Planning & Zoning Board
Monday, November 6, 2023 at 5:30 PM

City Commission Chambers
214 Sams Avenue, New Smyrna Beach, Florida 32168

1. CALL TO ORDER

A. Roll Call

2. APPROVAL OF MINUTES

2.A Approval of the Planning and Zoning Board September 11, 2023 and October 2, 2023 Regular Meeting Minutes.

3. PUBLIC PARTICIPATION

4. OLD BUSINESS

5. NEW BUSINESS

5.A A-19-23: Review and recommendation of an overall annexation application that would include a rezoning to City A-3, Transitional Agriculture and a Small Scale Comprehensive Plan amendment changing the Future Land Use to City Rural for property located at 664 Louella Street.

5.B V-6-23: Request to reduce the required distance, for a location to serve alcohol for consumption at 111 North Causeway.

5.C SV-2-23: The applicant is seeking a positive recommendation, from the

Planning and Zoning Board, of a proposed street vacation of Cooper Street, south of East 3rd Avenue.

5.D Approval of the Planning and Zoning 2024 Regular Meeting Schedule

5.E Selection of the 2024 Chairperson and Vice Chairperson

6. COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

7. REPORTS AND COMMUNICATION BY THE STAFF

7.A November 2023 Development Activity Report

8. ADJOURNMENT

Pursuant to Florida Statutes 286.0105, if an individual decides to appeal any decision made by the board, agency or commission of the City of New Smyrna Beach with respect to any matter considered at this meeting, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. Such person must provide a method for recording the proceedings.

In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk's office in person or by mail at 210 Sams Avenue, New Smyrna Beach, Florida 32168, (386) 410-2630, prior to the meeting.

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

APPROVAL OF THE PLANNING AND ZONING BOARD SEPTEMBER 11, 2023 AND OCTOBER 2, 2023 REGULAR MEETING MINUTES.

November 6, 2023

Background:
Florida Statutes require that minutes be prepared and approved for all meetings of the Planning and Zoning Board.

Findings:
Staff recommends the Planning and Zoning Board approve the minutes of the regular Planning and Zoning Board meeting held on September 11, 2023 and October 2, 2023.

Fiscal Analysis:
N/A

Strategic Plan Item:
No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

A-19-23: REVIEW AND RECOMMENDATION OF AN OVERALL ANNEXATION APPLICATION THAT WOULD INCLUDE A REZONING TO CITY A-3, TRANSITIONAL AGRICULTURE AND A SMALL SCALE COMPREHENSIVE PLAN AMENDMENT CHANGING THE FUTURE LAND USE TO CITY RURAL FOR PROPERTY LOCATED AT 664 LOUELLA STREET.

November 6, 2023

Background:

Applicant and Property Owner: Gary S. Weaver, 664 Louella Street, New Smyrna Beach, Florida 32168

Request: Voluntary annexation, *Comprehensive Plan* amendment, and rezoning:

- **From:** Volusia County Future Land Use (FLU) designation of Rural, and Volusia County zoning designation of A-3, Transitional Agriculture with an "A" attached for Airport Height Notification Zone.
- **To:** City FLU designation of Rural and City zoning designation of A-3, Transitional Agriculture with an "A" attached for Airport Height Notification Zone.

Site Information:

- **Size:** 1.0 ± acres
- **Location:** West side of Louella Street, north of Pioneer Trail, addressed as 664 Louella Street.

Tax I.D. Number: 7314-06-02-0250

Findings:

On April 23, 2013, the City Commission adopted an Interlocal Service Boundary Agreement (ISBA). The ISBA, which is permitted under Chapter 171, Part II, Florida Statutes, allows the City to annex any parcels that are within the designated annexation area, even if they are not contiguous to the current municipal boundaries. The agreement, which is between the County of Volusia and the City, was also approved by the County on May 2, 2013. A new agreement was approved on May 2, 2022.

The subject property is within the annexation area designated in the ISBA. The subject property at 664 Louella Street is developed with a single-family house. A location map is attached as **Exhibit A** and an aerial map is attached as **Exhibit B**.

The existing Volusia County Future Land Use (FLU) and zoning designation of the subject property is shown on the following maps as **Exhibits C and D**. The text description of the existing Future Land Use designation for the subject property is attached as **Exhibit E**. The associated current zoning text description for the subject property is attached as **Exhibit F**. Existing land uses are shown on the map attached as **Exhibit G.**

The established City Commission policy is that when properties are annexed into the City, the City will assign future land use and zoning designations that would be as similar as possible to existing County designations. As discussed above, the existing County FLU designation is Rural. The existing County zoning designation is A-3, Transitional Agriculture with an "A" attached for the Airport Height Notification Zone. The proposed City FLU designation is Rural. The proposed City zoning designation is A-3, Transitional Agriculture with an "A" attached for the Airport Height Notification Zone. A text description of the proposed City Rural Future land Use designation is attached as **Exhibit H,** with a map of this proposed change also attached as **Exhibit I**. A text description of the proposed City A-3, Transitional Agriculture zoning and a map of the proposed changes, are similarly attached as **Exhibits J** and **K**

This annexation request is within the City's annexation area and within the City's water and sewer service area **(Exhibit L).** The parcel at 664 Louella Street currently has a 6' PVC water line, but sewer and reclaimed water services are not available. A map of the soil limitations for septic systems is attached as **Exhibit M**.

The *Land Development Regulations* requires any proposed development to conform to the Concurrency Management System. That system includes traffic, parks and recreation, potable water, wastewater treatment, solid waste collection, storm-water management, and public school facilities. The subject property at 664 Louella Street is developed with a single-family house with no increased density proposed for this property. Therefore, staff did not prepare a concurrency analysis table for this case.

There are numerous *Comprehensive Plan* maps that must be amended to incorporate the subject property into the *Comprehensive Plan* (see **Exhibits N through Z)**. A map showing the subject properties incorporated into Commission Zone 3 is attached as **Exhibit AA**. The Interlocal Service Boundary Agreement map is attached as **Exhibit BB**. The legal description and warranty deed is attached as **Exhibits CC** & **DD**.

All required advertisements have been done per the City Land Development Regulations, Interlocal Service Boundary Agreement, and Florida Statues.

Recommendations

Staff recommends that the Planning and Zoning Board give a positive recommendation to the City Commission to **approve** the requested annexation, Small Scale *Comprehensive Plan* amendment amending the Future Land Use to City Rural and rezoning to City A-3, Transitional Agriculture with an "A" attached for Airport Height Notification Zone.

Fiscal Analysis:
N/A

Strategic Plan Item:
Yes

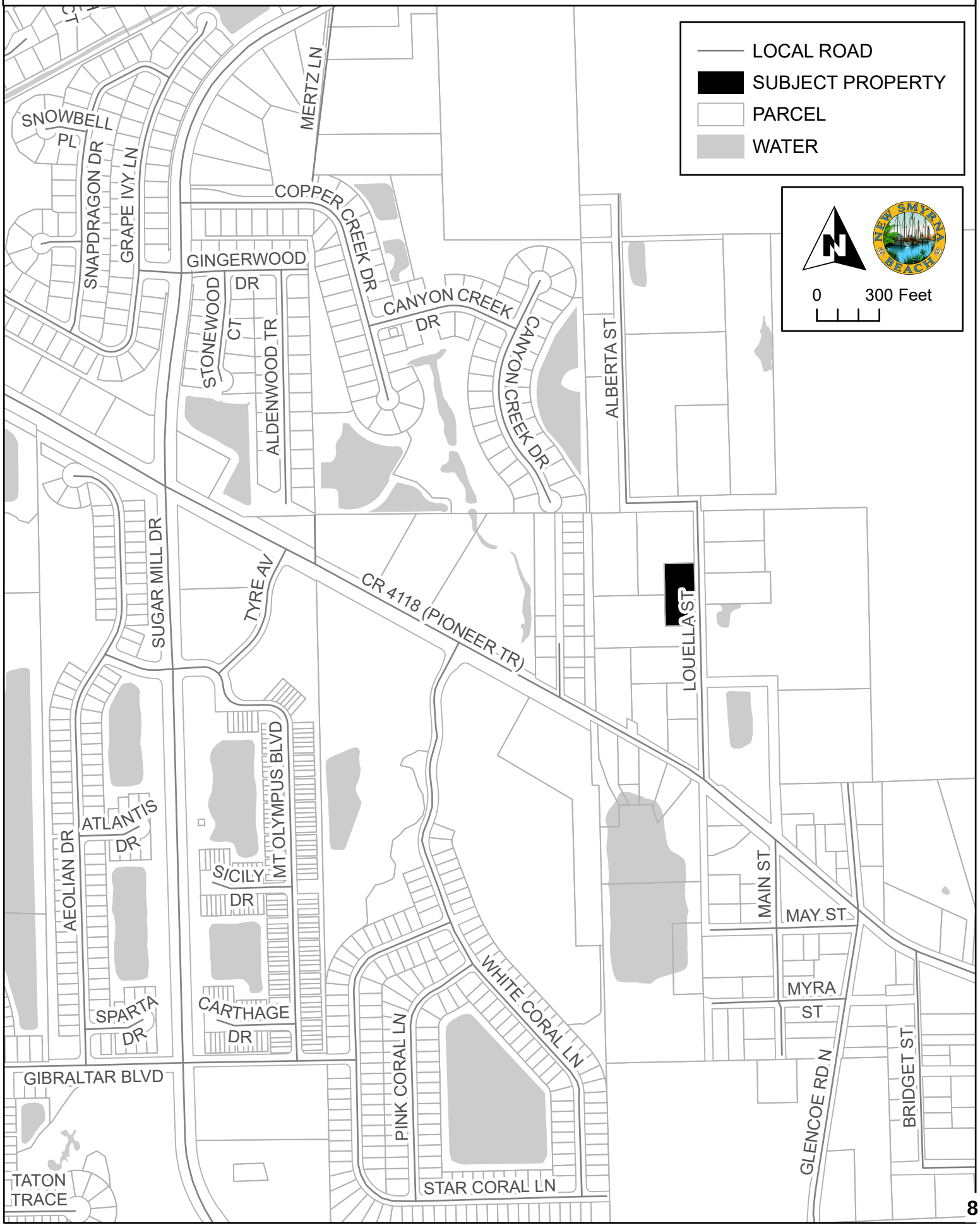
Staff Report Created By: Robert Mathen - Planner II

Attachments:

A-19-23 Exhibit A Location Map.pdf
A-19-23 Exhibit B Aerial Map.pdf
A-19-23 Exhibit C Existing FLU Map.pdf
A-19-23 Exhibit D Existing Zoning.pdf
A-19-23 Exhibit E County Rural Text.pdf
A-19-23 Exhibit F County A-3 Zoning Text.pdf
A-19-23 Exhibit G Existing Land Use Map.pdf
A-19-23 Exhibit H City Rural FLU Text.pdf
A-19-23 Exhibit I Proposed FLU Map.pdf
A-19-23 Exhibit J City A-3 Zoning Text.pdf

A-19-23 Exhibit K Proposed Zoning Map.pdf
A-19-23 Exhibit L Water and Sewer Service Area.pdf
A-19-23 Exhibit M Soil Limitation for Septic Systems.pdf
A-19-23 Exhibit N Airport Runway Protection Zones.pdf
A-19-23 Exhibit O Bicycle and Pedestrian Facilities.pdf
A-19-23 Exhibit P Boat Slip Siting.pdf
A-19-23 Exhibit Q City Parks.pdf
A-19-23 Exhibit R Coastal High Hazard Areas.pdf
A-19-23 Exhibit S Evacuation Routes.pdf
A-19-23 Exhibit T Existing Traffic Lanes - 2009.pdf
A-19-23 Exhibit U Number of Traffic Lanes - 2025.pdf
A-19-23 Exhibit V Existing Level of Service - 2009.pdf
A-19-23 Exhibit W Level of Service - 2025.pdf
A-19-23 Exhibit X Flood Prone Areas.pdf
A-19-23 Exhibit Y Neighborhood.pdf
A-19-23 Exhibit Z Public Transit Routes.pdf
A-19-23 Exhibit AA Commission Zones Map.pdf
A-19-23 Exhibit BB Interlocal Service Boundary Agreement Map.pdf
A-19-23 Exhibit CC Legal Description.pdf
A-19-23 Exhibit DD Warranty Deed.pdf

A-19-23: 664 LOUELLA ST
PARCEL: 7314-06-02-0250 LOCATION MAP

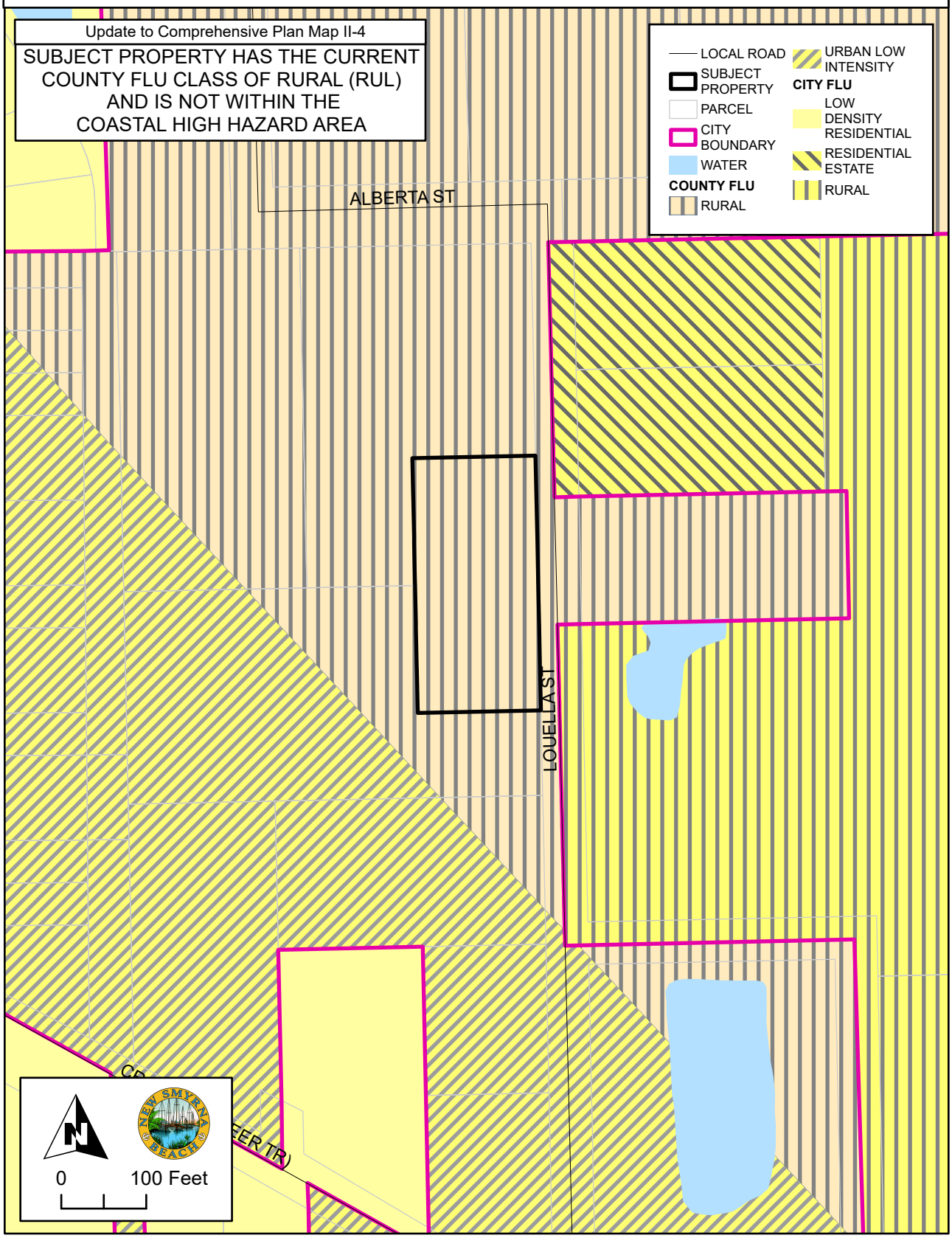


A-19-23: 664 LOUELLA ST
PARCEL: 7314-06-02-0250 AERIAL MAP



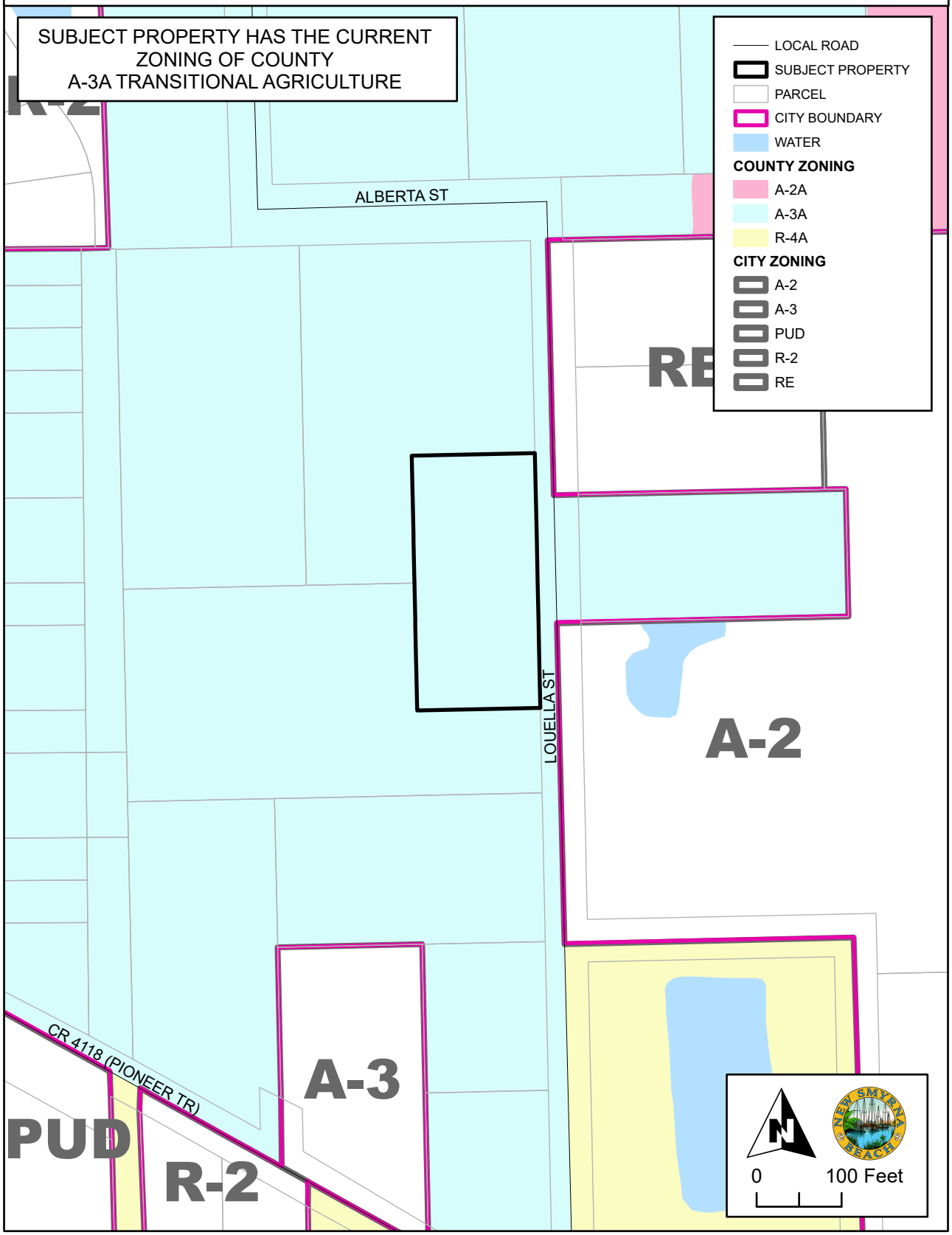
EXISTING FUTURE LAND USE DESIGNATIONS

A-19-23



EXISTING ZONING

A-19-23



Rural (R)

This designation consists of areas which are a mixture of agriculture and low density residential development. Rural areas provide two functions, the first being a transitional use between the agricultural and urban uses and the second would be a rural community which serves as the economic focal point of a small region. Rural areas should be developed in a manner consistent with the retention of agriculture and the protection of environmentally sensitive areas. Strict limitation of development in rural areas contributes to the efficient growth and operation of public services and facilities, thus ensuring the most effective use of public resources. The natural features and constraints will be the primary determinants in deciding whether or not an area is suitable for rural type development.

(1) Lands designated as rural shall be developed at a density of one (1) dwelling unit per five (5) acres. This density allowance may be increased under specific conditions as follows:

(a) The subject parcel is within six-hundred-and-sixty feet (660') of an existing subdivision with a density less than one (1) dwelling unit per five (5) acres. In this case the rural land may be developed at a similar density not to exceed one (1) dwelling unit per one (1) acre and with lot sizes similar and compatible with said qualifying subdivision.
(b) The subject parcel is adjacent to an urban land use. In this case the rural land may develop at a similar density not to exceed one (1) dwelling unit per one (1) acre, or intensity not to exceed a maximum Floor Area Ratio of twenty-five percent (0.25 FAR).
(c) In addition to the above conditions, the appropriateness of allowing densities less than one (1) dwelling unit per five (5) acres will also be subject to the following:

i. Compatibility of the proposed development in the context of existing uses, including the proximity of agricultural uses;
ii. Public facility capacity in the area, including the availability of paved public roads;
iii. Suitability for wells and septic tank usage (i.e. existence of hydric soils);
iv. The natural features of the subject parcel such as soils, vegetation, wildlife habitat and flood plain; and,
v. If applicable, consistency with Local Plans associated with this Element.

(2) There are two subcategories of the rural designation that address past development decisions. These subcategories are Rural Community and Rural Recreation. They are identified on the Special Rural Areas Map Series, presented in Appendix 1. These areas of intense or potentially intense development provide the mixed use concept to the rural areas. They help limit urban sprawl by providing services not necessarily found in remote rural areas thus reducing the number of trips out of these rural areas. Also allowing some limited urban type of development may help promote economic growth in the

rural areas as well. In designated Rural Communities and Rural Recreation areas where densities are greater than one (1) unit per acre, existing platted lots, undeveloped subdivisions, or other pre-existing developments shall be permitted subject to zoning requirements. However, any new development or subdivision of land shall have to comply with current County regulations.

(a) Rural Community - A rural community is characterized by a concentration of a permanent population, sometimes reaching over one-thousand (1,000) persons. These communities serve as the focal point for a specific neighborhood and generally contain existing lots less than one (1) acre in size. There may be commercial uses at a level to serve the immediate population. Commercial, retail and personal services may be allowed within the lower end of the range of what is can commonly be referred to as a neighborhood business (30,000 to 50,000 sq. ft. of gross leasable area) and shall not exceed a thirty-five percent Floor Area Ratio (0.35 FAR). The community commonly extends between one-half (½) to one (1) mile from the focal point which is usually the intersection of two rural roads. A rural community may retain the zoning classifications that exist at the time of adoption of the Comprehensive Plan. A change in zoning must be consistent with the overlying land use designation, however, if existing zoning is more intense than the land use designation, a change to a similar intensity zoning classification may be permitted (e.g., small lot single family residential to small lot mobile home). Existing agricultural operations shall be allowed even if currently zoned for nonagricultural uses.

The following areas are considered Rural Communities:

i Seville
ii Barberville
iii Volusia
iv Cassadaga
v DeLeon Springs
vi Emporia

(b) Rural Recreation - Limited areas of intense use located in remote rural areas along the St. Johns River. These areas are used for launching and/or storing boats with areas available for camping (RV sites are included). These areas may also contain single and multi-family dwelling units, hotels, bait shops, restaurants, and gas stations. Many of them are commonly referred to as fish camps. This designation is intended to be treated in a similar manner as the Rural Community in that the existing zoning (at the time of the effective date of the Comprehensive Plan) may remain and be developed consistent with current land development regulations. New requests for zoning changes must be consistent with the Comprehensive Plan, as stated under Rural Community.

The following areas are considered Rural Recreation areas:

i Pine Island
ii Shell Harbor Estates
iii Volusia Bar
iv South Moon
v Paramore
vi Highland Park
vii Daisy Lake
viii Crows Bluff
ix St. Johns River Acres
x Lemon Bluff
xi Baxter Point
xii Lakeview
xiii St. Johns Gardens

A-3 TRANSITIONAL AGRICULTURE CLASSIFICATION

Purpose and intent: The purpose and intent of the A-3 Transitional Agriculture Classification is to preserve and protect small farms for personal and limited agricultural production or to provide a transitional agricultural zone between more intensive agricultural use areas and residential areas. It is intended that this classification be applied to properties which are within a designated rural community, to preserve existing agricultural uses in urban areas as depicted by the comprehensive plan, or to properties so as to coincide with the existing character of an area in a manner consistent with the comprehensive plan.

