

CITY OF BROOKSVILLE  
SPECIAL COUNCIL MEETING - 6:30 P.M.  
REGULAR CITY COUNCIL MEETING - 7:00 P.M.  
COUNCIL CHAMBERS  
201 HOWELL AVENUE

AGENDA

October 20, 2008

See Above

Brooksville City Council met in regular session with Mayor David Pugh, Vice Mayor Frankie Burnett and Council Members Joe Bernardini, Lara Bradburn and Richard E. Lewis present. Also present was Derrill McAteer and Jennifer Rey, City Attorneys; T. Jennene Norman-Vacha, City Manager; Karen M. Phillips, City Clerk/Director of Administration; Janice L. Peters, Deputy City Clerk; Steve Baumgartner, Finance Director; Mike Walker, Parks and Recreation Director; Bill Geiger, Community Development Director; Emory Pierce, Director of Public Works and Tim Mossgrove, Fire Chief.

The meeting was called to order by Mayor Pugh, followed by an invocation and Pledge of Allegiance.

Mayor Pugh adjourned the Council Meeting for the appeal of the Planning & Zoning Commission decision concerning the denied Special Exception Use Petition for 611 N. Broad Street at 6:41 p.m.

SPECIAL MEETING - PUBLIC HEARING

\*Appeal of Planning & Zoning Commission (P&Z) Decision - SE2008-05 Special Exception Use Petition -611 N. Broad St.

Consideration of appeal of the P&Z Decision rendered 09/10/08 to deny Petition for Special Exception Use to allow a "Heating Fuel" establishment, specifically providing for the dispensing of off road diesel fuel and kerosene in a C3 Commercial District.

Mayor Pugh asked all who wished to speak or offer testimony to rise and be sworn by the City Clerk. Those wishing to do so were sworn by City Clerk Phillips.

Mayor Pugh stated the following:

"Please note that only competent, substantial, fact-based testimony or evidence will be considered by the Council in deciding the quasi-judicial matters listed on today's agenda. Pure speculation or mere opinion, not based on competent facts, cannot be legally considered by the Council in weighing the appropriateness of the quasi-judicial application. Lay testimony with fact-based support (e.g. minutes, surveys, engineering reports, etc.) may be considered competent and substantial evidence."

City Attorney McAteer stated that tonight we are in a record-based proceeding, which means that it is not a stage two public hearing. The City of Brooksville adopted policy in 1997 which limits the participation to the appellant from the denial of the Planning & Zoning

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Commission, Council, staff and legal representation to the extent Council wants that participation. He cautioned the audience and Council that it would legally corrupt the hearing if additional parties, other than those that appeared at the Planning & Zoning Commission meeting, were brought in.

City Clerk Phillips read the Notice of Public Hearing into the record (Attachment A).

Mayor Pugh polled Council for any conflicts of interest, and on the advice of City Attorney McAteer, for any ex parte communications.

Council Member Bradburn indicated she received a phone call from a citizen wishing to present testimony and she advised them to come to the meeting, before being advised by Council that their testimony would not be allowed. She expressed that she would like discussion at some other time as to whether that is an appropriate course. All other Council Members had none.

Council, by consensus, recognized Director Bill Geiger as an expert witness.

Director Geiger reviewed the specifics of the appeal of the Planning & Zoning Commission decision to deny the Special Exception Use petition that would have provided for the operation of a heating fuel establishment within a C-3 Commercial District for property located at 611 North Broad Street.

He asked that the entire appeal packet be entered into the record as though it were read. (Attachment B)

He clarified that a Special Exception Use, as defined in the Code, is a use that is essential or would promote public health, safety or welfare in one or more districts but which would impair the integrity and character of the district in which it is located, or adjoining districts, unless restrictions or conditions on location, size, extent, and character of performance are imposed in addition to those imposed in the ordinance.

Staff, in its review of the petition, recommended the Planning & Zoning Commission consider approval of the request subject to conditions which are outlined in the staff report attached to the appeal petition. After hearing testimony from staff, the petitioner and two members of the public, a motion was made by the Planning & Zoning Commission to approve staff recommendation. This motion died for lack of a second. A subsequent motion was then made to deny the staff recommendation and as a result deny the petition. This motion was seconded and carried with a 3-2 vote. The commissioners voiced the primary concerns to be potential safety issues related to the proximity of the proposed use to old historic properties as well as the potential for fuel leakage.

Director Geiger clarified that in discussions with the petitioner, the scope of the business they are proposing, under Schedule E, Permitted and Special Exception Uses for non-residential uses in the zoning code, provides for things such as a gasoline service station as a permitted use within that district. The scope of what the petitioner is proposing could be considered less than what you would see typically in

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a gasoline service station. Also, part of what they do in pumping fuel is that they have an off-road diesel fuel tank which could be classified in the same general category as a gasoline fueling station and would be a permitted use on the site. However, they do have a kerosene tank which is primarily used as a heating fuel for the home or other structure. With all those things being considered staff recommended approval of the petition.

Vice Mayor Burnett asked for clarification that the project does meet requirements for the special exception. Director Geiger explained that a special exception is needed for the kerosene distribution and the recommendation for approval of the petition request was appropriately conditioned so that it would, as much as possible, fit into the area it is being located in. The diesel fuel would be a permanent use under the C-3 zoning district.

Mayor Pugh asked if the above ground storage is the reason for the special exception. Director Geiger reiterated that it is specifically for the heating fuel part of the establishment, which is defined as a special exception use in this zoning category.

Council Member Lewis asked if a gas station would have to have a special exception permit for distribution of a heating fuel. Director Geiger answered affirmatively, for that part, and reiterated that the above-ground storage does not pose a problem meeting the criteria for the existing zoning of the property.

Mayor Pugh asked if C-3 would allow for the above ground storage for just gasoline. Director Geiger specified that gasoline is not allowed to be stored in above ground storage, however, diesel is.

Richard Wilkes, petitioner, reiterated that the purpose of the appeal is so he can sell kerosene from a 300 gallon tank. The diesel fuel is for off-road agriculture equipment for which he has a Change of Use certificate approved by the Building Department.

Council Member Bradburn asked for clarification that his tank is only 300 gallons because he had stated at the Planning & Zoning Commission meeting that it was 1,400. Mr. Wilkes indicated he was referring to his delivery truck, which holds 4,200 gallons and would not be parked on the property but would be used to fill the tank there as he uses the truck for deliveries.

Referring to the testimony at the Planning & Zoning Commission meeting, Council Member Bradburn clarified that Council does not grant temporary use permits. For the record, Council Member Bradburn wanted to cover all the concerns expressed at the Planning & Zoning Commission meeting, which included issues of safety, compatibility with the residential area, particularly those of a historic nature, the traffic concerns related to the curve and environmental concerns.

Council Member Bradburn asked if Mr. Wilkes had contacted the Department of Environmental Protection (DEP). Mr. Wilkes indicated that above ground storage tanks of 550 gallons or less are not regulated by DEP. He stated he has full containment under both tanks. As to the relevance to the historic properties, he did not feel there to be a threat to any surrounding structures. Council Member Bradburn

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expressed that she did not feel the project was compatible to the neighborhood in regards to aesthetics as well as the City's revitalization plan and redevelopment goals for the city.

Discussion continued which included the current zoning and the prospect of the Hilltop project coming forward.

In further discussion of the above-ground storage tanks, Mayor Pugh asked if it is possible to put the storage tanks underground. Mr. Wilkes indicated it is difficult and probably more dangerous than leaving it above ground in the containment system.

Council Member Bernardini asked Director Geiger if the 300 gallon kerosene tank will be the largest number of gallons that can go there. Director Geiger stated that the total gallons allowed is limited to 1,000 because of the special exception use and includes the kerosene and diesel. Because the fuel delivery truck holds 4,200 gallons, Council could include the stipulation that it not be allowed to be parked on the property.

Mayor Pugh expressed concern for the curve in the road on Broad Street/Hwy. 41. He asked if a stipulation could be added to restrict access to Hwy. 41 via Saxon Avenue to eliminate site issues related to the Hwy. 41 access. In consideration of the Special Exception Use, Director Geiger indicated a condition could be added to address the issue. He also indicated access to 41 has already been limited to prevent additional commercial traffic in the residential area. Mayor Pugh suggested further access limitation to a right-in only from 41 to alleviate the crossing of Hwy. 41 to go north. Another built in condition was to restrict access to Museum Court.

In response to Vice Mayor Burnett's question on compliance, Mr. Wilkes indicated he is willing to follow any and all direction required by Council.

Mayor Pugh asked where the above-ground tanks will be installed. Mr. Wilkes advised they are already there toward the south side at Hwy. 41.

In reference to the buffer, Mr. Wilkes indicated it will be a 6-foot high wooden fence that you cannot see through, in addition to trees. Director Geiger explained that a Type C buffer is the most restrictive and requires a completely opaque visual buffer as well as a vegetative buffer. The location of the tanks meets the distance requirement from adjoining properties.

Council Member Bradburn again indicated she did not feel it to be an appropriate use in that area in that it is a residential area of historical value and an entry point to the downtown area. She felt current zoning code holds many flaws, including this one.

### Motion:

Motion was made by Council Member Bradburn and seconded by Vice Mayor Burnett for reversal of the Planning & Zoning Commission decision and approval of staff recommendation with additional conditions as follows:

- Prohibit overnight parking of fuel distribution or storage

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vehicles

- Limits storage tank capacity to a maximum of 800 gallons total (versus staff recommendation of 1000).
- Right-in-only from Hwy. 41 using Saxon to head North on Hwy. 41
- Additional buffer in the form of bushes and trees
- Removal of the empty oil drums to a storage facility

Motion carried 5-0.

Mayor Pugh adjourned the hearing for the appeal of the Planning & Zoning Commission decision and reconvened the Council Meeting at 7:30 p.m.

### CONSENT AGENDA

#### Minutes

August 5, 2008	Budget Workshop
August 12, 2008	Budget Workshop

#### 2009 Annual Holiday and Meeting Schedule

Review and consideration of proposed meeting and holiday schedule for 2009, including tentative budget workshop and public hearing dates, including Fire District & CRA Meetings, pursuant to City Code & Policy. Dates are consistent with county and school board holiday schedules.

#### Fire Department Emergency Vehicle Purchase (Removed for discussion)

Authorization to purchase Emergency Medium Duty Squad Vehicle and ancillary cascade system equipment from Pierce Mfg. Inc. under the St. Johns County Contract #07-53, together with trade in of Vehicle 211 to vendor, in the not to exceed amount of \$184,111. Budgeted funds available in Account #502 000 166 19037.

#### Sewer Rehab Phase 2A Bid No. UD2008-08 - Sections 2.0 and 3.0 Award - Pre-installation Cleaning of Service Laterals and Cured-in-Place Pipe Lining of Laterals (Removed for discussion)

Consideration of awarding the bid to LMK Pipe Renewal, LLC, for the not to exceed amount of \$215,586 with funding via CIP Account #404-000-169-19049, Project 1999-UT-14, approval of applicable budget amendment and authorization for the Mayor to sign an Agreement for Contractor Services when all documents have been reviewed by the City Attorney.

