

**ARTICLE XVII        ADMINISTRATION, AMENDMENTS, DEVELOPMENT PLAN  
REVIEW**

**Section 17.0    Reserved.**

**Section 17.1    City Council.**

- A.     The City Council for the City of Fellsmere shall have the following powers and duties under this Code:
1.     The powers to initiate, review, and adopt amendments to the Official Zoning Map.
  2.     The powers to initiate, review, and adopt amendments to the text of this Code.
  3.     The powers to review and grant, grant with conditions, or deny Site Plan applications.
  4.     The powers to review and grant, grant with conditions or deny plat applications.
  5.     The powers to review and grant, grant with conditions, or deny conditional use applications.
  6.     The powers to review and grant, grant with conditions or deny subdivision applications.
  7.     The powers to review and grant, grant with conditions or deny applications for development agreements.
  8.     The powers to interpret boundaries of the various zoning districts on the Official Zoning Map.
  9.     The power to establish a schedule of fees by resolution in order to cover the costs of technical and administrative activities required by this Code.
  10.    All other powers necessary to carry out the provisions of this Code.

**Section 17.2    Planning and Zoning Commission.**

- A.     Created; composition.

There is hereby created the city planning and zoning commission, which shall consist of five regular members, two alternate members, plus a school board representative designated and approved by the school board, who shall serve in a non-voting capacity. The regular members and alternate members shall be qualified electors and property owners within the city.

B. Powers and Duties.

The Planning and Zoning Commission shall have the following powers and duties under this Code:

1. The powers to initiate, review, and recommend for approval or disapproval to the City Council, applications for amendments to the Official Zoning Map.
2. The powers to initiate, review, and recommend for approval or disapproval to the City Council, amendments to the text of this Code.
3. The powers to review and recommend for approval, approval with conditions, or disapproval to the City Council applications for Site Plans, Plats and Planned Developments.
4. The powers to review and recommend for approval, approval with modifications, or disapproval to the City Council, applications for conditional use permits.
5. The powers to serve in an advisory capacity to the City Council and review, report, and prepare studies and investigations as requested by that council.
6. The powers to make its special knowledge and expertise available upon reasonable written request and authorization by the City Council to any official, department, board, commission, or agency of a city, county, state, or the federal government.
7. The powers to adopt rules of procedure that are not in conflict with the provisions of this Code.

C. Appointments; Terms.

The Planning and Zoning Commission shall be composed of five (5) members. The members of the Planning and Zoning Commission shall be appointed by majority vote of the City Council. Appointments of members shall be for staggered terms of two years. All members of the Planning and Zoning Commission shall hold office until their successors are appointed and qualified.

1. Appointment of alternate members and their duties.

Each alternate member shall be appointed for a term of two years. The alternate members of the Planning and Zoning Commission shall attend all meetings of the Planning and Zoning Commission but shall act only in the absence, disability or disqualification of a regular member thereof. When an alternate member acts, the minutes of the Planning and Zoning Commission shall reflect the name of the absent, disabled or disqualified member in whose place and stead the alternate is acting. Each alternate member shall fill in for a regular member who is absent, disabled or disqualified on a rotating basis with the most senior alternate member to be the first in the initial rotation. If more than one regular member is absent, disabled or disqualified, then both alternate members shall act as members of the planning and zoning commission.

2. Absences.

The absence of a member, for three (3) consecutive meetings, without an excuse approved by the chairperson of the Planning and Zoning Commission and noted

in the minutes, shall be deemed cause for removal of the member by the City Council.

3. Vacancies and reappointments.
  - a. Any sitting member of the Planning and Zoning Commission may be reappointed to serve an additional term or terms, subject to confirmation by majority vote of the City Council.
  - b. Should a sitting member's seat on the Planning and Zoning Commission become vacant for any reason, the City Council shall appoint a new member, subject to the ratification provisions described in this subsection C. Appointments to fill any vacancy, shall be for the remainder of the unexpired term of office of the member of the Planning and Zoning Commission that is being replaced.
  - c. Two months prior to the expiration of the term of any member, or in the event of any vacancy, the city clerk shall provide the chairperson and the City Council with a copy of all pending applications for membership on the planning and zoning commission, even if the incumbent Planning and Zoning Commission member intends to seek reappointment. Whenever a current or former Planning and Zoning Commission member is being considered for appointment or reappointment to the planning and zoning commission, the City Council shall consider the number and nature of the memoranda of conflict previously filed by such person pursuant to F.S. § 112.3143, as amended.
4. Selection of chairperson and vice chairperson.
  - a. At the first regular meeting in January each year, the members of the Planning and Zoning Commission shall elect one (1) of their number as Chairman and one (1) of their number as Vice-Chairman.
  - b. The Chairman shall preside at all meetings and hearings of the Planning and Zoning Commission, decide points of order, and appoint any committees that are deemed necessary.
  - c. The Vice-Chairman shall preside at all meetings and hearings of the Planning and Zoning Commission, and decide points of order in the absence of the Chairman.
  - d. The members of the Planning and Zoning Commission may select an additional person who shall preside over meetings in the absence of the Chairman and Vice-Chairman.
  - e. Whenever possible, the person selected as the chairperson and vice chairperson of the Planning and Zoning Commission shall have served two years as a regular member of the Planning and Zoning Commission and shall have attended at least 90 percent of the meetings of the Planning and Zoning Commission which such member was not otherwise excused from attending by the individual serving as the chairperson of the Planning and Zoning Commission at such meetings.

5. Selection of Secretary.
  - a. An employee appointed by the City Manager or designee shall act as a Secretary.
  - b. The Secretary, with the aid of the City Manager or designee shall keep minutes of the proceedings of the Planning and Zoning Commission, and shall maintain all records of Commission proceedings and the correspondence of the Commission.

D. Members to Serve Without Compensation.

The members of the Planning and Zoning Commission shall serve without compensation.

E. Office of the City Manager or designee.

The City Manager or designee and his staff shall provide necessary professional support to the Planning and Zoning Commission, with the approval of the City Council.

F. Quorum and Necessary Vote.

1. No business shall be transacted by the Planning and Zoning Commission without a quorum. A quorum shall consist of three (3) members of the Planning and Zoning Commission.
2. All recommendations and decisions of the Planning and Zoning Commission shall require the affirmative vote of a majority of the members, unless otherwise stated in this Code.

G. Meetings, Hearings, and Procedures.

1. A regular meeting of the Planning and Zoning Commission shall be held once each month, or as determined by the Chairman.
2. Special meetings of the Planning and Zoning Commission may be called by the Chairman of the Planning and Zoning Commission, if at least twenty-four (24) hours notice of the special meeting is given to each member of the Planning and Zoning Commission.
3. All meetings and hearings of the Planning and Zoning Commission shall be open to the public.
4. The Planning and Zoning Commission may continue a regular meeting if all business cannot be completed on that day. The time and place of the meeting's resumption shall be stated by the presiding officer at the time of continuance.
5. In the event that less than a quorum is present at any proceeding of the Planning and Zoning Commission, the proceeding shall be rescheduled within a reasonable period of time. The Secretary shall notify in writing all parties and such other interested persons as may be designated the time, place, and date of the rescheduled proceeding.
6. All records of the Planning and Zoning Commission shall be public records open to inspection at reasonable times and upon reasonable notice in accordance with Section 119.01 et seq. Florida Statutes, as amended, the Public Records Act.

**Section 17.3 Local Planning Agency**

A. Duties and Responsibilities.

The Local Planning Agency, in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, Section 163.3174, Florida Statutes, shall:

1. Be the agency responsible for the preparation of the comprehensive plan and shall make recommendations to the City Council regarding the adoption of such plan or element or portion thereof. During the preparation of the plan and prior to any recommendation to the City Council, the local planning agency shall hold at least one (1) public hearing, with due public notice, on the proposed plan or element or portion thereof. The City Council, in cooperation with the local planning agency, may designate any agency, committee, department, or person to prepare the comprehensive plan or any element thereof, but final recommendation of the adoption of such plan to the City Council shall be the responsibility of the Local Planning Agency.
2. Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the City Council such changes in the comprehensive plan as may be required from time to time, including preparation of the periodic reports required by Section 163.3191.
3. Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the City Council as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof.
4. Perform any other functions, duties, and responsibilities assigned to it by the City Council or by general or special law.

B. Designation and Establishment.

Pursuant to, and in accordance with Section 163.3174, Florida Statutes (Local Government Comprehensive Planning and Land Development Regulation Act) the City Planning and Zoning Commission is hereby designated and established as the Local Planning Agency for the City of Fellsmere.

C. Public Meetings and Records.

All meetings of the Local Planning Agency shall be public meetings and all agency records shall be public records. The Local Planning Agency shall encourage public participation.

**Section 17.4 Board of Adjustment.**

A. Established:

1. There is hereby created the city Board of Adjustment (Board).

B. Powers and Duties:

The Board of Adjustment shall have the following powers and duties under this Code:

1. The power to authorize variances from any dimensional requirements of this Code. The Board of Adjustment may not consider or grant any authorization of use in any zoning district that is otherwise prohibited in that district
2. The powers to hear and decide appeals initiated by any person, officer, board, or bureau of the City of Fellsmere aggrieved by any decision, order, determination, or interpretation of any administrative official of the City with respect to the provisions of this Code.
3. The powers to make its special knowledge and expertise available upon reasonable written request and authorization by the City of Fellsmere to any official, department, board, commission, or agency of a city, county, state, or federal government.
4. The powers to adopt rules of procedure that are not in conflict with the provisions of this Code.

C. Membership: Appointment, Removal, Terms, Vacancies, And Qualifications.

1. The Board of Adjustment shall be composed of five (5) members. The members of the Board of Adjustment shall be appointed by majority vote of the City Council. Appointments of members shall be for staggered terms of two years. All members of the Board of Adjustment shall hold office until their successors are appointed and qualified.
2. Three (3) of the five (5) members of the Board must reside within the City of Fellsmere and two of whom may reside outside of the City provided that the two residing outside the City must be a Contractor, Architect, or Engineer working in the City from time to time. However, there is no requirement that someone residing outside of the City must be appointed to the Board.
3. At the option of the City Council, the Council may, by Resolution, designate itself to be the Board of Adjustment.
4. Vacancies and reappointments.
  - a. Any sitting member of the Board of Adjustment may be reappointed to serve an additional term or terms, subject to majority vote of the City Council.
  - b. Should a sitting members seat on the Board of Adjustment become vacant for any reason, the City Council shall appoint by majority vote a new member, subject to the ratification provisions described in this subsection C. Appointments to fill any vacancy, shall be for the remainder of the unexpired term of office of the member of the Board of Adjustment that is being replaced.
  - c. Two months prior to the expiration of the term of any member, or in the event of any vacancy, the city clerk shall provide the chairperson and the City Council with a copy of all pending applications for membership on the Board of Adjustment, even if the incumbent Board of Adjustment member intends to seek reappointment. Whenever a current or former Board of Adjustment member is being considered for appointment or reappointment to the Board of Adjustment, the City Council shall consider the number and nature of the memoranda of conflict previously filed by such person pursuant to F.S. § 112.3143, as amended.

5. Absence from two (2) consecutive meetings of the Board of Adjustment shall vacate the seat of that member, unless such absence is excused by the Board of Adjustment or the Chairman of the Board of Adjustment. If a majority of the Board of Adjustment members disagree with the Chairman's decision on this matter, they may overrule it. Such excuse must be duly entered on the minutes.
6. Any member of the Board of Adjustment may be removed by the City Council.
7. No member of the Board of Adjustment shall appear for or represent any person in any matter before the Board of Adjustment other than himself.

D. Chairman and Vice-Chairman.

1. At the first regular meeting in January of each year, the members of the Board of Adjustment shall elect one (1) of their number as Chairman and one (1) of their number as Vice-Chairman.
2. The Chairman shall preside at all meetings and hearings of the Board of Adjustment, decide points of order, and appoint any committees that are deemed necessary.
3. The Vice-Chairman shall preside at all meetings and hearings of the Board of Adjustment and decide points of order in the absence of the Chairman.
4. The members of the Board of Adjustment may select an additional person who shall preside over meetings in the absence of the Chairman and Vice-Chairman.
5. The presiding officer may administer oaths to witnesses at Board of Adjustment hearings and meetings.