In order to ensure the long-term vitality of agricultural uses and natural resources, all agricultural uses are encouraged to utilize the natural resource conservation service (formerly the soil conservation service) best management techniques and other agricultural best management practices.

Permitted principal uses and structures: In the A-3 Transitional Agriculture Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

Except for those permitted special exceptions listed hereunder, all agricultural pursuits, including the processing, packaging, storage and sale of agriculture products which are raised on the premises.

Apiaries.

Aquaculture operations in which there are no associated excavations.

Aviaries.

Communication towers not exceeding 70 feet in height above ground level.

Essential utility services.

Exempt excavations (refer to subsection 72-293(15)) and/or those which comply with division 8 of the Land Development Code of Volusia County [article III] and/or final site plan review procedures of this article.

Exempt landfills (refer to subsection 72-293(16)).

Fire stations.

Hobby breeder.

Home occupations, class A (refer to section 72-283).

Houses of worship.

Parks and recreation areas accessory to residential developments.

Public schools.

Publicly owned parks and recreational areas.

Publicly owned or regulated water supply wells.

Silvicultural operations which follow the most up to date state-prescribed best management practices.

Single-family standard or manufactured modular dwelling.

Tailwater recovery systems.

Worm raising.

Permitted special exceptions: Additional regulations/requirements governing permitted special exceptions are located in sections 72-293 and 72-415 of this article.

Animal shelters.

Aquaculture operations in which there are nonexempt excavations (refer to subsection 72-293(15)).

Bed and breakfast (refer to subsection 72-293(19)).

Cemeteries (refer to subsection 72-293(4)).

Communication towers exceeding 70 feet in height above ground level.

Dairies and dairy products (minimum parcel size requirement of five acres).

Day care centers (refer to subsection 72-293(6)).

Dogs and cats boarded as personal pets exceeding the number permitted in subsection 72-306(a).

Equestrian/livestock event facility.

Excavations only for stormwater retention ponds for which a permit is required by this article.

Garage apartments.

Group home (refer to subsection 72-293(12)).

Hog farms (minimum parcel size requirement of 2.5 acres).

Home occupations, class B (refer to section 72-283).

Kennels.

Livestock feed lots (minimum parcel size requirement of five acres).

Off-street parking areas (refer to subsection 72-293(14)).

Poultry farms (minimum parcel size requirement of 2.5 acres).

Processing, packaging, storage, retail or wholesale sales of agricultural products not raised on the premises.

Public uses not listed as a permitted principal use.

Public utility uses and structures (refer to subsection 72-293(1)).

Recreational areas (refer to subsection 72-293(3)).

Riding stables.

Schools, parochial and private (refer to subsection 72-293(4)).

Single-family mobile home dwelling with a minimum floor area of 480 square feet as a temporary residence while building a standard or manufactured dwelling (maximum duration of 18 months).

Temporary campsites for three days before, during and three days after any regularly scheduled racing event at the Daytona Beach International Speedway for Speedweeks, Biketoberfest, the Pepsi 400, and Bike Week, on condition that security, portable toilets, garbage disposal and potable water facilities sufficient to accommodate all occupants and other relevant conditions are provided. Related special events and sales are allowed, if approved as part of the special exception.

Wholesale or retail fertilizer sales.

Dimensional requirements:

Minimum lot size:

Area: One acre.

Width: 150 feet.

Minimum yard size:

Front yard: 40 feet.

Rear yard: 40 feet.

Side yard: 25 feet.

Waterfront yard: 40 feet.

Maximum building height: 55 feet.

Maximum lot coverage: The total lot area covered with principal and accessory buildings shall not exceed 35 percent.

Minimum floor area: 1,000 square feet.

Off-street parking and loading requirement: Off-street parking and loading areas meeting the requirements of sections 72-286 and 72-287 shall be constructed.

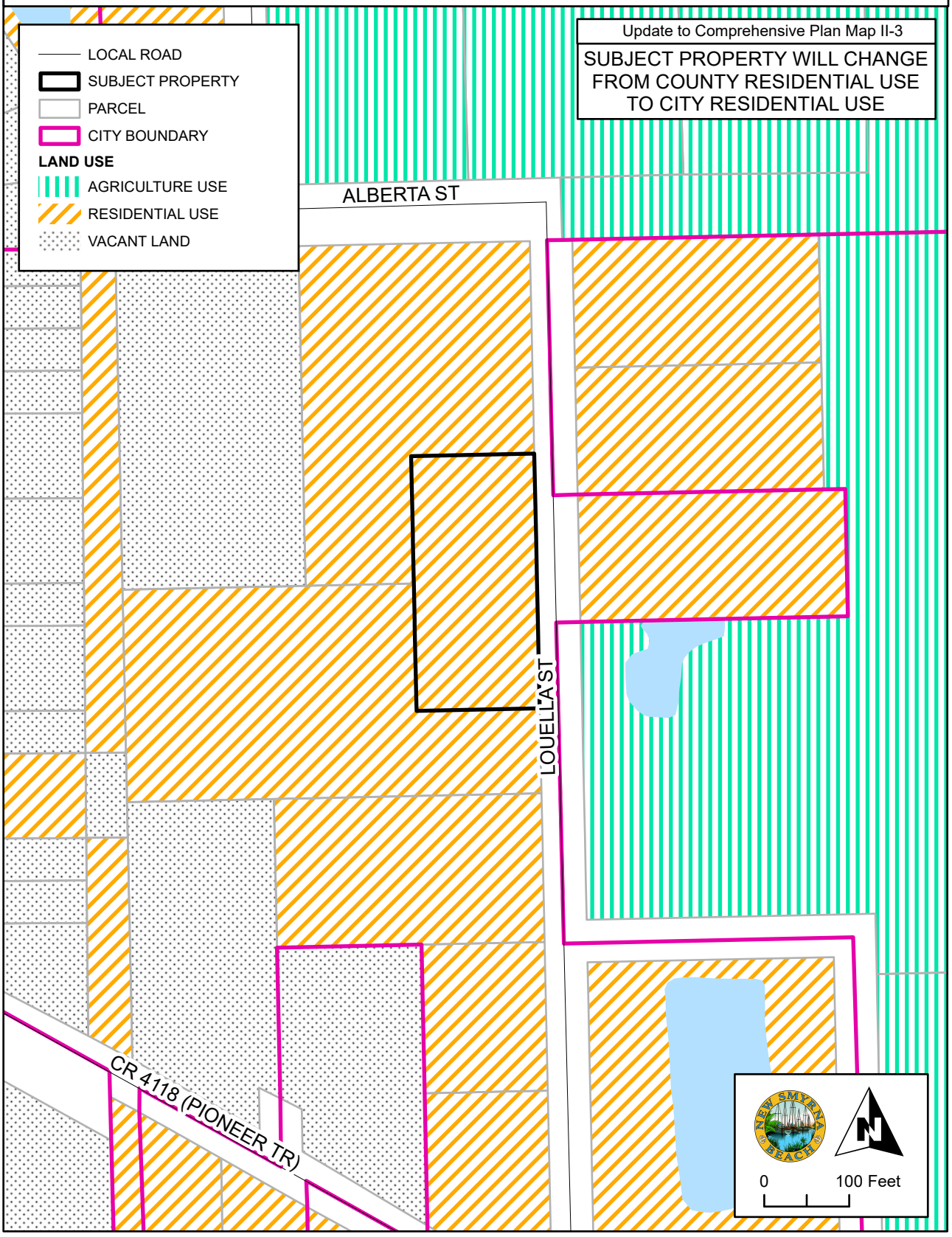
Skirting requirement for mobile home dwelling: The area between the ground and floor of the mobile home dwelling shall be enclosed with skirting.

(Ord. No. 81-39, §§ VII, VIII, 11-19-81; Ord. No. 82-20, §§ V, XIII, 12-9-82; Ord. No. 84-1, §§ I, III, VI, 3-8-84; Ord. No. 84-25, § IV, 10-10-84; Ord. No. 87-14, § II, 6-18-87; Ord. No. 89-20, §§ VI, VII, IX, 6-20-89; Ord. No. 90-34, § 11, 9-27-90; Ord. No. 92-6, § XIII, 6-4-92; Ord. No. 94-4, § XV, 5-5-94; Ord. No. 97-19, §

II, 8-7-97; Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04; Ord. No. 2009-17, § III, 5-21-09)

EXISTING LAND USE DESIGNATIONS

A-19-23



RURAL

(Up to one [1] dwelling unit per five [5] acres or up to one [1] dwelling unit per acre) This category includes areas that may consist of agriculture land, undeveloped rural land, and large parcels of developed residential land. Areas designated with a Rural FLU category should be developed in a manner consistent with the retention of agriculture and rural lands, low-density residential and the protection of environmentally sensitive areas. Strict limitation of development in rural areas contributes to the efficient growth and operation of public services and facilities, thus ensuring the most effective use of Future Land Use Element public resources. The natural features and constraints will be the primary determinants in deciding whether or not an area is suitable for rural type development.

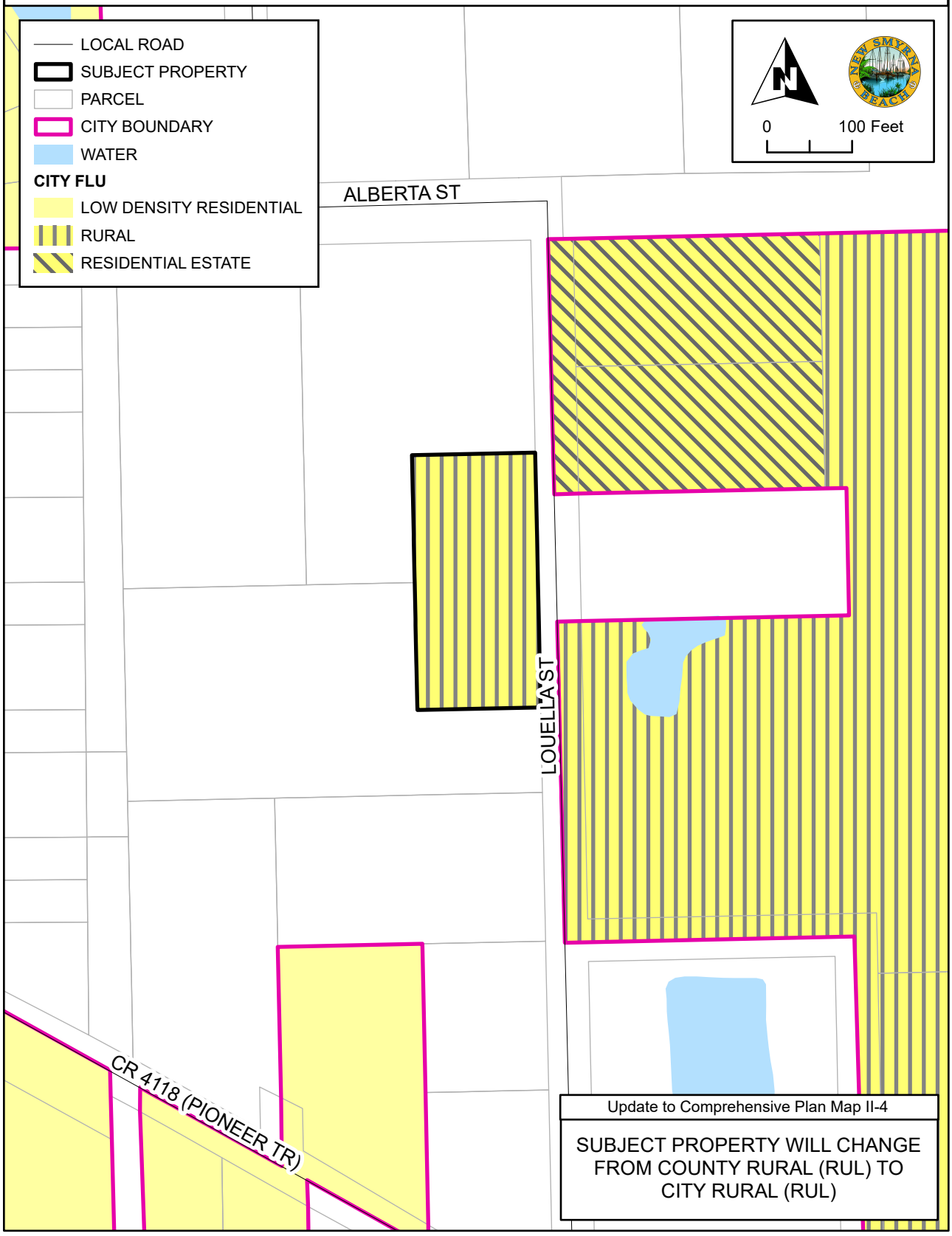
The Rural FLU designation may allow smaller lot sizes in clusters to protect environmentally sensitive land and upland buffers but shall not allow increase in density. Smaller cluster lots shall be allowed provided the clusters have large perimeter buffers to give the appearance of rural land from adjacent parcels and there is legal assurance that the property not included in the fee simple cluster lots are owned in common by the fee simple lot owners and will not be subsequently developed.

The density shall be determined as follows: Vacant parcels of land in the vicinity of existing exempt or approved platted subdivisions on or before April 3, 1990, with lot sizes from 1 unit per acre to 1 unit per 5 acres or vacant parcels of land immediately adjacent to an urban FLU category may be developed with similar density or lot sizes but not less than one (1) unit per acre. Only that portion of a parcel(s) that is within 660 feet from the above described existing exempt or approved subdivision or urban FLU category boundary, as of the adoption date of the Rural FLU category, is considered “in the vicinity.” Note: If a parcel that is “in the vicinity” is covered by more than fifty percent (50%) of the 660 feet extension, then the remaining portion of that parcel which is 10 acres or less is eligible for increased density.

Although the adjacency to the conditions described above allows for the potential of subdivisions with lots less than 5 acres in size, the actual lot size will be dependent upon the following: Compatibility of the proposed development will be viewed within the context of existing uses, public facility capacity in the area, suitability for wells and septic tank usage, and the natural features of the parcel in question, such as soils, vegetation, and floodplain. Vacant parcels or tracts of land that do not meet the preceding criteria or are in areas which have not been previously platted with lots less than 5 acres in size shall only be developed with lot sizes that are 5 acres or greater or in cluster developments at a density of no greater than one (1) unit per five (5) acres.

PROPOSED FUTURE LAND USE DESIGNATIONS

A-19-23



A-3 TRANSITIONAL AGRICULTURE CLASSIFICATION

Purpose and intent: The purpose and intent of the A-3 Transitional Agriculture Classification is to preserve and protect small farms for personal and limited agricultural production or to provide a transitional agricultural zone between more intensive agricultural use areas and residential areas. It is intended that this classification be applied to properties which are within a designated rural community, to preserve existing agricultural uses in urban areas as depicted by the comprehensive plan, or to properties so as to coincide with the existing character of an area in a manner consistent with the comprehensive plan.

In order to ensure the long-term vitality of agricultural uses and natural resources, all agricultural uses are encouraged to utilize the natural resource conservation service (formerly the soil conservation service) best management techniques and other agricultural best management practices.

Permitted principal uses and structures: In the A-3 Transitional Agriculture Classification, no premises shall be used except for the following uses and their customary accessory uses or structures:

Except for those permitted special exceptions listed hereunder, all agricultural pursuits, including the processing, packaging, storage and sale of agriculture products which are raised on the premises.

Apiaries.
Aquaculture operations in which there are no associated excavations.
Aviaries.
Communication towers not exceeding 70 feet in height above ground level.
Essential utility services.
Exempt excavations.
Exempt landfills.
Fire stations.
Hobby breeder.

Parks and recreation areas accessory to residential developments.
Public schools.
Publicly owned parks and recreational areas.
Publicly owned or regulated water supply wells.
Silvicultural operations which follow the most up to date state-prescribed best management practices.
Single-family standard or manufactured modular dwelling.
Tailwater recovery systems.
Worm raising.

Permitted special exceptions:

Animal shelters.
Aquaculture operations in which there are nonexempt excavations.
Cemeteries.
Communication towers exceeding 70 feet in height above ground level.
Dairies and dairy products (minimum parcel size requirement of five acres).
Day care centers.
Equestrian/livestock event facility.
Excavations only for stormwater retention ponds for which a permit is required by this article.
Garage apartments.
Group home.
Hog farms (minimum parcel size requirement of 2.5 acres).
Houses of worship.
Kennels.
Livestock feed lots (minimum parcel size requirement of five acres).
Off-street parking areas.
Poultry farms (minimum parcel size requirement of 2.5 acres).
Processing, packaging, storage, retail or wholesale sales of agricultural products not raised on the premises.
Public uses not listed as a permitted principal use.
Public utility uses and structures.
Recreational areas.
Riding stables.
Schools, parochial and private.
Single-family mobile home dwelling with a minimum floor area of 480 square feet as a temporary residence while building a standard or manufactured dwelling (maximum duration of 18 months).
Temporary campsites for three days before, during and three days after any regularly scheduled racing event at the Daytona Beach International Speedway for Speedweeks, Biketoberfest, the Pepsi 400, and Bike Week, on condition that security, portable toilets, garbage disposal and potable water facilities sufficient to accommodate all occupants and other relevant conditions are provided. Related special events and sales are allowed, if approved as part of the special exception.
Wholesale or retail fertilizer sales.

Dimensional requirements:
Minimum lot size:
Area: One acre.
Width: 150 feet.

Minimum yard size:
Front yard: 40 feet.
Rear yard: 40 feet.
Side yard: 25 feet.
Waterfront yard: 40 feet.

Maximum building height: 55 feet.

Maximum lot coverage: The total lot area covered with principal and accessory buildings shall not exceed 35 percent.

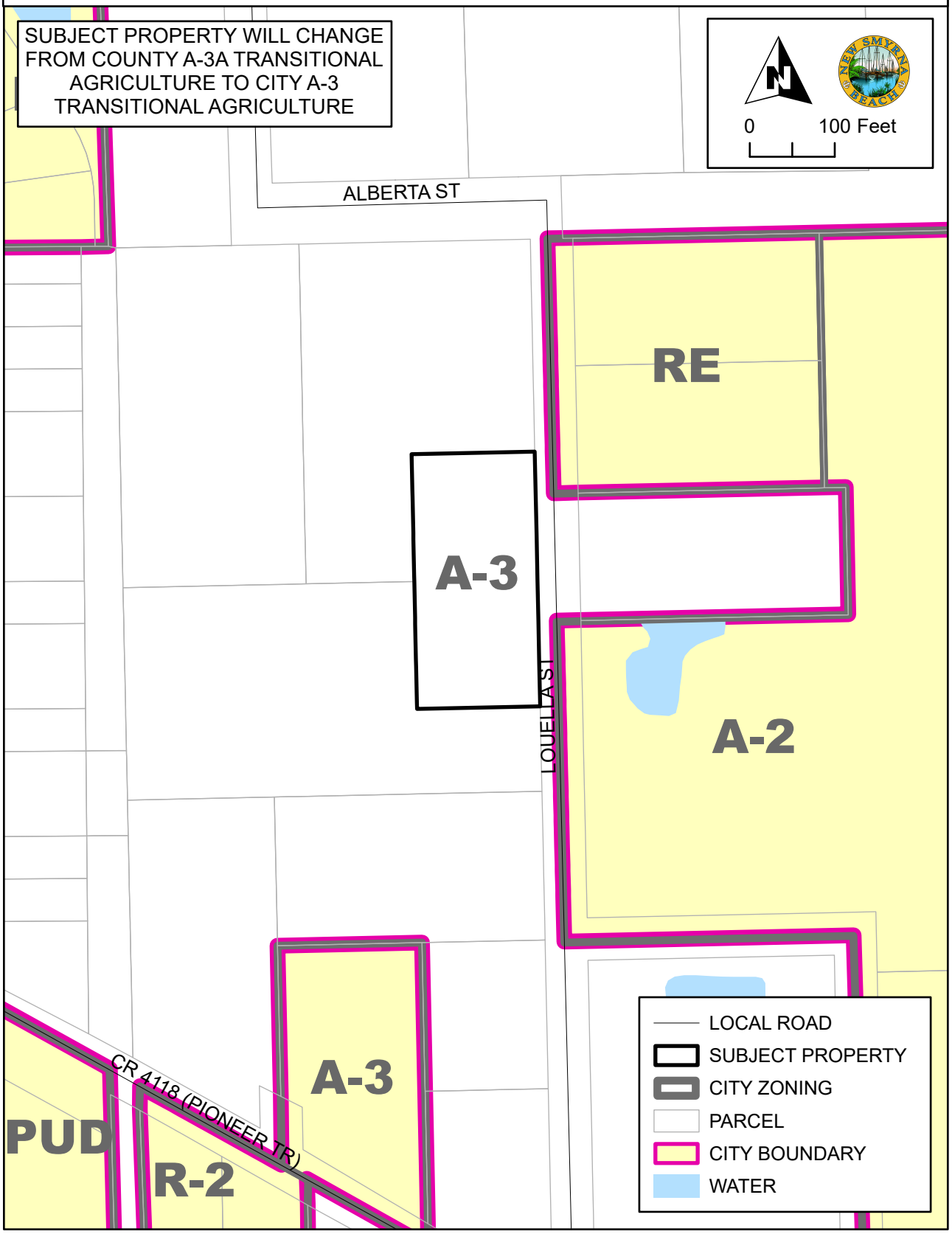
Minimum floor area: 1,000 square feet.

Off-street parking and loading requirement: Off-street parking and loading areas meeting the requirements of this LDR shall be constructed.

Skirting requirement for mobile home dwelling: The area between the ground and floor of the mobile home dwelling shall be enclosed with skirting.