#### Sewer Rehab Phase 2A Bid No. UD2008-08 - Section 4.0 - Manhole Chimney Seal

Consideration of awarding the bid to USSI, LLC for the not to exceed amount of \$232,669 with funds available in CIP Account #404-000-169-19049, Project 1999-UT-14, and authorize the Mayor to sign an Agreement for Contractor Services when all documents have been reviewed by the City Attorney.

#### Surplus Equipment/Transfer of Vehicles

Consideration of declaring two Public Works Department Vehicles surplus for disposal via the County auction process and authorize transfer of third vehicle from the Streets Division to the Maintenance Shop Division.

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**Cost Recovery Corporation**

Approval of one year agreement with automatic one year renewals with Cost Recovery Corporation for recovery services of costs associated with providing law enforcement, fire and emergency/medical services.

**Auditor's Agreement for F/Y Ending 9/30/08, 9/30/09 & 9/30/10**

Consideration of three year agreement with Oliver & Joseph, PA for audit services as negotiated by the City Attorney.

**Motion:**

Motion was made by Council Member Bernardini and seconded by Council Member Bradburn for removal of D-3 & D-4 from the Consent Agenda. Motion carried 5-0.

**Motion:**

Motion was made by Vice Mayor Burnett and seconded by Council Member Lewis for approval of the Consent Agenda without items D-3 & D-4. Motion carried 5-0.

**Fire Department Emergency Vehicle Purchase (D-3)**

Council Member Bernardini asked Fire Chief Mossgrove to explain the increase in the money of \$16,000. Fire Chief Mossgrove indicated the actual cost of the truck is \$201,000 and it had to be properly identified in the budget for Capital Outlay. City Manager Norman-Vacha gave a brief review of the financials associated with the purchase.

**Motion:**

Motion was made by Council Member Bernardini and seconded by Council Member Lewis for approval. Motion carried 4-0, with Vice Mayor Burnett absent.

**Sewer Rehab Phase 2A Bid No. UD2008-08 - Sections 2.0 and 3.0 Award - Pre-installation Cleaning of Service Laterals and Cured-in-Place Pipe Lining of Laterals (D-4)**

Council Member Bradburn expressed concern that LMK's bid is significantly lower than the other bids. Director Pierce advised that they are qualified. Lauren Busacca indicated their references have been checked and they are a phenomenal company.

**Motion:**

Motion was made by Council Member Bradburn and seconded by Council Member Lewis for approval. Motion carried 5-0.

**CERTIFICATES, PROCLAMATIONS AND PRESENTATIONS**

**Brooksville Kiwanis Club - Annual Christmas Parade Fee Waiver**

Consideration of request to partially waive fees to in the amount of \$2,822.24 to offset costs to conduct their 34<sup>th</sup> Annual Christmas Parade on Saturday, December 13, 2008.

Dave Hamilton, Vice President of the Brooksville Kiwanis Club, addressed Council requesting the waiver of fees for this year's parade. He advised the theme is "Christmas around the World".

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**Motion:**

Motion was made by Vice Mayor Burnett and seconded by Council Member Lewis for approval of the waiver.

Discussion of the cost for Police was discussed. Staff will try to further minimize the cost.

Motion carried 5-0.

Vice Mayor Burnett asked for the same outline of costs to be done for the Hernando High waiver request.

**Eagle Scout Daniel R. S. Keyes Proclamation**

Proclamation in recognition of efforts of Eagle Scout Daniel R. S. Keyes

Mayor Pugh read the proclamation in its entirety which will be sent to Mr. Keyes.

**PUBLIC HEARING**

**Ordinance No. 767 - Flood Prevention and Protection**

Consideration of ordinance amending Chapter 113, "Flood Prevention and Protection" of the City of Brooksville code.

[First Reading 09/15/08 - Second Reading Continued 10/06/08]

Director Geiger reviewed the issue indicating City Council continued the ordinance in order for staff to make the recommended changes. A copy of the standards for mobile home tie-downs was provided, which he reviewed and the issue was discussed. Director Geiger recommended the next building code update include more stringent regulations.

**Motion:**

Motion was made by Council Member Bernardini and seconded by Vice Mayor Burnett for approval of Ordinance 767.

Mayor Pugh asked for public input.

Dr. Pierre Desjardins advised Florida is getting very expensive to live in and urged Council to consider the costs to the citizens of their implementations and to let the citizens make the decision of whether to purchase a level 2 or 3 mobile home. Council Member Bradburn advised that response comes with a cost and citizens not protected to the level they should be costs everyone money.

City Clerk Phillips read Ordinance No. 767 by title, as follows:

AN ORDINANCE OF THE CITY OF BROOKSVILLE, FLORIDA, REPEALING ORDINANCE NO. 437 AND AMENDING THE CODE OF ORDINANCES OF THE CITY OF BROOKSVILLE, FLORIDA, CHAPTER 113, "FLOOD PREVENTION AND PROTECTION," BY REPEALING THEREIN ARTICLE I, "IN GENERAL," ARTICLE II, "ADMINISTRATION," AND ARTICLE III, "PROVISIONS FOR FLOOD HAZARD REDUCTION" AND REPLACING HERewith ARTICLE I, "IN GENERAL," ARTICLE II, "DEFINITIONS," ARTICLE III, "GENERAL PROVISIONS," ARTICLE IV, "DESIGNATION AND DUTIES OF BUILDING OFFICIAL," ARTICLE V, "ADMINISTRATION," ARTICLE VI, "PROVISIONS FOR FLOOD HAZARD REDUCTION," AND ARTICLE VII, "VARIANCES;"

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PROVIDING FOR CONFLICT AND SERVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Motion carried 5-0 upon roll call vote, as follows:

Council Member Bernardini	AYE
Council Member Bradburn	AYE
Council Member Lewis	AYE
Vice Mayor Burnett	AYE
Mayor Pugh	AYE

**REGULAR AGENDA**

**Resolution No. 2008-26 - 2008/09 Utility Rates**

Consideration of resolution formalizing City Council decision on October 6, 2008 to "hold constant" the existing water and sewer rates for the Brooksville utility district customers.

City Manager Norman-Vacha indicated this resolution formalizes Council's decision at the last meeting concerning rates and sets an effective date for October 1 but holds the rates constant, which will be in effect until amended by Council.

**Motion:**

Motion was made by Council Member Bradburn and seconded by Vice Mayor Burnett for approval of Resolution 2008-26.

City Clerk Phillips read Resolution No. 2008-26 by title, as follows:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, MODIFYING WATER AND SEWER SERVICE CHARGES AND RATES; AND PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.**

Mayor Pugh asked for public input.

Pierre Desjardins asked for clarification of the changes. Mayor Pugh advised this is for water and sewer for both commercial and residential, which will stay at their current rates for now.

Motion carried 5-0 upon roll call vote, as follows:

Council Member Bradburn	AYE
Council Member Lewis	AYE
Council Member Bernardini	AYE
Vice Mayor Burnett	AYE
Mayor Pugh	AYE

**Resolution No. 2008-27 - Options to Amend Rate Adjustments and Set 3% Modifier Cap**

Consideration of resolutions proposing 3% cap on rate increases setting provisions for future rate increases based on Tampa-St. Petersburg-Clearwater MSA CPI. Alternative option is provided as a "conservation" measure beginning with FY 2008-09 rates and repealing prior resolution.  
[Action Continued from 10/06/08]

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Motion:

Motion was made by Council Member Lewis and seconded by Vice Mayor Burnett for approval of Resolution 2008-27 Option A.

The specifics of the tiered rating (Option B) was explained by City Manager Norman-Vacha and discussed, as well as the standard 3,000 gallon minimum, which was further elaborated on by Director Pierce.

Mayor Pugh asked for public input; there was none.

City Clerk Phillips read Resolution No. 2008-27 by title, as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, REPEALING AND READOPTING WATER AND SEWER SERVICE CHARGES AND RATES WITH PROVISIONS FOR CONSERVATION EFFORTS; PROVIDING INCLUSION OF ALL WATER & SEWER CUSTOMERS IN ANY RATE INCREASES; PROVIDING FOR A CAP ON SERVICE CHARGES AND RATE INCREASES PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion carried 4-1 upon roll call vote, as follows:

Council Member Lewis	AYE
Council Member Bernardini	NAY
Council Member Bradburn	AYE
Vice Mayor Burnett	AYE
Mayor Pugh	AYE

Council Member Bradburn asked that staff continue deliberating, especially in the area of conservation, and see what options are available in the coming year.

Ordinance No. 769-A - 2008-09 Budget Amendment

Consideration of ordinance providing for revenue reduction and reserve revisions as a result of \$102,000 decrease in utility revenue due to adoption of Resolution No. 2008-27 (replacing Resolution No. 2004-1).

Motion:

Motion was made by Council Member Bradburn and seconded by Council Member Lewis for approval of Ordinance 769-A.

Mayor Pugh asked for public input; there was none.

City Clerk Phillips read Ordinance No. 769-A by title, as follows:

AN ORDINANCE AMENDING APPROPRIATIONS OF CERTAIN MONIES FOR THE GENERAL OPERATIONS OF THE CITY OF BROOKSVILLE, FLORIDA, FROM ITS WATER AND SEWER FUND FOR THE TWELVE MONTH PERIOD BEGINNING OCTOBER 1, 2008 AND ENDING SEPTEMBER 30, 2009.

Motion carried 5-0 upon roll call vote, as follows:

Council Member Bernardini	AYE
Council Member Bradburn	AYE
Council Member Lewis	AYE
Vice Mayor Burnett	AYE
Mayor Pugh	AYE

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**Resolution No. 2008-20 - Building Division/Community Development Department Service Fees**

Staff update on potential contractor relocation to City Hall and other cost reduction measures for consideration of resolution amending the current Permitting, Inspection, and Administrative & Development Fee Schedule. [Continued from 09/15/08]

Mayor Pugh indicated a memo had been received requesting this item be brought forward to the next meeting or the second meeting in November.

**Ordinance No. 766-A - Amendment to Law Enforcement, Fire and Emergency Medical Services Cost Recovery Ordinance**

Consideration of ordinance amending Section 4, paragraph (f) of Ordinance No. 766 providing for cost recovery measures for emergency service response to commercial or commercial carrier motor vehicle incidents and amending Section 10 to establish a separate cost recovery fund and to clarify use of cost recovery receipts.

City Attorney Rey reviewed the amendment clarifying the allocation of the revenue.

**Motion:**

Motion was made by Council Member Bradburn and seconded by Council Member Bernardini for approval of Ordinance 766-A.

Mayor Pugh asked for public input; there was none.