E. Secretary.

1. An employee appointed by the City Manager or designee shall act as a Secretary.
2. The Secretary, with the aid of the City Manager or designee, shall keep minutes of the proceedings of the Board of Adjustment and shall maintain all records of Board of Adjustment meetings, hearings, and proceedings, and the correspondence of the Board.

G. Office of the City Manager or designee.

The City Manager or designee and his staff shall provide necessary professional support to the Board of Adjustment, with the approval of the City Council.

H. Quorum and Necessary Vote.

1. No meeting shall be held without a quorum. A quorum shall consist of three (3) members, two (2) of which shall reside within the City.
2. The affirmative vote of three (3) members will be required for any action by the Board of Adjustment included but not limited to reversing decisions of any administrative official and to allow variances.

I. Meetings, Hearings, and Procedures.

1. Regular meetings of the Board of Adjustment shall be held each month, or as determined by the Chairman.
2. Special meetings may be called by the Chairman of the Board of Adjustment, provided that twenty-four (24) hours notice of the such meeting is given to each member of the Board of Adjustment.
3. All proceedings of the Board of Adjustment shall be open to the public.
4. The Board of Adjustment may continue a regular meeting if all business cannot be completed on that day. The time and place of the meeting's resumption shall be stated by the presiding officer at the time of continuance.
5. In the event that less than a quorum is present at any proceeding of the Board of Adjustment, the proceeding shall be rescheduled within a reasonable period of time. The Secretary shall notify in writing all parties and such other interested persons as may be designated the time, place, and date of the rescheduled proceeding.
6. All records of the Board of Adjustment shall be public records open to inspection at reasonable times and upon reasonable notice in accordance with Section 119.01 et seq. Florida Statutes, as amended, the Public Records Act.
7. Any person desiring to appeal a decision of the Board of Adjustment under this section may apply for judicial relief to the Circuit Court in the Nineteenth Judicial Circuit in and for Indian River County within thirty (30) days after rendition of the decision by the Board of Adjustment. Review shall be governed by the Florida Rules of Appellate Procedure.

**Section 17.5 Technical Review Committee.**

A. Establishment and appointments:

There is hereby created the City of Fellsmere Technical Review Committee (TRC). Technical Review Committee means a committee formed by the City Manager or designee to review site plans, subdivision plats, planned developments, or other development order applications deemed necessary in his/her discretion. At a minimum, the TRC shall consist of a member of the following departments/divisions of the City: Building, Community Development, Public Works, Police and the City Engineer. The City Attorney will serve as legal advisor to the TRC. The City Manager may include other consultants as deemed necessary, and/or other City/County departments, such as emergency services. Other personnel may be added at the City Manager's discretion.

1. Officers.

The Chairman of the Technical Review Committee shall be the City Manager or designee. The City Manager or designee shall appoint a Secretary to the Technical Review Committee to keep a record of its findings, decisions and recommendations, which shall be maintained in the Office of the City Manager or designee.

2. Meetings:

The Technical Review Committee shall meet at least once per month on a recurring day and time to be established by the City Manager or designee. Should the committee have items for review to be discussed at that meeting, the applicant for said item shall be notified of the meeting and requested to be present to address any questions or issues of concern raised at that meeting.

3. Powers and Duties.

- a. The Technical Review Committee shall have the power to review applications for subdivision plats, site plans, planned development projects, developments of regional impact, and any other applications submitted for development order approval which in the opinion of the City Manager or designee should be reviewed by the Technical Review Committee.
- b. In reviewing such applications, the Technical Review Committee shall prepare a written report describing the project, its surrounding uses, zoning, setting forth any deficiencies for the technical requirements of the land development regulations and list any conditions deemed appropriate should the application be recommended for approval.
- c. The TRC shall transmit its report to the Planning and Zoning Commission and City Council.
- d. The powers and duties of the Technical Review Committee shall include other responsibilities that may be assigned from time to time by the City Council.

**Section 17.6 Office of the City Manager.**

The City Manager shall be considered the Administrative Official, who shall be charged with the authority to administer this Code and to enforce the regulations and procedures contained herein. The Administrative Official, in the performance of the necessary duties and functions, may enter upon any land and make examinations and surveys that do not occasion damage or injury to private property. For the purpose of performing any of the duties and functions necessary to administer and enforce this Code, the City Manager, or designee, may appoint any appropriate persons as official designees who shall have and exercise the authority of the Administrative Official, except the authority to appoint official designees.

**Section 17.7 Office of the Community Development Director.**

A. Jurisdiction, Authority, and Duties.

In addition to the jurisdiction, authority, and duties which may be conferred on the Community Development Director by Chapter 2, Division V, Section 2-206 to 2-209, of the Code of Ordinances of the City of Fellsmere, he shall also have the following powers and duties under this Code.

1. The Community Development Director shall grant or deny applications for a Vested Rights Special Use Permit in accordance with the procedures in Section 17.23 of this Code.

2. The Community Development Director, whenever a use is not specifically listed in Tables 3B and 3C in Article III, shall make a determination as to whether the proposed use is a use permitted by this Code, in accordance with the provisions in Article III.
3. The Community Development Director shall serve as staff planner to the Planning and Zoning Commission and the City Council, including the provision of aid and technical assistance in:
  - a. The initiation, processing, and review of applications for amendment to the Official Zoning Maps.
  - b. The initiation, processing, and review of applications for amendment to the text of this Code.
  - c. The initiation, processing, and review of applications for amendment to the Comprehensive Plan.
  - d. The processing and review of applications for Planned Developments.
  - e. The processing and review of applications for subdivision plats.
  - f. The processing and review of applications for conditional use permits.
  - g. The processing and review of site plans.
4. The Community Development Director shall serve as staff planner to the Board of Adjustment, including the processing and provision of technical assistance in the review of variances.
5. The Community Development Director shall maintain the Official Zoning Maps.
6. The Community Development Director shall, whenever requested to do so by the City Council necessary, conduct or cause to be conducted, with the assistance of other city departments, investigations, reports, surveys, studies, maps, charts, and recommendations with respect to matters before the City Council, the Planning and Zoning Commission, or the Board of Adjustment.

**Section 17.8 Code Enforcement Special Master.**

A. Authority.

Pursuant to Chapter 2, Article V, Section 166-178, of the Code of Ordinances of the City of Fellsmere, as amended, the City has created and established a Code Enforcement Special Master to enforce, by administrative hearings, the provisions contained in this Code, as well as other laws of the City. The method of enforcement shall be as described in Section 2-171 of the Code of Ordinances of the City of Fellsmere, as amended, except as may be modified by this Code. Nothing contained in this Section shall prohibit the City from enforcing this Code by any other means.

**Section 17.9-17.14 Reserved.**

## **Section 17.15 Review of Applications for Planned Development District (PDD) Zoning and Conditional Use Approval.**

### **A. General Procedures.**

#### **1. Processing and submittal requirements.**

This section contains the required submittals and review procedures for rezoning to the Planned Development District, or to obtain approval for a conditional use request for a Planned Development project. In both instances, the preliminary development plans as conditioned and approved by the City Council form the basis for obtaining approval and are binding upon the developer and assigns. Five (5) steps are generally required to obtain final approval for a planned development:

- a. Preliminary conference;
- b. Preliminary development plan;
- c. Preliminary plat;
- d. Engineering drawings; and
- e. Final development plan including the final plat.

#### **2. Pre-application conference.**

Prior to submitting a formal application for PDD or conditional use approval, the petitioner is required to attend a pre-application meeting with the Technical Review Committee.

#### **3. Preliminary Development Plan (PDP).**

##### **a. PDP submittal requirements.**

Applications for rezoning or conditional use to PD must be accompanied by a preliminary development plan (PDP). Applicants may submit concurrent preliminary and final development plan applications for an entire PDD, a phase or phases of a PDD, if they wish to expedite the process. The PDP application submittal shall be submitted at least sixty (60) days prior to any scheduled meeting of the planning and zoning commission, and shall include the following:

##### **b. Application form.**

The applicant shall submit a signed application form and shall include a statement describing the type of development proposed.

##### **c. Development agreement.**

At the discretion of the City council a development agreement may be entered into as provided in Section 17.22, Development Agreements.

A development agreement for a PDD or conditional use shall include the following, unless there is a conflict with the provisions of Section 17.22, in which event the provisions of Section 17.22 shall prevail.

- 1) A legal description of the land subject to the agreement and the names of its legal and equitable owners.
  - 2) The duration of the agreement.
  - 3) The development uses permitted on the land, including population and unit densities, and building intensities and height.
  - 4) A description of the public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development.
  - 5) A description of any reservation or dedication of land for public purposes.
  - 6) A description of all local development orders or permits approved or needed to be approved for the development of land.
  - 7) A finding that the development permitted or proposed is consistent with the Comprehensive Plan and all Land Development Code requirements.
  - 8) A description of any conditions, terms, restriction, or any other requirements determined to be necessary by City Council for the public health, safety, or welfare of its citizens.
  - 9) A statement indicating that failure of the agreement to address a particular development order or permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.
  - 10) A statement that the burdens of the development agreement shall be binding upon and the benefits of the agreement shall inure to, all successors in interest to the parties of the agreement.
- d. Boundary survey.
- 1) Legal description of the proposed site.
  - 2) Boundaries of tract shown with bearings, distances, closures and bulkhead lines.
  - 3) All existing easements, section lines and property lines, and all existing streets and physical features in and adjoining the project.
- e. Vicinity and existing conditions map.
- 1) The vicinity and existing conditions map or map series shall include the subject site and surrounding properties (located within three hundred (300) feet from the site). The map shall be

no less than one (1) inch equals one hundred (100) feet scale and shall include the following:

- 2) Property lines of the proposed development and surrounding properties.
- 3) Names, and location of surrounding developments and subdivisions.
- 4) Location and names of all existing streets.
- 5) The location and use of all existing principal buildings.
- 6) Generalized soil types in the development area and surrounding area.
- 7) Any existing recreation or open space areas.
- 8) The location and size of all existing drainage, water, sewer, electrical, and other utilities facilities, including fire hydrants.
- 9) Existing easements, watercourses, bridges, lakes, marshes, wooded areas, sinkholes, and other physical conditions affecting the area.
- 10) Current zoning and land use of the subject site and surrounding properties.
- 11) The location and function of all other existing public facilities that would serve the site such as schools, parks, fire stations and the like. Notation of this information on a scaled map or by written description is acceptable.
- 12) Existing topography on the subject site at a scale of one (1) inch equals one hundred (100) feet with two-foot contour lines and a slope category analysis for areas of more than ten (10) per cent slope (if any).
- 13) Information addressing the requirements of Article XIII Environmental Standards.

f. Preliminary Development Plan.

- 1) Proposed name or title of project.
- 2) The name of the surveyor, engineer, architect, and developer.
- 3) North arrow, scale (not to exceed one (1) inch equals one hundred (100) feet, unless otherwise permitted by city staff) and date of plan preparation with adequate space for revision notes.

- 4) Tabulated site data including the following:
  - a) Number of gross acres in the project.
  - b) Acreage and percentage of land to be devoted to each of the residential and non-residential uses, including open space.
  - c) Proposed density/intensity of development.
  - d) Total number of dwelling units by type (single-family attached/detached, duplexes, townhouses, apartments, condominiums, etc).
  - e) Total square footage of commercial, industrial, or office space.
- 5) General location of primary and secondary uses within site.
- 6) Vehicular and pedestrian circulation systems.
- 7) Proposed parks, school sites, or other public or private facilities.
- 8) Proposed common open space, including the proposed improvements/amenities and any complementary structures (e.g. conceptual lighting, facade materials, street furniture) and open space accessories. Areas qualifying for usable common open space shall be specifically designated on the site plan.
- 9) The proposed method of dedication and administration of proposed common open space.
- 10) Preliminary development schedule delineating proposed dates for development phases.
- 11) General statement indicating proposed means of drainage for the site to ensure conformity with natural drainage within the vicinity area or with the drainage plan established within the vicinity.
- 12) A generalized landscaping plan addressing the requirements of Article XI Landscaping.
- 13) Conceptual building elevations indicating style(s) and materials to be used within the development.
- 14) Table with proposed development standards such as building height, lot size, lot frontage, building setbacks, minimum living area, and floor area ratio.
- 15) Notes specifying standards for signage, landscaping and buffering. Standards not specified on the development plan will revert to the standards for the zoning classification that better matches the type of development proposed.