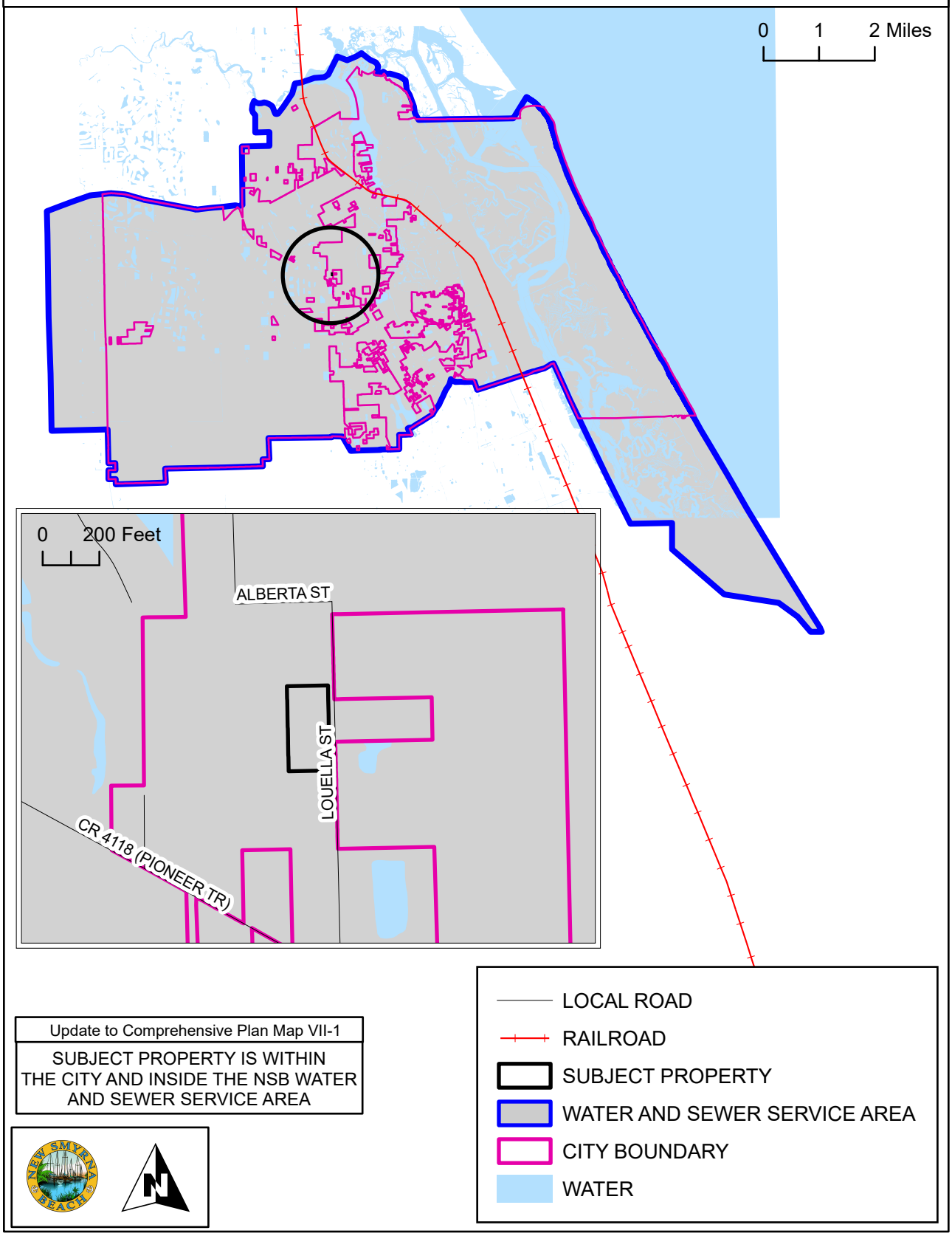
PROPOSED ZONING

A-19-23



WATER AND SEWER SERVICE AREA

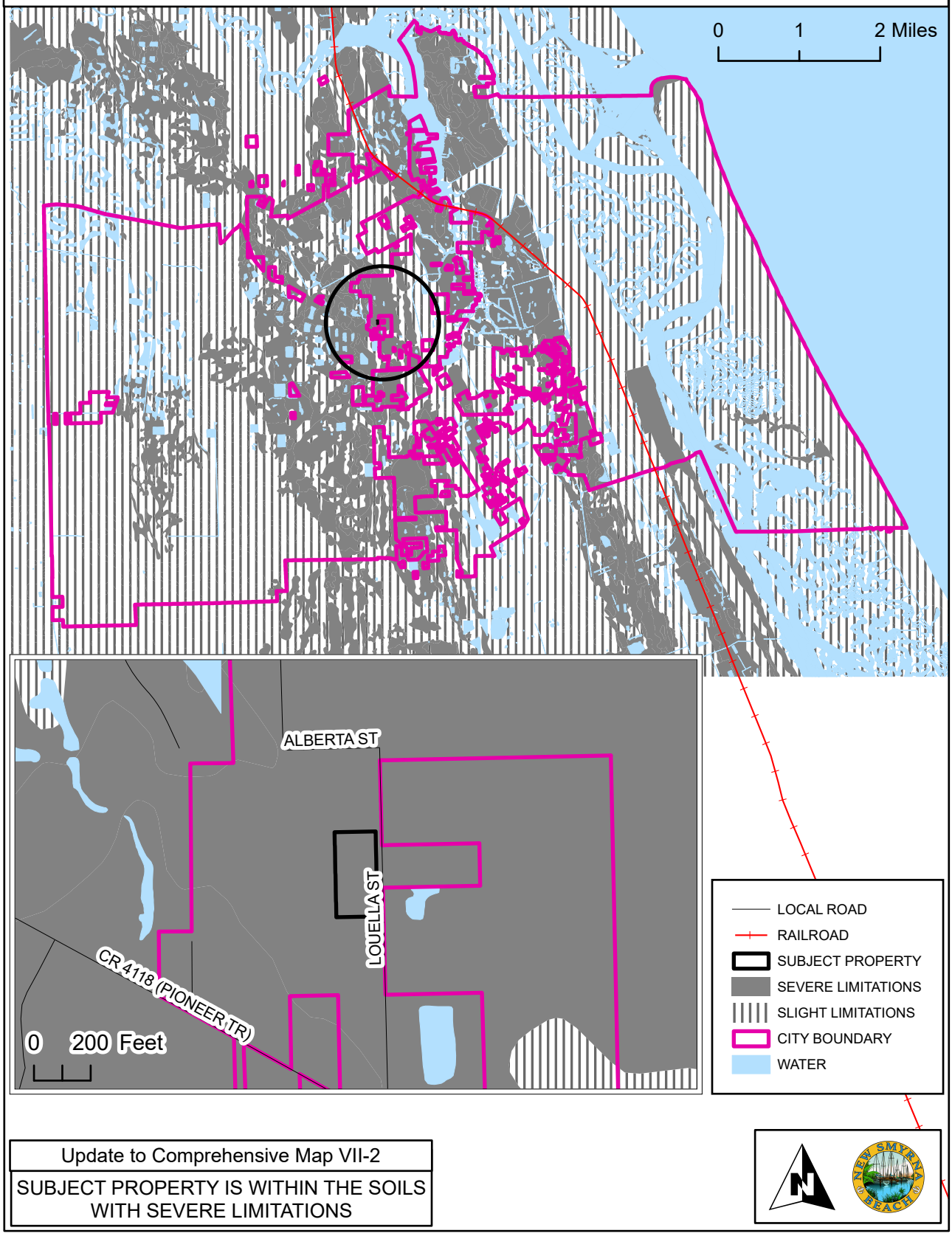
A-19-23



Update to Comprehensive Plan Map VII-1
SUBJECT PROPERTY IS WITHIN THE CITY AND INSIDE THE NSB WATER AND SEWER SERVICE AREA

SOIL LIMITATION FOR SEPTIC SYSTEMS

A-19-23

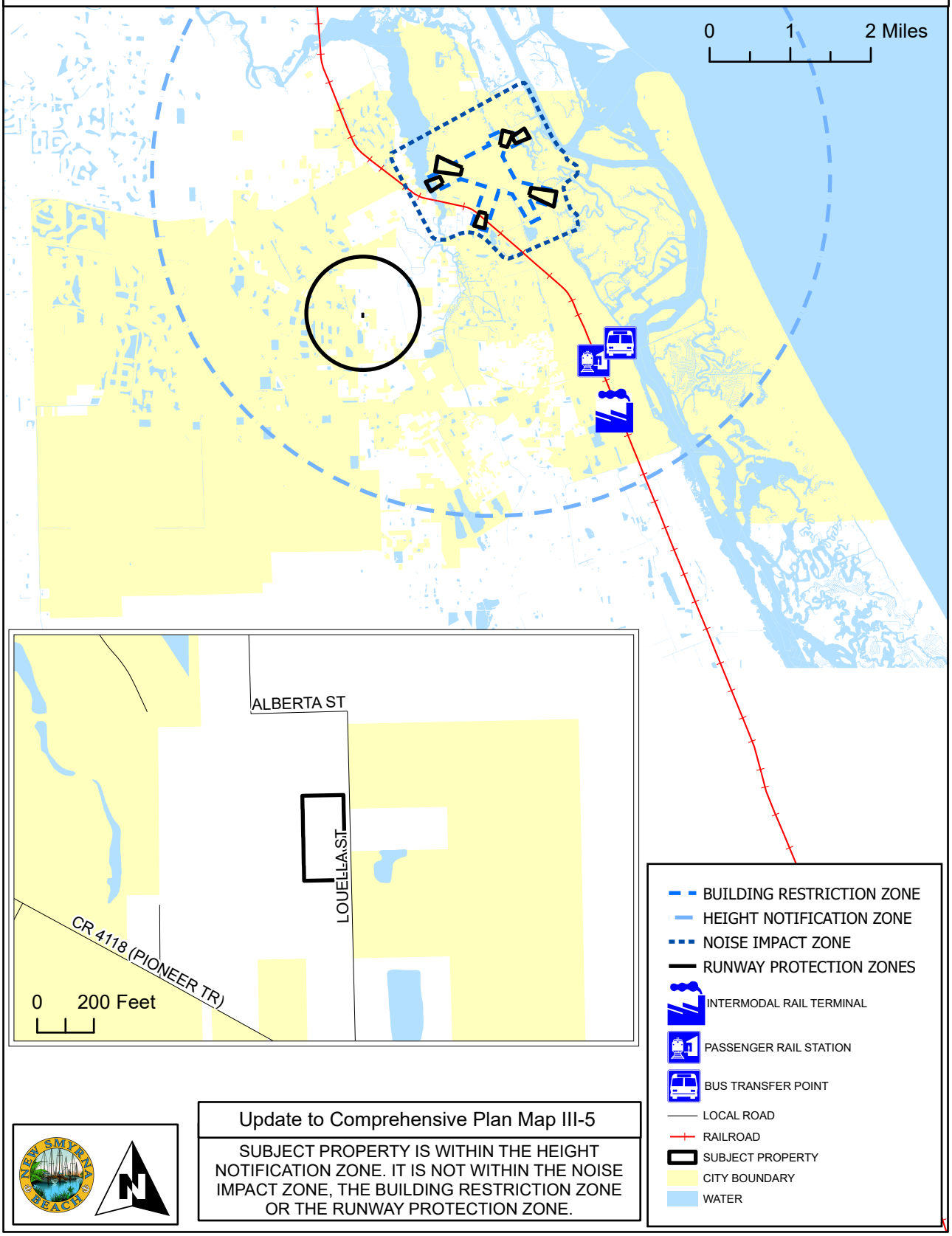


Update to Comprehensive Map VII-2

SUBJECT PROPERTY IS WITHIN THE SOILS WITH SEVERE LIMITATIONS

AIRPORT RUNWAY PROTECTION ZONES

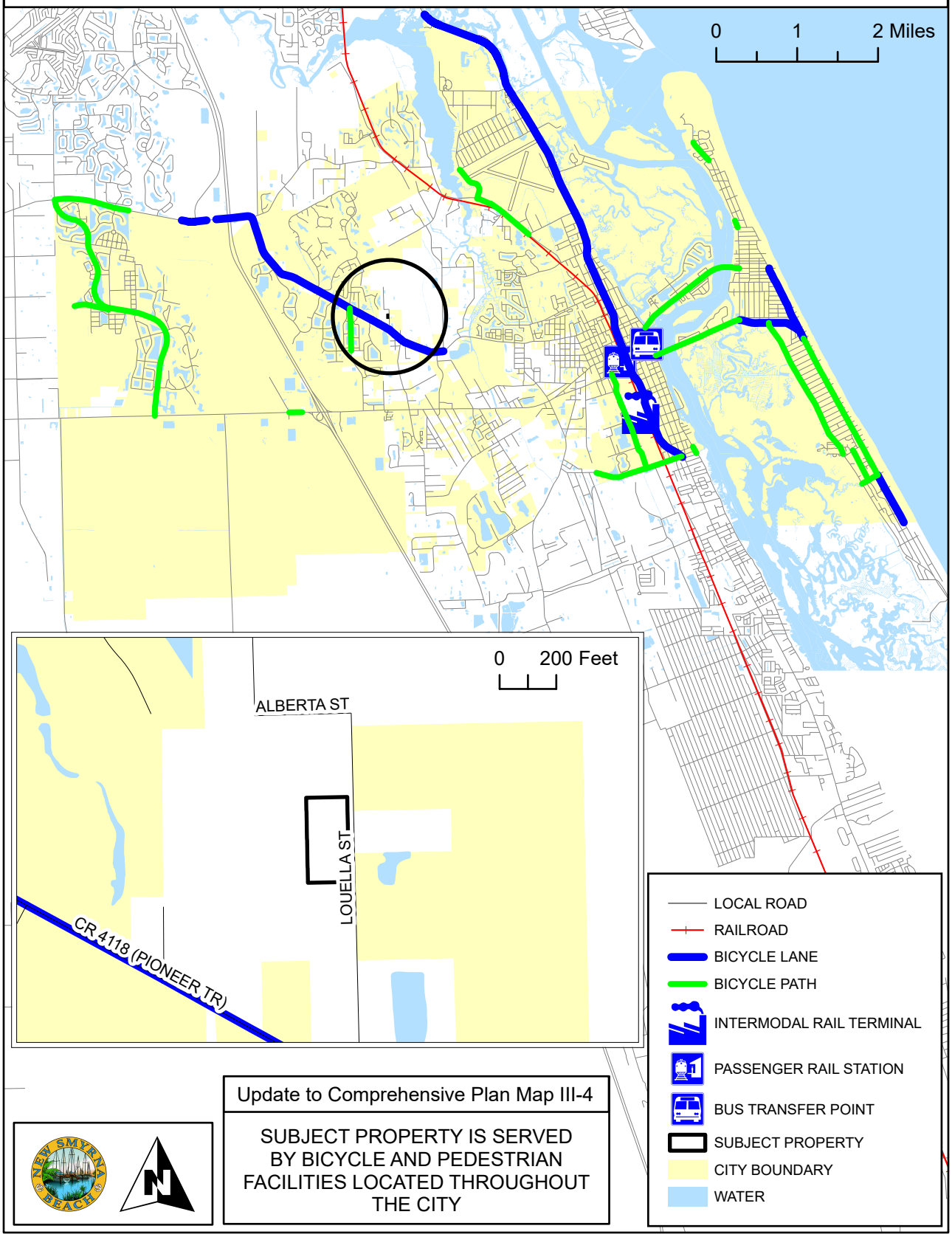
A-19-23



Update to Comprehensive Plan Map III-5
SUBJECT PROPERTY IS WITHIN THE HEIGHT NOTIFICATION ZONE. IT IS NOT WITHIN THE NOISE IMPACT ZONE, THE BUILDING RESTRICTION ZONE OR THE RUNWAY PROTECTION ZONE.