City Clerk Phillips read Ordinance No. 766-A by title, as follows:

AN ORDINANCE OF THE CITY OF BROOKSVILLE AMENDING ORDINANCE NO. 766 RELATING TO COST RECOVERY OF CERTAIN POLICE, FIRE, EMERGENCY AND RESCUE SERVICES; PROVIDING FOR COMMERCIAL OR COMMERCIAL CARRIER INCIDENTS; AMENDING THE USE OF REVENUE PROVISION; AND PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

Motion carried 4-1 upon roll call vote, as follows:

Council Member Bradburn	AYE
Council Member Lewis	AYE
Council Member Bernardini	AYE
Vice Mayor Burnett	AYE
Mayor Pugh	NAY

**ITEMS BY COUNCIL**

**Lara Bradburn, Council Member**

**Trees down at Hospital**

Council Member Bradburn asked about the downed trees at the old hospital site. Director Geiger indicated most are pine trees and some oaks that had disease or there was no way to work around them. They have a landscaping plan that supersedes what the City's code requirements are and states they will be coming back with plantings to replace those removed. Director Geiger explained the disease affecting the oaks which included pitting, dead branches in the upper canopies and decay in the trunks. Discussion continued of the code regarding removal of specimen trees. Council Member

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Bradburn requested that if a Developer needs to deviate from the plans initially presented to Council she would like it to be brought back to Council for approval.

City Manager Norman-Vacha indicated the issue would be researched and a report would be brought back to Council.

### Special Exceptions

Council Member Bradburn, concerning special exceptions, reiterated that she feels all special exceptions should come to Council rather than P&Z for final say. Council concurred.

### Code Update

She also wanted to see the levels of the code built in for continuity in growth and intensity, which was briefly discussed.

### Richard E. Lewis, Council Member

#### Grader Dedication

Council Member Lewis indicated he attended the dedication ceremony of the main Post Office renaming in honor of U.S. Specialist Cody C. Grader on Friday.

#### Mural Dedication

He also indicated he attended the mural dedication on Saturday on E. Liberty.

### Frankie Burnett, Vice Mayor

#### South Brooksville Redevelopment Update

Vice Mayor Burnett advised that South Brooksville Redevelopment, Inc. has partnered with the County and is meeting with County and City staff to discuss the revitalization as well as other areas with issues.

#### Council Packet Changes

He commended staff on the changes made to the agenda distribution process which City Manager Norman-Vacha indicated Council Member Bernardini suggested.

City Clerk Phillips reminded Council to leave the binders.

### CITIZENS INPUT

#### Pierre Desjardins

##### Sewer Rates

He asked if sewer rates were recently raised for commercial businesses. Mayor Pugh indicated they were not.

##### Dilapidated Buildings

He expressed concern for dilapidated buildings in the business district.

##### Truck Route

Further, he inquired as to why so many trucks are not using the truck route versus going through downtown. Director Pierce indicated all the roads are DOT and they will not restrict truck traffic, therefore there is not much to be done to alleviate the problem. Council Member Bradburn

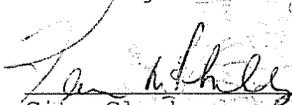
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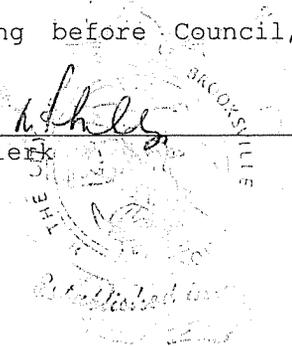
elaborated that it is a long-standing problem that was exasperated by the one-way pairings which was an idea fostered by the local business community and the local government at that time. Efforts to reverse the one-way pairings have been dampened by needed improvements and design changes.

City Manager Norman-Vacha indicated there is an on-going dialogue between the City and the County in working with DOT to look at other design efforts and other ways to slow down traffic in the downtown area that go hand in hand with the current City Redevelopment Plan. She advised they are hopeful that as they progress forward in some of the projects solutions will be found.

**ADJOURNMENT**

There being no further business to bring before Council, the meeting adjourned at 8:55 a.m.

  
\_\_\_\_\_  
City Clerk



Attest:   
\_\_\_\_\_  
Mayor

City of Brooksville



(352) 544-5400 (Phone)  
(352) 544-5424 (Fax)  
(352) 544-5420 (TDD)

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City Council of the City of Brooksville, Florida, will hold a public hearing at a Special Meeting on Monday, October 20, 2008, at 6:30 p.m., in the City Council Chambers, 201 Howell Ave. (located at the corner of Howell Ave. and Ft. Dade Ave.) for the appeal of Planning and Zoning Commission Decisions (Denial of Special Exception Use Petition for property located at 611 North Broad St.). The transcript and documents in its entirety may be inspected at the office of the City Clerk during regular working hours.

All persons wishing to be heard, please take notice and govern yourselves accordingly. You are further advised that if a person decides to appeal any decision with respect to any matter considered at these proceedings, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based.

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's office 48 hours in advance of the meeting at 352/544-5400.

By: Karen M. Phillips  
Karen M. Phillips  
City Clerk

PUBLISH: Friday, October 17, 2008

FILE: 2008-40

NOTICE TO PAPER: Please run smallest legal ad possible in Hernando Section only and provide two (2) affidavits of publication upon completion.

Please bill the petitioner: Richard Wilkes, Hernando Oil Co., P.O. Box 1042, Brooksville, FL 34605-1042, Ph. 352-796-7638

**MEMORANDUM**

**To:** Honorable Mayor & City Council Members  
**Via:** T. Jennene Norman-Vacha, City Manager   
**From:** Bill Geiger, Community Development Director   
**Appellant:** Richard Wilkes  
**Subject:** Appeal of the Planning & Zoning Commission decision to deny Petition Ref. No. SE2008-05 (Special Exception Use Petition request to allow a "Heating Fuel" Establishment; specifically providing for the dispensing of off road diesel fuel and kerosene in a C3 Commercial District)  
**Location:** 611 N. Broad Street (Ref. HCPA Parcel Key #00009047)  
**Date:** October 7, 2008

**GENERAL INFORMATION - HISTORY**

As noted above, the Appellant has filed an appeal to the Planning & Zoning Commission's decision to deny a Special Exception Use petition that would have provided for the operation of a "Heating Fuel" establishment within a C3 commercial zoning district for property located at 611 N. Broad Street. The specific reasons for the appeal are stated by the appellant in the NOTICE OF APPEAL (enclosed).

On September 10, 2008, the Special Exception Use (SEU) Petition No. 2008-05 was presented to the Planning & Zoning Commission for consideration (Note- A Special Exception Use is defined in City Code as "a use which is essential or would promote the public health, safety or welfare in one or more districts, but which would impair the integrity and character of the district in which it is located or in adjoining districts unless restrictions or conditions on location, size, extent and character of performance are imposed in addition to those imposed in this ordinance."). The staff recommended conditional approval of the Special Exception Use Petition, as follows:

"Approve the Special Exception Use petition SE2008-05, allowing for a "Heating Fuel" establishment (Specifically providing for the dispensing of Diesel Fuel and Kerosene) in a C3 Commercial District on the property identified by Hernando County Property Appraisal Key #00009047 (611 N. Broad Street), subject to the following conditions:

1. The main ingress/egress for the dispensing station shall be from the existing property driveway connection to Broad Street. Access from Museum Court shall be used for office personnel only.
2. The pumping station is to be completely enclosed with a Type "C" buffer. The type "C" buffer shall completely surround the dispensing tanks and equipment and shall consist of a continuous, 100% opaque wall at least six (6) feet in height constructed of masonry, wood, or other material as may be approved by the Community Development Department. If the wall is constructed of cement block, the side facing the abutting use shall be faced with stucco or another similar decorative finish. In addition, one (1) tree shall be planted adjacent to the wall every twenty-five (25) feet, or portion thereof.
3. Within 45 days of September 10, 2008, the petitioner shall provide documentation indicating all conditions contained herein have been satisfied.
4. Failure to comply with conditions associated with this Special Exception Use approval will result in the revocation of said approval and subject the property lessee/owner to code enforcement sanctions as may be applicable.

5. The developer must meet all applicable Local, State and Federal performance standards and permitting requirements that pertain to this type of business.
6. The scope of the proposed use will be limited to two (2) aboveground storage tanks not-to-exceed one thousand (1,000) gallons of total fuel storage on the site.” *(Note: This condition was added at the hearing).*

After hearing testimony from staff, the petitioner and two members of the public, a motion was made by the Planning and Zoning Commission to approve staff recommendation. This motion died for lack of a second. A subsequent motion was then made to deny the staff recommendation and, as a result, deny the petition. This motion was seconded and carried with a 3-2 vote. The Commissioners voiced the following primary concerns during the hearing:

1. Concerns over potential safety issues related to the proximity of the proposed use to old, historic properties.
2. The potential for fuel leakage.

#### **APPEAL PROCESS**

Section 137-43(d) of the City of Brooksville Code of Ordinances specifies the requirements of the appeal process. Enclosed with this memorandum is a copy of the Notice of Appeal, the agenda package for the SE2008-05 petition from the September 10, 2008 Planning & Zoning Commission meeting, the draft minutes from said meeting, a copy of the referenced code section that applies to the appeal process and Official Policy 9-1997 that provides the meeting procedures for hearing appeals. Additionally, a copy of the audio recording for the September 10, 2008 Planning & Zoning Commission meeting is available through the City Clerk’s office.

#### **BUDGET IMPACT**

Fees are assessed to and paid by the appellant to cover the costs associated with hearing an appeal.

#### **LEGAL STATEMENT**

City Council has the legislative authority to hear an appeal of an action taken by the Planning & Zoning Commission. The Council should follow the City’s Official Policy No. 9-1997 in hearing the appeal. Based on the referenced Policy, testimony is limited to staff and appellant presentations followed by a questioning period by the City Council with rebuttal time being afforded to the presenters. City Policy No. 9-1997 does not provide for nor authorize public input as part of the appeal process.

#### **ACTION ITEM**

After following the process outlined in the City of Brooksville’s Official Policy No. 9-1997, a motion, second and vote should be taken to either (a) affirm the Planning & Zoning Commission’s decision to deny Special Exception Use Petition SE2008-05; or (b) modify the Planning & Zoning Commission’s decision to deny Special Exception Use Petition SE2008-05.

- Enclosures\*:
- (1) Notice of Appeal
  - (2) Agenda package for the SE2008-05 petition from the 9/10/2008 Planning & Zoning Commission meeting
  - (3) Draft minutes from the September 10, 2008 Planning & Zoning Commission meeting

Page 3  
Appeal Hearing for SE2008-05  
Richard Wilkes - 611 N. Broad Street  
October 20, 2008

- (4) Section 137-43(d), City of Brooksville Code of Ordinances
- (5) City of Brooksville's Official Policy No. 9-1997

**\*A copy of the audio recording for the September 10, 2008 Planning & Zoning Commission meeting is available through the City Clerk's office.**

F:\Bgeig\SEU's\Appeal cc10202008 SE2008-05 611 N Broad St .doc

NOTICE OF APPEAL

In accordance with Section 137-43() of the City of Brooksville Code, I do hereby file with the City Clerk this Notice of Appeal regarding the decision made by the City of Brooksville Planning & Zoning on September 10, 2008, concerning the matter of Petition # SE2008-05

Appellant's Name: Richard W. Wilko

Board/Individual whose Decision is being Appealed: Planning & Zoning Commission

Petition Reference Number: SE2008-05

Petitioner: Richard Wilko

Subject of Petition: Special Exception Use for Heating, Diesel/Kerosene Fuel Establishment in a C-3 zoning district.

Location of Petition Request: 611 N. Broad Street

Action Being Appealed: Denial of Special Exception.