## g. PDP Review Procedures.

## 1) Staff Review.

The preliminary development plan (PDP) shall be reviewed formally by the Technical Review Committee and any other division or department as necessary to determine the feasibility and suitability of the plan prior to the submission of the PD zoning application to the Planning and Zoning Commission and City Council.

## 2) Planning and Zoning Commission Review.

The Planning and Zoning Commission shall then review said preliminary development plan to determine its conformity with the official plans and policies of the City and the requirements of this Article. Upon completion of its review, the Planning and Zoning Commission shall recommend to the City Council the approval, approval subject to conditions, or denial of the preliminary development plan application.

The decision of the Planning and Zoning Commission on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the Planning and Zoning Commission shall consider the following facts:

- a) Degree of departure of proposed planned development from surrounding areas in terms of character and density.
- b) Compatibility within the planned development and relationship with surrounding neighborhoods.
- c) Prevention of erosion and degrading of surrounding area.

h. Adequate provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

i. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of said common open space.

j. The feasibility and compatibility of the specified phases contained in the preliminary development plan to exist as an independent development.

k. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned development.

l. The availability and adequacy of water and sewer service to support the proposed planned development.

- m. The benefits within the proposed development and to the general public to justify the requested departure from standard land use requirements inherent in a planned development classification.
- n. The conformity and compatibility of the planned development with any adopted development plan of the City of Fellsmere.
- o. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses within the proposed planned development.

4. City Council Review.

Upon receiving the recommendation of the planning and zoning commission, the City Council shall, at a regularly scheduled public meeting, review said recommendation and preliminary development plan and either approve, approve subject to conditions, or disapprove the preliminary development plan application. Approval of the preliminary development plan indicates approval of the PD zoning subject to acceptance of the final development plan. The decision of the council shall be based upon a consideration of the facts specified as review criteria for the planning and zoning commission. The City shall have the right to evaluate the physical layout, architectural characteristics, and amenities of the planned development and to suggest changes or modifications designed to create compatibility and conformity in the variety of uses within the development to ensure, protect and promote the health, safety and general welfare of the property owners of the planned development and the residents of the City of Fellsmere.

B. Record of Preliminary Development Plan.

In the event the preliminary development plan application is approved by the City Council, a copy of said application and required exhibits shall be certified and approved by the mayor and said certified copy shall be filed with the Community Development department and City Clerk as a permanent record.

C. Preliminary Plat.

The preliminary plat step may be omitted if the parcel does not need to be platted. However, the developer has six (6) months from the date of approval of the preliminary development plan in which to file a preliminary plat application. The preliminary plat submittal and review shall comply with the subdivision regulations Article XV. An applicant for PD rezoning may submit development plan and plats simultaneously.

D. Engineering Drawings.

Engineering drawings of the following proposed utility system improvements must be presented to the Community Development department for review and approval, prior to the final development plan being presented to the planning and zoning commission. Engineering drawings must include:

- 1. Water.
- 2. Sanitary sewer.
- 3. Storm sewer.

4. Bulkheads.
5. Sidewalks and bicycle paths.
6. Streets.
7. Lot grading plan.
8. Drainage.
9. Lighting

E. Final development plan (FDP).

The developer shall have two (2) years from the approval date by the City Council of the preliminary plat or preliminary development plan, whichever is later, in which to file a final development plan or a phase or phases of the Planned Development District.

1. FDP submittal requirements
2. If no platting is required, a site plan must be presented in accordance with Article XIV. If the property needs to be platted, the applicant must submit a development plan that complies with subdivision regulation, Article XV. Additional exhibits required for the final development plan may include the following:
  - a. Development schedule. The development schedule shall contain the following information:
  - b. The order of construction of the proposed stages delineated in the development plan.
  - c. The proposed date for the beginning of construction on said stages.
  - d. The proposed date for the completion of construction of said stages.
  - e. The proposed schedule for the construction and improvement of common open space within said stages, including any complementary buildings.
3. Deed restriction. Deed restriction proposals to preserve the character of the common open space. Said deed restrictions shall include a prohibition against partition by any residential property owner. Deed restrictions are subject to review and approval by the City Attorney.
4. Association or nonprofit corporation. If the developer elects this method of administering common open space, the proposed Articles and Bylaws of the association of the non-profit corporation are subject to review and approval of the City Attorney.
5. Instruments. Instruments dedicating all rights-of-way, easements and other public lands shown on the final development plan from all persons having any interest in said land and instruments indicating that all necessary off-site easements or dedications have been acquired. In lieu of originals, "certified true copies" will be

accepted if the recording information from the public records of Indian River County, Florida, is included thereon.

6. Bill of sale. A bill of sale, conveying to the City water and sewer utility lines, mains, lift stations, and other personal property required to be installed by this Article.
7. Title opinion. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances and defects, if any.
8. Tax receipts. Paid receipts indicating taxes have been paid in full up to and including the current period.

F. Final Development Plan Review Procedures.

1. Staff review.

The technical review committee shall recommend the approval, approval subject to conditions, or disapproval of the final development plan application based upon the conformity of the final development plan with the preliminary development plan, sufficiency and accurateness of the required exhibits, and the requirements and purposes of this Land Development Code and ordinances and regulations of Fellsmere.

2. Planning and Zoning Commission and City Council review.

The Planning and Zoning Commission and the City Council of the City of Fellsmere shall review the recommendations of technical review committee at regular public meetings of the Planning and Zoning Commission and City Council and shall approve, approve subject to conditions, or deny the final development plan application.

G. Recording of Final Development Plan.

After approval of the City Council of the final development plan application, the city engineers shall verify that all requirements of F.S. Ch. 177, have been complied with before the final development plan is recorded in the public records of Indian River County, Florida. No final development plan of a planned unit development within the city shall be recorded unless it shall have the approval of the City Council inscribed thereon.

The transfer of, sale of, agreement to see, or negotiation to sell land by reference to or exhibition of, or other use of a final development plan of a planned unit development, or portion thereof, that has not been given final approval by the City Council and recorded in the official records of Indian River County, Florida, is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such prohibition.

H. Building Permit.

No building permit shall be issued by the city until the final development plan has been approved and duly recorded as provided in this Article.

I. Simultaneous Submittals.

Applications for final development plan or plat approval may be submitted for review simultaneously with applications for preliminary development plan approval. In such cases, any

approval must be conditioned upon the approval of the final development plan and rezoning. If the approved development plan includes any additions or conditions by the City Council, the preliminary plat or site plan undergoing simultaneous review may be referred back to the Planning and Zoning Commission for further consideration.

J. Termination of PD Zone.

Failure of the developer to file a final development plan (FDP) application within the time period specified shall automatically revoke approval of the preliminary development plan and the city may take the necessary steps to return the land to its previous classification or one which is deemed most applicable.

K. Minor Adjustments to PDD or Conditional Use.

Final Development plans may have minor adjustments as provided for in Section 17.20 E.

**Section 17.16 Public Notice Requirements.**

A. General:

Notice of all public hearings which are required by a provision of this Code shall be given as follows, unless expressly stated otherwise. The City Council reserves the right to adopt procedures and guidelines that may, at its discretion, require any applicant for any activity that requires a public hearing to be responsible for all notice requirements set forth in this section.

B. Content of Notice:

Every required notice shall include: the date, time, and place of the hearing or appeal; a description of the substance of the subject matter that will be discussed at the hearing or appeal; a legal description of the properties directly affected including the street address when available; a statement of the body conducting the hearing; the title of the proposed ordinance or resolution to be considered (if applicable) and the place or places in the City where such ordinance or resolutions may be inspected by the public; a brief statement of what action the body conducting the hearing is authorized to take; a statement that interested parties may appear at the public hearing and be heard with respect to the proposed action; and a statement that the hearing may be continued from time to time as may be necessary.

C. Publication.

Publication of the notice shall be as follows:

1. General:

Except as provided in paragraph 2 and 3 below, all notice for all public hearings which are required by a provision of this Code shall be properly advertised in a newspaper of general circulation in Indian River County not more than thirty (30) days nor less than ten (10) days before the date of the hearing.

2. Amendments to the Official Zoning Maps which affect ten (10) contiguous acres or more of the total land area in the City of Fellsmere, that are initiated by the City:

Any proposed amendment to the Official Zoning Maps which has been initiated by the City Council and affects ten (10) contiguous acres or more of the total land area of the City of Fellsmere, shall require publication of notice as follows. Two (2) advertised public hearings shall be held by the City Council. At least one hearing shall be held after 5 p.m. on a weekday, unless the City Council, by a majority plus one vote, elects to conduct that hearing at another time of day. Publication of notice for the first public hearing shall occur approximately seven (7) days before the day that the first public hearing is held. The second hearing shall be held at least fourteen (14) days after the first hearing and public notice shall occur at least ten (10) days prior to the public hearing. The required advertisements shall be no less than two columns wide by ten inches long in a standard size or a tabloid size newspaper of general circulation in Indian River County, and the headline in the advertisement shall be in a type no smaller than eighteen (18) point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be in substantially the following form:

NOTICE OF *(INSERT TYPE OF)* CHANGE

The City Council for the City of Fellsmere proposes to adopt the following by ordinance *(or resolution)* *(insert title of ordinance or resolution)*.

A public hearing on the ordinance *(or resolution)* will be held on *(date and time)* at *(meeting place)*.

The advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed amendment to the Official Zoning Maps. The map shall include major street names as a mean of identification.

3. Amendment to the Text of This Code:

Any amendment to the text of this Code shall require public hearing and publication of notice as follows:

- a. The Planning and Zoning Commission for the City of Fellsmere shall hold at least one advertised public hearings on the proposed ordinance or resolution amending the provision of this code. The hearing shall be held after 5 p.m. on a weekday, unless the Planning and Zoning Commission, by a majority vote plus one, elects to conduct that hearing at another time of day. The first public hearing shall be held at least ten (10) days after the day that the advertisement for the hearing is published.
- b. The City Council shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the City Council, by a majority vote plus one, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least ten (10) days after the first hearing and shall be advertised at least 5 days prior to the public hearing.
- c. The required advertisements shall be no less than two columns wide by ten inches long in a standard size or a tabloid size newspaper of general circulation in Indian River County, and the headline in the advertisement

shall be in a type no smaller than eighteen (18) point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be in substantially the following form:

NOTICE OF *(INSERT TYPE OF)* CHANGE

The City Council for the City of Fellsmere proposes to adopt the following by ordinance *(or resolution)* *(insert title of ordinance or resolution)*.

A public hearing on the ordinance *(or resolution)* will be held on *(date and time)* at *(meeting place)*.

D. Public Inspection.

A copy of all notices of public hearing shall be available in the Office of the City Clerk for the City of Fellsmere, during regular business hours.

E. Mail.

Mailing notice to specific real property owners shall be as follows:

1. Amendments and Applications That Affect Less than Ten (10) contiguous acres:
  - a. In addition to the publication requirements in Section 17.16, in the case of a public hearing regarding an amendment to the Official Zoning Maps for the City of Fellsmere, that applies to less than ten (10) contiguous acres of the City, or any other action, not involving an amendment to the official zoning maps or future land use maps of the City of Fellsmere, that requires a public hearing, notice of such public hearing shall be provided by mail to all property owners within three hundred (300) feet of the property directly affected by the proposed action whose address is known by reference to the latest ad valorem tax rolls for Indian River County. Notification shall be mailed not more than thirty (30) days nor less than ten (10) days before the date of the hearing.
  - b. In the case of amendments to the Official Zoning Maps which have been initiated by the City Council or its designee and affect less than ten (10) contiguous acres of land area in the City, notice shall also be provided by the City Council, by mail, to each real property owner whose land is the subject of the proposed amendment and whose address is known by reference to the latest approved ad valorem tax roll for Indian River County,. Such notice shall be mailed at least thirty (30) days before the date of the hearing.
2. Amendments That Affect Ten (10) Contiguous Acres or More of Land.