BICYCLE AND PEDESTRIAN FACILITIES

A-19-23

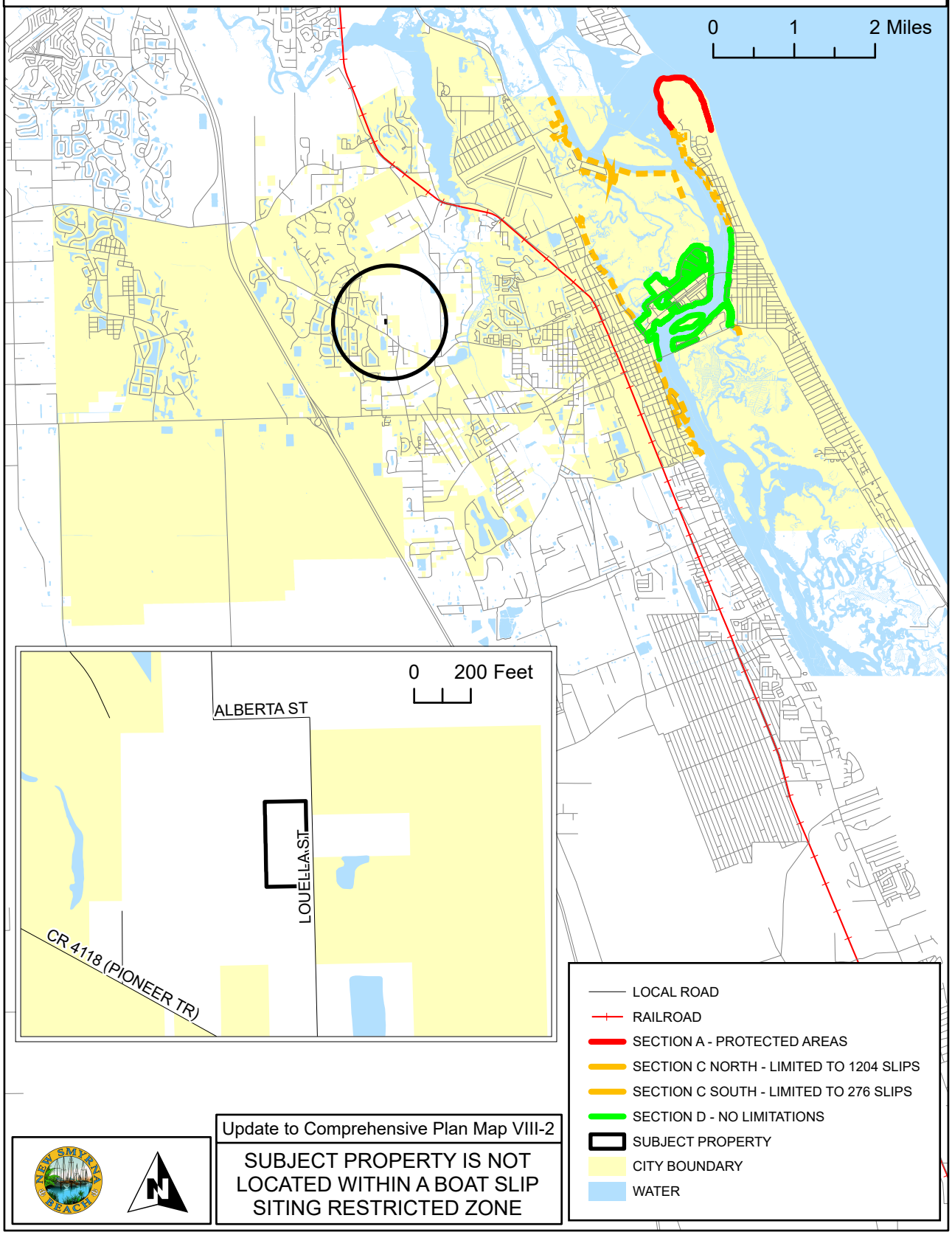


Update to Comprehensive Plan Map III-4

SUBJECT PROPERTY IS SERVED BY BICYCLE AND PEDESTRIAN FACILITIES LOCATED THROUGHOUT THE CITY

BOAT SLIP SITING

A-19-23

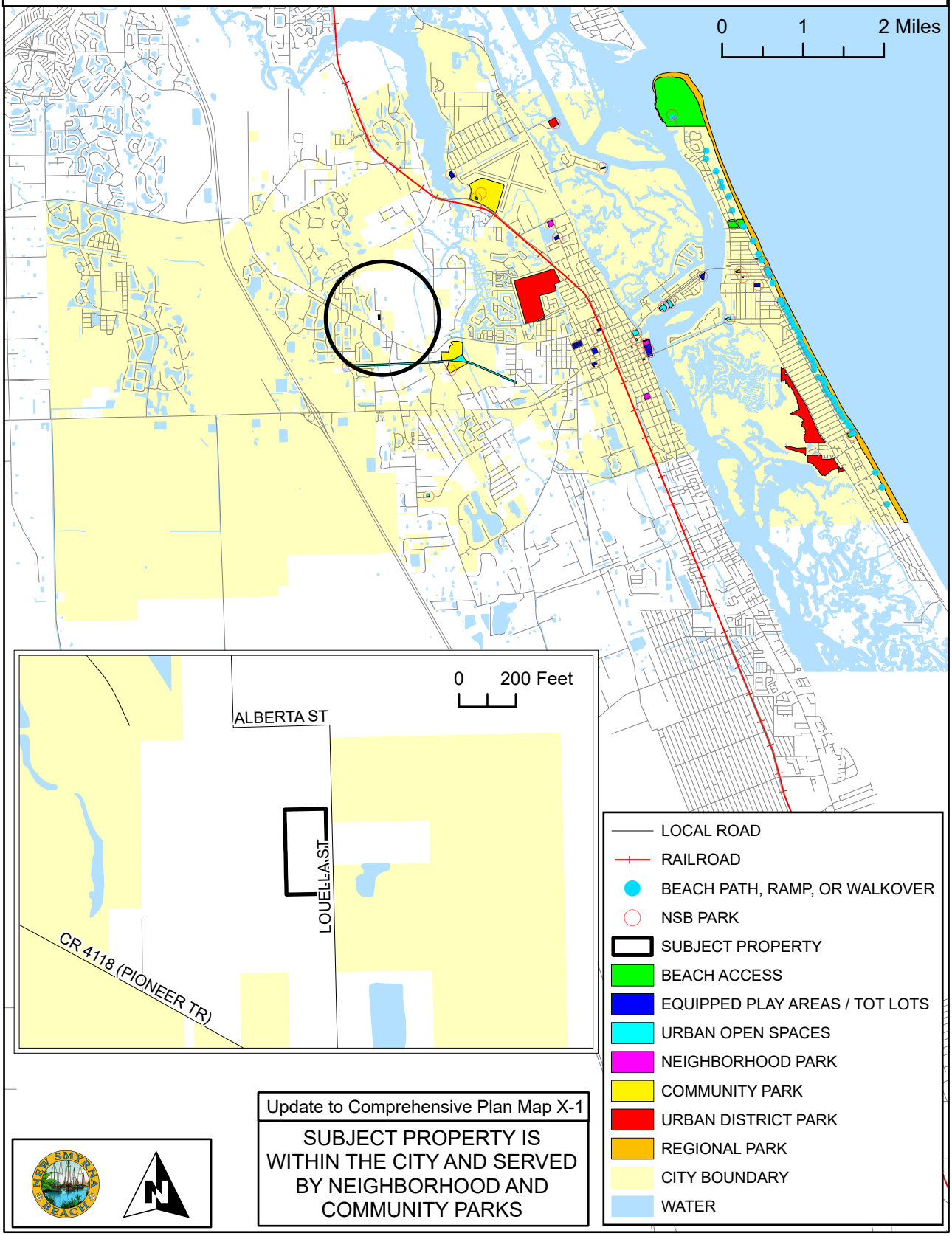


Update to Comprehensive Plan Map VIII-2

SUBJECT PROPERTY IS NOT LOCATED WITHIN A BOAT SLIP SITING RESTRICTED ZONE

CITY PARKS

A-19-23

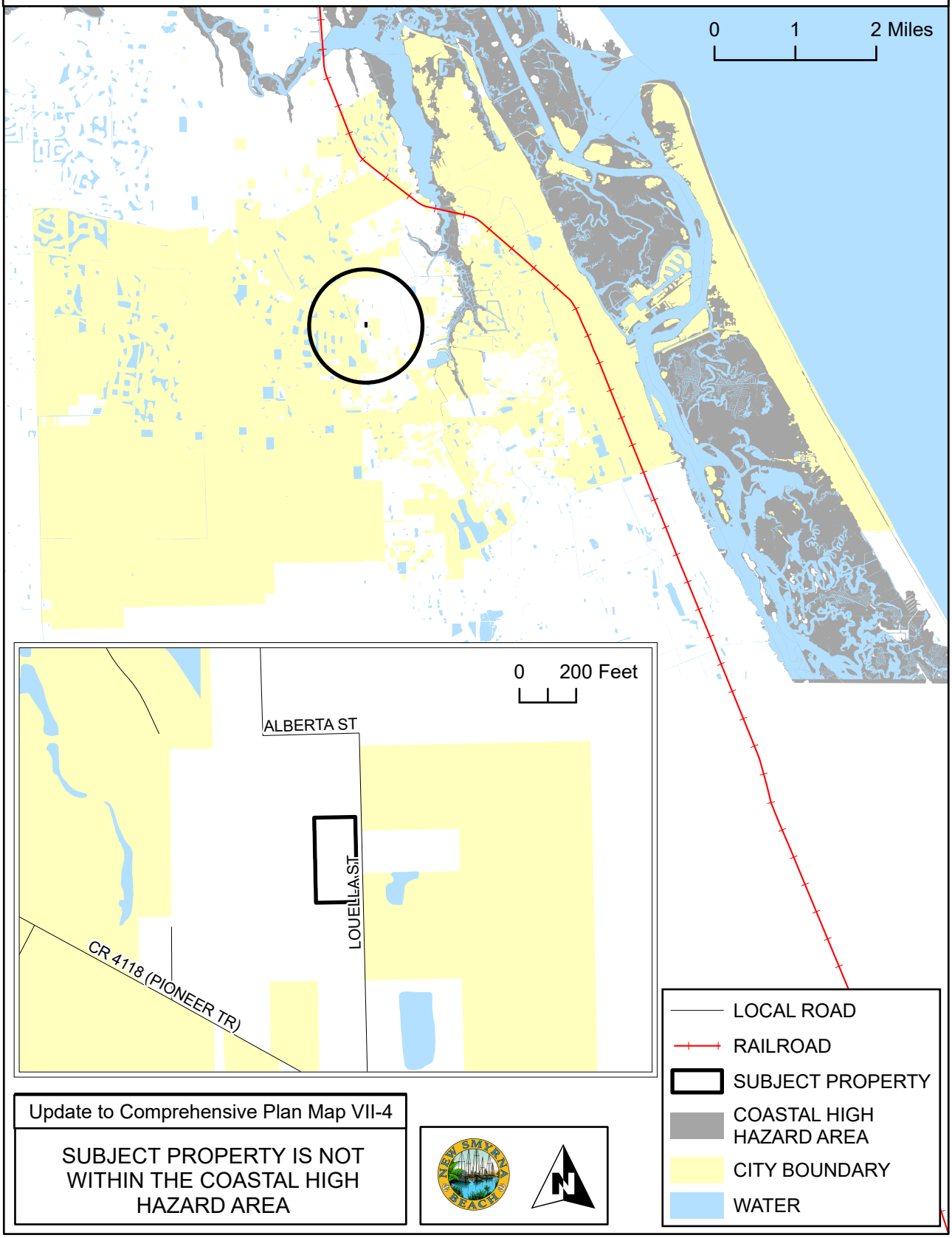


Update to Comprehensive Plan Map X-1

SUBJECT PROPERTY IS WITHIN THE CITY AND SERVED BY NEIGHBORHOOD AND COMMUNITY PARKS

COASTAL HIGH HAZARD AREAS

A-19-23

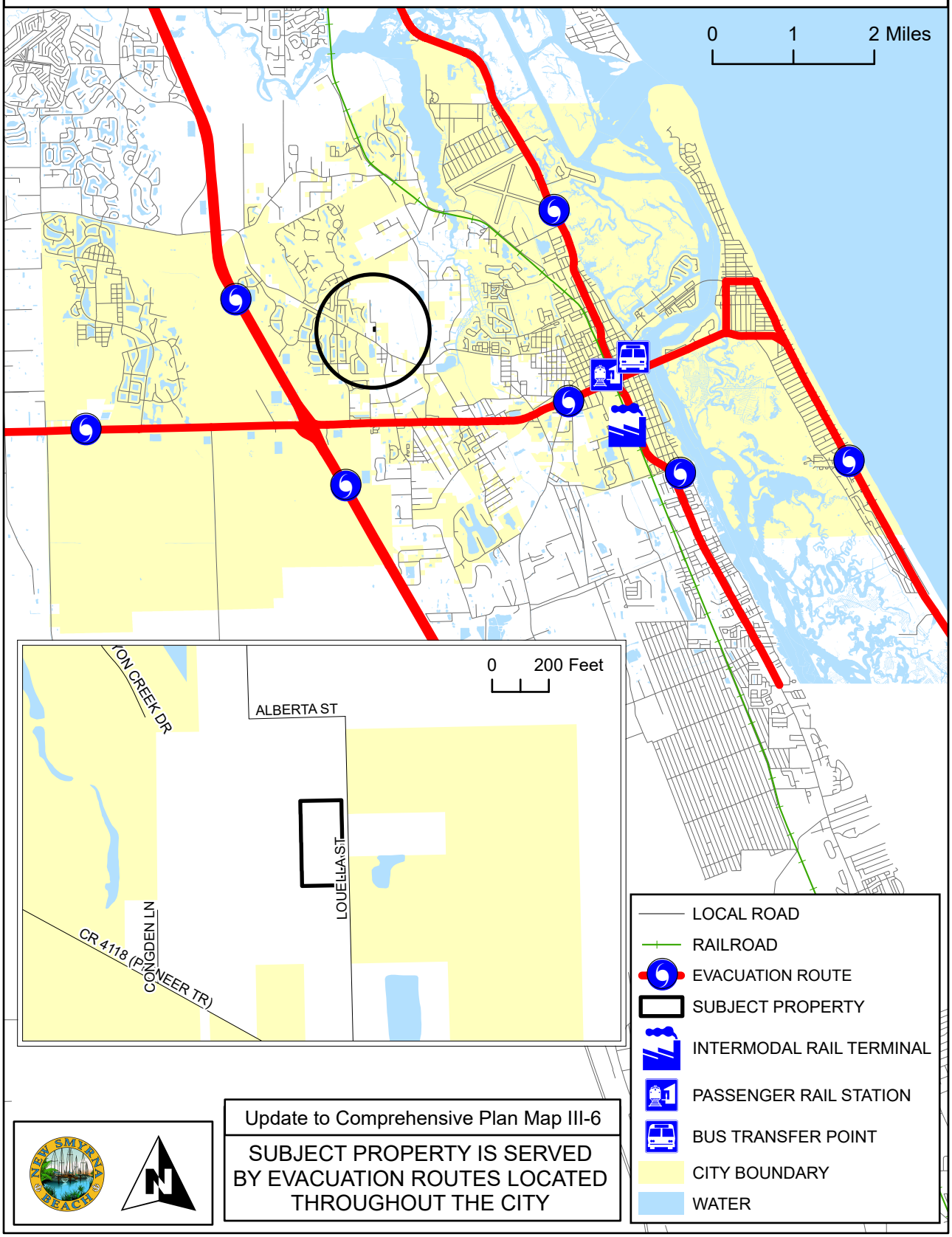


Update to Comprehensive Plan Map VII-4

SUBJECT PROPERTY IS NOT WITHIN THE COASTAL HIGH HAZARD AREA

EVACUATION ROUTES

A-19-23

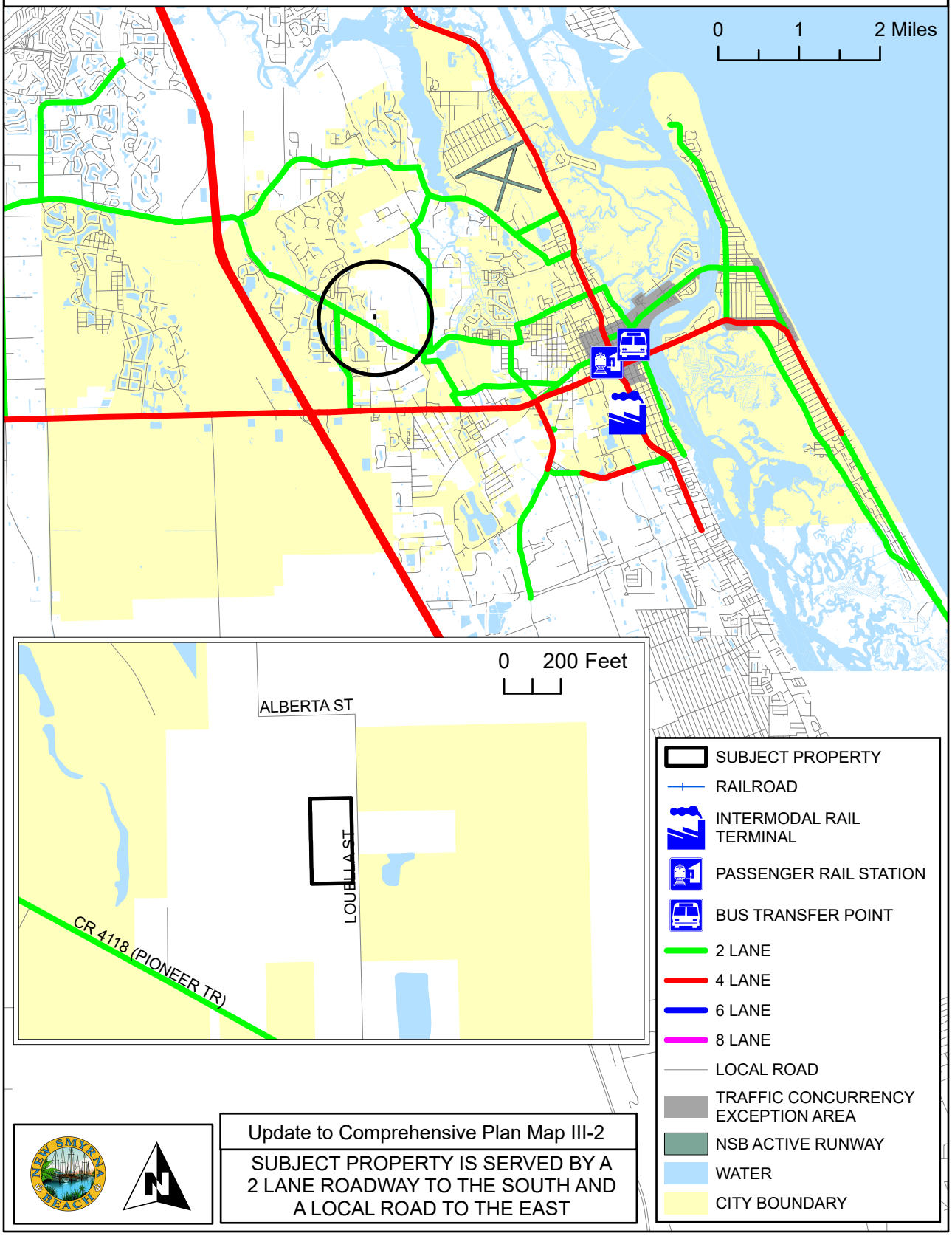


Update to Comprehensive Plan Map III-6

SUBJECT PROPERTY IS SERVED BY EVACUATION ROUTES LOCATED THROUGHOUT THE CITY

EXISTING TRAFFIC LANES - 2009

A-19-23

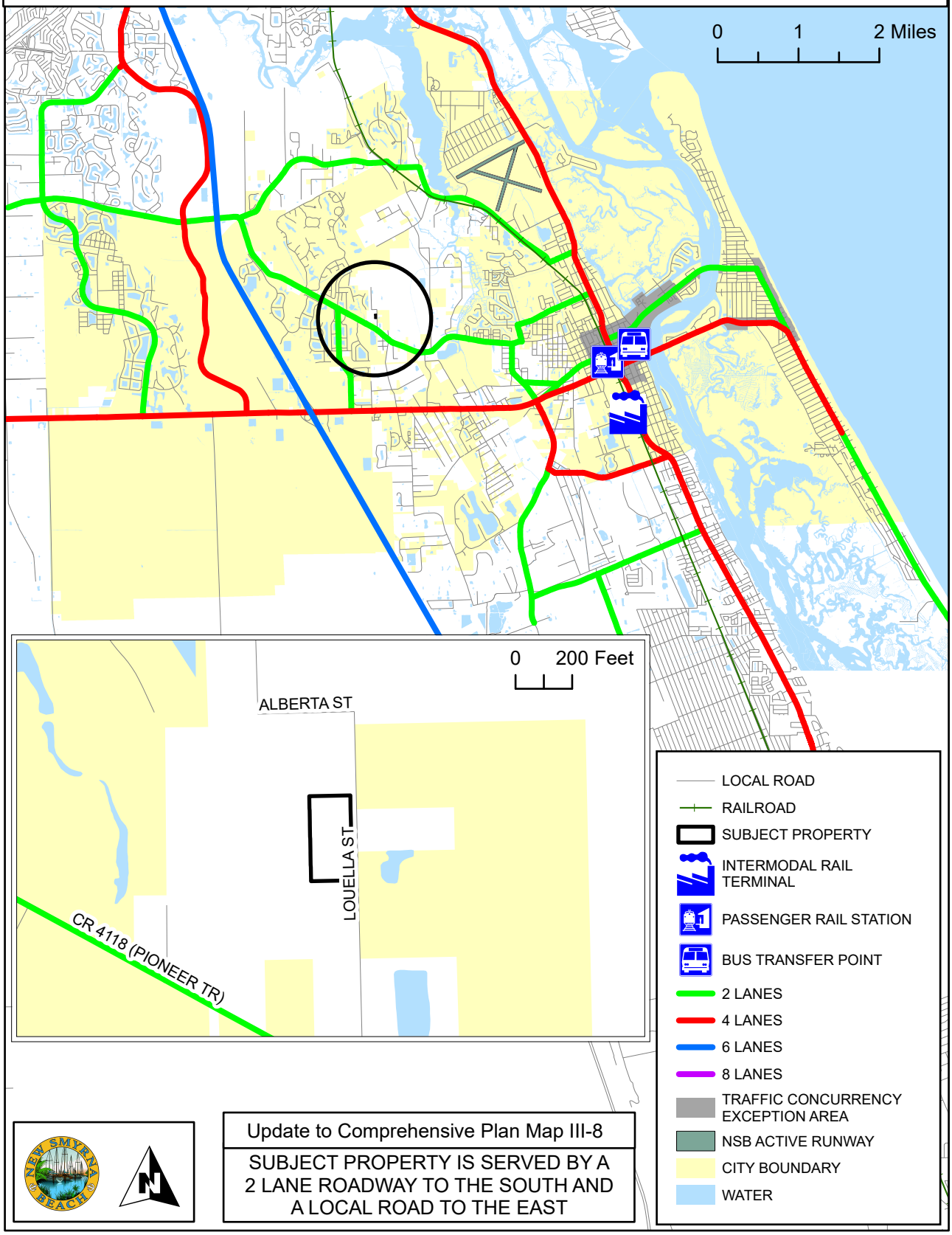


Update to Comprehensive Plan Map III-2

SUBJECT PROPERTY IS SERVED BY A 2 LANE ROADWAY TO THE SOUTH AND A LOCAL ROAD TO THE EAST

NUMBER OF TRAFFIC LANES - 2025

A-19-23

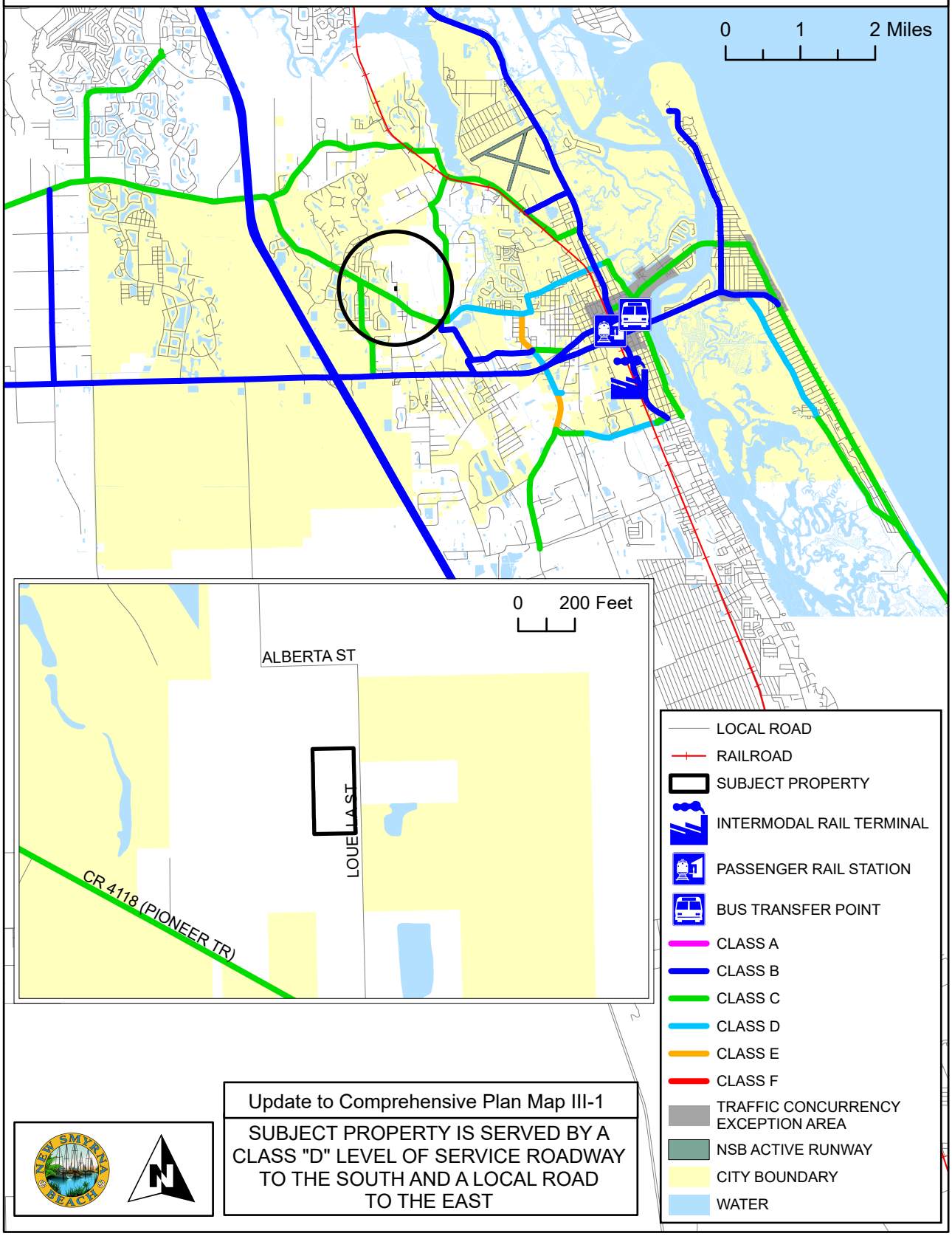


Update to Comprehensive Plan Map III-8

SUBJECT PROPERTY IS SERVED BY A 2 LANE ROADWAY TO THE SOUTH AND A LOCAL ROAD TO THE EAST

EXISTING LEVEL OF SERVICE - 2009

A-19-23

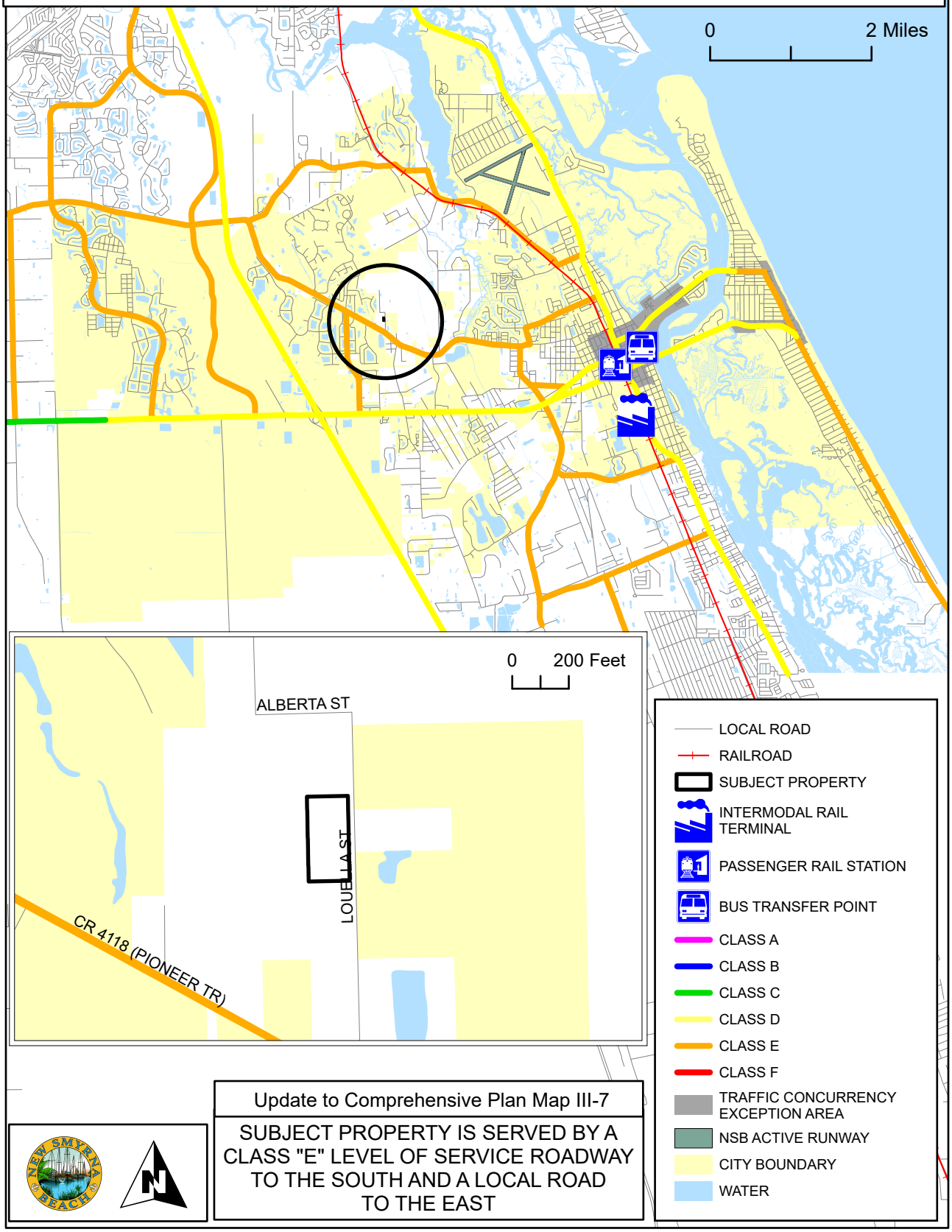


Update to Comprehensive Plan Map III-1

SUBJECT PROPERTY IS SERVED BY A CLASS "D" LEVEL OF SERVICE ROADWAY TO THE SOUTH AND A LOCAL ROAD TO THE EAST

LEVEL OF SERVICE - 2025

A-19-23

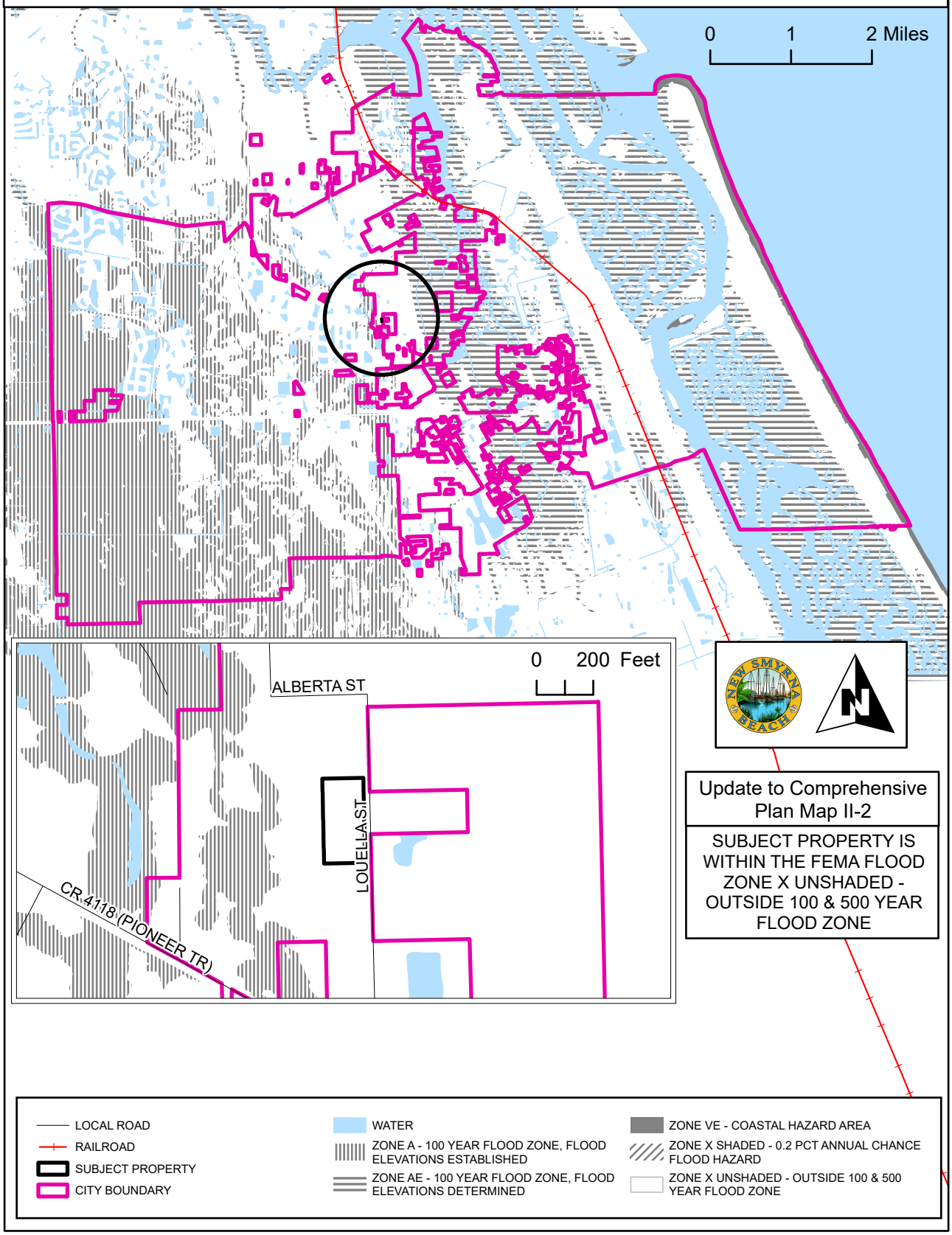


Update to Comprehensive Plan Map III-7

SUBJECT PROPERTY IS SERVED BY A CLASS "E" LEVEL OF SERVICE ROADWAY TO THE SOUTH AND A LOCAL ROAD TO THE EAST

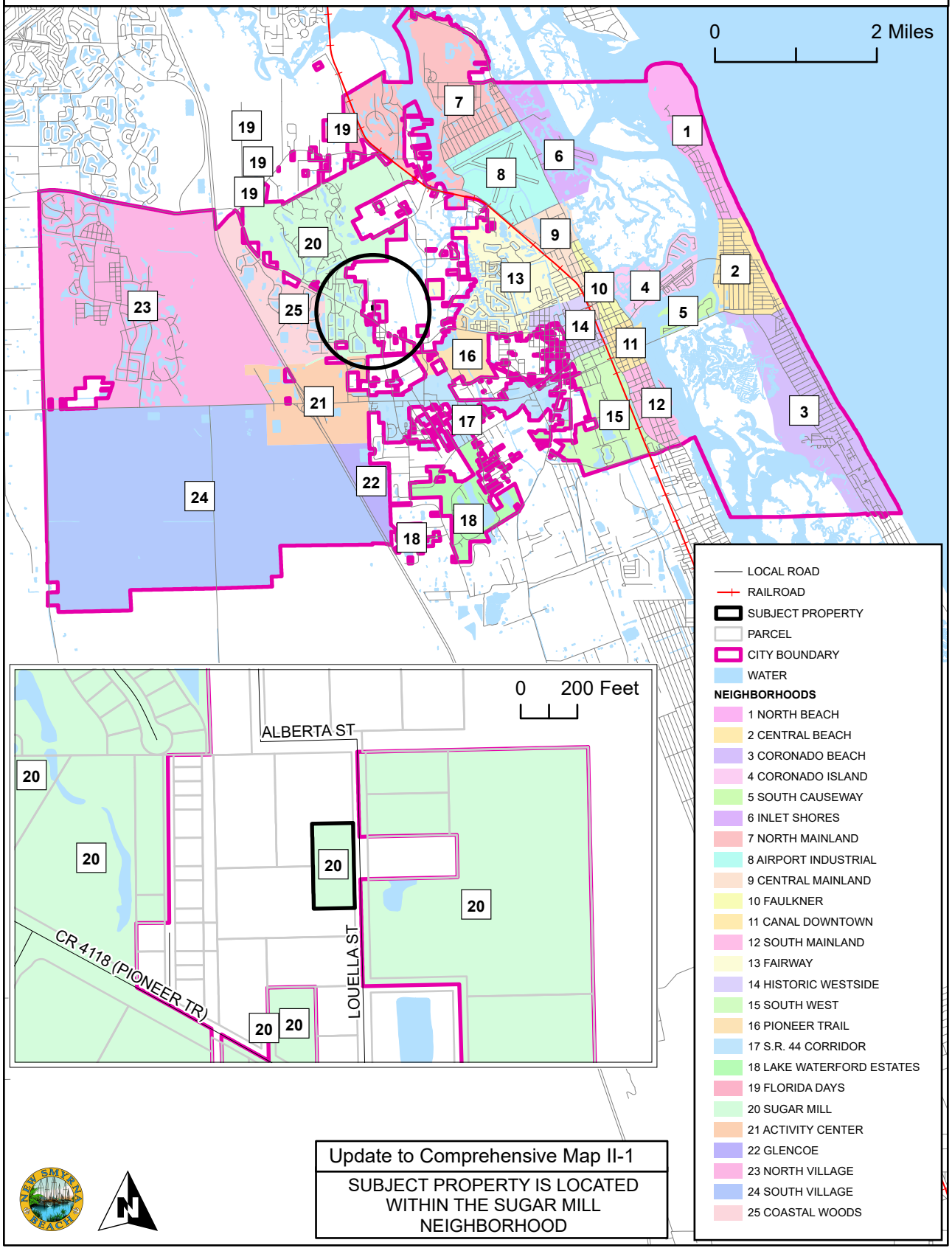
FLOOD PRONE AREAS

A-19-23



NEIGHBORHOODS

A-19-23

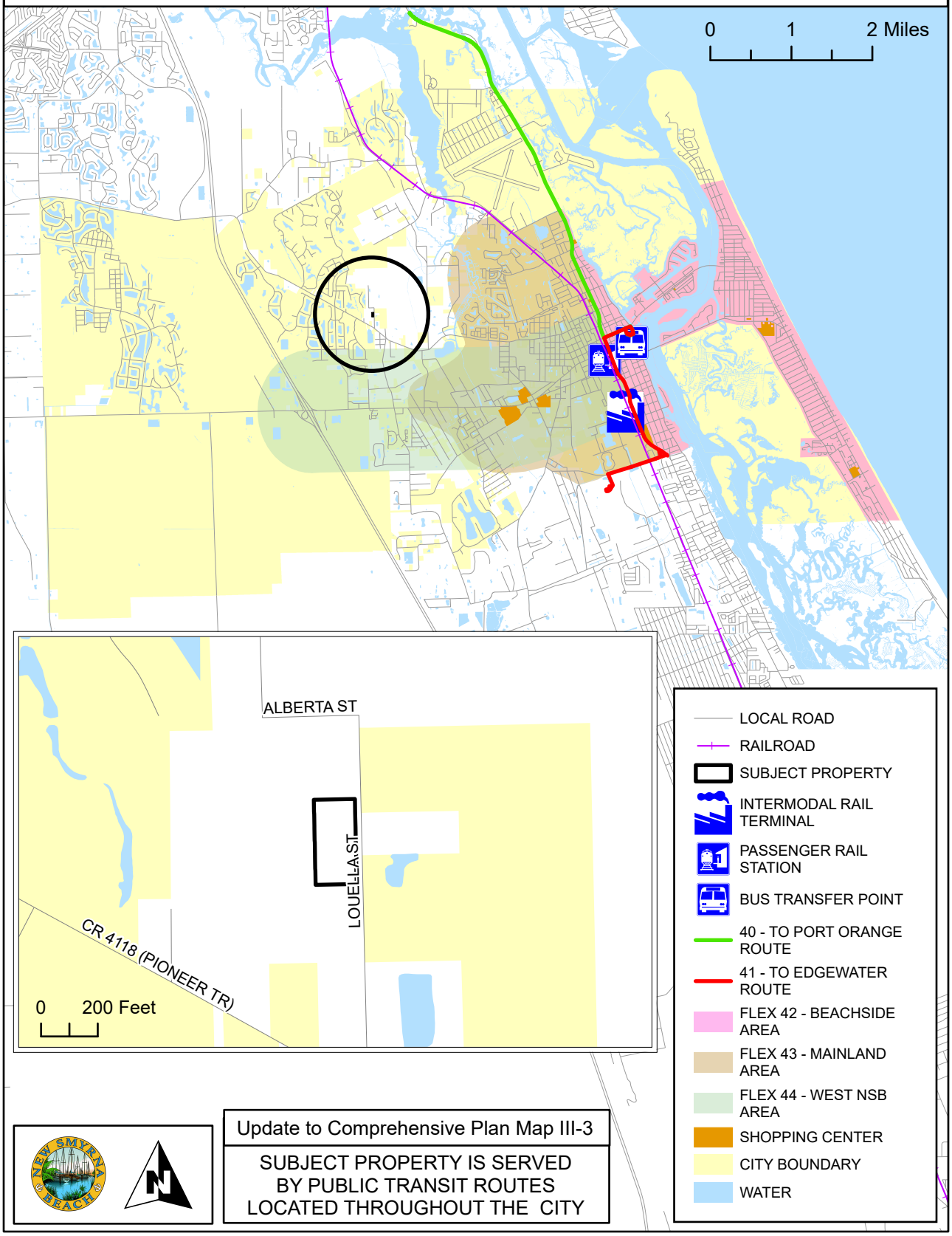


Update to Comprehensive Map II-1

SUBJECT PROPERTY IS LOCATED WITHIN THE SUGAR MILL NEIGHBORHOOD

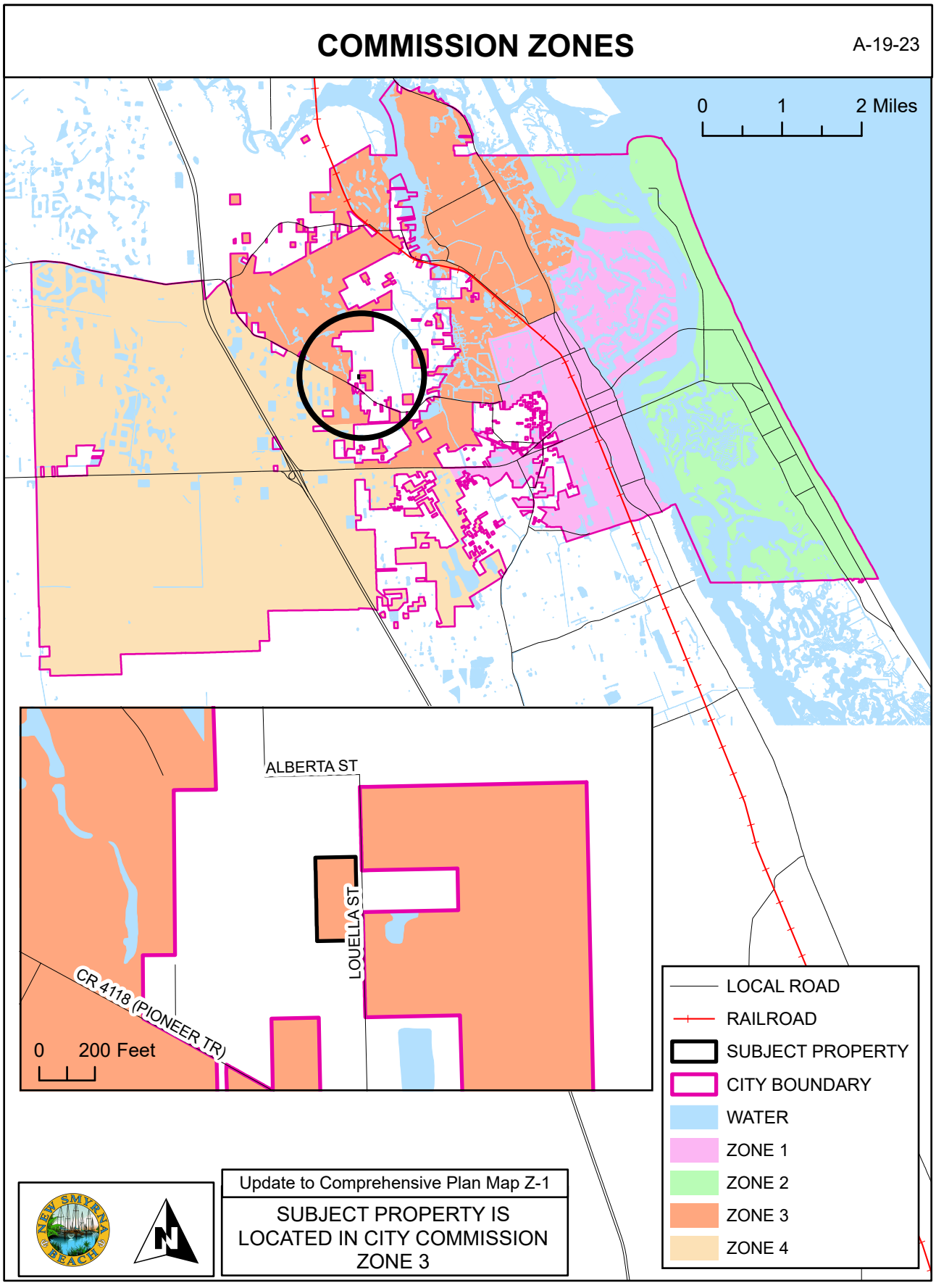
PUBLIC TRANSIT ROUTES

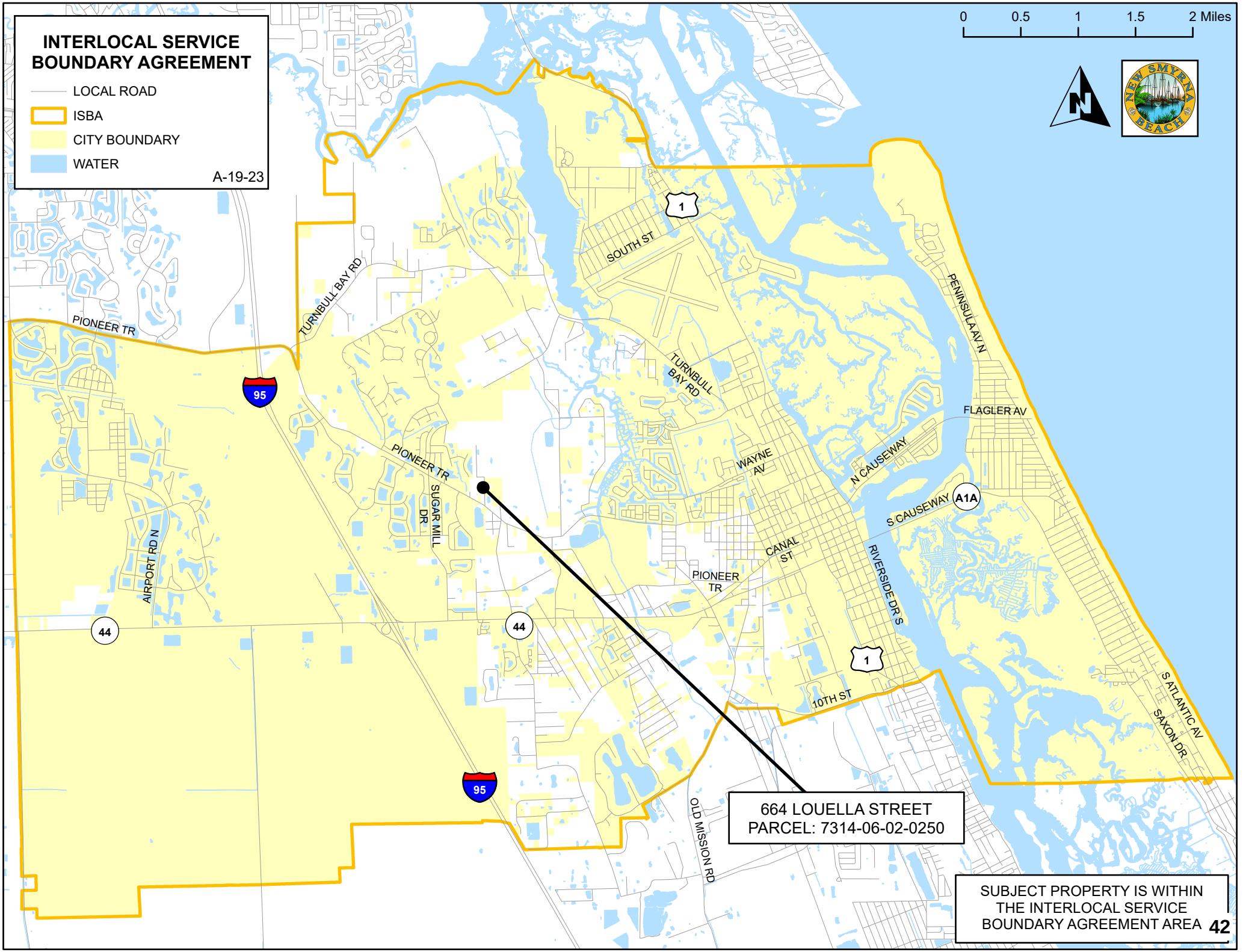
A-19-23



Update to Comprehensive Plan Map III-3

SUBJECT PROPERTY IS SERVED BY PUBLIC TRANSIT ROUTES LOCATED THROUGHOUT THE CITY


COMMISSION ZONES
A-19-23
0 1 2 Miles
ALBERTA ST
LOUELLA ST
CR 4118 (PIONEER TR)
0 200 Feet
LOCAL ROAD
RAILROAD
SUBJECT PROPERTY
CITY BOUNDARY
WATER
ZONE 1
ZONE 2
ZONE 3
ZONE 4
Update to Comprehensive Plan Map Z-1
SUBJECT PROPERTY IS LOCATED IN CITY COMMISSION ZONE 3


INTERLOCAL SERVICE BOUNDARY AGREEMENT
LOCAL ROAD
ISBA
CITY BOUNDARY
WATER
A-19-23
0 0.5 1 1.5 2 Miles
NEW SMYRNA BEACH
PIONEER TR
TURNBULL BAY RD
SOUTH ST
PENINSULA AV N
FLAGLER AV
N CAUSEWAY
WAYNE AV
S CAUSEWAY
A1A
CANAL ST
RIVERSIDE DR S
10TH ST
S ATLANTIC AV
SAXON DR
SUGAR MILL DR
AIRPORT RD N
OLD MISSION RD
95
44
1
664 LOUELLA STREET
PARCEL: 7314-06-02-0250
SUBJECT PROPERTY IS WITHIN THE INTERLOCAL SERVICE BOUNDARY AGREEMENT AREA

LEGAL DESCRIPTION

Address:
664 Louella Street, New Smyrna Beach, Florida 32168

Parcel Number
7314-06-02-0250

AltKey Number:
3709586

Metes and Bounds by Thomas D. Wright, Esquire:

Lots 22, 23, 24, 25, 26, and 27, Block B, MAP OF W. J. MANNING SUBDIVISION, as per map thereof recorded in Map Book 9, Page 118, of the Public Records of Volusia County, Florida.

This Instrument Prepared By:
Thomas D. Wright, Esquire
340 North Causeway
New Smyrna Beach, FL 32169
Parcel Number: 7314-06-02-0250

06/16/2004 11:40 AM
Doc stamps 630.00
(Transfer Amt $ 90000)
Instrument# 2004-149140
Book: 5342
Page: 3037
Diane M. Matousek
Volusia County, Clerk of Court

WARRANTY DEED

This Indenture, Made this 8th day of June, 2004, **Between**

DAVID A. HAYES, also known as DAVID ANDRE HAYES, SR., a single person, and DAVID A. HAYES, JR., a single person, grantor*,
whose post office address is P.O. Box 764, New Smyrna Beach, FL 32170
and

GARY S. WEAVER, grantee*,
whose post office address is 2551 May Street, New Smyrna Beach, Florida 32168,

WITNESSETH, That said grantor, for and in consideration of the sum of TEN DOLLARS ($10.00), and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following-described land, situate, lying and being in Volusia County, Florida, to-wit:

Lots 22, 23, 24, 25, 26, and 27, Block B, MAP OF W. J. MANNING SUBDIVISION, as per map thereof recorded in Map Book 9, Page 118, Public Records of Volusia County, Florida.

Subject to real property taxes for 2004 and subsequent years.

And said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.
*"grantor" and "grantee" are used for singular or plural, as context requires.

IN WITNESS WHEREOF, grantor has hereunto set grantor's hand and seal the day and year first above written.
Signed, sealed and delivered in our presence:

Barbara Y. Lovelace
First Witness (as to both Grantors)
Printed Name: BARBARA Y. LOVELACE

Donna J. Austin
Second Witness (as to both Grantors)
Printed Name: DONNA J. AUSTIN

[SEAL]
DAVID A. HAYES,
also known as DAVID A. HAYES, SR.

[SEAL]
DAVID A. HAYES, JR.

STATE OF FLORIDA
COUNTY OF VOLUSIA

I hereby certify that on this day before me, an officer duly qualified to take acknowledgments, personally appeared **DAVID A. HAYES, also known as DAVID ANDRE HAYES, SR., a single person, and DAVID A. HAYES, JR., a single person,** to me personally known to be the persons described in, or who produced Fla. Driver's Licenses as identification, and who executed the foregoing instrument and acknowledged before me the execution of same.
Witness my hand and official seal in the County and State last aforesaid this 8th day of June, 2004.

Barbara Y. Lovelace
Notary Public
Printed Name: BARBARA Y. LOVELACE

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA
BARBARA Y. LOVELACE
MY COMMISSION EXPIRES
June 7, 2007
#DD198859

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

V-6-23: REQUEST TO REDUCE THE REQUIRED DISTANCE, FOR A LOCATION TO SERVE ALCOHOL FOR CONSUMPTION AT 111 NORTH CAUSEWAY.

November 6, 2023

Background:

Applicant: Mitesh Patel, 6716 Calistoga Circle, Port Orange, Florida 32128

Property Owner: Kengro Holdings LLC, 603 Indian River Road, Edgewater, Florida 32132

Request: Variance from Section 801.03.A.1 of the City's Land Development Regulations (LDR) to allow:

1. Reduce the required 1,000-foot distance of businesses that serve alcohol for consumption.

Site Information: The subject property is zoned City B-2, Neighborhood Business, and is located on the northwest corner of North Causeway and Quay Assisi. See location map and aerial map attached as **Exhibits A & B**.

Tax I.D. Number: 7314-06-03-0013

Findings:

Exhibits used in this report:

Exhibit A: Location Map
Exhibit B: Aerial Map
Exhibit C: Applicants request letter
Exhibit D: Land Development Section 801.03

Under Land Development Regulation 801.03, the City requires any non-exempt business

that sells alcohol for consumption to be at least 1,000 feet from another non-exempt business. The Madcap's comedy club is located next door to 111 North Causeway and the building is approximately 120 ± feet apart. The Madcap's Comedy club currently has a State of Florida alcohol license to sell beer and wine for consumption.

Currently the property located at 111 North Causeway has a State of Florida alcohol license to operate as a package store. Non-exempt package stores also have a distance requirement to be at least 1,000 feet from another non-exempt package store.