Specific Reasons for Appeal: The 500 gal Diesel Tank should not be included in this Special Exception. It is off-Rd. Diesel Tank used for Agriculture and construction purposes. This only should include the 300gal kerosene tank. You have not shown due cause to deny the sale of kerosene.

Appellant Affidavit: The information provided in this NOTICE OF APPEAL is in all respects true and correct to the best of my knowledge and belief.

Signature of Appellant: Richard J. Wilko

(For office use only below this line)

Date Notice of Appeal filed with City Clerk: 9/19/08

Date scheduled for City Council Consideration: 10/06/08

Date for Special Meeting for Appeal (if approved by City Council): \_\_\_\_\_

**MEMORANDUM**

---

**To:** Planning & Zoning Commission Members  
**Via:** Bill Geiger, Community Development Director *BG*  
**From:** Patricia J. Jobe, Planning & Zoning Coordinator *P. Jobe*  
**Petitioner:** Richard Wilkes  
**Subject:** SE2008-05 Special Exception Use Petition request to allow a "Heating Fuel" Establishment (Specifically providing for the dispensing of Diesel Fuel and Kerosene) in a C3 Commercial District - Ref. HCPA Parcel Key #00009047  
**Location:** 611 N. Broad Street  
**Date:** September 10, 2008

---

**SUMMARY OF REQUEST**

The Petitioner is requesting approval of a Special Exception Use within an existing C-3 Commercial District to allow for a "Heating Fuel" establishment that would allow the dispensing of Diesel Fuel and Kerosene. The subject property for this Special Exception Use process is approximately 1.01 acres  $\pm$ . The property is located at 611 North Broad Street (Formerly Creative Environmental Solutions and Charlie's Plumbing before that).

**STAFF FINDINGS:**

**CURRENT LAND USE/ZONING**

There is an existing structure located on the subject property which has been occupied by several other small businesses. This structure was built in 1978. This property is zoned C3 (Commercial). A "Heating Fuel" establishment (dispensing diesel fuel and kerosene) is classified as a Special Exception Use in a C3 zoning district. The property is designated Commercial on the City's Comprehensive Plan Future Land Use Map.

Properties located to the north are zoned R2 (Residential) with a City Comprehensive Plan Future Land Map (FLUM) designation of Commercial; properties to the south, east and west are all zoned C3 (Commercial) with a City Comprehensive Plan Future Land Map designation of Commercial.

**FACTUAL INFORMATION**

1. The subject property is approximately 1.01 acres  $\pm$  in size. The existing primary structure is approximately 1,500 sq. ft. in size.
2. The proposed fueling station will be located on the south side of the existing structure and will only be accessible from Broad Street.
3. The subject property is zoned C3, which provides for consideration of a Diesel Fuel and Kerosene pumping station (under the Heating Fuel and Ice Establishment Classification) as a Special Exception Use.
4. The site contains adequate parking for the proposed use.

**FINDINGS OF FACT**

The subject property is approximately 1.01 acres and contains a structure that is 1,500 sq. ft. in size. City Code provides for the Special Exception Use consideration for Heating Fuel and Ice Establishment (Pumping of Diesel Fuel and Kerosene) within commercial zoning districts. The subject property is located in a C3 Commercial Zoning District and has Commercial FLUM designation.

The petitioner has submitted information from the Hernando County Property Appraiser's web site that contains information regarding the site and building layout. Heating Fuel and Ice Establishments require 1.5 parking spaces per person regularly employed on the premises. There will be a maximum of three (3) employees at this location at any given time. There is adequate parking under the City code standards to support the proposed use of the property.

Adequate public services and facilities are available to support the proposed Special Exception Use.

**NOTE: The Special Exception Use review process is a land use determination which does not constitute a permit for either construction on or use of the property. Nor is this action considered a Certificate of Concurrence. Prior to use of or construction on the property, the petitioner must receive approvals from the appropriate City Departments and/or other governmental agencies that may have regulatory authority over the proposed use/development.**

**This report does not include the perspective of adjacent landowners, who may be present at the public meeting to address and present questions and comment.**

**STAFF RECOMMENDATION:**

Staff recommend that the Planning & Zoning Commission conditionally approve the Special Exception Use petition SE2008-05, allowing for a "Heating Fuel" establishment (Specifically providing for the dispensing of Diesel Fuel and Kerosene) in a C3 Commercial District on the property identified by Hernando County Property Appraisal Key #00009047 (611 N. Broad Street), subject to the following conditions:

1. The main ingress/egress for the dispensing station shall be from the existing property driveway connection to Broad Street. Access from Museum Court shall be used for office personnel only.
2. The pumping station is to be completely enclosed with a Type "C" buffer. The type "C" buffer shall completely surround the dispensing tanks and equipment and shall consist of a continuous, 100% opaque wall at least six (6) feet in height constructed of masonry, wood, or other material as may be approved by the Community Development Department. If the wall is constructed of cement block, the side facing the abutting use shall be faced with stucco or another similar decorative finish. In addition, one (1) tree shall be planted adjacent to the wall every twenty-five (25) feet, or portion thereof.
3. Within 45 days of September 10, 2008, the petitioner shall provide documentation indicating all conditions contained herein have been satisfied.
4. Failure to comply with conditions associated with this Special Exception Use approval will result in the revocation of the said approval and subject the property lessee/owner to code enforcement sanctions as may be applicable.
5. The developer must meet all applicable Local, State and Federal performance standards and permitting requirements that pertain to this type of business.
6. The scope of the proposed use will be limited to two (2) above-ground storage tanks not-to-exceed one thousand (1,000) gallons of total fuel storage on the site. *(Note: This condition was added at the hearing)*

Enclosures: (1) Special Exception Use Petition  
(2) Petitioner's Cover Letter date stamped September 4, 2008  
(3) Site Maps and Property Appraiser Data & petition support documents  
(4) Location Map

# PETITION FOR SPECIAL EXCEPTION USAGE

TO THE CITY OF BROOKSVILLE, FLORIDA  
PLANNING & ZONING COMMISSION

The undersigned Petitioner/Property Owner hereby submits this Petition for a Special Exception Usage at the following described property, to wit: (insert typewritten legal description)

---

ALL of Block 8, SAXON'S ADDITION TO BROOKSVILE, as per plat thereof  
Recorded in plat book 3, page 1, public records of Hernando County, Florida

Subject Property Street Address:

611 N. BROAD Street  
Brooksville, FL 34603

PETITIONER IS SPECIFICALLY REQUESTING SPECIAL EXCEPTION USAGE FOR THE FOLLOWING:

Pumping OFF ROAD Diesel Fuel (Ag Fuel) & Kerosene in Winter Months.

Property future land use is: COMMERCIAL  
Current land use is: COMMERCIAL  
Property is zoned: C-3

Petitioner requests that said Special Exception Usage be permitted so that the Owner may utilize the above said property to its highest and best use.

It is in the opinion of the Petitioner that the granting of a Special Exception Use of said property will not be materially detrimental to the Public Welfare, nor to the persons or properties located in the immediate area.

Wherefore, the Petitioner requests that the City of Brooksville, Florida, Planning and Zoning Commission convene to hear and take jurisdiction over the subject matter of this petition.

Petitioner's Name: Richard Wilkes / HERANAWAD Oil, Inc.

Street Address: 6011 N. Broad Street

City/State/Zip: Brooksville, FL 34603

Daytime Phone: 352-1796-7638

Signature: Richard J. Wilkes

## OWNER OR AGENT AFFIDAVIT

CITY OF BROOKSVILLE  
COUNTY OF HERNANDO  
STATE OF FLORIDA

I, Richard Wilkes, being duly sworn, hereby depose and say  
Hilltop Partners LLC is the owner of the herein described property to-wit:

(Insert Legal Description Below)

All of Block 8, SAYON'S ADDITION  
TO Brooksville, AS per Plat thereof Recorded  
in PLAT Book 3, Page 1, Public records of  
HERNANDO County, Florida.

# ACKNOWLEDGMENT

All information submitted within this Petition is in all respects true and correct to the best of my knowledge and belief.

Witness Signature: \_\_\_\_\_

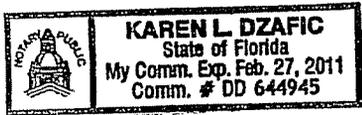
Owner/Agent Signature: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF Hernando

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 31  
DAY OF July, 2007 BY THE ABOVE PERSON(S) \_\_\_\_\_  
WHO IS PERSONALLY KNOWN TO ME OR WHO HAS PRODUCED  
\_\_\_\_\_ AS IDENTIFICATION AND WHO (DID) (DID NOT) TAKE AN  
OATH.

Karen L DZAFIC  
SIGNATURE OF NOTARY

KAREN L DZAFIC  
PRINTED NAME OF NOTARY



# APPOINTMENT OF AGENT

CITY OF BROOKSVILLE  
COUNTY OF HERNANDO  
STATE OF FLORIDA

I, Hilltop Partners, LLC, the owner(s) in fee simple of the below described real property hereby appoint Richard Wilkes as my (our) agent to file required petitions, sign required documents, make representations as to issues of fact and to appear, as may be necessary, before the appropriate City of Brooksville authority. My agent shall also have the authority to commit myself as owner to the necessary future performance conditions as may be directed by the appropriate City authority as a condition of granting my petition. ONLY AS IT PERTAINS TO 611 N. BROAD ST.  
(Insert Legal Description Below)

Dated: 7/30/08

Signed in the presence of:

WITNESSES:

Signature JAMES W. CARMAN  
Print Name JAMES W. CARMAN  
Signature Kathleen Warrington  
Print Name Kathleen WARRINGTON

LANDOWNER(S):