An amendment to the Official Zoning Maps that affects ten (10) contiguous acres or more of the land in the City's jurisdiction or any amendment to the text of this Code does not require notice by mail.

F. Posting of Notice.

1. After an application has been filed for an amendment to the Official Zoning Maps, for a Planned Development, for conditional use approval, for an adjustment to a conditional use, for a variance, the City Manager or designee shall cause the posting of a sign or signs on the property concerned. The sign or signs shall not be less than ten (10) square feet in size and located where, in the judgment of the City Manager or designee, the sign or signs would be in the most conspicuous place to the passing public. Each sign shall contain the following information:
  - a. Present zoning and requested rezoning classification, if applicable;
  - b. Conditional use information, if applicable;
  - c. Variance information, if applicable; and
  - d. Dates of scheduled hearings.

The sign or signs shall be posted not less than ten (10) days prior to the public hearing. The City Manager or designee will only be responsible for erection of the sign or signs.
2. The Applicant shall provide a signed affidavit stating that the notice was posted at the initiation of the advertising period. Failure to maintain a conspicuous notice on the property shall not affect any change or amendment of this Code.

G. Hearing Procedures.

1. Setting the Hearing.
 

When the City Manager or designee, determines that an application for an amendment to the Official Zoning Maps, an application for an amendment to the text of this Code, an application for a Planned Development, an application for conditional use approval, an application for a major adjustment to a conditional use, or an application for a variance is completed, or that a petition for an administrative appeal has been filed and is complete, the City Manager or designee shall notify the appropriate decision making body so a public hearing may be set and notice given in accordance with the provisions of this Code.
2. Examination and Copying of Application and Other Documents.
 

Any time after the provision of notice, as required by this Code, in Section 17.16, any person may examine the application or petition in question, and the material submitted in support or opposition to the application or petition in the Office of the City Manager or designee during regular business hours. Any person shall be entitled to obtain copies of the application or petition and other materials upon reasonable request and payment of a fee to cover the actual costs of providing such copies.
3. Conduct of the Hearing.
  - a. Rights of All Persons
 

Any person may appear at a public hearing, or may be represented by counsel or agent, and may submit documents, materials, and other

written or oral testimony either individually or as a representative of an organization. Each person who appears at a public hearing shall identify himself, his address, and state the name and mailing address of any organization he represents. The body conducting the public hearing may place reasonable time restrictions on the presentation of testimony and the submission of documents and other materials.

b. Continuance of Hearing

The body conducting the hearing may continue the hearing to a fixed date, time, and place.

4. Record of the Hearing.

a. The transcript of testimony, when and if available, the minutes of the Secretary, all applications, exhibits, documents, materials, and papers submitted in any proceeding before the decision-making body, the City of Fellsmere project files, if applicable, and records, the report of the City of Fellsmere staffers or agents acting on behalf of the City of Fellsmere, and the decision and report of the decision-making body shall constitute the record.

b. The body conducting the hearing shall record the proceedings by any appropriate means; upon request of any person to the City Manager or designee, and payment of a fee to cover the cost of transcription, the record may be transcribed and a copy provided to that person. If a sound recording is made, any person shall be entitled to listen to the recording at any reasonable time, or make copies at his own expense, at the Office of the City Manager or designee.

c. Any person shall be entitled to examine the record, at a reasonable time, or make copies at his own expense, at the Office of the City Manager or designee.

5. Action by Decision-Making Body.

The decision making body shall render its decision within a reasonable time, unless stated otherwise in this Code.

6. Notification.

Notification of the final decision on an application shall be mailed to all parties. A copy of the final decision shall be filed in the Office of the City Clerk.

7. Reconsideration of Action.

a. City Council

1) An action may be reconsidered by the City Council under the following circumstances:

a) On a decision when four (4) members voted, and the vote was two to two (2-2), a motion to reconsider may be made by any member of the council at the first meeting thereafter when all five (5) council members are present. A motion to reconsider shall be approved by an

affirmative vote of a majority of the five (5) council members.

- b) On any decision other than that described in Section a), a motion to reconsider may be made at the first meeting thereafter at which a quorum is in attendance only by a council member voting on the prevailing side. A motion to reconsider may be seconded by any other member and shall be approved by an affirmative vote of the majority of the quorum in attendance. For purposes of this subparagraph, an absent member will be presumed to have voted on the prevailing side.

b. Planning and Zoning Commission and Board of Adjustment.

An action may be reconsidered by the Planning and Zoning Commission or the Board of Adjustment only upon motion of a member of the decision-making body voting with the prevailing side of the original vote. The motion must be made at the same or the immediately subsequent regular meeting of the body. A motion to reconsider may be seconded by any member.

c. Notice

Action on a question pending reconsideration must follow the notice provisions in Section 17.16.

H. Appeals From City Council Decisions.

Any person desiring to appeal a decision of the City Council under this Section may apply for judicial relief to the Circuit Court in the Nineteenth Judicial Circuit in and for Indian River County within thirty (30) days after rendition of the decision by the City Council. Review shall be governed by the Florida Rules of Appellate Procedure.

I. Withdrawal of Applications.

An application for any type of development review may be withdrawn at any time as long as no notice has been given that the application will be reviewed at a public hearing. An application for any type development review may be withdrawn at any time with the consent of the reviewing body responsible for reviewing the application.

**Section 17.17 Amendments to the Land Development Code and Official Zoning Maps.**

A. Purpose.

The purpose of this section is to provide a means for amending the text of this code or the official zoning maps. It is not intended to relieve particular hardships or confer special privileges or rights on any person.

B. Persons Entitled to Propose Amendments.

- 1. Amendments to the text of this code may be proposed by the City Council, the planning and zoning commission, or any other interested party, and shall be subject to the public hearing procedures described in section 17.16 and the standards of review in section 17.17.

2. Amendments to the official zoning maps, may be proposed by City Council, the planning and zoning commission, or over fifty (50) percent of the owners of the real property to be directly affected by the proposed amendment, and shall be subject to the public hearing procedures described in section 17.16 and the standards of review in Section 17.17.

C. Standards of Review.

In reviewing the application of a proposed amendment to the text of this code or an application for a proposed amendment to the official zoning map, the City Council and the planning and zoning commission shall consider:

1. Whether the proposed amendment is in conflict with any applicable portions of this code;
2. Whether the proposed amendment is consistent with all elements of the City of Fellsmere comprehensive plan.
3. Whether and the extent to which the proposed amendment is inconsistent with existing and proposed land uses;
4. Whether there have been changed conditions in the area of the proposed amendment that support the proposed amendment;
5. Whether and the extent to which the proposed amendment would result in demands on public facilities, and whether or the extent to which the proposed amendment would exceed the capacity of such public facilities, including but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools, solid waste, mass transit and emergency medical facilities;
6. Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment;
7. Whether and the extent to which the proposed amendment would result in an orderly and logical development pattern, specifically identifying any negative effects on such pattern;
8. Whether the proposed amendment would be in conflict with the public interest, and is in harmony with the purpose and interest of this code; and
9. Any other matters that may be deemed appropriate by the planning and zoning commission or the City Council, in review and consideration of the proposed amendment.

D. Procedures.

1. Proposal by the City Council or the planning and zoning commission:

Proposals for an amendment to the text of this code or an amendment to the official zoning maps by the City Council or the planning and zoning commission shall be transmitted to the city manager or designee for application. Any interested party may request that the City Council or the planning and zoning commission initiate such an application.

2. Proposals by others:

Any person desiring to apply to the City Council for an amendment to the text of this code or an amendment to the official zoning maps shall submit an application to the city manager, accompanied by a nonrefundable application fee as established from time to time by the City Council to defray costs of processing the application.

3. Application:

The application shall include the following information:

- a. The applicant's name and address;
- b. If the application requests an amendment to the text of this code, the precise wording of any proposed amendment to the text of this code shall be provided;
- c. A statement describing any changed conditions that would justify an amendment;
- d. A statement describing why there is a need for the proposed amendment;
- e. A statement describing whether and how the proposed amendment conforms to the City of Fellsmere comprehensive plan;
- f. A statement outlining the extent to which the proposed amendment:
  - 1) Is compatible with existing land uses;
  - 2) Affects the capacities of public facilities, including but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools, solid waste, mass transit, and emergency medical facilities;
  - 3) Affects the natural environment; and,
  - 4) Will result in an orderly and logical development pattern.
- g. If the application requests an amendment to the official zoning maps, the applicant shall include:
  - 1) The street address and legal description of the property proposed to be reclassified;
  - 2) The applicant's interest in the subject property;
  - 3) The owner's name and address, if different than the applicant, and the signature of over fifty (50) percent of the owners of the real property whose property would be reclassified by the proposed amendment, giving their consent to the filing of application, if applicable;
  - 4) The current zoning classification and existing uses of the property proposed to be reclassified;

5) The area of the property proposed to be reclassified, stated in square feet or acres, or a major fraction thereof.

h. Such other information or documentation as the City Manager or designee may deem necessary or appropriate to a full and proper consideration and disposition of the particular application.

4. Submission to the City Manager.

Within twenty (20) days after an application for an amendment to the text of this code or an application for an amendment to the official zoning maps is submitted, the City Manager or designee shall determine whether the application is complete. If the City Manager or designee determines the application is not complete, he shall send a written statement specifying the application's deficiencies to the applicant by mail. The City Manager or designee shall take no further action on the application unless the deficiencies are remedied.

5 Review by City Manager.

When the City Manager determines an application for an amendment to the text of this code or an application for an amendment to the official zoning maps is complete, the City Manager or designee shall review the application, make a recommendation and notify the planning and zoning commission that the application is complete.

E. Action by Planning and Zoning Commission.

1. Public hearing by planning and zoning commission.

Upon notification of the completed application for an amendment to the text of this code or an application for amendment to the official zoning maps, the planning and zoning commission shall place it on the agenda of a regular meeting for a public hearing in accordance with the requirements of section 17.16. The public hearing held on the application shall be in accordance with section 17.16. In determining whether to recommend that the City Council approve the application, the planning and zoning commission shall consider the standards in section 17.17.

2. Action by planning and zoning commission.

Within a reasonable time of the conclusion of the public hearing, the planning and zoning commission shall make a recommendation to grant or deny the application for amendment to the City Council.

F. Action by City Council.

1. Upon receipt of the recommendation of the planning and zoning commission, the City Council shall place the application on the agenda of a regular meeting of the City Council for a public hearing or hearings, in accordance with the requirements of section 17.16.

2. In making a decision on the application, the City Council shall consider the recommendation of the planning and zoning commission and the standards in section 17.17.

3. Within a reasonable time of the conclusion of the public hearing, the City Council shall either grant or deny the application for a proposed amendment.
4. Notification of the City Council' decision shall be mailed to all parties, and the decision shall be filed in the office of the City Manager or designee.

G. Time Limitations.

1. After a decision or recommendation denying a proposed amendment to the text of this code or a proposed amendment to the official zoning maps, the City Council and the planning and zoning commission shall not consider an application for the same amendment for a period of one (1) year from the date of the action.
2. The time limits of this subsection may be waived by the affirmative vote of four (4) members of the City Council when such action is deemed necessary to prevent injustice or facilitate the proper development of the City.

H. Protest by Property Owners.

In the case of a written protest against an individual application for a change in zoning, signed by the owners of fifty (50) percent or more of the area within five hundred (500) feet of the property affected by the proposed action, such change in zoning shall not be approved except by the favorable vote of four-fifths (4/5) of all of the City Council.

**Section 17.18 Variances.**

A. Authority.

Unless otherwise provided for in this Code, the Board of Adjustment shall have authority to grant variances from the dimensional requirements of this Code, in accordance with the standards and procedures set forth in this section.

B. Purpose.

The purpose of a variance is to provide a mechanism when, owing to special conditions, the literal enforcement of the provisions of this Code would impose upon a landowner unnecessary hardship that can be mitigated without conferring on the applicant any special privilege.