The business owner at 111 North Causeway is requesting a variance to the required 1,000-foot distance for non-exempt businesses to have a State of Florida alcohol license to serve alcohol for consumption on the premise. The business owner is requesting this so they can offer tasting of the alcohol products before a customer would purchase.

The applicant has provided a letter explaining the hardship and the need for this consumption license, included as **Exhibit C**.

The Land Development Regulation requires variance requests to meet all the following criteria. Applicants responses are in *italics* and Staff's responses are in **bold.**

Special circumstances exist which are peculiar to the applicant's land, structure, or building, and do not generally apply to the neighboring lands, structures, or buildings, in the same district or vicinity.

- *Being the only package liquor store in an old bank building on the North Causeway, Kenny's has converted the bank's old vault into a "Wine Vault" where customers can shop for high-end wine. Kenny's is the only package store in the area to sell these high-end bottles besides Publix, which is still quite far away. It is found that customers are interested in this high-end wine and are interested in purchasing it but wish to sample it before spending a hefty amount on a bottle they have never tried.*

- **There are no special circumstances which are peculiar to the applicant's land, structure, or building and do not generally apply to the neighboring lands,**

structures, or buildings, in the same district or vicinity. The distance requirement would seem to limit the number of locations within a special area to keep from an oversaturation of non-exemption businesses from selling alcohol for consumption.

This criterion has not been met.

Strict application of the provisions of this Land Development Regulation would deprive the applicant of reasonable rights commonly applicable to other properties in the same district or may preclude a benefit to the community in general.

- *Neither the Surf Lounge nor Mad Caps Comedy Club, which are in the general vicinity, offer the expensive liquors and or wines that Kenny's offers. To purchase the quality product provided by Kenny's, residents would have to drive clear across town to ABC or Publix. Nowhere within miles is the quality of the products offered at Kenny's available to nearby residents. It is a convenience, and the wine tastings in the wine room are unique, which Kenny's can provide to residents within a two-mile radius.*

- **Strict application of the provisions of this Land Development Regulation may not deprive the applicant of reasonable rights commonly applicable to other properties in the same district but would limit the privilege of selling alcohol for consumption applicable to other properties in the same district. The variance could give a benefit to the customer visiting this establishment to be able to taste products before making a decision to purchase.**

This criterion has partially been met.

The special circumstances and conditions exist that do not result from the direct or indirect actions of the present property owner(s) or past property owner(s). This criterion shall not be satisfied if the present or past property owner created, to any degree, the hardship that is the subject of the variance request.

- *Kenny's did not cause hardship for the area due to location, structure, or business. What Kenny's did was rehab a long deserted bank building and turn it into something that residents and tourists greatly appreciate and enjoy. Something*

unique was created, and the bank vault is used as a local attraction. The proximity to the boat park, picnic tables, Riverwalk, etc., makes Kenny's a great business choice for the area. What is a hardship is the loss of the opportunity for Kenny's Liquors to get reductions on wine with this license. Further, the license offers another unique experience for all who frequent and live in the area by allowing patrons to taste before they purchase. It is a unique experience and one that is in a location where they would not be competing with any other businesses.

- **The variance request is based on a restriction imposed by the City as a local limitation and not a hardship created by the business owner.**

This criterion has been met.

That granting of the variance will not cause substantial detriment to the public welfare or impair the purposes and intent of this LDR.

- *No. The intent of the ordinance is to offer a license for a bar. Kenny's in no way plans to open a bar. Instead, provide product samples for purchase and better pricing to the thousands of patrons who visit the establishment. Kenny's is also willing to sign an agreement that they will never use this license to open a bar and remain a package store with a certain classy and respectable flair. In doing so, this does not hurt anyone else's business or the residents. Using this license to offer patrons tastings and better pricing is not detrimental to anyone. Still, it is a service that Kenny's patrons will significantly appreciate.*

- **Given that the applicant has requested this variance, so that the business can offer tasting of an alcohol product before making a decision to purchase a package item, would not cause a substantial detriment to the public welfare. The intent of the current regulation is to limit the distances between non-exemption business from selling alcohol for consumption as in a bar or tavern establishment. The business owner has expressed that he has no intention to operate a bar or any other non-exempt business but only be allowed to offer tasting of different alcohol products thus allowing for customers to make a decision on which product to purchase.**

This criterion has been met.

That granting of the variance will not constitute a grant of special privilege that is denied by this Land Development Regulation to other lands, structures, or buildings, in the same

district.

- *As far as Kenny's knows, no other business in the 1-mile radius has asked for this special consideration or wants this consideration. The other establishments that have this kind of license are too far away to be impacted negatively by Kenny's being given this license. The one patron who could make a case has given approval to Kenny's: Mad Caps Comedy Club. Kenny's offers an alcohol package venue, unparalleled by other businesses that provide the same services in New Smyrna Beach. Kenny's is unique, memorable, and an added value to the community.*

- **Since the business owner is trying to create an experience for the adult aged public, that has not been requested by other non-exempt businesses, Staff would not consider this request as a special privilege. If other businesses in the future inquired about allowing for this additional license to offer tastings in package stores, a revisit to the Section 801.03. may be required. Most other package stores are corporate type of package stores, (ABC, Publix, Walgreens, etc.), and are not a local owned store like this location. Staff believes this in an isolated request that other package stores may not pursue.**

This criterion has been met.

Recommendation:

The Planning Department has determined that the application meets or partially meets most of the required criteria, 4 out of 5. Because the initial review of the variance request does not meet all five of the variance criteria, staff must recommend **denial.** However, if the Planning and Zoning Board approves the variance request, staff recommends the consumption request is limited to tasting of alcohol products and not operate as a full consumption establishment like a tavern, lounge, or bar.

