attachment E)

Property History and Environmental Site Assessments

- In early 2016, both the Brixton and Wellington properties consisted of vacant, mostly vegetative, land.
- According to the Phase I Environmental Site Assessment (ESA), the north portion of the Brixton property was developed as a citrus grove from at least the late 1930s through the 1980s. The ESA noted that "Typically, citrus grove operations include the use of pesticides, herbicides and fertilizers which may contain hazardous materials, including arsenic . . . While the FDEP does not require the cleanup of agriculturally applied compounds, the presence of these compounds in excess of the exposure concentrations may present a future liability on the redeveloped property. Although not a recognized environmental condition, it may be prudent to complete soil sampling to determine if these compounds are present in concentrations that exceed the State of Florida cleanup criteria prior to any future redevelopment."
- Based on a review of available aerial photographs, the Phase I ESA indicated that the Wellington property appears to have been undeveloped with trees and low lying vegetation at least back to 1947 and it appears to have been operated as a nursery from 1969 to 2006. The ESA indicated that "Past use of the subject property as a nursery appears as a likely recognized environmental condition (REC). Nurseries typically store, handle, and over use pesticides, herbicides and fertilizers which may contain hazardous materials, including arsenic. The proper storage and handling of approved chemicals do not constitute a REC. However, the over use or a release from the storage and handling of these agricultural compounds has been shown, at times, to leave these agricultural compounds in the soil above the recommended exposure levels established by the Florida Department of Environmental Protection. Based on the environmental assessment reports (provided by the owner) and the states approved resolution (to the dieldrin release), the likelihood of the subject property being adversely impacted appears low." In addition, the ESA noted that the facility operated as a non-retail fuel user that maintained an Underground Storage Tank that was removed by January 1992 and three aboveground tanks that were removed by June 2005. Petroleum releases to the environment were documented in 1992 and 1994, but the ESA indicated that Site Rehabilitation Completion Orders were issued for both releases; therefore, "the likelihood of the subject property being adversely impacted appears low." The landscaping nursery operation appeared to no longer be present after 2006 and by 2007 all structures appear to have been razed.

Redevelopment Plans

The developer of both properties is Jonathan Wolf with Wendover Housing Partners, LLC. Both properties are planned for residential apartment complexes to be used for affordable housing. Both projects have received the minimum local match for the state tax credit program, plus Wellington received a variance to the last Board-approved school impact fee increase.

The Brixton property is completely built and fully leased. It has 80 units with 72 units allocated for residents 55 and older whose income does not exceed 65% of area median income. The Wellington property is 80% complete. It is a 120-unit affordable housing development with 36 one-bedroom, 66 two-bedroom, and 18 three-bedroom units. The facility is anticipating to start accepting lease applications in November 2017.

Normally, applications for BFA designations are received prior to redevelopment of a property. Since the applications were submitted relatively late in the development process, EPD initiated a conference call between representatives of EPD, the County Attorney's Office, and the Goldstein Firm on January 31, 2017. During the call, staff questioned the timing of the submission and requested that the Goldstein Firm provide clarification on the intent for the BFA designation since it did not seem that negotiating a Brownfield Site Rehabilitation Agreement (BSRA) with the Florida Department of Environmental Protection (FDEP) was immediately expected. The Goldstein Firm confirmed that while the Florida Brownfield Redevelopment Act (the "Act") does not specify application timeframes for designation of BFAs, their client met the requirements for the designation and expected certain incentives and benefits that were not dependent on the execution of a BSRA.

On February 16, 2017, the Goldstein Firm provided a written response to staff's request which outlined three specific incentives their client was planning to seek: lender liability protection, sales tax refund on eligible materials for affordable housing redevelopment, and future BSRA accessibility.

Community Meeting, First Public Hearing, and Additional Correspondence

The Goldstein Firm held a community meeting on July 10, 2017 at the First United Methodist Church in Apopka. EPD staff and Commissioner Nelson were present during the meeting.

On July 14, 2017, the Goldstein Firm provided information through email correspondence indicating they had a deadline for the sales tax refund for Brixton of September 26, 2017 and requested that staff ensure that the public hearing for the Board be conducted before that date.