Signature J. Thomas Bronson  
Print Name J. THOMAS BRONSON

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

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SEP 04 2009

## COVER LETTER

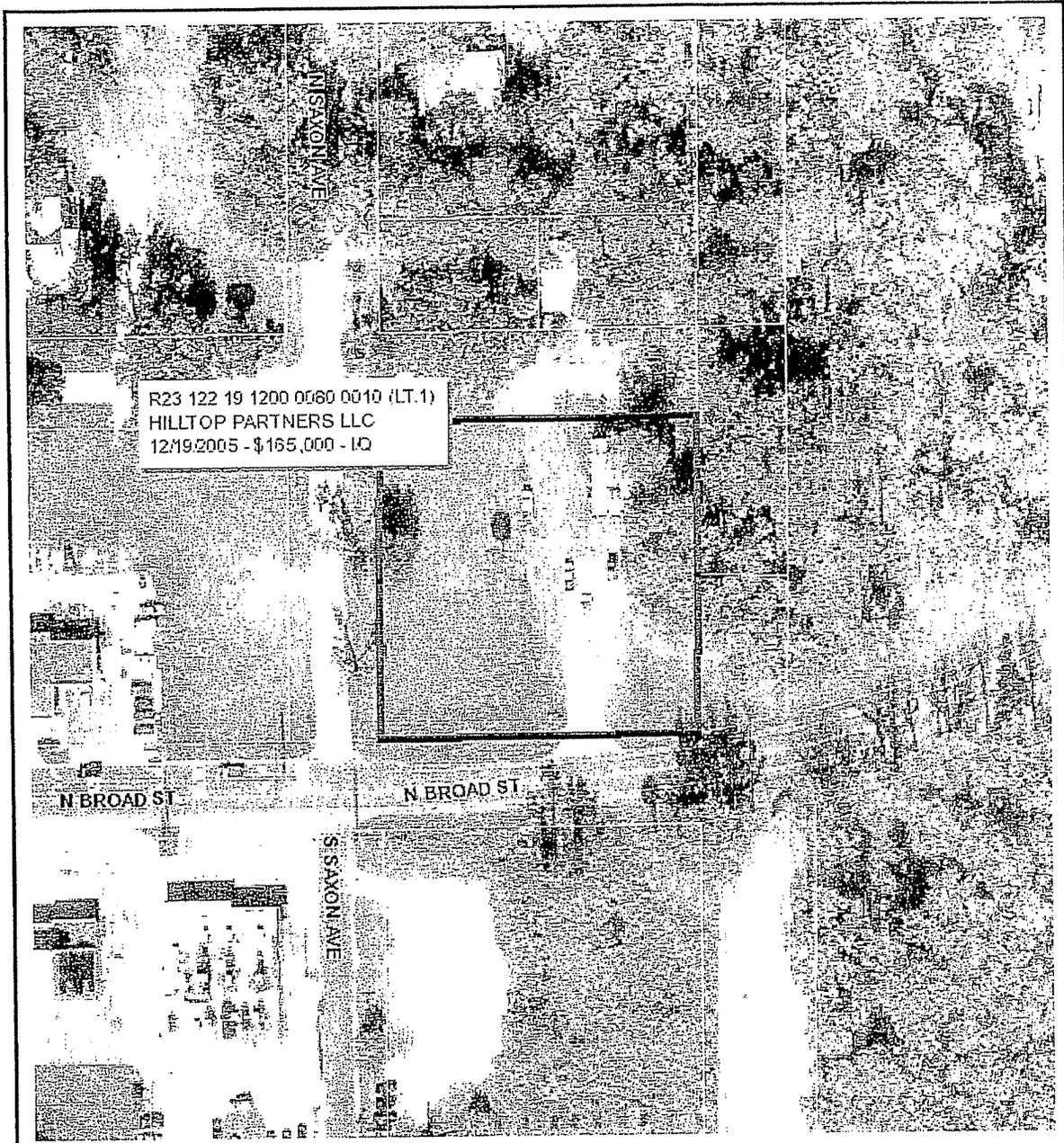
TO: CITY OF BROOKSVILLE PLANNING & ZONING

The purpose of this letter is to request a special use exemption to pump off road diesel fuel, and kerosene. Tanks are above ground and both have containment around them. We will construct fence around tanks upon approval of the special use exemption.

Sincerely,

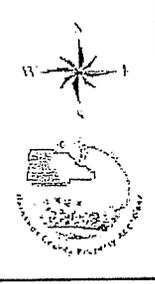
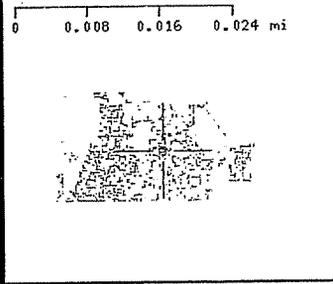
A handwritten signature in cursive script, appearing to read "Richard Wilkes".

Richard Wilkes  
Hernando Oil Company, Inc.



R23 122 19 1200 0080 0010 (LT.1)  
 HILLTOP PARTNERS LLC  
 12/19/2005 - \$165,000 - 10

<b>Hernando County Property Appraiser</b>	
Alvin R. Mazourek CFA - Brooksville, Florida - 352-754-4190	
<b>PARCEL: R23 122 19 1200 0080 0010   KEY: 00009047</b>	
SAXONS ADD TO BROOKSVILLE ALL OF BLK 8	
Name: HILLTOP PARTNERS LLC	LandVal \$110,250.00
Site: 611 N BROAD ST	BldgVal \$54,275.00
Mail: 24060 DEER RUN RD	JustVal \$168,152.00
BROOKSVILLE FL 34601-4548	Assd \$168,152.00
Sales 12/19/2005 \$165,000.001 (Q)	Exmpt \$0.00
Info 4/24/2002 \$165,000.001 (Q)	Taxable \$168,152.00
12/17/1998 \$100.001 (D)	



This information was derived from data which was compiled by the Hernando County Property Appraiser Office solely for the governmental purpose of property assessment. This information should not be relied upon by anyone as a determination of the market value, ownership, or zoning of the property. Zoning information should be obtained from the Hernando County Development Department. No warranties, expressed or implied, are provided for the accuracy of the data herein, its use, or its interpretation. Although it is periodically updated, this information may not reflect the data currently on file in the Property Appraiser's office. The assessed values are NOT certified values and therefore are subject to change before being finalized for ad valorem assessment purposes.  
 Data Updated: 7/16/2008 | GIS Map Updated: 7/16/2008 | © Copyright 2003 All Rights Reserved - Hernando County Property Appraiser

**DRAFT**

CITY OF BROOKSVILLE  
PLANNING AND ZONING COMMISSION MEETING  
Regular Meeting

September 10, 2008

6:30 P.M.

George Rodriguez, Elmer Korbus, Louise Taylor, Ernie Wever and Shannon Andras-Pettry were present. Also attending were Bill Geiger, Community Development Director, Derrill McAteer, City Attorney, and Patricia Jobe, Planning & Zoning Coordinator/Recording Secretary. Don Varn and John Wanat were absent.

The meeting was called to order at 6:30 p.m. by Chairman Rodriguez, followed by the invocation and pledge of allegiance.

APPROVAL OF MINUTES

August 13, 2008

Motion:

Motion was made by Member Wever, seconded by Member Korbus to approve minutes. Motion carried 5-0.

\*\* SE2008-05 - RICHARD WILKES - HERNANDO OIL - 611 N. BROAD STREET

Request for a Special Exception Use to enable petitioner to operate a Diesel Fuel and Kerosene Pumping Station in a C-3 Commercial Zoned District.

The City Attorney explained that this is a quasi-judicial proceeding and asked anyone who would like to be recognized as an intervening party to the proceeding or who would like to be sworn as an expert witness to come forward.

Chairman Rodriguez took a poll of the members for any ex-parte communication on the subject matter. Member Wever stated he received a telephone call from the petitioner's mother but referred her to the City Attorney. All other members responded nay.

Commission accepted Bill Geiger by consensus as an expert witness in land use planning, development, and zoning, and his qualifications are on file in the Community Development Department.

Director Geiger requested that the staff report be entered into the record in its entirety, as follows:

SUMMARY OF REQUEST

The Petitioner is requesting approval of a Special Exception Use within an existing C-3 Commercial District to allow for a "Heating Fuel" establishment that would allow the dispensing of Diesel Fuel and Kerosene. The subject property for this Special Exception Use process is approximately 1.01 acres ±. The property is located at 611 North Broad Street (Formerly Creative Environmental Solutions and Charlie's Plumbing before that).

STAFF FINDINGS:

CURRENT LAND USE/ZONING

There is an existing structure located on the subject property which has been occupied by several other small businesses. This structure was built in 1978. This property is zoned C3 (Commercial). A "Heating Fuel" establishment (dispensing diesel fuel and kerosene) is classified as a Special Exception Use in a C3 zoning district. The property is designated Commercial on the City's Comprehensive Plan Future Land Use Map.

Properties located to the north are zoned R2 (Residential) with a City Comprehensive Plan Future Land Map (FLUM) designation of Commercial; properties to the south, east and west are all zoned C3 (Commercial) with a City Comprehensive Plan Future Land Map designation of Commercial.

**FACTUAL INFORMATION**

1. The subject property is approximately 1.01 acres ± in size. The existing primary structure is approximately 1,500 sq. ft. in size.
2. The proposed fueling station will be located on the south side of the existing structure and will only be accessible from Broad Street.
3. The subject property is zoned C3, which provides for consideration of a Diesel Fuel and Kerosene pumping station (under the Heating Fuel and Ice Establishment Classification) as a Special Exception Use.
4. The site contains adequate parking for the proposed use.

**FINDINGS OF FACT**

The subject property is approximately 1.01 acres and contains a structure that is 1,500 sq. ft. in size. City Code provides for the Special Exception Use consideration for Heating Fuel and Ice Establishment (Pumping of Diesel Fuel and Kerosene) within commercial zoning districts. The subject property is located in a C3 Commercial Zoning District and has Commercial FLUM designation.

The petitioner has submitted information from the Hernando County Property Appraiser's web site that contains information regarding the site and building layout. Heating Fuel and Ice Establishments require 1.5 parking spaces per person regularly employed on the premises. There will be a maximum of three (3) employees at this location at any given time. There is adequate parking under the City code standards to support the proposed use of the property.

Adequate public services and facilities are available to support the proposed Special Exception Use.

**NOTE:** The Special Exception Use review process is a land use determination which does not constitute a permit for either construction on or use of the property. Nor is this action considered a Certificate of Concurrency. Prior to use of or construction on the property, the petitioner must receive approvals from the appropriate City Departments and/or other governmental agencies that may have regulatory authority over the proposed use/development.

This report does not include the perspective of adjacent landowners, who may be present at the public meeting to address and present questions and comment.

**STAFF RECOMMENDATION:**

Staff recommends that the Planning & Zoning Commission conditionally approve the Special Exception Use petition SE2008-05, allowing for a "Heating Fuel" establishment (Specifically providing for the dispensing of Diesel Fuel and Kerosene) in a C3 Commercial District on the property identified by Hernando County Property Appraisal Key #00009047 (611 N. Broad Street), subject to the following conditions:

1. The main ingress/egress for the dispensing station shall be from the existing property driveway connection to Broad Street. Access from Museum Court shall be used for office personnel only.
2. The pumping station is to be completely enclosed with a Type "C" buffer. The type "C" buffer shall completely surround the dispensing tanks and equipment and shall consist of a continuous, 100% opaque wall at least six (6) feet in height constructed of masonry, wood, or other material as may be approved by the Community Development Department. If the wall is constructed of cement block, the side facing the abutting use shall be faced with stucco or another similar decorative finish. In addition, one (1) tree shall be planted adjacent to the wall every twenty-five (25) feet, or portion thereof.
3. Within 45 days of September 10, 2009, the petitioner shall provide documentation indicating all conditions contained herein have been satisfied.
4. Failure to comply with conditions associated with this Special Exception Use approval will result in the revocation of the said approval and

subject the property lessee/owner to code enforcement sanctions as may be applicable.

5. The developer must meet all applicable Local, State and Federal performance standards and permitting requirements that pertain to this type of business.

Mr. Geiger stated he would recommend one addition condition as number six to read as follows "That the scope of the proposed use will be limited to two (2) above ground storage tanks not to exceed one thousand (1,000) gallons of total fuel storage on the site".

Member Wever asked if there was anyone that can tell him whether or not the State or Federal laws require that these storage tanks be placed on a concrete pad so that it will contain any spillage.

Director Geiger replied it was his understanding, and the petitioner can probably speak to this more directly since he has established this use in other locations, that there is containment storage required under and around the tanks so if there is any fuel spillage it would capture that. But you may want to question him in more detail on that. Our Fire Department normally reviews the projects from those perspectives and would be able to better answer that question. But my understanding is that there is containment requirements for above ground storage tanks that would apply whether it is double wall or not, I'm not sure about that.