Fiscal Analysis:
N/A

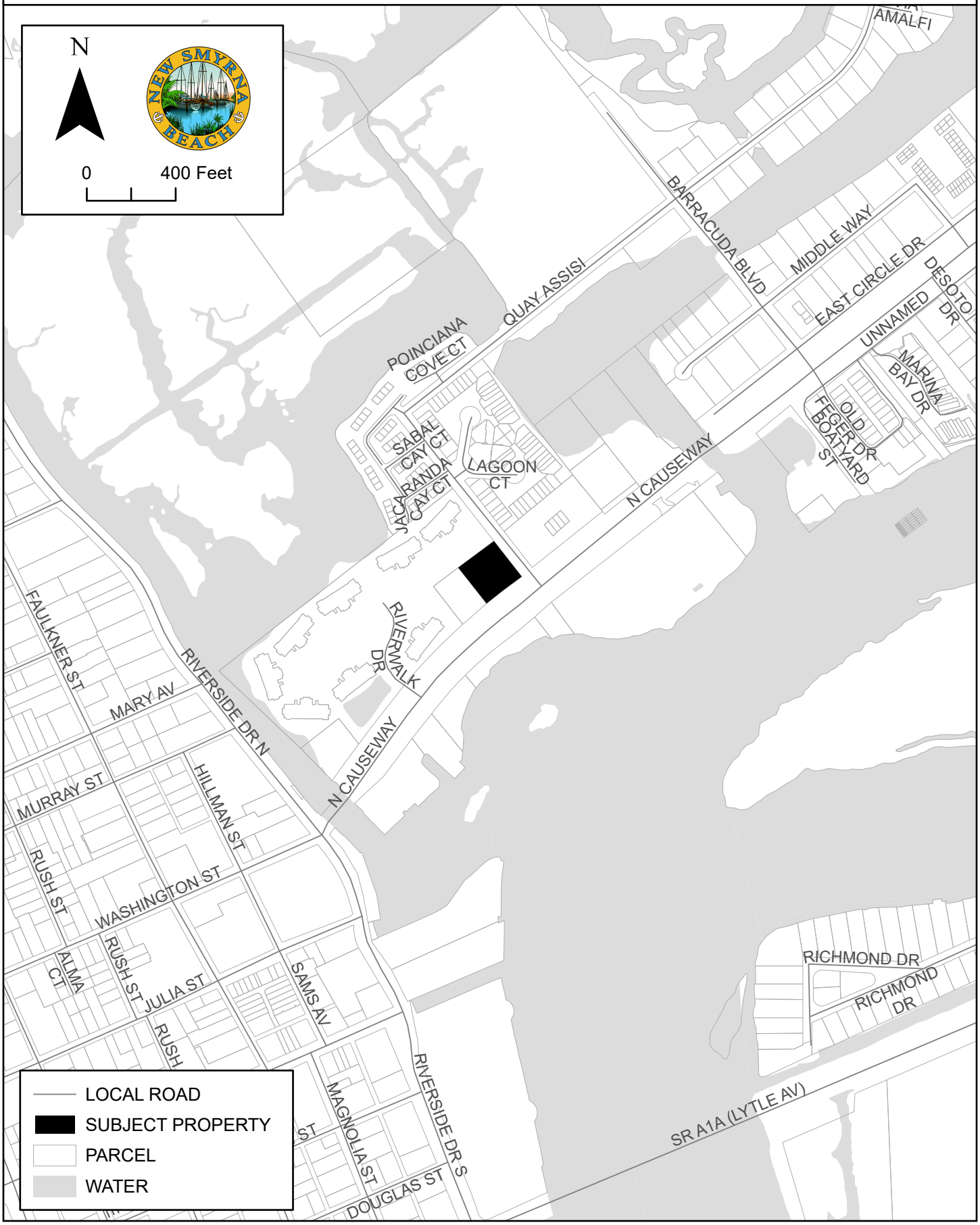
Strategic Plan Item:
No

Staff Report Created By: Robert Mathen - Planner II

Attachments:

V-6-23 Exhibit A Location Map.pdf
V-6-23 Exhibit B Aerial Map.pdf
V-6-23 Exhibit C Applicants Responce Letter.pdf
V-6-23 Exhibit D Land Development Regulation 801.03 - 801.04.pdf

V-6-23: 111 NORTH CAUSEWAY
PARCEL: 7417-01-01-0130 LOCATION MAP



V-6-23: 111 NORTH CAUSEWAY
PARCEL: 7417-01-01-0130 AERIAL MAP



A) Being the only package liquor store in an old bank building on the North Causeway, Kenny's has converted the bank's old vault into a "Wine Vault" where customers can shop for high-end wine. Kenny's is the only package store in the area to sell these high-end bottles besides Publix, which is still quite far away. It is found that customers are interested in this high-end wine and are interested in purchasing it but wish to sample it before spending a hefty amount on a bottle they have never tried.

B) Neither the Surf Lounge nor Mad Caps Comedy Club, which are in the general vicinity, offer the expensive liquors and or wines that Kenny's offers. To purchase the quality product provided by Kenny's, residents would have to drive clear across town to ABC or Publix. Nowhere within miles is the quality of the products offered at Kenny's available to nearby residents. It is a convenience, and the wine tastings in the wine room are unique, which Kenny's can provide to residents within a two-mile radius.

   In addition, Kenny's is located directly across from one of the largest boating parks in New Smyrna Beach. The store location is in a service area frequented by boaters from all parts of Florida. Many boaters are shoppers and want to taste what Kenny's offers before purchasing in large quantities. Wine tastings will allow this large population to enter and exit NSB without traveling the north or south Causeway to reach Publix, Walgreens, Winn Dixie, or ABC. Its location makes it convenient and prevents boaters leaving NSB from clogging thorough fairs to get to other alcohol package stores.

C) Kenny's did not cause hardship for the area due to location, structure, or business. What Kenny's did was rehab a long deserted bank building and turn it into something that residents and tourists greatly appreciate and enjoy. Something unique was created, and the bank vault is used as a local attraction. The proximity to the boat park, picnic tables, Riverwalk, etc., makes Kenny's a great business choice for the area. What is a hardship is the loss of the opportunity for Kenny's Liquors to get reductions on wine with this license. Further, the license offers another unique experience for all who frequent and live in the area by allowing patrons to taste before they purchase. It is a unique experience and one that is in a location where they would not be competing with any other businesses.

D) No. The intent of the ordinance is to offer a license for a bar. Kenny's in no way plans to open a bar. Instead, provide product samples for purchase and better pricing to the thousands of patrons who visit the establishment. Kenny's is also willing to sign an agreement that they will never use this license to open a bar and remain a package store with a certain classy and respectable flair. In doing so, this does not hurt anyone else's business or the residents. Using this license to offer patrons tastings and better pricing is not detrimental to anyone. Still, it is a service that Kenny's patrons will significantly appreciate.

E) As far as Kenny's knows, no other business in the 1-mile radius has asked for this special consideration or wants this consideration. The other establishments that have

this kind of license are too far away to be impacted negatively by Kenny's being given this license. The one patron who could make a case has given approval to Kenny's: Mad Caps Comedy Club. Kenny's offers an alcohol package venue, unparalleled by other businesses that provide the same services in New Smyrna Beach. Kenny's is unique, memorable, and an added value to the community.

801.03. *Distance requirements for places of business where alcoholic beverages are served to customers for consumption on the premises.*

A. *Distance limitations.*

1. *General separation requirements.* No location shall be approved for a place of business where alcoholic beverages are served to customers for consumption on the premises unless such location is at least more than 1,000 feet away from any other location where there exists a current place of business serving alcoholic beverages to customers for consumption on the premises. Businesses identified as exempt under subsection 801.03C. shall not be included in determining compliance with aforedescribed separation requirements. Businesses located in the West Canal Street neighborhood shall be exempt from this provision.

2. *West Canal Street neighborhood.* No location shall be approved for a place of business where alcoholic beverages are served to customers for consumption on the premises in the West Canal Street neighborhood unless such location is at least 200 feet away from any other location where there exists a current place of business serving alcoholic beverages to customers for consumption on the premises. The West Canal Street neighborhood is an area bounded on six sides by: first, the south side of Washington Street between Dimmick Street and the Florida East Coast Railway right-of-way; second, the west side of the Florida East Coast Railway right-of-way between Washington Street and Canal Street; third, the north side of Canal Street between the Florida East Coast Rail Way right-of-way and Lewis Street; fourth, the east side of Lewis Street between Canal Street and Julia Street, fifth, the south side of Julia Street between Lewis Street and Dimmick Street; and sixth, the east side of Dimmick Street between Julia Street and Washington Street (said area more particularly described in exhibit "A" attached to Ordinance No. 71-02, adopted January 14, 2003, and by reference made a part of this section). Businesses identified as exempt under subsection 801.03C. shall not be included in determining compliance with aforedescribed separation requirements. Businesses located in the West Canal Street neighborhood shall be exempt from the general separation requirements for the city as set forth in subsection 801.03C.A.1. above.

The aforesaid subsection 801.03A.2. above allowing places of business where alcoholic beverages are served to customers for consumption on

the premises within 200 feet in the West Canal Street neighborhood shall stand repealed on January 14, 2005 unless reviewed and saved from repeal through reenactment by the city commission. Upon automatic repeal by this provision a place of business where alcoholic beverages are served to customers for consumption on the premises in the West Canal Street neighborhood shall not be allowed within 1,000 feet of another place of business where alcoholic beverages are served to customers for consumption on the premises. Places of business where alcoholic beverages are served to customers for consumption on the premises established in the West Canal Street neighborhood between January 14, 2003 and January 14, 2005 and located less than 1,000 feet and more than 200 feet of another place of business where alcoholic beverages are served to customers for consumption on the premises shall be allowed to continue said use as a nonconforming use subject to the conditions that the nonconforming use is not discontinued and a city occupational license for the nonconforming use is continuously maintained. In the event that the nonconforming use shall be discontinued, or the nonconforming use shall fail to maintain a city occupational license, the nonconforming use as a place of business where alcoholic beverages are served to customers for consumption on the premises shall be automatically terminated upon the happening of either event and the nonconforming use shall no longer be allowed as a permitted nonconforming use.

B. *Measurement of distances.* The distance between the location for a proposed place of business where alcoholic beverages are to be sold to customers for consumption on the premises, and a location where such a place of business currently exists, shall be measured by following a straight line from the nearest point of the building or portion of a building which is the proposed premises, to the nearest point of the building or portion of a building which is the existing premises. Said distance shall be verified by a plat of survey prepared by a Florida registered land surveyor. The platted survey shall be prepared at the property owner's expense and submitted to the city prior to opening for business.

C. *Exempt businesses.* The following businesses serving alcoholic beverages to customers for consumption on the premises shall be exempt from distance limitations as set out in [subsection] A. above:

(1) Any bonafide hotel, motel, or motor court, of not fewer than 50 rooms; or any bonafide hotel or motel of fewer than 50 guest rooms which derives at least 51 percent of its gross revenues from the rental of hotel/motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants, and which is listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, or is within or contributes to a registered historic district pursuant to 26 USC 48(g)(3)(B), or has been found to meet the criteria of historical significance of the Division of Archives, History and Records Management, Department of State, as certified by the division, or by locally established historic preservation board or commission, or like body which has been granted the authority to designate historically significant properties by the jurisdiction within which the hotel or motel is located.

(2) Any residential condominium accommodation which is licensed under the provisions of F.S. ch. 509.

(3) Any restaurant having a service area equipped to serve 150 persons at one time; however, no restaurant shall operate as a package store.

Any business operating under this provision shall, as a condition of commencing operation, and thereafter every 12 months, provide the city manager of New Smyrna Beach, or official designated by the city manager, either:

a. A letter or other acceptable documentation from the State of Florida Division of Alcoholic Beverages and Tobacco stating that the business is (or will be) licensed to sell alcoholic beverages only under F.S. § 561.20(2)(a)3, and that the business holds no other license (or will hold no other license) to sell alcoholic beverages; or

b. An affidavit from a Florida licensed certified public accountant stating that he or she has examined the books and records of said business, and on the basis of the examination, has determined that the business is equipped to serve 150 persons at one time, and it is reasonable to anticipate that for a newly licensed business, it will derive at least 51 percent of its gross revenue from the sale of food and non-alcoholic beverages, or for an established business that in the last 12 months has derived at least 51 percent of its gross revenue from the sale of food and non-alcoholic beverages. The

affidavit must be made under oath and attested before a Florida notary public.

Any business failing to provide the city manager or official designated by the city manager with either a letter or other acceptable documents from the Division of Alcoholic Beverages and Tobacco, or an affidavit from a verified public accountant shall be ineligible for an exemption under this provision and shall remain ineligible until the business complies with this provision.

(4) Any restaurant having a service area equipped to serve less than 150 persons at one time, so long as, and provided that, said restaurant operates in a manner consistent with the operating requirements and prohibitions listed below.

a. *Operating requirements.*

1. Table service by waiters or waitresses;
2. Menus listing at least five entrees;
3. Complete place settings including tableware and flatware for each seat in the restaurant;
4. Full-time cook on the premises;
5. Kitchen equipped in a manner consistent with the property's use as a restaurant, to wit: cooking equipment, exhaust fans, fire extinguishers, adequate refrigeration; food preparation areas, and other items normally found in a restaurant kitchen. All of the above kitchen equipment must be connected and in good working order.

b. *Operating prohibitions.*

1. Pool table(s);
2. Dart boards;
3. Video games;
4. Glass door refrigeration equipment displaying alcoholic beverages;
5. Operating as a package store.

(5) A bowling establishment having 12 or more lanes and the necessary equipment to operate them.

(6) Any facility either owned or operated by the City of New Smyrna Beach, Volusia County, or the United States government.

(7) Airport terminal as defined by F.S. § 561.01(13).

(8) Fairgrounds or civic center owned or operated by the City of New Smyrna Beach, Volusia County, State of Florida, or the United States government.

(9) Subordinate lodges or clubs of national fraternal or benevolent associations.

(10) Golf clubs, tennis clubs, and beach or cabana clubs which are municipally or privately owned or leased.

(11) Nonprofit corporations or clubs devoted to promoting community, municipal, or county development, or any phase of community, municipal, or county development.

(12) Clubs assisting, promoting, and developing subordinate lodges or clubs of national fraternal or benevolent associations.

(13) Any chartered or incorporated club owning or leasing and maintaining any bonafide regular standard golf course consisting of at least nine holes, with clubhouse, locker room and attendant golf facilities, and comprising in all, at least 35 acres of land owned or leased by such club, provided that said club maintains the golf course and golf facilities in a manner consistent with a use as a golf course.

(14) Any chartered or incorporated club owning or leasing and maintaining a bonafide tennis club or four-wall indoor racquetball club consisting of not fewer than six regulation-size tennis courts or six regulation-size four-wall indoor racquetball courts, or a combination of such courts totaling in the aggregate, not fewer than six courts with clubhouse facilities, pro shop, locker rooms and attendant tennis or racquetball facilities, all located on a contiguous tract of land owned or leased by such a club; provided that such a club maintains the courts and facilities in good working condition.

(15) Any charter or incorporated club which owns or leases and which maintains a bonafide beach or cabana club consisting of beach facilities,

swimming pool, locker rooms with facilities for at least 100 person, and a restaurant with seats at tables for at least 100 persons, and a restaurant with seats at tables for at least 100 persons, comprising in all, an area of at least 5,000 square feet located on a contiguous tract of land of at least two acres.

(16) Any billiard hall within the B-5 Planned Shopping Center zoning district.

D. *Existing conditions.* Places of business where alcoholic beverages are sold to customers for consumption on the premises which had a current valid liquor license in existence on August 1, 1987, shall not in any manner be affected by this part so long as said use is not abandoned for a period longer than six months, nor shall any right of renewal of such licenses be changed by the distance limitations or any provisions of this part.

801.04. *Distance requirements for package stores.*

A. *Distance limitations.* No location shall be approved for a package store unless such location is at least more than 1,000 feet from any other package store or other business which provides on-site consumption of alcoholic beverages. Businesses identified as exempt under subsection 801.04C. shall not be included in determining compliance with the aforedescribed separation requirement.

B. *Measurement of distances.* Same as [sub]section 801.03B. except for package stores only.

C. *Exempt business.* The following package stores shall be exempt from distance limitations as set out in [sub]section 801.04A.

(1) Any package store which held a current valid liquor license and municipal business license in existence on January 22, 1991, shall not in any manner be affected by this part so long as said use maintains itself open and in operation and said use shall not cease to be active and in operation for a period not to exceed two years, nor shall said operation have an expired liquor license or business occupational license for a period not to exceed two years. Failure to maintain both criteria shall constitute abandonment, nor shall any right of renewal of such licenses be changed by distance limitations or any provisions of this part.

(2) Any package store developed as a part of a retail facility, where such retail facility (operation) is under single ownership; where the square footage of the package store does not exceed 20 percent of the total

retail operation; where the retail operation (including the package store) operates under a single business identification; and where the adjoining retail operation engages in the sale of products, services, and commodities other than alcoholic.

(3) Any package store developed as part of an existing retail establishment (collectively, "retail operation"), both of which are under single ownership and located within a retail, planned shopping center as defined in Section 201.00 of this Code, provided that, for purposes of this subsection (3), such retail, planned shopping center must contain at least 20,000 square feet of gross leasable area; where the square footage of the package store does not exceed 20 percent of the retail operation; where the retail operation operates under a single corporate ownership; and where the existing retail establishment engages in the sale of products, services, and commodities, including the sale of alcoholic beverages, which sales shall represent not more than 20 percent of the total gross revenue of the existing retail establishment.

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

SV-2-23: THE APPLICANT IS SEEKING A POSITIVE RECOMMENDATION, FROM THE PLANNING AND ZONING BOARD, OF A PROPOSED STREET VACATION OF COOPER STREET, SOUTH OF EAST 3RD AVENUE.

November 6, 2023

Background:

Applicant: Glen D. Storch, Esq. 420 South Nova Road, Daytona Beach, Florida 32114 representing P & J Florida Properties, LLC, 208 Canova Dr., New Smyrna Beach, FL 32169.

Request: Vacation of a section of Cooper Street, a platted but unopened 75-foot wide right-of-way and a portion of a platted parcel owned by the City of New Smyrna Beach.

Right-of-Way Information: The subject portion of public right-of-way is 75' x 135', and is generally located south of State Road A1A / 3rd Avenue and west of Saxon Drive, within the First Addition to J.Y. Detwiler's Subdivision and a 75-foot wide by 40 feet deep section of a parcel lying south of the platted Cooper Street right-of-way. A Location Map is attached as Exhibit A, and an aerial map attached as Exhibit B, to show the subject property and other surrounding parcels.

Findings:

Exhibits used in this report:

Exhibit A: Location Map
Exhibit B: Aerial Map
Exhibit C: Provided Survey with legal descriptions
Exhibit D: OR 1604 Pg. 520 Cooper Street Deed
Exhibit E: Original Plat
Exhibit F: Letters of no objection from adjacent property owners
Exhibit G: Letter of No Objection from the New Smyrna Beach Utilities
Exhibit H: Letter from Applicant
Exhibit I: 2015 City Commission Result Letter
Exhibit J: 2014 P&Z Board minutes
Exhibit K: City Engineering Department Review

The applicant is seeking a vacation of an un-opened section of Cooper Street south of East 3rd Avenue and a portion of a parcel south of the un-opened Cooper Street right-of-way.

Under section 305.03 of the City's Land Development Regulations (LDR) requires the following items for a street vacation:

- Completed application form
- Receipt of application fee payment
- Plat of survey, including legal description and acreage of street or alley proposed to be vacated
- Letter from all land owners adjacent to portion of street or alley proposed to be vacated indicating that they have no objection to the vacation
- Letter from Utilities Commission indicating:
  a. No objection to the vacation,
  b. No utilities are within the right-of-way proposed to be vacated; or
  c. If utilities exist with right-of-way then letter must indicate what utilities are located in the right-of-way,
  d. If utilities exist in right-of-way, then letter must indicate easements required
  6. Letter from applicant explaining how the vacation is in the interest of the public good

All of these items have been received by City planning staff.

Also under Section 305.03 B. of the City LDR requires:

- The “City Planner shall review the application package for consistency with the City Comprehensive Plan and Land Development Regulations.”, and
- “In addition, the City Planner shall determine whether or not the proposed vacation would be in the interest of the public good.”

Those reviews and determinations are included as part of this staff report, to evaluate the requested vacation as required.

That same LDR Section (305.03 B.) also states the following in regard to the City Commission’s specific responsibilities concerning public right-of-way vacation requests:

- “The City Commission shall also determine whether the requested vacation would be in the interest of the public good.
- “The City Commission shall deny the request if there is no evidence that the vacation would be in the interest of the public good.”
- “The request shall not be approved for the sole reason of providing a benefit for the applicant or adjacent property owners."

- The City Commission shall hold a public hearing concerning the requested vacation in order to allow the public to voice its concern on the requested vacation.”

The City Planner is required to review any requested street vacation application for consistency with the City Comprehensive Plan. The following are portions of the City Comprehensive Plan that pertain to this specific request for vacation of public lands, at this central beachside location fronting SR A1A / 3rd Avenue and the Indian River /Mosquito Lagoon, with staff comments following each Comprehensive Plan Goal, Objective, and/or Policy in bold:

Chapter II, Future Land Use Element
Goal 1, Objective 2, Policy d.

- Maintain a sense of community through the provision of public spaces and landscaping of parks, recreation areas and medians.

  - **The area proposed for vacation is a currently undeveloped public property. While the North Causeway contains numerous public areas along its roadway, containing pavilions for bikers, pedestrians, etc., the South Causeway/ SR A1A / 3rd Avenue has no such provisions at this time, even though its volume of traffic is almost twice that of the North Causeway, and it serves as the primary gateway for most beachside visitors and residents.**

Goal 1, Objective 3, Policy b.

- …concentrating proposed commercial developments around major roadway intersections, and discouraging proposals that would increase the frontage of existing commercial strips.

  - **This vacation request would not serve the above designated Comprehensive Plan purpose of "discouraging proposals that would increase the frontage of existing commercial strips", but rather create the opposite effect. The existing commercial frontage along this section of SR A1A / 3rd Avenue would be extended to provide for a longer and increased commercial frontage, with no breaks then in the commercial strip length from Saxon Drive to Peninsula Avenue.**

Goal 4, Objective 5, Policy e.

- The City shall develop a plan to acquire properties with waterfront access for private and public redevelopment.

  - **Rather than furthering the stated plan "to acquire properties with waterfront access", this application seeks to have the City vacate a currently owned public**

property with possible waterfront access, at a very central location, and at no cost to those recipients of this public property and with no corresponding public benefit to the City.

Goal 7, Objective 1, Policy f.

- Participate with the state and county in the acquisition/preservation of lands lying within the Indian River estuarine system.

  - **Again, rather than the stated Policy of participating with the state and county in acquiring and preserving lands within the Indian River estuarine system, this application seeks to have the City give away land that is obviously part of the Indian River estuarine system (as shown in the Exhibit B aerial, at no cost to the recipients.**

Chapter III, Transportation Element
Roadways with Special Characteristics (Pg. III-14)

- ...State Road A1A (South Causeway / East 3rd / South Atlantic Avenues): State Road A1A is a physically constrained facility due to the unavailability of right-of-way from Live Oak Street to the south City limit.

  - **If this section of State Road A1A / 3rd Avenue is listed as a physically constrained facility due to the unavailability of right-of-way, it makes no sense to vacate this area of immediately adjacent platted and/or dedicated public right-of-way that currently does exist, especially as it has been enlarged in area in recent years specifically for public roadway purposes.**

Chapter X, Recreation and Open Space Element
Goal

- To provide and maintain an outstanding system of recreation and open space areas that will meet the present and future needs of New Smyrna beach.

  - **The area proposed for vacation is a currently undeveloped public property that could be used as a public waterfront park and/or open space area. Again, while the North Causeway contains numerous public areas along its roadway, containing pavilions for bikers, pedestrians, etc., the South Causeway/ SR A1A / 3rd Avenue has no such provisions at this time, even though its volume of traffic is almost twice that of the North Causeway, and it serves as the primary gateway for most beachside visitors and residents. This current ability to use this potential**

public space for those purposes listed above would be lost for good should this vacation request be approved.

The City Planner is also obligated to review any requested street vacation application, to determine whether or not the proposed vacation would be in the interest of the public good. The applicant has submitted a letter to explain how they perceive the proposed vacation request to be in the interest of the public good, which is attached as Exhibit H. In reviewing that letter from the applicant as to how the proposed request would to be in the interest of the public good, staff noted these reasons provided therein, with staff comments in bold following each listed item:

- The requested vacation would “provide a new 2-lane driveway access for each adjacent properties. The internal driveways between these two businesses will reduce traffic on E 3rd Avenue and will be a big benefit to the overall 3rd Avenue Commercial District."