The first public hearing was held at the John Bridges Community Center on August 15, 2017. A teleconference between County staff and the Goldstein Firm was held on August 18 to further discuss the timing of the applications and the issue of the perception of contamination as a hindrance to development. As was noted above, the applications were submitted much later in the redevelopment process than is typical. Initially, this raised concerns as to whether or not the proposed BFA designations met the intent of the Act. The Act defines Brownfield sites as "real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination." Staff initially questioned whether complications of redevelopment and perceptions of contamination could be maintained as applicable conditions once it was determined that no environmental contamination requiring cleanup was necessary and redevelopment was well underway or almost completed. However, the Act does not address timing required for submission of BFA applications. In addition, perceived environmental contamination is not defined in the Act and is an inherently subjective concept. Between August 18 and 24, 2017, the Goldstein Firm submitted supplemental information with respect to each property through email correspondence. As part of that correspondence, included as Attachment F, are affidavits from the developer attesting to how the perception of contamination at both projects complicated redevelopment, reuse, and expansion of the subject properties.

Benefits of Brownfield Designation

The Act is intended to reduce public health and environmental hazards on existing commercial and industrial sites to foster their use and reuse as sources of employment, housing, recreation, and open space areas. The Act establishes incentives to encourage responsible persons to voluntarily develop and implement cleanup plans.

The following is a listing of incentives that become available upon adoption of a resolution designating a BFA:

- Job creation bonus refund (up to \$2,500 per full-time job created with benefits under the State of Florida Brownfields Redevelopment Program) and
- State loan guarantees: up to 50% on Brownfield sites and up to 75%, if the property is redeveloped with affordable housing.

The following additional incentives become available upon entry into a BSRA:

- Sales tax credit on building materials purchased for the construction of an affordable housing project or mixed-use affordable housing project;
- 50% voluntary cleanup tax credit (VCTC); 25% additional VCTC if the property is redeveloped with affordable housing;
- Makes available risk-based cleanup criteria using Chapter 62-780, Florida Administrative Code (F.A.C.) and Chapter 62-777, F.A.C.;
- Brownfield Federal Tax Incentives: allows environmental cleanup costs to be fully deductible in the same year they occur;
- Cleanup liability protection;
- Lender liability protection; and
- Federal grants/loans available for cleanup (if applicable).

Based on supplemental information received from the Goldstein Firm on behalf of the applicants, dated February 16, 2017, specific benefits being sought on both proposed BFAs are the following (note that the summary below is an excerpt from the response received):

- **Lender liability protection**, “existing and potential lenders are provided statutory immunity for environmental liability pursuant to §376.82(4)(b), F.S.”
- **Sales tax refund on eligible materials for affordable housing redevelopment**, “under §212.08, F.S., the Florida Department of Revenue (“FDR”) administers a powerful financial incentive for the construction of affordable housing projects in the form of a 100% sales tax refund on eligible construction materials”
- **BSRA Accessibility** – “having the designation in place allows for swift negotiation and execution of a BSRA, which would then immediately lock into place developer-specific liability protection and the ability to obtain a second, important financial incentive – state corporate income tax credits for eligible costs of contamination assessment and remediation.”

Criteria for consideration of BFA designation under Section 376.80(2)(c), F.S.

The Act indicates that when a BFA is proposed by persons other than a local government, the applicant must establish that they meet each of the following five criteria. The criteria and responses from the applicants' authorized agent are noted below (note that in some cases the information below is an excerpt of what was provided by the Goldstein Firm).

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the site.
 - *"Brixton Landing satisfies this criterion in that it currently owns the Subject Property and has agreed to rehabilitate it . . ."* Redevelopment has been completed for Brixton.
 - *"Wellington Park meets this criterion in that it currently owns the Subject Property by virtue of a Special Warranty Deed . . . Wellington Park has additionally agreed to rehabilitate and redevelop the Subject Property."* Redevelopment has been 80% completed for Wellington.
2. The rehabilitation and redevelopment of the proposed brownfield 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 . . . However, the job creation requirement does not apply the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in section 420.0004
 - *"Brixton Landing satisfies this criterion in that the Project will result in significant economic productivity of the area. The budget for rehabilitation and redevelopment is approximately \$15.5 million, which is being spent in part on local labor, contractors, consultants, construction materials, furnishings, infrastructure improvements, and impact fees. Because all of the units at the Subject Property will be rented to Income Eligible Households under the Low Income Housing Tax Credit Program, rehabilitation and redevelopment of the subject property will 'provide affordable housing as defined in s. 420.0004.' Accordingly, the employment creation threshold of at least 5 new permanent jobs is not applicable to the Project. Notwithstanding the aforementioned exemption, approximately 3 new permanent jobs will be created specifically for the Project to operate the Subject Property."*
 - *"Wellington Park satisfies this criterion in that the Project will result in significant economic productivity of the area. The budget for rehabilitation and redevelopment is approximately \$22 million, which is being spent in part on local labor, contractors, consultants, construction materials, furnishings, infrastructure improvements, and impact fees. Because all of the units at the Subject Property will be rented to Income Eligible Households under the Low Income Housing Tax Credit Program, rehabilitation and redevelopment of the subject property will 'provide affordable housing as defined in s. 420.0004.' Accordingly, the employment creation threshold of at least 5 new permanent jobs is not applicable to the Project. Notwithstanding the aforementioned exemption,*

approximately 5 new permanent jobs will be created specifically for the Project to operate the Subject Property."