C. Applications.

1. A written petition for a variance is to be initiated by the owner of, or any person having contractual interest in, the property for which relief is sought.
2. All applications for variances shall be in the form required and provided by the designated Administrative Official. Such application shall be submitted to the City Manager or designee together with the fee as established by the City Council by resolution and all supplemental data or information necessary to permit the determinations required incident to application for variance, such application form, supplemental data and fee being collectively the "completed application".

D. Standards For Granting Variances.

The Board of Adjustment shall not grant a variance unless it shall, in each case, make specific findings of fact based directly upon the particular evidence presented supporting written conclusions that:

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.
2. That the special conditions and circumstances did not result from the action or negligence of the applicant.
3. That granting the variance requested will not confer upon the applicant any special privileges denied by this Code to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this Code and would work unnecessary and undue hardship on the applicant.
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That the granting of the variance will be in harmony with the general intent and purpose of this Code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
7. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
8. That the granting of the variance desired will not be opposed to the general spirit and intent of this Code or the City of Fellsmere Comprehensive Plan.

E. Limitations on Granting Variances.

1. Variances shall not be granted that would:
  - a. Permit a building or structure to have a height in excess of one hundred (100%) percent of that permitted by Table 3D and in Table 3E, Article III; or permit a lot width or road frontage less than eighty (80%) percent of that permitted by said Tables, except:
    - 1) In the case of nonconforming lots of record, provided, however, that a variance to construct a permitted or authorized accessory structure on such a lot shall be governed by the provisions of Article IV.
  - b) Permit the use of land or a structure contrary to the use provisions of Table 3B and Table 3C, Article III.
2. No variance from the dimensional requirements of Table 3D and Table 3E, Article III, other than variances granted for or in conjunction with a Final Development Order, shall be valid for a period longer than twelve (12) months

unless a building permit is issued and remains valid. A variance issued for, or in, conjunction with a Final Development Order shall expire upon the termination of that Final Development Order unless the Final Development Order is extended or otherwise determined to be compliant with the provisions of this Code.

F. Procedures for Application.

1. Application.

An application for a variance shall be filed with the City Manager or designee, accompanied by a non-refundable fee, as established from time to time by resolution by the City Council to defray the actual cost of processing the application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the City Manager or designee and shall contain at least the following:

- a. Name and address of applicant;
- b. Legal description, street address, and lot number and subdivision name, if any, of the property which is the subject of the application;
- c. The size of the subject property;
- d. The variance sought and the Section of this Code from which a variance is requested;
- e. The purpose for the requested variance and a statement of the intended development of property if the variance is granted;
- f. A statement of the hardship imposed on the applicant by this Code; a statement setting forth reasons why this hardship is unique to the applicant, and why the same hardship is not imposed on other property in the neighborhood that is similarly situated; a statement of why the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located; a statement of why the variance will not increase traffic, the danger of fire, or impair property values in the neighborhood; a statement of why the proposed variance is the minimum variance that will make possible a reasonable use of the land, building, and structures; and a statement explaining how the proposed variance is consistent with the general spirit and intent of this Code and the City of Fellsmere Comprehensive Plan.

G. Filing an Application for Approval of a Variance.

Within thirty (30) days after an application for variance is submitted, the City Manager or designee shall determine whether the application is complete. If the City Manager or designee determines that the application is not complete, he shall send a written statement specifying the application's deficiencies to the applicant by mail. The City Manager or designee shall take no further action on the application unless the deficiencies are remedied.

H. Review of the Application.

1. Review by the City Manager

When the City Manager or designee determines an application for approval of a variance is complete, he shall review the application, make a recommendation, and submit it to the Board of Adjustment.

I. Action of Board of Adjustment.

1. Upon notification that an application for a variance is complete, the Board of Adjustment shall place the application on the agenda of a regularly scheduled meeting for a public hearing in accordance with Section 17.16 F. In reviewing the application for variance approval, the Board of Adjustment shall use the standards in Section 17.18 D. The Board of Adjustment may require the applicant to meet certain conditions before approval of the variance.
2. At any hearing upon any matter subject to the provisions of this section, the applicant seeking action and any other party desiring to be heard upon the application may appear in person, by agent or by attorney. The applicant shall be entitled to make an initial presentation respecting the application and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the applicant so desires. The Chairman of the Board of Adjustment at the commencement of the hearing upon each application or at any time during such hearing, require that parties desiring to make a presentation identify themselves and may specify the time to be allowed each such party within which to make such presentation.
3. Within a reasonable time of the hearing, the Board of Adjustment shall issue its decision approving, approving with conditions, or denying through resolution the requested variance.
4. The Board of Adjustment may place reasonable conditions, limitations, and requirements upon the granting of any variance as may be necessary to ensure compliance with the intent of this Code. Such conditions, limitations, or requirements may be placed on the granting of any variance to prevent or minimize adverse effects upon other property in the neighborhood which might otherwise result from the reductions in standards being requested, including but not limited to conditions, limitations, or requirements on the size, intensity of use, bulk, and location of any structure; landscaping; lighting; the provision of adequate ingress and egress, and the duration of the variance. Such conditions, limitations, or requirements shall be set forth expressly in the resolution granting the variance.
5. The decision of the Board of Adjustment shall be mailed to the petitioner and filed with the Office of the City Manager or designee.

J. Extensions of Variance Approvals.

The time limitations imposed on any Variance by Section 17.18 E. may be extended by the Board of Adjustment not more than one (1) time, and for not more than twelve (12) months, upon application by the applicant and after a public hearing held in accordance with Section 17.16 F.

K. Appeals from the Board of Adjustment.

Any party or any city official or city department or city board aggrieved by any decision of the Board of Adjustment may appeal to the Circuit Court in Indian River County, Florida, by a petition within thirty (30) days after rendition of the decision. Review shall be governed by the Florida Rules of Appellate Procedure.

L. Stay of Proceedings.

An appeal of any decision of the Board of Adjustment stays all proceedings in furtherance of the action appealed unless, the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of competent jurisdiction for due cause shown.

M. Finality of Decision.

When the Board of Adjustment has taken action respecting an application for variances, no application for the same relief shall be accepted by the City Manager or designee, for consideration by the Board of Adjustment for a period of one (1) year from the date of such action.

**Section 17.19 Conditional Uses.**

A General Provisions.

1. Purpose.

The purpose of this section is to provide for uses that are generally compatible with the use characteristics of a zoning district, but which require individual review of their location, design, intensity, configuration, and public facility impact in order to determine the appropriateness of the use on any particular site in the district and their compatibility with adjacent uses. Conditional Uses may require the imposition of additional conditions to make the uses compatible in their specific contexts.

2. Authority.

The City Council may, in accordance with the procedures, standards, and limitations of this Code, grant conditional use permits for those uses enumerated in each of the zoning districts in Article III of this Code.

3. Requirement for Four-Fifths Vote When Protest Is Filed.

In the case of a written protest against an application for a Conditional Use Permit, signed by the owners of fifty-one (51) percent or more of the area within five hundred (500) feet of the property affected by the proposed action, such Conditional Use Permit shall not be approved except by the favorable vote of four-fifths (4/5) of all of the City Council.

B. Persons Entitled to Initiate Applications.

An application for a conditional use may only be submitted by the owner or any other person having a contractual interest in the parcel of land proposed for conditional use.

C. Standards for Review of Conditional Use Permits.

A conditional use permit shall be granted only if the applicant demonstrates the following:

1. Consistency With this Code and Comprehensive Plan.

The proposed conditional use is in compliance with all requirements, and is consistent with the general purpose, goals, objectives, and standards of this Code, the City of Fellsmere Comprehensive Plan, and the Code of Ordinances of City of Fellsmere; and is in compliance with all additional standards imposed on it by the particular provisions of this Code authorizing such use.

2. Effect On Adjacent Properties:

- a. The proposed conditional use will not have an undue adverse effect upon nearby property.
- b. The proposed conditional use is compatible with the existing or planned character of the neighborhood in which it would be located.
- c. All reasonable steps have been taken to minimize any adverse effect of the proposed conditional use on the immediate vicinity through building design, site design, landscaping, and screening.
- d. The proposed conditional use will be constructed, arranged, and operated so as not to interfere with the development and use of neighboring property, in accordance with applicable district regulations.

3. Adequacy Of Public Facilities:

The proposed conditional use will be served by adequate public facilities and services, including roads, police protection, fire protection, solid waste disposal, water, sewer, drainage structures, parks and mass transit.

D. Conditions On Conditional Use Permits.

The City Council shall attach such conditions, limitations, and requirements to a conditional use permit as are necessary to effectuate the purposes of Section 17.19 C.; to carry out the spirit and purpose of this Code and the City of Fellsmere Comprehensive Plan; and to prevent or minimize adverse effects upon other property in the neighborhood, including but not limited to limitations on size, intensity of use, bulk and location, landscaping, lighting, the provision of adequate ingress and egress, duration of the permit, and hours of operation. Such conditions shall be set forth expressly in the resolution granting the conditional use permit.

1. Traffic Control Devices.

Whenever, as the result of traffic generated by a proposed conditional use, it is determined, based on the Manual on Uniform Traffic Control Devices, that there is a need to install traffic control devices (including traffic signals, signing, and

pavement markings), the conditional use permit shall not be granted except upon the condition that the applicant be responsible for installing all said devices and signs, or making an equitable contribution toward such installation.

2. Access Improvements.

A conditional use permit shall not be granted except upon the condition that the applicant provide the access (ingress and egress) improvements determined to be necessary as a result of traffic generated by the development.

3. Projects Requiring Other Regulatory Approval.

a. For proposed conditional uses requiring any permit from the United States Army Corps of Engineers, the Florida Department of Environmental Regulation or any other state or federal regulatory authority, the City Council shall not grant unconditionally a conditional use permit until it has received from such agency notice of either issuance of or intent to issue the required regulatory permit.

b. The City Council may grant a conditional use permit contingent upon receiving notice of either issuance of or intent to issue any required regulatory permit if it can make, on a tentative basis and subject to confirmation, the findings required in Section 17.19 C. A conditional use permit granted contingent upon receiving notice of either issuance of or intent to issue any required regulatory permit shall not preclude the City Council, after reviewing the regulatory permit application and other information, from revoking such contingent grant of a conditional use permit based solely upon an inability to confirm the findings required in Section 17.19 C. or from protesting the regulatory permit application.

4. Reduction In Maximum Residential Density.

The City Council shall require a reduction from the maximum residential density permitted in the zoning district in which a conditional use is to be located when such allowable maximum residential density:

a. Would impose an excessive burden, as determined by recognized engineering or other professional standards, on public facilities that would serve the proposed conditional use; or discontinued for a period of twelve (12) consecutive months.

5. Time Limit.

No conditional use permit shall be valid for a period longer than eighteen (18) months unless a building permit issued and remains valid.

E. Application Procedures.

1. Pre-Application Conference.

An application for conditional use is initiated by requesting in writing a pre-application conference with the City Manager or designee. The request shall include a description of the character, location and magnitude of the proposed conditional use, together with a proposed timetable for development. The purpose of this meeting is to acquaint the applicant with the requirements of this Code and the views and concerns of the City when positions are flexible. Within

twenty (20) days of the request, the City Manager or designee or designee shall schedule a pre-application conference with the applicant and other relevant City departments.

2. Filing Application for Conditional Use Permit.

a. Filing.

After the pre-application conference, an applicant for a conditional use permit shall submit an application to the City Manager or designee accompanied by a non-refundable fee as established from time to time by resolution by the City Council to defray the actual cost of processing the application. If, in accordance with Article XIV of this Code, the specific conditional use applied for requires site plan approval, the applicant shall submit a site plan meeting the requirements of Article XIV of this Code. If, in accordance with Article XIV, the specific conditional use applied for does not require site plan approval, the applicant shall submit a written statement of proposed use including, but not limited to, the nature of the use and the proposed improvements to the site. Applications for conditional use approval shall include such other information or documentation as the City Manager or designee deems necessary for the full and proper consideration and disposition of the application.

b. Review by City Manager.

- 1) Within twenty (20) days after an application for conditional use approval is submitted, the City Manager or designee shall determine whether the application is complete. If the City Manager or designee determines that the application is not complete, he shall send a written statement specifying the deficiencies to the applicant by mail. The City Manager or designee shall take no further action on the application unless the deficiencies are remedied.
- 2) Within thirty (30) days after the City Manager or designee determines that an application for conditional use permit is complete, the City Manager or designee shall review the application, make a report, and notify the Planning and Zoning Commission that the application is ready to review.