  - **There is only one business currently there now the Mon Delice bakery. In addition, it is unlikely the 37.5’ frontage being requested to be vacated and then given to each adjoining property would allow for any more accessibility than currently exists. With SR A1A / 3rd Avenue being an arterial state road controlled and maintained by FDOT, that agency naturally has limitations on where curb cuts / accesses can be.**

- "A new public amenity in the form of a viewing pavilion is also proposed that will provide visitors with an overlook of the mangrove estuary."

  - **It would seem that the proposed 75' wide by 175' deep vacation has more value than the pavilion being proposed.**

This request was previously applied for in 2014. At its regular scheduled meeting on August 4, 2014 the Planning and Zoning Board voted, 0-5, failing to give the City Commission a positive recommendation to the City Commission to approve the vacation request. See Exhibit J.

The City Commission did approve a prior application even though the Planning Department and the Planning and Zoning Board were not in favor of the request. See City Commission result letter with conditions, attached as Exhibit I.

Recommendations:

The City Engineering Department reviewed the application based on future projects or

proposed improvements to this requested right-of-way vacation. The City Engineering Department has no conflict with the request. There are no current proposed use for this un-opened section of Cooper Street right-of-way.

As stated above, there are two specific responsibilities the City Commission is charged with concerning any public right-of-way vacation requests, which are:

- The City Commission shall determine whether the requested vacation would be in the interest of the public good," and "shall deny the request if there is no evidence" of that, and
- "The request shall not be approved for the sole reason of providing a benefit for the applicant or adjacent property owners."

In the required associated staff review of this right-of-way vacation application request, for consistency with the City Comprehensive Plan, and to determine whether or not the proposed vacation would be in the interest of the public good, those reviews and determinations are included above in this staff report. The end result and determination, and staff recommendation to the Planning and Zoning Board and City Commission who will be reviewing and acting on this request, is that the request fails to meet the required items listed above. This request fails specifically for the following reasons, as previously described in more detail above and reiterated below:

1) Should this vacation request be granted, it would leave a remnant City owned public property that was deeded for the specific purpose "to have and to hold the above described property for a public road or street." That city owned the extension of Cooper Street" roadway property would then have no connection and/or access to any other public right-of-way, and its value would be lost or at best reduced very severely. This may cause a situation where the heirs may be able to request the return of this property, would be landlocked, with no access to East 3rd Avenue.

2) This vacation request is inconsistent with, and in many instances totally contrary to, various Goals, Objectives, and Policies of the City's Comprehensive Plan, as listed above, regarding aspects of the Comprehensive Plan pertaining to public spaces, increasing lengths of existing commercial strips, acquiring and/or preserving waterfront and/or Indian River properties (as opposed to this request to abandon the current public ownership), public right-of-way availability along SR A1A / 3rd Avenue, open space, public spaces, and waterfront and scenic area access.

3) The required letter by the applicant to provide evidence of this request being "in the interest of the public good" fails to provide any such evidence, instead detailing how any additional access points could be designed if approved by FDOT.

4) Taken all together, from the evidence that has been provided by the applicant and as determined as required in this staff review and evaluation, there appears to be minimal or no evidence that the proposed vacation request would be in the required "interest of the public good." Accordingly it is recommended the request shall be denied, as "there is no evidence that the vacation would be in the interest of the public good."

6) In addition, as the sole reason for this request appears to be to provide a benefit for the applicant or adjacent property owners, that is a second requirement that provides even more evidence to recommend the request shall be denied, as "the request shall not be approved for the sole reason of providing a benefit for the applicant or adjacent property owners."

Fiscal Analysis:
N/A

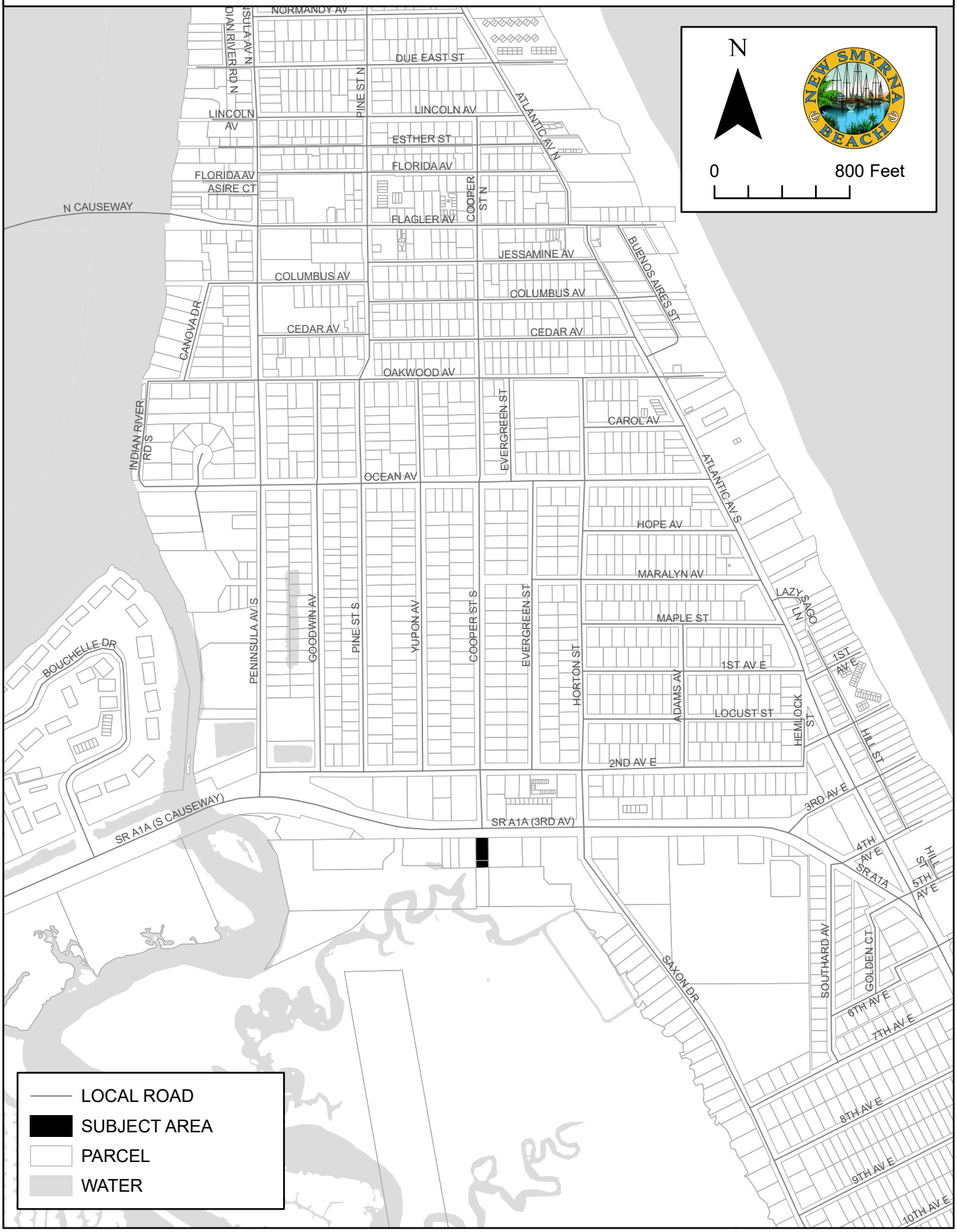
Strategic Plan Item:
No

Staff Report Created By: Robert Mathen - Planner II

Attachments:

SV-2-23 Exhibit A Location Map.pdf
SV-2-23 Exhibit B Aerial Map.pdf
SV-2-23 Exhibit C Cooper Street vacation Sketch of Description.pdf
SV-2-23 Exhibit D OR 1604 Pg 520 - Cooper St. Extension by Deed.pdf
SV-2-23 Exhibit E Original Detwiler plat.pdf
SV-2-23 Exhibit F Adjacent Property Owner Lettter of No Objection.pdf
SV-2-23 Exhibit G No Objection letter from Utilities.pdf
SV-2-23 Exhibit H Applicant Request Letter 4-19-23.pdf
SV-2-23 Exhibit I 2015 Result Letter - City Commission 03102015.pdf
SV-2-23 Exhibit J August 2014 P&Z Minutes.pdf
SV-2-23 Exhibit K City Engineering Department Review.pdf

SV-2-23: LOCATION MAP



SV-2-23: AERIAL MAP



EXHIBIT C

SKETCH OF DESCRIPTION OF (NOT A SURVEY)

That portion of Cooper Street, shown as "Avenue E", a 75-foot right of way, FIRST ADDITION TO J. Y. DETWILER'S SUBDIVISION in New Smyrna Beach, according to the map of plat thereof, recorded in Map Book 7, Page 85, Public Records of Volusia County, Florida, lying south of East 3rd Avenue, shown as "Detwiler Boulevard" or "3rd Street" on said plat of First Addition to J. Y. Detwiler's Subdivision; bounded on the west by the east line of Block "24", said First Addition to J. Y. Detwiler's Subdivision, and bounded on the east by the west line of Block "26", said First Addition to J. Y. Detwiler's Subdivision.

AND

The North 40 feet of the extension of Copper Street as described in Official Records Book 1604, Page 520 of the Public Records of Volusia County, Florida.

Containing 13,125 square feet more or less.

REPORT:

1. Description prepared by the undersigned at the request of the client.
2. Subject to restrictions, reservations, limitations, easements and rights of way, if any, appearing of record.
3. This sketch of description and report prepared without the benefit of an abstract and no title work has been performed or provided to this surveyor.
4. This sketch of description and report is subject to any facts that may be disclosed by a full and accurate title search.
5. The location of any subsurface foundations, improvements, features or utilities which may or may not exist and which may or may not violate deed or easement lines are not determined or addressed by this survey.
6. Dimensions indicated hereon are in U.S. standard feet and decimals thereof, unless otherwise noted.
7. **This sketch is not an actual Boundary Survey.**
8. Additions or deletions to this survey map or report by other than the signing party or parties is prohibited without written consent of the signing party or parties per F.A.C. Rule 5J-17.051(3)(b)6.
9. The survey map and report or copies thereof are not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

SEE PAGE 2 FOR SKETCH

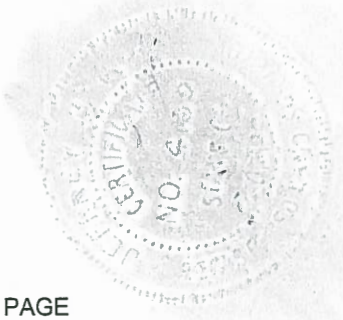
DATE PREPARED: 04/10/2023

I hereby certify that this sketch of description of the subject property is true and correct to the best of my knowledge, information and belief as prepared under my supervision on the dates shown thereon. I further certify that this sketch of description meets the Standards of Practice set forth in F.A.C. Rule 5J-17, adopted by the Florida Board of Professional Surveyors and Mappers, pursuant to Florida Statutes Ch. 472.027, subject to the qualifications noted hereon.

Signed: _____

Jeffrey W. Cory
Professional Surveyor and Mapper License Number 4139

Seal:



THIS SKETCH OF DESCRIPTION CONTAINS 2 PAGES
EACH PAGE IS NOT FULL AND COMPLETE WITHOUT THE OTHER PAGE

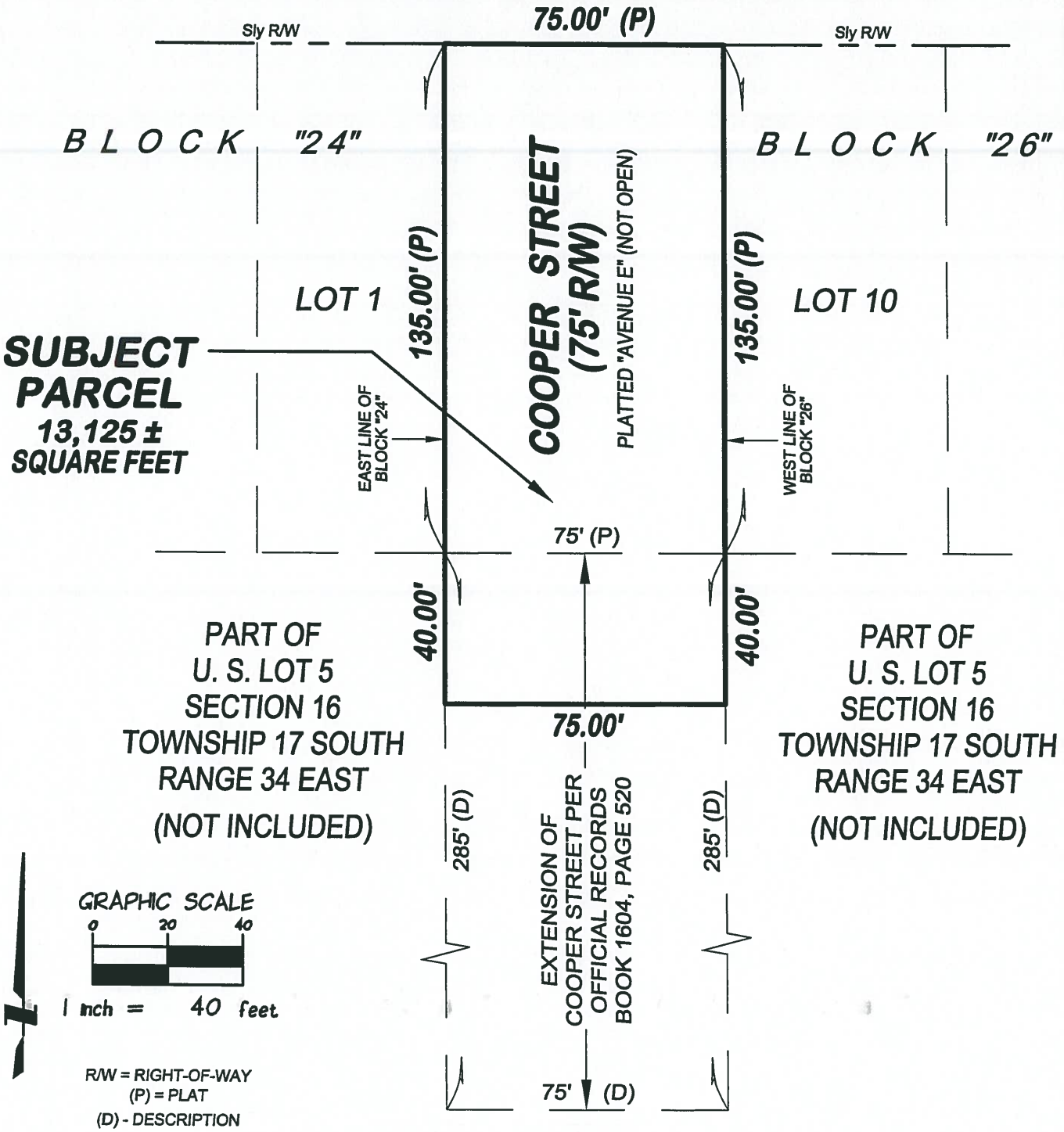
Daniel W. Cory Surveyor, LLC
Certificate of Authorization Number LB 7883
300 Canal Street
New Smyrna Beach, Florida 32168
(386) 427-9575

FILE # 2035
Work Order #22-07-004
Cooper Street
South of 3rd Avenue

EXHIBIT C

EAST 3rd AVENUE - COUNTY ROAD A-1-A (100' R/W)

PLATTED "DETWILER BOULEVARD" OR "3rd STREET"



R/W = RIGHT-OF-WAY
(P) = PLAT
(D) - DESCRIPTION

NOT A BOUNDARY SURVEY
(DESCRIPTION ON PAGE 1)

THIS SKETCH OF DESCRIPTION CONTAINS 2 PAGES
EACH PAGE IS NOT FULL AND COMPLETE WITHOUT THE OTHER PAGE

Daniel W. Cory Surveyor, LLC
Certificate of Authorization Number LB 7883
300 Canal Street
New Smyrna Beach, Florida 32168
(386) 427-9575

FILE # 2035
Work Order #22-07-004
Cooper Street
South of 3rd Avenue

CAD FILE: 22070042

Book	No. 28 -continued-
Page	side of Ave. "G" to the SE corner of Lot 1 in Block 26, a distance of 285 ft; thence Wly along the S line of platte lots in Block 26 a distance of 527.2 ft to the point of b ginning, which is the SW corner of Lot 10 in Block 26. First Addition to J. Y. Detwiler's Sub of New Smyrna Bea
Date	Signed and sealed in the presence of two witnesses.
Filed	Acknowledged before a Notary Public, J. Boyd DeLoach, th 20th day of December, 1972. Commission expires 4/25/73
Kind of Instrument	
Consideration	

	No. 29 W I T N E S S E T H:
Book	HANNAH DETWILER BONNET, a single woman, The party of the first part, for and consideration of the sum of Ten Dol ($10.00) and other good and valuabl considerations, the receipt of whic hereby acknowledged, has granted, b gained, sold and conveyed, and here grants, bargains, sells and conveys to the party of the second part, su ors and assigns that certain real pr erty lying and being in Volusia Coun Florida and more particularly descri as:
OR 1604	
Page	-to-
520	
Date	CITY OF NEW SMYRNA BEACH, a municipal corporation.
11 June 1973	
Filed	
14 June 1973	
Kind of Instrument	
DEED OF DEDICATION	
Consideration	
$10 & ovc	A parcel of land in U. S. Lot 5, Sec 16, Township 17 South, Range 34 East, described as follow Begin at the Southwest corner of Lot 10, Block 26, J. Y. Detwiler's Subdivision as recorded in Map Book 7, Page 8 Public Records of Volusia County, Florida, thence Southe along the Southerly prolongation of the West line of sai Lot 10, 285 feet; thence Westerly and parallel to the So line of said Lot 10, 75 feet; thence Northerly and paral to the Southerly prolongation of the West line of said L 10, 285 feet; thence Easterly 75 feet to the point of be ginning, containing 0.49 acres more or less, being an ex sion of Copper Street,
Book	
Page	to have and to hold the above described property for a p lic road or street.
Date	Signed and sealed in the presence of two witnesses.
Filed	Acknowledged before a Notary Public, Ona R. Gentry, the 11th day of June, 1973. Commission expires 9/19/74
Kind of Instrument	
Consideration	

BOOK 22 PAGE 129

~ Corrected ~

Plat of First Addition to J. Y. Detwiler Sub of New Smyrna Beach, Vol. Co. Fla. C'tn Lot 1 Sec 16 Twp 17 S, R 34 E. Blocks 1 to 12 inc.) This plat consists of parts of Lots 2-3-4 & 5 - All in Sec 16 Twp 17 S, R 34 E. and shows as platted parts of Blocks 13-15-17-20-24-23-26-27 & 28 and all of Blocks 18-19 & 22

Exceptions

Block 27 as platted includes all of Mc Cormick and Chapman's Sub. of the S.E. four Acres of Lot 4, Sec. 16 Twp 17 S, R. 34 E. Except Lots 1-2-11-12-13-14.

Henry D. Bennett Professional Engineer Reg. # 200

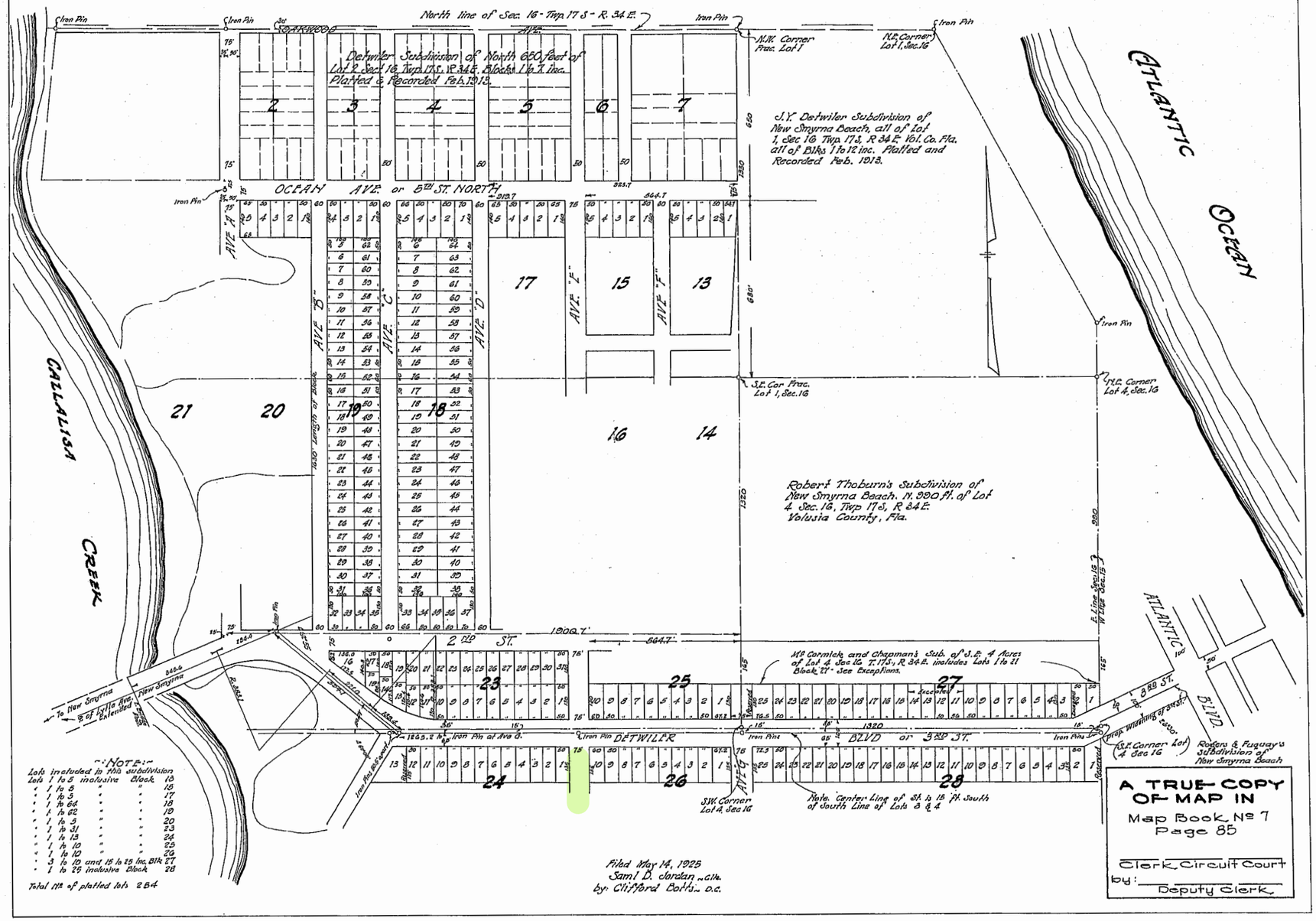
SCALE 1" = 200 ft. Dated Dec. 1924 May 14 1925

State of Florida
County of Volusia

Hannah Detwiler Bonnet a Free Dealer being duly Sworn, says that she is the owner of the following Lands all in Sec. 16 Twp 17 S, R 34 E. Vol. Co. Fla. To wit: The South 650 ft. of Lot 2. All of Lots 3 & 5 and the S. 330 ft. of Lot 4. Except Lots 1-2-11-12-13 and 24 of Mc Cormick & Chapmans Sub. of S.E. 4 Acres of Lot 4, S. 16, T. 17 S., R 34 E. That she has caused the same to be in part Subdivided and mapped according to the plat herewith and that same is correct to the best of her knowledge and files same for Record.

Hannah Detwiler Bonnet

Signed and sworn to and acknowledged before me this 12th day of May 1925.



~ NOTE ~

Lots included in this subdivision

Lot 1	to 5	inclusive	Block	13
" 1	to 5	"	"	15
" 1	to 5	"	"	17
" 1	to 64	"	"	18
" 1	to 62	"	"	19
" 1	to 3	"	"	20
" 1	to 31	"	"	23
" 1	to 13	"	"	24
" 1	to 10	"	"	25
" 1	to 10	"	"	26
" 3	to 10 and 15 to 25	Inc.	Blk	27
" 1	to 29	inclusive	Block	28

Total No of platted lots 284

Filed May 14, 1925
Sam'l D. Jordan Clk.
by: Clifford Botts D.C.

A TRUE COPY OF MAP IN
Map Book No 7
Page 85
Clerk Circuit Court
by: Deputy Clerk

EXHIBIT F

LETTER OF NO OBJECTION

I, SERGE SORESE, as President of FLORIDA'S FINEST FRENCH BAKERY, INC., which is the owner of Parcel ID # 7416-05-24-0010, hereby state that I have no objection to the vacation of the Cooper Street right-of-way adjacent to said parcel.

Signed: _____
Serge Sorese

4/19/23
Sworn to under oath.
Personally known

_____

NOTARY PUBLIC STATE OF FLORIDA

DONNA AUSTIN RUHL
Commission # HH 320364
Expires October 29, 2026

New Smyrna Beach
• • • UTILITIES • • •

200 Canal Street
New Smyrna Beach, Florida 32168
386-427-1361

Mailing Address:
Post Office Box 100
New Smyrna Beach, FL 32170

May 17, 2023

Storch Law Firm
420 South Nova Road
Daytona Beach, FL 32114

SUBJECT: Proposed Vacation of a Highlighted Portion of Platted Right-of-Way
Map of First Addition to J.Y. Detwiler's Subdivision, Map Book 7, Page 85

Dear Mr. Brown:

New Smyrna Beach Utilities has no objection to the referenced unopened platted right of way vacations of a portion of Cooper Street as described and depicted in your letter dated April 18, 2023.