Member Korbus asked to back up to number six, two above ground storage tanks...how big.

Director Geiger replied the largest of the two (2) storage tanks that the petitioner is proposing to use is five hundred gallons and we are recommending that the total fuel storage on the site based on this condition would not exceed a one thousand gallon total, just to basically put a limitation on the scope of what the potential operation could be under this approval process. If they want to go larger than that, they would have to come back through board review in order to establish a higher scope.

Attorney McAteer stated "Bill, I have a question and then a suggestion on the conditions." The question is regarding the type C buffer. I see that wood is an option and how is the City interpreting the word "wall" versus the word "fence". If it is an opaque fence would that be enough for him to do.

Director Geiger replied an opaque fence would be acceptable under that standard. It is an either/or type recommendation as far as whether it would be a masonry wall, wood or other type of similar composite material that would be acceptable. We would review what would be proposed and either approve it or not approve it accordingly.

Attorney McAteer stated "I wanted that clarification on the record just for the applicant's benefit and for the Board's benefit." And also should we, in light of Mr. Wever's question perhaps with number six state "with a concrete flooring or pad compliant with State and Federal regulation". Something like that, it may be somewhat redundant, but.

Director Geiger replied that, State and Federal requirements, as it relates to above ground storage tanks, I know that it is required to have containment. But it could be another material other than concrete that may be the case.

Chairman Rodriguez asked would number five cover that when you say that "The developer must meet all applicable Local, State and Federal performance standards..."

Director Geiger replied it would.

Chairman Rodriguez asked, "I am a little confused, now this property got

zoned for development, is this still part of that development?"

Mr. Geiger replied no, this has nothing to do with what was previously proposed. There was a mixed use project that was proposed for this property. They had to go through a process where they were requesting a vacation of right-of-way. That was not approved at the City Council level as far as the vacation of the right-of-way. The petitioner stepped back and said we are not proposing to do this at this time. Mr. Wilkes saw the vacant property and he contacted the property owner, wanted to establish this as a temporary use on this property understanding that they will not be there forever and that at some point in time when the property owner comes back with a proposed master plan use for the property, that its use of the property would end at that point.

Chairman Rodriguez asked when they came to the Commission, we approved the project...was it disapproved by the Council.

Director Geiger replied the project was not disapproved but the vacation of right-of-way was not approved.

Attorney McAteer stated maybe it was a condition precedent that was not able to be satisfied therefore the project, for the lack of a better term "died" at the moment.

Chairman Rodriguez asked if they come back again with the same project with the three 3-story buildings that was part of this property would this property still be used for that purpose.

Director Geiger replied it would be up to the property owner. When they come in with a petition they could come in with something similar with what they were proposing before which would include this property. Or they could come in with something different that would perhaps only pertain to the adjacent property. We have no control over that as far as what they might come in and ask for.

Chairman Rodriguez asked, "I did not go to the meeting but did City Council overturn or deny the whole project or just the vacation of the street?"

Director Geiger replied they denied the vacation of the street, not the project itself. The Council expressed support for the intent of the overall project as a mixed use project. They were very supportive of that, but they did not feel it was appropriate to vacate a public street right-of-way.

Chairman Rodriguez asked then this does not really mix with the original project.

Director Geiger replied it does not, it has no relationship to it other than it is part of that property.

Attorney McAteer stated I would point out to the Board that the underlying fee owner of the properties remain the same. This gentleman is leasing the property and he has filled out an affidavit of agent in the record for the underlying property owner as for this use so this parcel has not been split off from that original ownership group. This is a lease situation with this gentleman acting as agent in this application.

Member Korbus asked can we put a limitation on this as far as a time limit.

Director Geiger replied we did discuss that at a staff level as far as the appropriateness of attaching a time limit or time constraint to a project. Under conditional use permitting you can, under special exception use permitting it is not a typical thing to do. We are providing a time limit for them to meet appropriate conditions for the use of the property. But beyond that as far as putting a time limit to say that you are approved for a one year period or a two year period and after that it reverts back unless

you come back and get approved again I would defer to our City Attorney as far as the appropriateness.

Attorney McAteer replied you are thinking more of a temporary use permit than a special exception. Special Exception uses generally do not have a timer on them. I do not know off the top of my head, the mechanism of the code that specifically allows us to do that. So I would have some caution, some real reservation about that being done. If that answers your question.

Member Korbus stated I was thinking since he only had a temporary use of the property and it is leased for a certain period of time that we could tie that into the lease.

Director Geiger replied that it was understood that this is a month-to-month lease. So the property owner at any given time...there is probably like a thirty or sixty day provision in their lease that says you need to find another location.

Member Andras-Pettry asked, I noticed on number three "within forty five days of September 10, 2009", you said when you were reading it forty five days from today so I was just making sure that was correct. It is a year and forty five days then from today's date.

Director Geiger replied it should be 2008, that is a correction, thank you for catching that.

Chairman Rodriguez asked, "Can the petitioner please come forward." Please state your name for the record.

Mr. Wilkes replied, "Richard Wilkes."

Chairman Rodriguez asked do you have anything else to add to the staff report.

Mr. Wilkes replied none other than there is containment underneath both (tanks) that will hold more than the amount that is in the tanks. There is a five hundred gallon tank and a three hundred gallon tank with the same under both right now.

Attorney McAteer asked Mr. Wilkes I just have to ask for the record have you been sworn.

Mr. Wilkes replied yes.

Ms. Andras-Pettry asked are these the two (2) that are already existing, that are sitting there on the property now.

Mr. Wilkes replied yes.

Chairman Rodriguez asked is this going to be like anybody can drive in and out to buy this fuel.

Mr. Wilkes replied, my main customers are small farmers and people who use small piercing heater during the winter time. They drive in and usually, five to ten gallons at a time is what they get. Farmers get maybe a hundred, tops, a hundred and fifty. There are some construction companies and that is just too little of an amount for me to deliver off my big truck so that is why they come to my business to get that.

Chairman Rodriguez asked do you have a number of people in and out. Is it daily.

Mr. Wilkes replied not really. It is probably daily but I would say some weeks I may go through as much as three tanks of fuel which would be fifteen hundred gallons. Some weeks I may only go through five hundred or less. It

just depends on how many of those customers come by to get 150 to 200 gallons at a time that wipes out the storage so I have to refill them. Most of my customers come in smaller than 100 gallons.

Ms. Andras-Pettry asked are you going to have, I do not know anything about the fuel so you will have to excuse me, are they going to be bringing in tanker trucks to fill these tanks, you know, big semi trucks in there to fill the tanks.

Mr. Wilkes replied I have one truck that I fill up with and it is a 4,200 gallon truck so that is what I refill it with and no I do not park that truck at the location. It is only there when I am at the office which is very rare and to refill that tank.

Ms. Andras-Pettry asked are you on a month to month lease.

Mr. Wilkes replied yes.

Chairman Rodriguez asked if there were any other questions from staff. Any other questions for us, sir.

Mr. Wilkes stated one more comment, that the 4,200 gallon truck that is on there, it does not necessarily mean I am carrying 4,200 gallons of fuel in the truck. It has three compartments and nine times out of ten I am not fully loaded (inaudible).

Chairman Rodriguez asked if anybody in the audience had any questions for the petitioner at this time. If you do, please come forward and state your name, please.

My name is Mary Hogeland.

Chairman Rodriguez asked, "have you been sworn."

Ms. Hogeland replied I own the house across the street, I am sorry, I am hard of hearing.

Chairman Rodriguez replied, "I said state your name and say that you have been sworn in."

Ms. Hogeland replied, "no I have not been sworn in today."

Ms. Jobe asked, "do you swear the testimony you are about to give will be the truth."

Ms. Hogeland replied, "yes I do, most certainly."

Chairman Rodriguez said "state your name and address for the record."

My name is Mary Hogeland and I own the property at 705 Museum Court which is directly across from the building that is in question, the property that is in question. I have had that property for well over 20 years. I guess my first question would be why did the Zoning Board even consider this since Hernando County has so much property that is available that is already equipped for this kind of business. I would like to specify that where this property is located we have the Christmas House, we have the Museum, we have historic homes right across the street. Everybody has worked real hard and downtown Brooksville has worked real hard in getting our City up to that kind of par. I have known Mr. Wilkes for many years, actually my father started in Spring Hill and then he started with his father out there with the oil business back then and I know that you were located there on the by-pass and your father was and actually your brother lived right down the road from me. But you know I understand him needing a variance but I do not understand why this kind of variance needs to be put here. Why with the Comprehensive Plan

we have established in Hernando County and the City of Brooksville to keep random zoning and random variances to keep the neighborhoods all in a similar compatibility. I just feel that this type of business in this area is inappropriate. And I do feel that the Museum, the Christmas House, the residents in the historic division set a precedent over this type of business in that area. I do know that there are two gas stations sitting empty right there on 98 and 50 that he could move into and not have a variance. And I know there is property on 98 and there is industrial property and there is so much available that I hate to see a random variance going at this direction.

Attorney McAteer clarified at this time, I certainly do not mean to be rude to you, ma'am, I seek to advise the speaker that this is not a variance petition. A variance petition is a higher standard that requires a whole list of conditions of the code one of which is a hardship. This is a permitted special exception under the zoning code meaning while it is not a delineated permitted use the applicant can come in through a hearing process such as this, obtain that use, and it would be appropriate, under the existing C-3 zoning so the zoning is already there. There is nothing being proposed here that is a variance. It is a special exception in the sense that they are required to come in and do an extra hearing even though the property is already entitled because it is, in some theories, a little bit more intense use than some of the delineated permitted uses under the zoning category that is already attached to the property. I just wanted to make that clear for the record because she did say variance and there is a very big difference between variance and special exception.

Ms. Hogeland stated but still, we are looking at a special exception to be able to run this kind of business on this currently zoned property.

Attorney McAteer replied it was the opinion of staff and looking at Schedule E, Permitted Uses and Special Exception Uses for non-residential districts under Section 137-87 of the Brooksville Code that because of some of the home heating elements and some of the specifics of Mr. Wilkes business, he needed to go through the Special Exception Use process. If he wanted put a regular old gas station in, he can do it without even coming to see us because he is already under C-3 zoning, in my opinion.

Ms. Hogeland asked could you tell me when this was zoned in a C-3 zoning.

Director Geiger replied it would have been probably back in 1969.

Ms. Hogeland asked C-3, because I always understood it to be a C-2.

Director Geiger replied yes, C-2 and C-3 are exactly identical as far as permitted and special exception use.

Ms. Hogeland stated okay so it is actually zoned as C-2, is it not. Can I clarify that, is it zoned as C-2 or C-3.

Director Geiger replied C-3.

Ms. Hogeland stated it is zoned as C-3, because I was just in the other day and I was told it was zoned as C-2. I just thought it had to do with a little heavier commercial.

Director Geiger replied no.

Ms. Hogeland stated all I am saying is we are just trying to look at the area that is there and how it will effect everybody that is around that area.