3. Hearing and Action by Planning and Zoning Commission.

a. Hearing.

Upon notification that the application for a conditional use permit is ready for review, the Planning and Zoning Commission shall place it on the next regularly scheduled agenda for public hearing in accordance with the provisions of Section 17.16. The public hearing held on the application for conditional use shall be in accordance with Section 17.16.

b. Review.

In reviewing the conditional use application, the Planning and Zoning Commission shall consider the report of the City Manager or designee; shall determine whether the proposed use meets the standards in

Sections 17.19 C. for conditional uses; and shall determine whether the proposed use meets all other provisions of this Code, the City of Fellsmere Comprehensive Plan, and any other applicable City Ordinance. The Planning and Zoning Commission may recommend certain conditions be met before approval of the application.

c. Recommendation.

Within a reasonable time of the conclusion of the public hearing, not to exceed thirty (30) days, the Planning and Zoning Commission shall make a recommendation to approve, approve with conditions, or deny the application.

4. Hearing and Action by City Council.

a. Hearing.

Upon notification of the recommendation of the Planning and Zoning Commission, the City Council shall place the conditional use application on a regularly scheduled agenda for a public hearing in accordance with the requirements of Section 17.16. The public hearing on the application shall be held in accordance with Section 17.16.

b. Review

In reviewing the application, the City Council shall consider the report of the City Manager or designee and the recommendation of the Planning and Zoning Commission; shall determine whether the proposed use meets the standards in Sections 17.19 C. for conditional uses; and shall determine whether the proposed use meets all other provisions of this Code, the City of Fellsmere Comprehensive Plan, and any other applicable City Ordinance. The Council may require certain conditions be met before approval of the application.

c. Action.

Within a reasonable time of the conclusion of the public hearing, not to exceed thirty (30) days, the City Council shall approve, approve with conditions, or deny the application for conditional use permit. The decision on the application shall be by resolution setting forth the findings of the City Council and any condition, limitation, or requirement of such decision.

d. Notice of Action.

Notification of the City Council' decision shall be mailed to all parties, and the decision shall be filed with the Office of the City Manager or designee.

F. Development and Adjustment of an Approved or Existing Conditional Use.

1. Effect of Issuance of Conditional Use Permit.

The issuance of a conditional use permit shall only constitute approval of the proposed use, and development of the use shall not be carried out until the applicant has secured all other permits and approvals required.

2. Adjustments to an Approved or Existing Conditional Use.

Adjustments to a conditional use may be permitted as follows:

- a. Minor Adjustments: The City Manager or designee shall authorize minor adjustments to a conditional use. Such minor adjustments shall be consistent with the intent and purpose of the City of Fellsmere Comprehensive Plan, this Code, the conditional use as approved or existing, and shall be the minimum necessary. Such minor adjustments shall be limited to the following:
- 1) Altering the bulk of any one (1) structure by not more than twenty-five (25) percent; or,
  - 2) Altering the location of any one (1) structure or group of structures by not more than ten (10) feet; or,
  - 3) Altering the location of any circulation element by not more than ten (10) feet; or,
  - 4) Altering the location of any open space by not more than ten (10) feet; or,
  - 5) Reducing the total amount of open space by not more than five (5) percent or reducing the yard area or open space associated with any single structure by not more than five (5) percent; or,
  - 6) Change in project name or ownership of the property.

Notice of the authorization of such minor adjustments shall be provided to the City Council.

- b. Major Adjustments in Substantial Conformity.
- 1) Any other adjustment to a conditional use shall be a major adjustment and shall be granted only upon application to and approval by the City Council, which shall grant approval for such other adjustment after a public hearing upon finding that any proposed change in the conditional use as approved or existing will be in substantial conformity with the original approval or the existing conditional use. The City Council shall place the application for major adjustment on the agenda of a regularly scheduled meeting for a public hearing in accordance with the requirements of Section 17.16. The public hearing on the application shall be held in accordance with Section 17.16.
  - 2) If the City Council determines that the major adjustment is not in substantial conformity with the original approval or the existing conditional use, then it shall deny the application for adjustment. Such denial shall not preclude development of an approved conditional use.

3) Inspections During Development of an Approved Conditional Use

a) Inspections by City Manager.

Following approval of a conditional use, the City Manager or designee shall, at least annually until the completion of development, review all permits issued and construction undertaken and compare actual development with the approved conditional use and with the approved development schedule, if applicable.

b) Action by City Manager.

If the City Manager or designee finds that development is not proceeding in accordance with the approved schedule, or that it fails in any other respect to comply with the approved conditional use, he shall notify the City Council of such fact and may, if he finds it necessary for the protection of the public health, safety, or welfare, take such necessary action to stop such non-compliance, including but not limited to code enforcement action.

c) Action by City Council.

Within thirty (30) days following notification by the City Manager or designee, the City Council shall determine whether development of the conditional use is proceeding in accordance with the approved conditional use. If the City Council finds the development is not proceeding in accordance with the approved conditional use, it shall either revoke the permit or take the necessary action to compel compliance with the approved conditional use, including but not limited to code enforcement action.

4) Inspections After Development.

a) Inspection by City Manager.

Following completion of the development of a conditional use, the City Manager or designee shall review the development as completed and determine if it complies with the approved conditional use.

b) Action by City Manager.

If the City Manager or designee finds that the development as completed fails in any respect to comply with the use as approved, he shall immediately notify the City Council of such fact.

c) Action by City Council.

Within thirty (30) days following notification by the City Manager or designee, the City Council shall determine whether the completed conditional use fails in any respect to follow the approved conditional use permit. If the City Council finds the completed conditional use fails in any respect to follow the approved conditional use, it shall either revoke the permit or take the necessary action to compel compliance with the conditional use, including but not limited to code enforcement action.

G. Extensions of Conditional Use Permits.

The time limitations imposed on a conditional use permit by Section 17.19 J. may be extended by the City Council not more than one (1) time, and for not more than twenty-four (24) months, upon application by the applicant and after a public hearing held in accordance with Section 17.16.

H. Existing Conditional Uses.

A legally conforming use that exists on the date of adoption of this Code and that is permitted as a conditional use in a zoning district shall not be deemed a nonconforming use in that district, but shall without further action be considered a conforming use. A use existing prior to its present classification by this Code as a conditional use may change in use or in lot area or may alter a structure only if the change or alteration conforms with the requirements of Section 17.19 C.

I. Revocation of Conditional Use Permit.

In addition to any other penalty and remedy for violation of this Code, it shall be a condition of every conditional use approval that such approval may be revoked for:

1. Violation of any condition imposed upon such approval, and
2. Upon complaint and proof of adverse effect on adjacent properties.

The permit may be revoked only after the City Council holds a public hearing, unless the permittee consents to a revocation of the permit. If the permittee provides written consent to the revocation to the City Manager or designee, he shall revoke the permit and notify the City Council of the revocation.

J. Expiration of Conditional Use Permit.

No conditional use permit shall be valid for a period longer than twelve (12) months from the date of approval, unless a Building Permit is secured within twelve (12) months and remains valid. The conditional use permit shall automatically expire unless the permit is extended upon application to the City Council in accordance with Section 17.19 G.

K. Limitations on Approval for Conditional Uses.

A conditional use permit shall be deemed to authorize only the particular use for which it was issued and shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued in whole or in part for a period of twelve (12) consecutive months.

## **Section 17.20 Review of Applications for Site Plans.**

### **A. General Procedures.**

1. **Pre-application Conference.** The applicant shall meet with the Administrative Official, and/or the technical review committee of the City of Fellsmere to discuss basic site plan requirements and consider preliminary features of the site and the proposed development.
2. **Staff Review:** Applications for formal site plan approval shall be submitted to the community development staff who shall send copies of the proposed plans and related documents to the appropriate review departments for their written comments and recommendations. The technical review committee shall ascertain compliance with all city codes and shall determine whether the proposed development is harmonious with the adjacent uses and to the area. Staff shall then submit a recommendation to the Planning and Zoning Commission and City Council.
3. Within twenty (20) working days of receipt of the Site Plan, the City Manager or designee shall:
  - a. Determine that the application is complete and forward the application to the Technical Review Committee for further review; or
  - b. Determine that the application is incomplete and inform the applicant in writing of the missing components. The applicant may submit a revised application within thirty (30) working days without payment of any additional processing fee. If more than thirty (30) working days have elapsed before the applicant resubmits the application, the applicant shall be required to re-initiate the review process and pay a new application fee.

An application shall be determined to be complete only if the required submittals of Article XIV are provided.

4. The Technical Review Committee shall review the application for Site Plan and shall determine whether the application complies with the requirements of this Code within thirty (30) working days, after the application has been determined to complete by the City Manager or designee. In reviewing the application and making a determination of compliance with the provisions of this code, the Technical Review Committee shall use the submittal requirements of Section 14.2.
5. After the completion of the review by the Technical Review Committee, the Chair of the Technical Review Committee shall:
  - a. Recommend that the City Manager or designee determine that the application complies with the submittal requirements of Section 14.2; or
  - b. Inform the applicant, and the City Manager or designee, in writing of the deficiencies of the application.

The applicant shall notify the City Manager or designee within thirty (30) working days of this notice of deficiency of his intent to address the cited deficiencies. The applicant shall have a maximum of ninety (90) calendar

days to respond to the cited deficiencies without payment of any additional processing fee. Upon the applicant's response to the cited deficiencies the revised application shall be reviewed by the Technical Review Committee. If the applicant fails to respond to the cited deficiencies within ninety (90) calendar days, the applicant must thereafter reinitiate the review process and pay a new application fee.

6. Upon a determination by the Technical Review Committee that the submitted application has been determined to meet the minimum requirements of this Code, the Chair of the Technical Review Committee shall notify the City Manager or designee in writing that the application is ready for presentation to the Planning and Zoning Commission.
7. The Technical Review Committee's written report to the City Manager or designee shall set forth findings and conclusions supporting a recommendation to the Planning and Zoning Commission for approval, approval with conditions, or denial of the application.
8. Upon notification from the Technical Review Committee that the application is complete, the City Manager or designee shall place the application on the next available Planning and Zoning Commission agenda.
9. The City Manager or designee shall issue a written report to the Planning and Zoning Commission citing the recommendations of the Technical Review Committee and provide a recommendation of approval, approval with conditions or denial of the application.
10. The Planning and Zoning Commission shall conduct a hearing on the application to determine whether it satisfies the requirements of this Code. In reviewing and making a recommendation on the application, the Planning and Zoning Commission shall use the standards and submittal requirements in Section 14.2.
11. Within a reasonable time of the hearing, not to exceed 60 days the Planning and Zoning Commission shall submit a written recommendation and findings to the City Council for approval, approval with conditions, or denial of the application.
12. The City Council shall hold a public hearing on the application. The City Council shall consider the report of and recommendations of the Planning and Zoning Commission, the City Manager or designee and Technical Review Committee and shall determine whether the proposed development activity or use specified in the application meets the provisions of this Code, the City of Fellsmere Comprehensive Plan; and any other applicable City ordinances. Within a reasonable time of the conclusion of its review, the City Council will approve, approve with conditions or deny the application. The decision on the application shall be by resolution setting forth the findings of the City Council and any conditions, limitations, or requirements of such decision.
13. Notification of the City Council's decision shall be mailed to the applicant and filed with the Office of the City Manager or designee.