New Smyrna Beach Utilities has no electric, water, wastewater or reclaim water mains in the proposed vacation.

If you have any question or need additional information, please do not hesitate to contact me at 386-424-3008.

Sincerely,

Kristin Greene

Kristin Greene
New Business Service Coordinator

EXHIBIT H

STORCH LAW FIRM

GLENN D. STORCH, ESQUIRE
glenn@storchlawfirm.com

COREY D. BROWN, ESQUIRE
corey@storchlawfirm.com

A. JOSEPH POSEY, ESQUIRE
joey@storchlawfirm.com

April 19, 2023

Via Hand Delivery
Jeff Gove, AICP
Chief Planner
City of New Smyrna Beach
214 Sams Avenue
New Smyrna Beach, FL 32168

Re: Application for Vacation of Cooper Street Right-of-Way

Dear Jeff:

This is an application to vacate a portion of the Cooper Street right-of-way south of 3rd Avenue and adjacent to parcel numbers 7416-05-26-0080 and 7416-05-24-0010. The vacation area includes the section of Cooper St. right-of-way south of 3rd Avenue and a small section of the extension of that right-of-way to the south in City-owned parcel number 7416-00-00-0051. The proposed vacation will allow for a new 2-lane driveway for access to and from the adjacent properties, which includes Mon Delice French Bakery and a new restaurant and market with additional parking area. The internal driveways between these two businesses will reduce traffic on 3rd Avenue and will be a big benefit to the overall 3rd Avenue Commercial District. A new public amenity in the form of a viewing pavilion is also being proposed that will provide visitors with an overlook of the mangrove estuary. Both adjacent property owners have consented to the vacation (one is applicant and the other has provided a letter of no objection), and the right-of-way cannot provide access to any other properties due to the estuary/wetlands to the south.

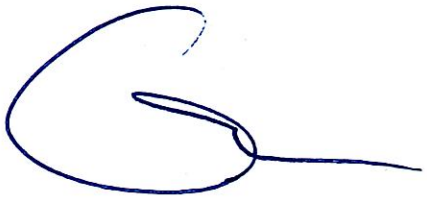
Included with this letter are the following:

1. Signed application form;
2. Application fee in the amount of $500;
3. Notarized authorization of owner;
4. Letter of No Objection from adjacent owner;
5. Sketch of description of the vacation area;
6. Conceptual Plan showing driveway, parking, restaurants and viewing pavilion; and
7. Thumb drive with electronic copies of documents.

I have also sent a letter to City of New Smyrna Beach Utilities requesting a no objection letter for this vacation, which I will forward to you upon receipt.

Please let me know if you have any questions about the proposed vacation of Cooper Street or need anything else for this application.

Kindest regards,



Glenn D. Storch

GDS/cdb
Enclosures

City of New Smyrna Beach

March 24, 2015

Glenn D. Storch
Storch & Harris, PA
420 South Nova Road
Daytona Beach, FL 32114

RE: SV-1-14: STREET VACATION REQUEST – COOPER STREET SOUTH OF STATE ROAD A1A / EAST 3RD AVENUE

Dear Mr. Storch:

The City Commission met in a regular meeting on Tuesday, March 10, 2015, to consider your request to vacate a portion of the platted, but unopened, Cooper Street right-of-way, south of State Road A1A/East 3rd Avenue.

The Commission voted 4-1, to approve your request. The Commission's approval was conditioned upon the following:

1. The proposed public access and facilities shown on the recent plan submittals be provided and constructed as part of any future site development, including recorded easements, etc;
2. The proposed site "redevelopment" and required public access be initiated within three years of the date of City Commission approval of the right-of-way vacation;
3. The "agreement or condition" offered by the property owner/developer (to allow public access to continue within this public right-of-way, and for the conceptual plans submitted to be "fully completed") shall include a reverter clause using that "set timeline" offered, with the faceted area returning to the city if all improvements are not completed within that time period;
4. The developer will bring the site plan back before the City Commission for review and approval within two years of the date of City Commission approval of the right-of-way vacation; and
5. Picnic tables shall be provided along the public access area.

Please feel free to contact me with any questions you might have. I may be reached at (386) 424-2134 or via email (ghenrikson@cityofnsb.com).

Sincerely,

Gail Henrikson, AICP
Planning Manager

Cc: Case File #SV-1-14

Excerpt from Official Minutes of August 4, 2014 Planning & Zoning Board, pertaining to SV-1-14, request to vacate Cooper Street public right-of-way

The Local Planning Agency/Planning and Zoning Board held a regular meeting on Monday, August 4, 2014 in the City Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida. Chairperson Travous Dever called the meeting to order at 6:30 p.m.

ROLL CALL

The following members answered to roll call:
Jessie Clark
Stephen Sather
Steven Casserly
Travous Dever
Jamie Calkins

Board members Ian Ratliff and Kelly Azzinaro were absent, excused. Also present were Planner Jeff Gove; Planner Robert Mathen; Planning Manager Gail Henrikson and members of the public.

.....

D. SV-1-14: COOPER STREET / WEST OF EAST 3RD AVENUE
Jeff Gehris, 208 Canova Dr., New Smyrna Beach, FL 32169, applicant and owner, requests vacation of an approximately 75' by 135' section of platted and/or dedicated & unopened Cooper Street right-of-way. The subject property is located south of 3rd Avenue / State Road A1A and the open section of Cooper Street to the north, west of Saxon Drive, within the First Addition to J. Y. Detwiler Subdivision.

Mr. Gove addressed the Board, reviewed staffs' findings and stated that staff recommended denial of the requested street vacation.

Mr. Sather discussed the estimation of the projected tax revenue from the vacated property. He stated that the overall revenue to the City might actually be more than estimated by staff.

Mr. Gove clarified how he had derived his estimation.

Mr. Sather continued to discuss the projected tax revenue.

Mr. Sather asked about the depth of the properties. He stated that the property to the south of the requested vacation area could be used for public access if the right-of-way were vacated and a public access easement granted to allow the public to access the parcel to the south.

Mr. Sather continued to discuss public access to the river with regard to this property and other properties throughout the City. He stated that he was trying to apply Solomon's Wisdom to this case.

Mr. Dever opened public participation.

No one from the public spoke for or against the request. The applicant was not present.

Mr. Dever closed public participation.

Mr. Calkins stated that he didn't think the City should give away land that could be used for a public purpose.

Mr. Sather stated that he concurred.

Motion by Mr. Calkins, seconded by Mr. Casserly, to recommend the City Commission approve the requested street vacation. Motion failed, 0-5, on a roll call vote. The motion goes forward to the City Commission with a recommendation of denial.

October 16, 2023

Bob, please see below response:

The Engineering Dept has no current or future plans for the opening or improvement of this right of way. It does not provide a benefit for roadway network and due to its elevation and proximity to the waterway would not provide any benefit to the stormwater systems in the area. There could however possibly be a potential shoreline restoration initiative in conjunction with the proposed improvements and suggest coordination with MDC for suggestions. I do not object to the request for vacation of this segment of S Cooper.

Jesse Meyers, P.E.
Senior Civil Engineer
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, FL 32168
(386) 410-2812 (office)
jmeyers@cityofnsb.com
www.cityofnsb.com

THE CITY OF NEW SMYRNA BEACH - DEVELOPMENTAL SERVICES

APPROVAL OF THE PLANNING AND ZONING 2024 REGULAR MEETING SCHEDULE

November 6, 2023

Background:
Staff recommends the Planning and Zoning Board approve the 2024 regular meeting schedule as submitted.

Fiscal Analysis:
N/A

Strategic Plan Item:
No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

Attachments:

P&Z 2024 REG MEETING DATES.pdf

City of New Smyrna Beach

Planning and Zoning
2024 Regular Meeting Schedule

MEETING DATES

The Planning and Zoning Board meets on the 1st Monday of each month at 5:30 p.m., unless otherwise indicated.

MEETING LOCATION

Unless otherwise advertised, the Planning and Zoning Board will meet at the City Commission Chambers, located at 214 Sams Avenue.

JANUARY 8, 2024
FEBRUARY 5, 2024
MARCH 4, 2024
APRIL 1, 2024
MAY 6, 2024
JUNE 3, 2024
JULY 1, 2024
AUGUST 5, 2024
SEPTEMBER 9, 2024
OCTOBER 7, 2024
NOVEMBER 4, 2024
DECEMBER 2, 2024

Development Services Department
214 Sams Avenue
New Smyrna Beach, Florida 32168
www.cityofnsb.com

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

SELECTION OF THE 2024 CHAIRPERSON AND VICE CHAIRPERSON

November 6, 2023

Background:

Conduct the nomination and election for the 2024 Planning and Zoning Board Chairperson and Vice Chairperson.

Fiscal Analysis:

N/A

Strategic Plan Item:

No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

THE CITY OF NEW SMYRNA BEACH - PLANNING DEPARTMENT

NOVEMBER 2023 DEVELOPMENT ACTIVITY REPORT

November 6, 2023

Background:
November 2023 Development Activity Report

Fiscal Analysis:
N/A

Strategic Plan Item:
No

Staff Report Created By: Stephanie Ferrara - Development Services Coordinator

Attachments:

November 2023 Development Activity Report 1.pdf
November 2023 Approved Projects.pdf

November 2023 Development Activity Report

****Contact Planning Department at (386) 410-2830 with any questions regarding the DAR*****

Map ID#	Project Name	Project Number	Location	Description	Final Approval By	Current Status	Next Step
1	Village Square MDA Amendment	PUD-0003-2021	2360 SR 44	Retail / Office / Restaurant	City Commmission Meeting	Staff preparing for CC agenda	City Commission Meeting on 10/24/23 *applicant requested to continue
2	Medical Complex and Wellness Center	PUD-0004-2022	190 S. Wild Orange Dr.	Medical Office	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
3	New Smyrna Beach Utilites Commission	PUD-0005-2022	Intersection of S.R. 44 and Interstate 95	Commercial/Utility Uses	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
4	4th Amendment to Regency/Wal-Mart PUD/MDA	PUD-0009-2022	SR 44 and I-95	Carwash	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
5	M/U Garage/Restaurant/Retail	PUD-0002-2023	1300 S. Atlantic Avenue	Garage/Restaurant /Retail	Future City Commission Meeting	Submitted for Staff Review	Staff to Issue Comments
6	3rd Amendment to VB PUD Restated	PUD-0006-2023	State Road 44 and Airport Road	Miniature Golf Course and Restaurant	Future City Commission Meeting	Submitted for Staff Review	Staff to Issue Comments
7	Murphy Oil	PUD-0008-2023	2995 State Road 44	Gas Station	Future City Commission Meeting	Submitted for Staff Review	Staff to Issue Comments
8	Reserve at Lake Waterford	S-1-18	Eslinger Road	45 Lot Residential Subdivision	Future City Commission Meeting	Staff preparing for CC agenda	City Commission Meeting on TBD
9	Rolling Hills	S-10-18	Sugar Mill Drive	194 Lot Subdivision	Future City Commission Meeting	Staff preparing for CC agenda	City Commission Meeting on TBD
10	S. Myrtle Ave	S-0002-2022	408 S. Myrtle Ave	8 Single Family Residental Lots	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
11	South Village - Pre Plat	S-0001-2023	State Road 44	Commercial and Residential	City Staff	Submitted for Staff Review	Staff to Issue Comments
12	Hidden Lakes - Pre Plat	S-0003-2023	Turnbull Bay Road/Wispering Pines Drive	132 Residential Units	City Staff	Submitted for Staff Review	Staff to Issue Comments
13	Bless Gas Station & Convenience Store	SP-0023-2021	1650 S. Atlantic	Convenience store and gas station	City Staff	Staff Comments Issued	Applicant to Resubmit
14	Davis Bros Expansion	SP-0024-2022	708 N. Dixie Freeway	6,267 SF warehouse	City Staff	Staff Comments Issued	Applicant to Resubmit

SP - Site Plan, S - Subdivision,
PUD - Planned Unit Development

November 2023 Development Activity Report

****Contact Planning Department at (386) 410-2830 with any questions regarding the DAR*****

Map ID#	Project Name	Project Number	Location	Description	Final Approval By	Current Status	Next Step
15	Catalyst Apartments	SP-0029-2022	Regency/Wal-mart PUD - SR 44	279 Multifamily Units with 558 parking spaces	Future City Commission Meeting	Staff Comments Issued	Applicant to Resubmit
16	Florida Health Care Plan	SP-0031-2022	Timberlane/ SR44 & Oliver Drive	12,713 SF Medical Office and Pharmacy Building	City Staff	Staff Comments Issued	Applicant to Resubmit
17	Seaview Terrace	SP-0001-2023	S. Atlantic Avenue	5 Condominium Units	City Staff	Submitted for Staff Review	Staff to Issue Comments
18	707 Cheston Street	SP-0015-2023	707 Cheston Street	2240 sq ft office and warehouse	City Staff	Submitted for Staff Review	Staff to Issue Comments
19	1674 Tionia Road	SP-0019-2023	1674 Tionia Road	4800 sq ft office and warehouse	City Staff	Submitted for Staff Review	Staff to Issue Comments

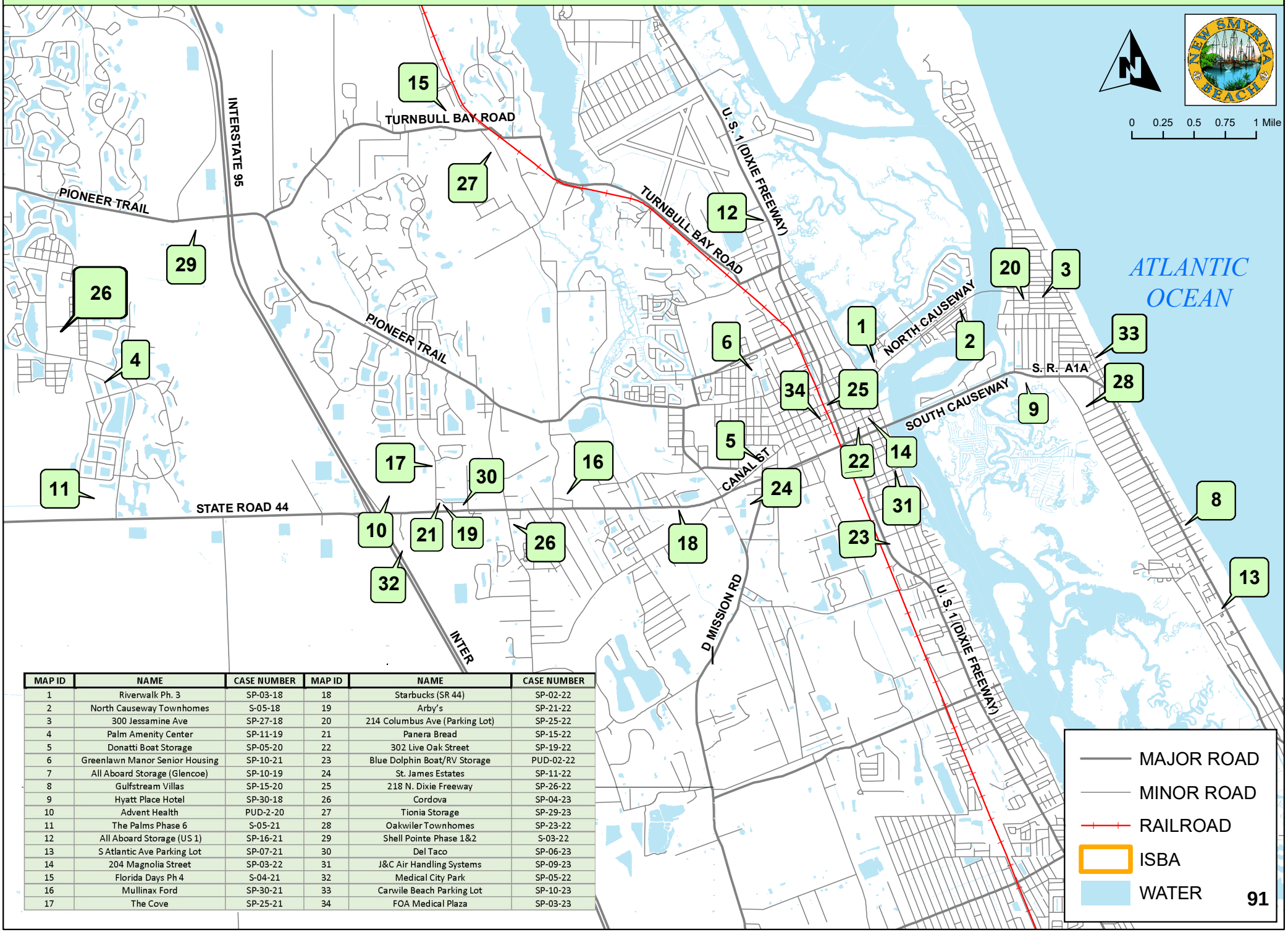
SP - Site Plan, S - Subdivision,
PUD - Planned Unit Development

NOVEMBER 2023 PROJECTS APPROVED AND/OR UNDER CONSTRUCTION MAP

Map ID #	Project Name	Project Number	Location	Descrition	Final Approval Date	Final Approval By	Current Status
1	Riverwalk Ph. 3	SP-03-18	99 N Causeway	Residential Condo 112 units	December 3, 2018	Planning and Zoning	Under Construction
2	North Causeway Townhomes	S-05-18	SR 44 and Desoto Drive	Residental Townhomes 2 building with 14 units	June 11, 2019	City Commission	Construction not started
3	300 Jessamine Ave	SP-27-18	300 Jessamine Ave	36 seat Restaurant	November 4, 2019	Staff Approval	Construction not started
4	Palms Amenity Center	SP-11-19	The Palms Subdivision on Airport Rd	Receration Facility	April 3, 2020	Staff Approval	Under Construction
5	Donatti Boat Storage	SP-05-20	1245 Canal Street	10 mini-warehouse building and 1 office building	December 8, 2020	Planning and Zoning	Under Construction
6	Greenlawn Manor Senior Housing	SP-10-21	600 Greenlawn St	80 unit 3 story multi-family senor living	September 23, 2021	Planning and Zoning	Under Construction
7	All Aboard Storage (S. Glencoe Rd.)	SP-10-19	SR 44 & South Glencoe Rd	57,600 Sq Ft Storage Facility	October 4, 2021	Planning and Zoning	Under Construction
8	Gulfstream Villas	SP-15-20	3403 S Atlantic Ave	8 Unit Townhomes	January 5, 2022	Staff Approval	Construction not started
9	Hyatt Place Hotel	SP-30-18	SR A1A and 3rd Ave	114 room hotel facilit, one 4 story building and 8,550 SF one story restaurant with 278 seats	February 7, 2022	Planning and Zoning	Construction not started
10	Advent Health	PUD-02-20	NE Corner of SR & I-95	New Medical Center	February 8, 2022	City Commission	Construction not started
11	The Palms Phase 6	S-05-21	Ventian Bay	209 Single Family Lots	March 8, 2022	City Commission	Under Construction
12	All Aboard Storage (US 1)	SP-16-21	110 Ponce Street	Storgae Facility	May 2, 2022	Planning and Zoning	Construction not started
13	S. Atlantic Ave Parking Lot	SP-07-21	S. Atlantic & Matthews	110 Space Parking Lot Facility	May 24, 2022	City Commission	Construction not started
14	204 Magnolia Street	SP-03-22	204 Magnolia	Restaurant with 2 apartment units	August 18, 2022	Staff Approval	Construction not started
15	Florida Days Ph 4	S-01-21	Cattail Circle	37 Single Family Lots Subdivision	September 13, 2022	City Commission	Construction not started
16	Mullinax Ford	SP-30-21	2317 State Road 44	11,068 sf building and 378 parking lot	September 27, 2022	Staff Approval	Under Construction
17	The Cove	SP-25-21	306 Sugar Mill Drive	47 Quadplexes of 188 dwellings	October 3, 2022	Planning and Zoning	Under Construction

18	Starbucks (SR 44)	SP-02-22	1906 State Road 44	Coffee shop with drive thru	October 26, 2022	Staff Approval	Under Construction
19	Arby's	SP-21-22	State Road 44	Resturant with drive-thr	November 21, 2022	Staff Approval	Construction not started
20	214 Columbus Ave (Parking Lot)	SP-25-22	214 Columbus Ave	21 Spaces/Parking Lot	December 8, 2022	Staff Approval	Construction not started
21	Panera Bread	SP-15-22	2709 State Road 44	Resturant with drive-thr	December 21, 2022	Staff Approval	Under Construction
22	302 Live Oak Street	SP-19-22	302 Live Oak Street	2 story residental buildir	December 21, 2022	Staff Approval	Construction not started
23	Blue Dolphin Boat/RV Storage	PUD-2-20	S. of 3rd Street extended West of S Dixie Freeway	Boat and RV Storage Facility	January 24, 2023	City Commission	Construction not started
24	St. James Estates	SP-11-22	S of SR 44 and Old Mission Rd.	7 Residential Townhouse	March 8, 2023	Planning and Zoning	Construction not started
25	218 N. Dixie Fwy.	SP-26-22	218 N. Dixie Freeway	Commercial business	May 3, 2023	Staff Approval	Construction not started
26	Cordova (Village Center East	SP-4-23	Luna Bella Lane	322 unit apartment complex	May 16, 2023	City Commission Approved	Under Construction
27	Tionia Storage	SP-29-21	South of Turnbull Bay Road	Boat and RV Storage Facility	June 5, 2023	Planning and Zoning	Construction not started
24	St. James Estates - Final Plat	S-1-22	S of SR 44 and Old Mission Rd.	31 proposed lots	June 13, 2023	City Commission	Construction not started
28	Oakwiler Townhomes	SP-23-22	Saxon Drive North of 7th Ave	77 Town houses units	June 27, 2023	City Commisson Approval	Construction not started
29	Shell Pointe Phase 1	S-03-22	State Road 44	Commercial and Residential	June 27, 2023	City Commission	Under Construction
30	Del Taco	SP-06-23	SR 44 (Coastal Woods East Commercial)	Restaurant with double Drive Thru	August 21, 2023	Staff Approval	Construction not started
31	J&C Air Handling Systems	SP-09-23	802 Magnolia	Replacement of Existing Storage Shop	August 21, 2023	Staff Approval	Construction not started
32	Medical City Park	SP-05-22	South of SR 44 and East of I-95	Mixed Use Medical Office and hotel facility	September 5, 2023	Planning and Zoning	Construction not started
33	Carwile Beach Parking Lot	SP-10-23	North of 3rd Ave and S. Atlantic Ave.	86 space parking lot	September 5, 2023	Planning and Zoning	Construction not started
34	FOA Medical Plaza	SP-03-23	617 Canal Street	3,834 SF medical building	September 22, 2023	Staff Approval	Construction not started

NOVEMBER 2023 PROJECTS APPROVED AND/OR UNDER CONSTRUCTION MAP



MAP ID	NAME	CASE NUMBER	MAP ID	NAME	CASE NUMBER
1	Riverwalk Ph. 3	SP-03-18	18	Starbucks (SR 44)	SP-02-22
2	North Causeway Townhomes	S-05-18	19	Arby's	SP-21-22
3	300 Jessamine Ave	SP-27-18	20	214 Columbus Ave (Parking Lot)	SP-25-22
4	Palm Amenity Center	SP-11-19	21	Panera Bread	SP-15-22
5	Donatti Boat Storage	SP-05-20	22	302 Live Oak Street	SP-19-22
6	Greenlawn Manor Senior Housing	SP-10-21	23	Blue Dolphin Boat/RV Storage	PUD-02-22
7	All Aboard Storage (Glencoe)	SP-10-19	24	St. James Estates	SP-11-22
8	Gulfstream Villas	SP-15-20	25	218 N. Dixie Freeway	SP-26-22
9	Hyatt Place Hotel	SP-30-18	26	Cordova	SP-04-23
10	Advent Health	PUD-2-20	27	Tionia Storage	SP-29-23
11	The Palms Phase 6	S-05-21	28	Oakwiler Townhomes	SP-23-22
12	All Aboard Storage (US 1)	SP-16-21	29	Shell Pointe Phase 1&2	S-03-22
13	S Atlantic Ave Parking Lot	SP-07-21	30	Del Taco	SP-06-23
14	204 Magnolia Street	SP-03-22	31	J&C Air Handling Systems	SP-09-23
15	Florida Days Ph 4	S-04-21	32	Medical City Park	SP-05-22
16	Mullinax Ford	SP-30-21	33	Carwile Beach Parking Lot	SP-10-23
17	The Cove	SP-25-21	34	FOA Medical Plaza	SP-03-23