Director Geiger stated let me respond to that too, this Board does not have any control over what petitions are presented to it. The petitions are presented on behalf of the property owner, in this case, the lessee and the content of the petitions are evaluated by this board based on the current criteria that has been established for Special Exception Use. Generally, the

Special Exception Use, as the attorney indicated is a use that would normally be approved although it may be of a type or intensity that might require some special consideration in its approval. What this board's obligation to do is to make sure that anything that might be construed as an adverse impact to the neighborhood, to the properties in the vicinity, that those types of issues are properly addressed in conditionally approving the petition. They are doing that with the conditions that are being recommended as far as buffering and addressing what could be otherwise considered an aesthetic eye sore with above ground storage tanks and such. Those things are being addressed in the conditions that are being recommended. At this point if there were any other things, from a permanent adjacent property owner's point of view that you would recommend the Board could certainly take that into consideration.

Ms. Hogeland asked so basically I could take it that you are recommending six (6) foot high fences around the property.

Director Geiger replied not around the property, around the storage and distribution facility.

Ms. Hogeland asked would that include big pods, big trucks, big dumpsters. May I ask would that include all that, big trucks coming in and out. Big dumpsters, big ipods for storage. Would that office look like it just has a few cars pulling up for the office from, you know, from the office and then all the other things be behind that fence or is that just going to be for the 50-gallon drums and storage tanks. The whole appearance of it makes a total difference in that whole area and I am not just speaking for myself, I am concerned about the museum. I am concerned about everything that we have put into this area. I was on the board of the museum twenty (20) years ago. We have put a lot of work into the museum and we have worked real hard in this area and downtown Brooksville has worked real hard. So I am just saying are you going to be able to control that with your stipulations. I have watched a lot of industry and commercial come in and out of Hernando County and I have watched a lot of stipulations going. Do you really think that you can get a beautiful control situation that is going to complement surrounding areas.

Director Geiger replied the conditions are addressing the scope of the operation that can go there. Obviously the petitioner has their established office operation there. They want to be able to do the small scale distribution as well. The conditions are all geared towards addressing that so that you do not have frequent delivery vehicles coming in and out or outdoor storage that is just random around the property. The intent is to address those kinds of concerns. The petitioner indicated that they have a small truck that they use to come in and refill the storage tanks and that should really be the largest vehicle that you will see coming in and off that property.

Ms. Hogeland stated but other trucks like dumpster trucks and dump trucks are going to come in and out. It is going to happen.

Director Geiger stated they can do that now, Mary, trucks are allowed to come in and off that property now, it is zoned Commercial.

Ms. Hogeland stated okay, I do want to mention too that when we came up with (inaudible) a few months ago when they put the development up and they had a beautiful scene area set up with restored buildings and (inaudible) like New Orleans, and it was complementing the whole neighborhood, the museum, and they did not get their road and now this is what is happening and I almost feel like, you know, that it is not fair. Okay, so, I have said my piece and I thank you very much for listening.

Chairman Rodriguez stated thank you, does the board members have any questions for the lady. Anybody else in the audience have anything at this point, please come forward if you do.

Attorney McAteer stated Mr. Chairman, the applicant has a right to rebuttal if he wants to.

Chairman Rodriguez asked does the petitioner have anything else to add to what he already told us if you do please come forward, or any response to the lady who just spoke.

Mr. Wilkes replied I would just like to add that I am a very small business. This was kind of an emergency move to this property. I do not plan on being there for the rest of my life. I cannot tell you how long I will be there but it will not be the rest of eternity so I would just like to add that I am a very small business and you are not going to have a huge amount of traffic coming in and out of that property. That is basically all I have.

Chairman Rodriguez stated thank you, sir. Since nobody else in the audience or the board have any questions for the petitioner at this time or for staff...

Member Korbus asked, Bill, on this, is it because it is fuel, does the City Fire Department have to give any type of approval or anything for it.

Director Geiger replied yes, they would do the review of plans and inspection of the above ground storage distribution facility itself.

Member Korbus asked but do they give any approval ahead of time like now, at this point in time. Do they say that is a compatible area or something like that.

Director Geiger replied no, they do not get into that.

Member Korbus asked so it is not a recommendation from the Fire Department until it is actually somewhat constructed.

Director Geiger replied they go in and make sure that they adhere to all the applicable codes and requirements associated with the type of use but they do not get involved with the use aspect which is what you are dealing with now.

Member Andras-Pettry stated my biggest concern is the safety issue for the historical sites. We have a lot of old homes there, we have the museum and I am very concerned about the diesel fuel being stored there next to the museum. I mean, it is not next to it but very close to it. I wish that the Fire Department could have reviewed this and let us know.

Director Geiger replied let me speak to that a little bit too. You have oil tanks inside residential homes that provide heat for homes in the winter time in other areas around the country. Obviously, we do not need that kind of storage here but as far as the kerosene and the diesel fuel, they are less flammable than the other types of fuels that are out there, gasoline you use in your car is definitely more flammable than these types of fuels that they will have on this site.

Member Andras-Pettry stated but that is eighteen (18) gallons versus close to a thousand.

Director Geiger replied no actually a lot of the fuel oil tanks that people have in their homes can be in excess of a hundred gallons.

Chairman Rodriguez asked any other questions for staff or the petitioner.

Member Korbus asked when they build this site they will put the tanks up and they put these things in to contain it, and things like that. Is there any way that it could possibly leak and reach down in...because this is going from the top of the hill, one of the highest hills in Brooksville and it is going downhill and because of the difference in elevation, if it leaked it is

going to go down real fast and it is going to spread real fast. If it leaked, it could possibly do a lot of damage. And for a temporary business to come in there and something just happened it would do a lot more damage than...

Director Geiger replied as Mr. Wilkes indicated, the containment is required to equal the size of the tanks themselves so any fuel that may be spilled with regard to the tanks should be captured and contained. Any spills that do occur have reporting requirements and they need to be taken care of immediately. You do not have fuel spills that are allowed to just sit there and to the point where they would create great environmental damage. There is always risk when it comes to dealing with fuels. That is a given but as far as when you look at the other types of permitted uses that are allowed on this property that are actually under the permitted use schedule that could be considered to be of higher risk than the scope of what is being proposed by this business.

Chairman Rodriguez asked in those uses, let us say I want to put a gas station in, I do not have to come in front of anybody at this point because it is zoned for the property, just go ahead and build a gas station, with underground tanks and everything else at this point...

Member Korbus asked but a gas station would have to have underground tanks, would it not, they cannot have above ground tanks anymore.

Director Geiger replied I do not know that they have to have underground tanks. It is just more cost effective for them to have underground tanks. It takes above ground space to have above ground tanks and usually space is a premium on a piece of property and most will choose to go with an underground tank.

Chairman Rodriguez asked any other questions. If not,...you will have to come forward to the microphone, state your name again.

Richard Wilkes stated in regards to that last question, it is required if you store gasoline that it has to be underground. Diesel fuel you do not have to because it is not explosive like gasoline.

Chairman Rodriguez stated thank you, sir, for clarification. Anybody else have a question, please come forward and state your name.

David Mango, stated I have been sworn, we live directly behind the petitioner on the west northwest at 701 Museum Court. Obviously the gas station could go there and you have no recourse. I would just ask the Board and the petitioner be sensitive to the historic environment that is there. We live in over a hundred year old home and the museum is even older than that. Our neighbor to the east is an older home as well. So we would ask that the Board be sensitive to that environment, the residential environment and parcels that are just to the north of this commercial property and whatever would go there I am sure we would be back to express that same concern of sensitivity towards the two (2) residential and commercial locations.

Chairman Rodriguez stated thank you, sir. Anybody else, any comments. This is the last time I am going to ask, so...if nobody else has any comments, I bring it back to the board. I need a motion then.

Motion was made by Member Wever to approve the staff report subject to the added condition of number six.

Attorney McAteer stated just a note for the record to clarify Mr. Wever's motion, that it is including all staff recommended conditions including recommendation six, is that correct, Mr. Wever, thank you.

Chairman Rodriguez stated I need a second, if I do not get a second, it is going to die. The motion dies for lack of a second. I need a motion still.

Motion:

Motion was made by Member Korbus to deny staff recommendations (and subsequently, the petition), seconded by Member Taylor. Motion carried 3-2 with Member Wever and Chairman Rodriguez voting in opposition.

Attorney McAteer asked are we clear on the record as to who...do you want to poll the board.

Recording Secretary Jobe stated no, I have it.

Chairman Rodriguez stated the motion has been denied 3-2. Thank you very much. Chairman Rodriguez then clarified, "Oh, sorry, the petition has been denied for approval."

\*\*PP2008-01 AND FP2008-01 PRELIMINARY AND FINAL SUBDIVISION RE-PLAT FOR OAKS TOWNE CENTRE - 55 PONCE DE LEON BOULEVARD - PRESENTED BY BILL RAIN, PRESIDENT, METRO BAY DEVELOPMENT

Director Geiger requested that the staff report be entered into the record in its entirety, as follows:

SUMMARY OF REQUEST - GENERAL INFORMATION

The Petitioner is requesting Preliminary and Final Subdivision Re-Plat approval for the "Oaks Towne Centre" property. The subject property is 11.00 acres ±, currently zoned CPDP (Combined Planned Development Project) and is located on west of Ponce De Leon Boulevard, south of DeSoto Avenue, north of Benton Avenue and east of Veterans Avenue (See attached location map). On May 9, 2007 the Planning and Zoning Commission reviewed and recommended that City Council approve rezoning the property from R-3 (Multi-Family Residential) to Planned Development Project (PDP) with a Special Exception Use for a Combined Planned Development Project (CPDP). On June 4, 2007 the City Council approved Ordinance No. 747 rezoning this property from R-3 (Multi-Family Residential) to PDP with a Special Exception Use for a Combined Planned Development Project (CPDP) with the following conditions:

- a. Permitted uses associated with this Combined PDP include an assisted living facility, government offices, general offices, retail stores, restaurant and an educational facility. Future outparcel development may include a bank, offices and a restaurant, subject to meeting all applicable performance standards. The "REZONING PLAN FOR OAKTOWNE CENTRE" dated 4/25/07 is subject to modification to address subdivision platting and city code performance standards.
- b. Within two years of the City Council's approval of this Combined Planned Development Project (Combined PDP) zoning, the petitioner/developer will need to initiate the subdivision process, providing preliminary plat plans that address infrastructure needs, construction plans that reflect the preliminary plat (once approved) and a final plat (all being consistent with the requirements of the City's subdivision regulations).
- c. The petitioner/developer must obtain all required permits and meet all applicable land development regulations for construction or use of the property.
- d. Landscaping/Buffers - The detailed development/redevelopment plans for this property will be required to reflect and adhere to the standards of the City's Landscaping, Buffer and Tree Protection code (Chapter 109, City Code). This portion of the City code encourages the preservation of existing trees on the site, and the developer will be required to give due consideration to this in the design and final plan layout.
- e. Traffic - Any modifications to existing access points that may

be proposed in conjunction with this property's redevelopment will be subject to meeting City performance standards, including frontage road setbacks and requirements. A traffic analysis showing the capacity of the road network impacted by this proposed development/redevelopment is to be completed and submitted to the City prior to or in conjunction with the preliminary plat plan submittal.