**B. Review Criteria.**

In addition to the above general considerations, the Planning and Zoning Commission and the City Council in the exercise of their authority, shall also consider the following specific standards and factors:

1. Ingress and egress to property and proposed structures, with reference to automotive and pedestrian safety, traffic flow and control, provision of services, and access in case of fire or catastrophe. Access may include divided landscaped entrance.
2. Off-street parking areas, with attention to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, convenience to the units it is designed to serve, and landscaping for the buffering of abutting property where applicable.
3. Recreation and open spaces, with attention to the location, size and development of the areas in regard to their adequacy, their effect on privacy of adjacent living areas, and their relationship to community wide open spaces and recreation facilities.
4. Density of development, within the framework of the permitted density.
5. General character and compatibility with reference to ensuring the proposed development will be designed so as not to cause substantial depreciation of property values or reduce the safety, light and general convenience of neighboring developments.
6. Existing uses and structures on the site illustrated on a separate sheet.
7. The environmental impact of the development on the total land area of the property including how development will affect protected species, wetlands, surficial aquifer recharge areas, physical features, and natural resources.
8. Rendering, architectural elevation, or photograph of the proposed development.
9. Other requirements deemed necessary by the Planning and Zoning Commission and City Council.
10. Affordable and attainable housing projects shall be given high priority in the site plan review process.
11. Where justified, the Planning and Zoning Commission and City Council may modify the strict application of the open space requirements upon finding that such modification would not be contrary to the intent and purpose of this Code.
12. Modification of the strict application of the provisions shall be limited to those provisions specifically referred to herein and shall not permit required yards of less than the minimum requirements of that particular zoning district.
13. The site plan shall comply with all applicable provisions of the Comprehensive Plan 2020 and this Code.
14. For Planned Developments, the City Council may waive various engineering or design provisions contained within this Code when a project's design features, land use, densities and intensities are consistent with the Comprehensive Plan, based upon the following criteria. The applicant shall:
  - a. Submit a letter detailing each item that deviates from the specific base Code requirements;

- b. Demonstrate they meet or exceed the base Code requirements through a betterment plan; and
- c. Substantiate the need to deviate from the base Code requirements.

C. Conditions on Site Plan Approval.

The City Council shall attach any reasonable conditions, limitations, or requirements to a site plan approval as is necessary to effectuate the purposes of this Section and to carry out the spirit and purpose of this Code and the City of Fellsmere Comprehensive Plan. Such conditions shall be set forth expressly in the Final Development Order approving the site plan and shall include the following:

1. Traffic Control Devices.

Whenever, as the result of additional traffic generated by a proposed development, it is determined that there is a need for installation of traffic control devices (including traffic signals, signing, and pavement markings) to ensure safe traffic circulation onto and off of the site, the site plan shall not be approved except upon the condition that the applicant be responsible for installing all said devices and signs, or make an equitable contribution toward such installation.

2. Access Improvements.

A site plan shall not be approved except upon the condition that the applicant provide the access (ingress/egress, turning and accelerations lanes) improvements determined to be necessary as a result of traffic generated by the development.

3. Water and Sewer Dry Line Improvements.

The developer shall construct and dedicate to the City water and sewer lines in accordance with standards and specifications of the City.

4. Right-Of-Way Dedications.

A site plan shall not be approved that does not provide for dedication of the necessary right-of-way.

5. Projects Requiring Other Regulatory Approval.

- a. For developments requiring any permit from the United States Army Corps of Engineers, the Florida Department of Environmental Protection, or any other state or federal regulatory authority, the City Council shall not approve unconditionally a site plan until it has received from such agency notice of either issuance of or intent to issue the required regulatory permit.
- b. The City Council may approve a site plan conditioned upon receiving notice of either issuance of or intent to issue any required regulatory permit if it can make, on a tentative basis and subject to confirmation, the findings required in Section 14.2. A site plan approval conditioned upon receiving notice of either issuance of or intent to issue any required regulatory permit shall not preclude the City Council, after reviewing the regulatory permit application and other information, from revoking such conditional site plan approval based solely upon an inability to confirm

the findings required in Section 14.2 or from protesting the permit application.

6. Reduction in Maximum Residential Density.

The City Council shall require a reduction from the maximum density permitted in the zoning district in which a proposed development is to be located when such allowable maximum residential density:

- a. Would impose an excessive burden, as determined by recognized engineering or other professional standards, on public facilities that would serve the proposed development; or
- b. Would contravene any goal, objective, or policy of the City of Fellsmere Comprehensive Plan.

7. Comprehensive Plan and Code.

The City Council may add any condition deemed necessary to ensure compliance with the provisions of this Code, the Fellsmere Comprehensive Plan and the City Code.

D. Appeals.

Any final action by a the City Council made in accordance with the provisions of this Section may be appealed to the Circuit Court, in the Nineteenth Judicial Circuit in and for Indian River county within thirty (30) days after rendition of the decision of the City Council. Review shall be governed by the Florida Rules of Appellate Procedures.

E. Minor Adjustment to Approved Site Plans.

1. The City Manager or his designee may authorize minor adjustments to the approved Site Plan. Such minor adjustments shall be consistent with the intent and purpose of the City of Fellsmere Comprehensive Plan, the standards and requirements of this Code, and the development as approved, and shall be the minimum necessary to overcome the particular difficulty. Such minor adjustments shall be limited to the following:
  - a. Increasing or decreasing any dimension of any one (1) structure by not more than ten (10) percent; or,
  - b. Altering the location of any one (1) structure or group of structures by not more than fifty (50) feet; or,
  - c. Altering the location of any circulation element by not more than fifty (50) feet; or,
  - d. Altering the location of any open space by not more than fifty (50) feet; or,
  - e. Reducing the total amount of open space by not more than five (5) percent or reducing the yard area or open space associated with any single structure by not more than five (5) percent; or,
  - f. The addition or relocation of any accessory structure or use so long as the proposed addition or relocation does not conflict with any portion of

any required open space, building separation requirements or other provisions of this Code.

- g. Increase by less than five (5%) percent of the area allocated to any land use type, except open space as shown above.

- 2. Notice of the authorization of such minor adjustments shall be provided to the City Council.

F. Time Limitations on Site Plan Approval.

1. Commencement of Construction.

- a. All site plan approvals shall terminate and become null and void automatically without notice if construction has not commenced within eighteen (18) months from the date of approval.
- b. For the purposes of this paragraph, construction will have commenced when the developer has obtained permits and built a portion of a structure shown on the plan (e.g. the pouring of footers), or has made substantial improvements to the site, other than land clearing, filling or grading, in accordance with the approved site plan, evidencing a good faith effort to diligently pursue construction to completion in accordance with completion dates noted on the approved plans.

2. Extensions of Site Plan Approval.

Site plan approval may be extended one time only for good cause by the City Council for a period not to exceed twelve (12) months from the date of expiration. All requests for extensions must be in writing on a form supplied by the City, and must be received by the City Manager, or designee, prior to expiration of the site plan.

- a. The City Council shall consider the following:
  - 1) The effect any delay in proposed project construction and completion has on the concurrency management system.
  - 2) The impacts of having any new and existing regulations applied to the project.
- b. The City Council may attach conditions to a site plan extension approval that further the intent and purpose or satisfy the requirements of any comprehensive plan policies or land development regulations.
- c. No extensions may be granted unless the City Council determines that an extension satisfies the applicable requirements of the concurrency regulations of Section 17.24.

3. Abandonment of Construction.

- a. In cases where construction has commenced according to paragraph E. 1. of this Section and has been subsequently abandoned, the site plan approval shall terminate and become null and void if, after notice to the applicant or successors in title (of record) and hearing by the City Council, the City Council moves to terminate the approval. In lieu of

approval termination, the City Council at its discretion may move to validate the approval with conditions that will ensure compliance with any and all then-existing land development regulations and comprehensive plan policies.

- b. For the purposes of this paragraph, construction shall be considered abandoned or suspended if at the hearing it is shown that an active building permit has not been maintained for the construction of a structure in accordance with the completion dates noted on the approved plan or it is shown to the satisfaction of the City Council that construction at a level indicating a good faith effort to proceed with completion of the project has not occurred for a continuous period of six (6) months immediately preceding the receipt of notice unless the inactivity is attributable to the deliberate and scheduled phasing of a multi-phase project which has been approved as such by the City Council.
- c. Upon determination by the City Manager or designee to pursue termination, the city shall issue a stop work order for the project. Said order shall be effective until determination by the City Council. This subsection shall not operate to invalidate any site plan prior to the end of the initial eighteen (18) month period or any authorized extension thereof.
- d. The City Council shall consider the time elapsed since the last significant construction, any evidence from the developer which indicates a good faith effort to diligently pursue construction to completion, and the impact of permitting the project as approved as compared to the project if approved under a new application in conformance with then-existing land development regulations and comprehensive plan policies.
- e. If the project's approval is terminated, the City Council may require the removal of construction work (earth work or structures) which may pose a threat to the public health, safety or welfare, or may otherwise conflict with land development regulations or comprehensive plan policies.
- f. If the project's approval is not terminated, the project may proceed under timeframes set by the City Council for the completion of the project.

G. Transfer of Site Plan Approval.

- 1. Approval runs with the land.
  - a. A site plan approval shall run with the land and shall transfer to a successor in interest from the original applicant upon written disclosure of such transfer to the community development department as to the identity of the successor. The disclosure shall provide the full legal name of the person or business entity acquiring the interest in the property, the nature of the interest, the address of the principal place of business of the successor, telephone number, name and address of registered agent; if the successor is a corporation. In addition, the following information shall be provided: name, address and title of officers or agents authorized to transact business with the City, together with proof of authorization if other than president or vice-president or general partner, and the name and address of any new design professional for the project.

- b. A transferee developer must also assume in writing on a form acceptable to the City Attorney all commitments, responsibilities, and obligations of the prior developer, including all conditions of site plan approval and all the obligations, conditions and requirements of all applicable development permits (including permits from other jurisdictional agencies).

2. Disclosure of Required Information.

Failure to make the required disclosure and assumption shall suspend all site plan and zoning approvals until such time as proper disclosure and assumption is made.

3. Time limits.

Transfer of site plan approval shall not toll or modify the calculation of time limits set forth with respect to commencement or abandonment of construction; following any transfer, such time limits shall be calculated as if the transfer had not occurred.

4. Transferability exceptions.

This provision does not relate to any transfer of space, units, buildings, or property to a transferee who intends to occupy the property only after issuance of a certificate of occupancy, unless the transferee is the successor developer, nor to the creation or transfer of a nonpossessory lien or encumbrance.

**Section 17.21 Development Permit Required Prior To Undertaking Any Development Activity.**

A. Generally.

- 1. No erection, alteration, construction, reconstruction or any type of development activity within the City of Fellsmere, involving a building, structure, paved parking area, driveway connection, or impact upon a protected natural habitat, is authorized without first obtaining all necessary Development Permits in accordance with the provisions of this Section.
- 2. No use, business or related activity, requiring the issuance of an occupational license or a development permit, as defined within this code, shall be permitted within the City of Fellsmere, unless a Certificate of Zoning Compliance has been issued in accord with provisions of this Section.

B. Prerequisites to Issuance of Development Permit.

Except as provided in Section C. below, a Development Permit/ Certificate of Zoning Compliance, shall not be issued unless the proposed development activity is authorized by a Final Development Order issued pursuant to this Code.

C. Exceptions to Requirement of a Final Development Order.

A Development Permit may be issued for the following development activities in the absence of a Final Development Order issued pursuant to this Code.

1. Development necessary to implement a valid site plan on which the start of construction took place prior to the adoption of this Code and has continued in good faith. Compliance with the development standards in this Code is not required if in conflict with the previously approved plan.
2. The construction or alteration of a one- or two-family dwelling on a lot of record approved prior to the adoption of this Code. Compliance with the general site development standards in this Code is not required if in conflict with the previously approved plat; however, noting in this section shall relieve any applicant for building permit of the obligation to comply with the applicable provision of the Florida Building Code.
3. The alteration of an existing building or structure so long as no change is made to its gross floor area, its use, or the amount of impervious surface on the site, however, nothing in this section shall relieve any applicant for building permit of the obligation to comply with the applicable provision of the Florida Building Code.
4. The re-surfacing of a vehicle use area that conforms to all requirements of this Code.

D. Post-Development Order Changes.

1. After a Preliminary or Final Development Order has been issued, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the permit without first obtaining a modification of the Preliminary or Final Development Order. A modification may be applied for in the same manner as the original Preliminary or Final Development Order.
2. A written record of the modification to a Final Development Order for a Conditional Use approval, Planned Development Approval, Site Plan Approval, Variance, Building Permit, Development of Regional Impact Development Order, Amendment to any portion the Comprehensive Plan, or Amendment to the Official Zoning Maps, shall be entered upon the original Final Development Order and maintained in the files of the City Manager or designee.