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permissible use under the applicable local land development regulations
 - o *"Brixton Landing satisfies this criterion in that the Subject Property is located in Orange County's Low-Medium Density Residential Future Land Use Designation of the Comprehensive Plan, which allows up to 10 dwelling units per acre of land . . . In addition, the Subject Property is located in the R-3 Multiple-Family Dwelling District, which permits residential uses at high population densities . . . This consistency and permissibility is also reflected in the enclosed Orange County Building Permits . . ."*
 - o *"Wellington Park satisfies this criterion in that the Subject Property is located in Orange County's Low-Medium Density Residential Future Land Use Designation of the Comprehensive Plan, which allows up to 10 dwelling units per acre of land . . . In addition, the Subject Property is located in the Planned Development District, which permits planned residential communities . . . The Subject Property's redevelopment as described above is thus an allowable use in such designations. This consistency and permissibility is also reflected in, and effectuated by the enclosed Florida Housing Finance Corporation Local Government Verification of Status of Site Plan Approval for Multifamily Developments, signed by Orange County's Chief Planner . . ."*
4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to paragraph (1)(c), 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 subparagraph must be posted in the affected area.

A notice of the first public hearing was published on August 6, 2017 in the *Orlando Sentinel* and notices were mailed to property owners within a 500-foot buffer of the proposed BFAs. In addition, notices of the meeting were posted on the properties proposed for BFA designation. On August 15, 2017, Orange County held a public hearing near the proposed areas to be designated in accordance with section 376.80(1)(c)4.a., F.S. During the first public hearing, information on the Florida Brownfields Redevelopment Program was presented and copies of the proposed resolutions and area designation maps of the proposed Brixton Landing Green Reuse Area: ROCC and Wellington Park Green Reuse Area: ROCC were provided. In addition, a representative from the Goldstein Firm was present to discuss how the proposed BFAs met the criteria for BFA designation listed in section 376.80(2)(c), F.S. In addition, the applicants' agent held a community meeting near the areas proposed for designation prior to the first public meeting organized by County staff.

5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site.

- *Brixton Landing – “The total capital budget of \$15.5 million for the Project is fully funded. See Wells Fargo Building Loan Agreement . . . See Florida Community Loan Fund Loan Agreement . . . Based on the current financial position of Brixton Landing, its affiliate, a proven history of leveraging assets with other capital sources, an impressive track record of success, and a staff of highly experienced and sophisticated development officials, Brixton Land has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.”*
- *Wellington Park – “The total capital budget of \$22 million for the Project is fully funded. See Wells Fargo Letter of Interest . . . See Neighborhood Lending Partners, Inc. Letter of Interest . . . Based on the current financial position of Wellington Park, its affiliate, a proven history of leveraging assets with other capital sources, an impressive track record of success, and a staff of highly experienced and sophisticated development officials, Wellington Park has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment plan.”*

Staff Recommendations

Staff has reviewed the applications and additional information provided by the applicant. Based on an evaluation of the criteria in Section 376.80(2)(c), F.S., staff recommends approval of both requests for BFA designations.

For proposed Brixton Landing Green Reuse Area: ROCC

ACTION REQUESTED: Approval of a Resolution of the Orange County Board of County Commissioners regarding designating certain land within unincorporated Orange County Parcel ID 15-21-28-0000-00-015, as the Brixton Landing Green Reuse Area: ROCC (Redeveloping Orange County Communities) and as a brownfield area for the purpose of environmental remediation, rehabilitation, and economic development. District 2

For proposed Wellington Park Green Reuse Area: ROCC

ACTION REQUESTED: Approval of a Resolution of the Orange County Board of County Commissioners regarding designating certain land within unincorporated Orange County Parcel ID 11-21-28-0000-00-007, as the Wellington Park Green Reuse Area: ROCC (Redeveloping Orange County Communities) and as a brownfield area for the purpose of environmental remediation, rehabilitation, and economic development. District 2

RESOLUTION
of the
ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS
regarding
**DESIGNATING CERTAIN LAND WITHIN
UNINCORPORATED ORANGE COUNTY CONSISTING OF
PARCEL ID 11-21-28-0000-00-007 AS THE WELLINGTON
PARK GREEN REUSE AREA: ROCC (REDEVELOPING
ORANGE COUNTY COMMUNITIES) AND AS A BROWNFIELD
AREA FOR THE PURPOSE OF ENVIRONMENTAL
REMEDICATION, REHABILITATION AND ECONOMIC
DEVELOPMENT**