- f. Sidewalks - The developer will be required to install appropriate pedestrian amenities including sidewalks in areas adjacent to public road rights-of-way and internal to the project, as applicable, and crosswalks where deemed appropriate, all being subject to approval through the subdivision plat review process. All facilities must meet ADA standards.
- g. Drainage - Proposals for outparcel or parking lot development that increase the existing impervious surface area of the project will be subject to meeting all applicable standards and permit requirements established by the Southwest Florida Water Management District and the City of Brooksville. To this extent, The developer will be required to construct an on-site storm water drainage control system that meets the design and performance standards as specified by the technical requirements for open and closed basins in the *Environmental Resource Permitting Information Manual, latest edition*, as published by the Southwest Florida Water Management District. The proposed stormwater plan associated with this project must comply with all applicable federal, state and local standards. The developer will be required to coordinate with the City's Department of Public Works and Community Development to properly plan for and address drainage.
- h. Infrastructure & Services - The developer will be required to enter into a utility service agreement with the City of Brooksville for water and sewer services.
- i. Sanitation - Solid waste collection services will be provided by the City. Special solid waste services (such as compactor service) are subject to city approval.
- j. Subdivision Requirements - To accommodate this project, the property must be platted in accordance with the City's subdivision regulations. Individual use areas will be further delineated and platted consistent with the City's standards.
- k. City Concurrency Standards - The developer will be required to provide a "Statement of Impact - Concurrency Application" with each phase of development for this project that will be reviewed to ensure that level-of-service standards are being maintained within their adopted levels.
- l. Unless specifically addressed to the contrary by conditions referenced herein, City ordinance regulations which apply with regard to zoning district classification shall be applied to this PDP as though it were zoned C2.
- m. Future actions required in conjunction with the redevelopment of this property include subdivision platting, rights-of way vacation and construction plan approval. Renovations to the existing structure may be initiated prior to receiving final plat approval.

#### LAND USE/ZONING

The subject property is zoned CPDP (Combined Planned Development Project) with a City Comprehensive Plan Future Land Use (FLU) designation of Public Facilities and Land. Property located on the north side of DeSoto Avenue is C2 (Commercial) and R3 (Multi-Family Residential) with a FLU designation of Commercial, and properties to the south, east and west are all C-2 Commercial, with a FLU designation of Commercial.

**STAFF FINDINGS:**

**FACTUAL INFORMATION**

1. The subject is zoned CPDP (Combined Planned Development Project).
2. The subject property is approximately 11.00 acres ±.
3. The subject property is being re-platted into three (3) lots. 55 Ponce De Leon, LLC is the owner for lot 1, the Grande, LLC is the owner of lot 2, and Hernando County Board of County Commissioners are the owners of lot 3. This portion of the Halemont Addition Section 2 plat currently has 45 platted lots with street rights-of-way going through it.
4. Construction plans have been reviewed to ensure that all applicable City code standards are being met.
5. Hendricks Street from Veterans Avenue to Lamar Avenue and a portion of Lamar Avenue from Hendricks Street to Veterans Avenue will be vacated with this subdivision re-plat.

This final Re-Plat has been reviewed by City staff to ensure that all conditions and requirements have been met prior to being submitted to the Commission for consideration. Staff comments are as follows:

1. The Final subdivision re-plat appears to be consistent overall with City and State regulatory standards.
2. Pursuant to Chapter 177, Florida Statutes, the City has employed a surveyor to review the proposed Re-Plat for compliance with technical surveying requirements specified by State law. The City's surveyor is in the process of reviewing the plat document at the time of writing this report. Final plat approval is subject to revision based on the city's review surveyor's determination.
3. Sub-Section 1.1.e. of the zoning ordinance requires that the subdivider provide a traffic analysis showing the capacity of the road network impacted by this proposed development/redevelopment either prior to or in conjunction with the preliminary plat plan submittal. This analysis has not yet been provided. Since this project is a redevelopment/remodeling of the existing building, the required analysis may be deferred to the timing of when a permit/certificate of use is being established for the building. It is anticipated that the future uses associated with this project will be comparable to the prior use of the property as a hospital site. If the required analysis demonstrates an equal to or lower than prior use impact, no mitigation will be required. If the analysis demonstrates a higher impact, mitigation would be required in the form of impact fees or road improvements.
4. The subdivider is in the process of coordinating with the various utility companies on establishing separate easement documents for the existing utilities that are on the subject property. These easements need to be executed and recorded prior to the City's signature of the final plat document.

**BUDGET IMPACT:** The Petitioner is assessed fees for the costs associated with the processing of this petition.

**LEGAL REVIEW:** The preliminary plat process is quasi-judicial and the final plat/replat process is legislative. Plat documents will be reviewed for legal form and sufficiency.

**NOTE:** The Preliminary Plat/Final subdivision re-plat review/approval process is a land use determination which does not constitute a permit for either construction on or use of the property. Nor are these actions considered a Certificate of Concurrency. Prior to use of or construction on the property, the petitioner must receive construction plan approval from the appropriate

city and/or other governmental agencies that have regulatory authority over the proposed development.

The granting of this land use determination does not protect the owner from civil liability for recorded deed restrictions which may exceed any City land use ordinances. Homeowner associations or architectural review committees may require submission of plans for their review and approval. The applicant for this petition request should contact the local association (if there is one) and review the Public Records for all restrictions that may be applicable to this property.

This report does not include the perspective of adjacent landowners, who may be present at the public meeting to address and present questions and comments.

**STAFF RECOMMENDATION:**

Staff recommends that the Planning and Zoning Commission conditionally approve the preliminary plat and Final Replat labeled as "Oaks Towne Centre", prepared by ArcPoint Surveying and Mapping, LLC, date stamped September 2, 2008, authorize the Chairman to sign the final Replat documents, and recommend that the City Council approve the same, subject to the following conditions and statements:

- A. Development of this property will be subject to meeting all applicable federal, state and local agency permitting requirements.
- B. Developer is required to provide a "Statement of Impact - Concurrency Application" with each phase of development for this project that will be reviewed to ensure that level-of-service standards are being maintained within their adopted levels. Additionally, the developer of this property is required to provide a traffic analysis showing the capacity of the road network impacted by this proposed development/redevelopment prior to the city issuing a certificate of use for the building. If impacts are established that are higher than the impacts associated with the prior use of the property, mitigation may be required that could include the payment of impact fees and/or improvements to infrastructure within the impact area.
- C. Unless conditioned and stated otherwise, all provisions stipulated within zoning Ordinance No. 747 continue to be applicable to the use of this property.
- D. Final plat approval is subject to revision based on the city review surveyor's determination and direction.
- E. All applicable easements need to be executed and recorded prior to the City's signature of the final plat document.
- G. The developer is required to provide the City with three original copies of the approved Oaks Towne Centre Preliminary Plat that are signed, dated and sealed by a Florida registered Land Surveyor. Once the Final Replat is recorded, the developer must provide the City with one recorded mylar and two copies, plus one (1) 11' X 17" copy.

Director Geiger stated developers and property owners will provide easements to the utility companies that have any of their facilities located within the existing platted road right-of-way to ensure their interests are secure and being addressed.

Discussion ensued regarding regulatory authority of the easements.

Bill Rain presented the board members with a visual presentation to address some of the issues brought up about the easements.

Motion:

Motion was made by Member Korbus to approve staff recommendations and for City Council to approval final replat with conditions, seconded by Member Taylor. Motion carried 5-0.

ADJOURNMENT

As there was no further business to come before the Commission, the meeting was adjourned at 7:28 p.m.

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Patricia J. Jobe  
Recording Secretary

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**Sec. 137-43. Additional duties of planning and zoning commission.**

(a) *Generally.* The commission shall have the following additional powers and duties:

(1) To hear and decide appeals where it is alleged there is an error in an order or determination made by the administrative official in the enforcement of the land use/zoning regulations of the city.

(2) To hear and decide special exception petitions to the land use/zoning regulations of the city.

(3) To hear and decide petitions seeking variances from the land use/zoning regulations of the city. No such variance will be granted unless the facts presented show that a literal interpretation and enforcement of the regulations would result in an unnecessary hardship to the petitioner. No variance will be granted for a condition which was caused by the petitioner.

(b) *Decision of the commission.* In the exercise of its powers and duties, the commission shall have all of the powers of the administrative official. The concurring vote of a majority of the commission shall be required to approve a variance or special exception request. Written confirmation of the decision of the commission shall be mailed to the applicant within two business days of the hearing on such decision.

(c) *Appeals.* Appeal of a decision of the administrative official may be taken to the commission by any person affected by such decision. Any appeal must be taken within 21 calendar days from the date the decision is rendered by the administrative official. Written notice of the appeal shall be delivered to the administrative official or his authorized representative. The administrative official will publish in a newspaper of local circulation (as defined in F.S. ch. 50) a notice of hearing at least seven calendar days prior to the hearing. The cost of such publication will be paid by the petitioner. The hearing before the commission shall be conducted pursuant to the rules and procedures established for such proceedings by the city council.

(d) *Appeals of a commission decision.* Anyone may appeal a decision of the commission to the city council. In order to appeal a decision, the petitioner must deliver a notice of appeal to the city clerk within ten calendar days of the date of the commission's decision. The notice of appeal must specify the decision being appealed and the specific reasons for the appeal. The notice of appeal shall be placed as an item on the next available regular agenda of the city council. No discussion of the merits of the appeal will be permitted; the mayor will request a vote of the council to determine if it wishes to hear the appeal. If a majority of the council votes to hear the appeal, a hearing at a special meeting of the city council will be scheduled within 21 days of the vote by the council. The city clerk will publish in a newspaper of local circulation (as defined in F.S. ch. 50) a notice of hearing at least three calendar days prior to the hearing. The cost of such publication will be paid by the petitioner. The hearing before the council shall be conducted pursuant to the rules and procedures established for such proceedings by the city council.

(e) *Stay of proceedings.* An appeal to the commission of a decision of the administrative official or an appeal to the city council of a decision of the commission shall cause all matters relating to the appeal to be stayed until the conclusion of the appeal process. However, after receipt of the notice of appeal, the stay may be lifted by the administrative official if, in his opinion, the facts in the notice of appeal would cause imminent peril to life or property.

(Code 1988, pt. III, subpt. B, § 53)

**CITY OF BROOKSVILLE  
OFFICIAL POLICY  
9-1997**

**APPEAL PROCEEDINGS**

This meeting procedure is to be used whenever an appeal is brought before the City Council pursuant to City Ordinance No. 562.

Procedure:

1. The Chairperson will call the meeting to order.
2. Notice of publication will be read into the record.
3. Representatives of the parties will be sworn in by the City Attorney.
4. Staff presentation. (4 minutes)
5. Council questions of staff.
6. Appellant presentation. (5 minutes)
7. Council questions of appellant.
8. Staff rebuttal. (1 minute)
9. Additional questions of staff/appellant.
10. Council discussions.
11. Council motion, second, vote.

General

1. Additional time may be allotted to the staff/appellant so long as the time available is fairly apportioned. Time made available under this section will be printed on the Council Agenda and would supersede the standard times listed on the foregoing procedure.