Resolution No. 2017-M-35

WHEREAS, the Brownfields Redevelopment Act, (the "Act"), Sections 376.77 - 376.85, Florida Statutes, authorizes and provides for designation by resolution, at the request of the property owner, of certain lands as a "Brownfield Area," and for the corresponding provision of environmental remediation, rehabilitation, and economic development for such areas; and

WHEREAS, Wellington Park, Ltd. ("Wellington"), the property owner of property parcel ID: 11-21-28-0000-00-007; located at 1225 Apley Circle within unincorporated Orange County, has requested that the property be designated as the WELLINGTON PARK GREEN REUSE AREA: ROCC (Redeveloping Orange County Communities), more particularly described in Exhibit "A," attached hereto and incorporated by reference herein, and as a brownfield area; and

WHEREAS, on August 15, 2017 and September 19, 2017, public hearings were held near the area to be designated and at the Orange County Board of County Commissioners (the "Board"), respectively, to provide an opportunity for public input on the size of the area; the objectives for rehabilitation; job opportunities and economic developments anticipated; neighborhood residents' considerations; and other relevant local concerns in accordance with Section 376.80, Florida Statutes; and

WHEREAS, the Board has reviewed the requirements for designation set forth in Section 376.80(2)(c), Florida Statutes, based on the representations of Wellington, and has determined that the proposed area qualifies for designation as a Brownfield Area because the following requirements have been satisfied:

1. The property owner, Wellington, has requested the designation and has agreed to rehabilitate and redevelop the potential brownfield site;
2. The job creation requirement of Section 376.80(2)(c)2., Florida Statutes does not apply to rehabilitation and redevelopment of this brownfield site

because it will provide affordable housing as defined in Section 420.0004, Florida Statutes;

3. The redevelopment of the proposed brownfield site is consistent with the Orange County 2010-2030 Comprehensive Policy Plan and is a permissible use under the County's land development regulations;
4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to Section 376.80(1)(c), Florida Statutes, and Wellington has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation; and
5. Wellington has provided reasonable assurance that it has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site; and

WHEREAS, the Board wishes to notify the Florida Department of Environmental Protection ("FDEP") of its decision to designate a Brownfield Area for remediation, rehabilitation, and economic development for the purposes set forth in the Act; and

WHEREAS, the procedures set forth in Section 376.80(1), Florida Statutes, including the notice and public hearing requirements set forth in Sections 125.66, 125.66(4)(b)1., and 125.66(4)(b)2., Florida Statutes, have been complied with.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. The recitals and findings set forth in the Preamble to this Resolution are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. Upon application by Wellington, the property described in Exhibit "A," attached hereto and incorporated herein by reference, which is located within and coincides with the boundaries of that portion located in the unincorporated area of the County, less any real property for which a property owner within the area depicted in Exhibit "A" requests in writing to have his or her property removed from the designation provided for herein, is hereby designated as the "Wellington Park Green Reuse Area: ROCC (Redeveloping Orange County Communities)" which shall hereafter be known as the "WELLINGTON PARK GREEN REUSE AREA: ROCC" and as a brownfield area for

environmental remediation, rehabilitation, and economic development as set forth in the Act, under the following terms and conditions:

a. Pursuant to Section 376.80(3), Florida Statutes, Wellington shall be the "person responsible for the brownfield site rehabilitation" as that term is defined in Section 376.79(15), Florida Statutes.

b. The designation of the brownfield area by this Resolution does not in any sense render Orange County or its Board responsible for any costs or liabilities associated with site remediation, rehabilitation, economic development, or source removal, as those terms are defined in the Act.

c. Nothing in this Resolution shall be deemed to prohibit, limit, or amend the authority and power of the Board, otherwise legally available, to designate any other property or properties as a brownfield site or brownfield area, or to modify, amend, or withdraw the designation as established herein.

Section 3. In accordance with Section 376.80(1), Florida Statutes, the Board hereby directs the Orange County Environmental Protection Division to notify the FDEP of Orange County's decision to designate this brownfield area for the purposes of remediation, rehabilitation, and economic development.

Section 4. This Resolution shall take effect upon the date of its adoption.

SEP 19 2017
ADOPTED THIS _____ DAY OF September, 2017.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jessica Vaughn*
for Deputy Clerk

EXHIBIT A

Proposed Brownfield

Parcel ID: 11-21-28-0000-00-007