E. Procedure For Obtaining Development Permits.

1. Building Permits.
  - a. Generally.
    - 1) The erection, alteration, or reconstruction of any building or structure shall not be commenced without obtaining a Building Permit from the Building Official for the City of Fellsmere. Work activities shall not proceed without obtaining all the inspections required by the Building Official and the Florida Building Code.

- 2) Each application for a Building Permit, with the required fee, shall be filed with the building official on a form furnished for that purpose and shall contain a general description of the proposed work and its location. The application shall be signed by the owner or his/her authorized agent. The Building Permit application shall indicate the proposed occupancy of all parts of the building and of that portion of the site or lot, if any, not covered by the building or structure and shall contain such other information as may be required by the building official. Permit application forms shall be in the format prescribed by a the Building Official and approved by the City Manager or designee, and must comply with the requirements of F.S. § 713.135(6) and (7), as amended. Each application shall be inscribed with the date of application and the code in effect as of that date.
- 3) No Building Permit shall be issued for development without a Certificate of Zoning Compliance.
- 4) No Building Permit shall be issued unless it complies with the provisions of this Section.
- 5) No Building Permit for the construction of any building or structure, or addition thereto, shall be issued for development unless the application for building permit is accompanied by a copy of a survey of the property on which the requested activity is to be permitted. All surveys shall completely depict the following:
  - a) The location of the proposed development activity;
  - b) The relationship of the activity under application to all adjacent property lines, and as may be required for the review of the application, all adjacent structures, improvements or natural features;
  - c) A minimum of two (2) elevations along each roadway on which the proposed activity borders, the existing ground elevation at the approximate center of the proposed structure, the existing ground elevation along the side property lines adjacent to the proposed structure, and the proposed finished floor elevation of the structure under application. All elevations are to be based upon NGVD;
  - d) The location of all native trees of 6 inches DBH and greater, with the specific diameter and type of tree clearly identified.

All surveys submitted shall have been prepared, signed and sealed by a Florida Registered Land Surveyor, in accordance with the current provisions of Chapter 61G17-6, FAC, except that applications for interior modifications or construction, roofing permits not involving any structural alteration or additions to the area covered by the roof surface, or any other permit required

activity that does not result in the expansion of any portion of the existing structures shall not be required to submit surveys.

Accessory structures with a building value of less than ten thousand dollars (\$10,000) shall not be required to submit a survey but shall instead be required to submit a scaled plot plan indicating the location of the accessory structure and its compliance with minimum setback standards.

b. Denial of Building Permit.

No building permit shall be issued when the Building Official, in consultation with the other city department heads is not satisfied that the applicant's proposed development will meet the requirements of the Code.

c. Time Limitation of Building Permits.

1) Building Permits shall expire and become null and void if work authorized by such Building Permit is not commenced, having called for and received a satisfactory inspection, within six (6) months from the date of issuance of the permit, or if the work is not completed within eighteen (18) months from the date of issuance of the Building Permit, except that the time may be extended by the building official if any of the following occur:

- a) A time schedule has been submitted and approved by the Building Official, predicated upon customary time for construction of similar buildings, prior to the issuance of the Building Permit, indicating completion of construction in excess of eighteen (18) months; or,
- b) The developer furnishes the building official satisfactory written evidence that the delay is due to the unavailability of construction supplies or materials, and every effort has been made to obtain substitute materials equal to those called for in the specifications; or,
- c) The delay is due to delay in delivery of construction supplies or materials, or
- d) The delay is due to fire, weather conditions, civil commotion or strike.

Increased costs of building materials or supplies or financial hardship shall not be considered by the building official as cause for continuation of the Building Permit.

2) Notwithstanding the provisions of this Section, an owner builder Building Permit shall expire within twenty-four (24) months from the date of issuance of the Building Permit if the work has not been completed. The time may be extended by the building official for a period not to exceed twelve (12) months if any of the conditions outlined in subsection c. 1) above occur.

- 3) If construction, having called for and received a satisfactory inspection, has commenced within six (6) months from the date of issuance of the permit, and is subsequently abandoned or suspended, not having called for and received a satisfactory inspection within the last six (6) months, for reasons other than those enumerated in subsection c. 1) above, the permit shall expire and become null and void unless the permittee demonstrates good cause at a hearing before the Board of Adjustment as to reasons for the suspension or abandonment of the project. If the Board finds that good cause has been shown for the suspension or abandonment of the project, the permittee shall be allowed to continue said construction under the original permit. The decision of the Board shall be final.
  - 4) If the Building Permit becomes null and void or expires, the building official shall inspect the development and determine whether the development is unsafe and constitutes a nuisance pursuant to Section 30-58 of the Code of Ordinances of Fellsmere, Florida. If the building official determines that the development is unsafe and constitutes a nuisance, the building official shall submit a report of his inspection to City Manager or designee for code enforcement action or any other action deemed necessary by the City Council.
  - 5) In order to continue construction once a Building Permit becomes null and void or expires, the permittee shall reapply and obtain a new Building Permit covering the proposed construction before proceeding with construction. The permittee shall comply with all regulations in existence at the time application is made for a new Building Permit.
- Unless otherwise addressed through the project's Final Development Order, site plan approval shall terminate if the Building Permit has become null and void.
- 6) Any Building Permit issued prior to the date of adoption of this Code shall expire and become null and void eighteen (18) months from the date of issuance thereof unless construction is delayed for reasons enumerated in subsection c. 1) above, and the contractor so notifies the building official in writing in accordance with subsection c. 1) provided, a schedule may be submitted for approval within thirty (30) days from the date of adoption of this Code for any construction presently underway requiring in excess of eighteen (18) months to complete.

2. Certificate of Zoning Compliance.

a. General.

A Certificate of Zoning Compliance shall be required prior to the issuance of any occupational license or Development Permit required by this Section.

b. Purpose.

The purpose for issuing a Certificate of Zoning Compliance is to ensure that all proposed development and use activities within the City of Fellsmere comply with the provisions of this Code.

c. Procedure.

- 1) Upon application for a Development Permit or use authorization, the City manager or designee shall determine whether such application complies with the provisions of this Code and the City of Fellsmere Comprehensive Plan.
- 2) If the City Manager or designee determines the proposed development activity or use complies with the provisions of this Code and the City of Fellsmere Comprehensive Plan, he shall issue a Certificate of Zoning Compliance.
- 3) If the City Manager or designee determines that the proposed development activity or use does not comply with the provisions of this Code or the Comprehensive Plan, the application shall be returned to the applicant accompanied by a written statement setting forth the provisions of this Code or the Comprehensive Plan with which the application does not comply.

d. Effect of Issuance.

A Certificate of Zoning Compliance constitutes an official statement that the proposed development or use complies with the applicable provisions of this Code or the Comprehensive Plan and any special approvals that apply to the property. A Certificate of Zoning Compliance does not serve as authorization to commence construction. All authorizations to commence construction shall be as described in this Code.

3. Sewage Compliance.

a) Effect.

No Certificate of Zoning Compliance or Building Permit shall be issued by the Building Official for any proposed development that utilizes a septic system until either the Indian River County Health Department or the Florida Department of Environmental Protection has approved a method of sewage disposal for that development.

**Section 17.22 Development Agreements.**

A. Intent.

It is the intent of this Section that the City Council, in its sole and exclusive discretion, may enter into developer's agreements with the legal and equitable owners of parcels of land within the city limits of the city, pursuant to Section 163.3220 et seq., Florida Statutes, as amended; provided, the requirements set forth under the terms of this article are complied with. The entry into a developer's agreement by the city shall in no way whatsoever limit or modify any legislative power by the city to adopt ordinances,

resolutions, regulations or to make executive, administrative or legislative decisions of any kind which it had the power to make prior to the entry of such developer's agreement, except to the degree that the developer's agreement, by its express terms and not by implication, gives vested rights to the said parcel of land owner, said owner's successor and assigns as to certain development permissions, required improvements and similar matters. No developer's agreement shall, by its express terms or by implication limit the right of the City Council to adopt ordinances, regulations or to adopt policies that are of general application or specific as to the parcel of land subject to the developer's agreement in the city, except as is expressly provided by Chapter 163, Florida Statutes, or said developer's agreement.

The submission of a request for consideration of a developer's agreement, the City Council's willingness to pursue discussions, the resultant negotiations regarding a developer's agreement, the payment of any application fees for the submission of any applications, engineering plans, surveys and any other expenditures or efforts in prosecution of the developer's agreement provided for herein by a parcel of land owner shall not vest any rights whatsoever in any zoning or land use designation in such parcel of land owner, or other individual, nor shall it in any manner whatsoever limit the City Council from undertaking any zoning or land use plan amendments that it would be otherwise legally entitled to undertake, except as may be specifically and without implication set forth in the developer's agreement.

B. Procedure for Review of a Development Agreement.

1. Submission of Application.

An application for a Development Agreement and a proposed Development Agreement shall be submitted to the City Manager, or designee only by a Qualified Applicant, in conjunction with or separate from any other application for Development Permit, on a form provided by the City and made available to the public. The application shall be accompanied by a non-refundable fee established by resolution by the City Council. The application may include any fees or costs incurred by the City for legal, engineering or planning services, or otherwise required to review the Development Agreement. The fee shall be non-refundable.

2. Determination of Completeness.

Within thirty (30) working days of the submission of the application and the proposed Development Agreement, the City Manager or designee shall determine whether the application is complete and includes the data necessary to evaluate the application. If it is determined that the application is not complete, written notice shall be served on the applicant specifying the deficiencies. The City Manager or designee shall take no further action on the application unless the deficiencies are remedied.

3. Review and Recommendations of City Manager.

Within thirty (30) working days of a determination that an application is complete, the City Manager or designee, in consultation with the City Attorney, shall prepare and file with the City Council a report as to whether the application and proposed Development Agreement comply with the standards of this Section and whether a public hearing on the requested Development Agreement will be forthcoming.

When the City Manager or designee determines the application and proposed Development Agreement comply with the standards of this Section, the City Manager or designee shall notify the planning and zoning commission that the application is complete and that a public hearing on the requested Development Agreement will be forthcoming.

4. Notice.

a) General Requirement.

Notice of intent to consider the application and proposed Development Agreement shall be advertised by publishing an advertisement at least seven (7) days before each public hearing on the application in a newspaper of general circulation and readership in Indian River County. Notice of intent to consider the application and proposed Development Agreement shall also be mailed by the applicant at least fifteen (15) days prior to the first hearing on the application to all owners of property, as reflected on the current year's tax roll, lying within five hundred (500) feet of the property directly affected by the application and proposed Development Agreement. The applicant shall provide certified copies of the property notification list to the City Manager or designee no later than fifteen (15) days prior to the first scheduled public hearing date.

b) Form.

The form of the notices of intention to consider adoption of a Development Agreement shall specify:

1) Time and Place.

The time and place of each hearing on the application.

2) Location.

The location of the land subject to the proposed Development Agreement.

3) Uses and Intensities.

The development uses proposed on the property, including the proposed population densities and proposed building intensities and height;

4) Where Copy Can Be Obtained.

Instructions for obtaining further information regarding the application and proposed Development Agreement can be obtained.

5. Action By Planning And Zoning Commission.

a) Public hearing by planning and zoning commission.

Upon notification that the completed application and proposed Development Agreement are ready for review, the planning and zoning commission shall place it on the agenda of a regular meeting for a public

hearing. In determining whether to recommend that the City Council approve the application for proposed Development Agreement, the planning and zoning commission shall consider the standards in subsection C of this section.

- b) Action by planning and zoning commission.

Within a reasonable time of the conclusion of the public hearing, the planning and zoning commission shall make a recommendation to grant or deny the application for a Development Agreement to the City Council.

6. Action By City Council.

- a) Upon receipt of the recommendation of the planning and zoning commission, the City Council shall place the application and proposed Development Agreement on the agenda of a regular meeting of the City Council for a public hearing.
- b) After the City Manager or designee has made a recommendation on the application and proposed Development Agreement, the application and a proposed Development Agreement shall be considered at two (2) public hearings by the City Council and at the conclusion of the second public hearing, approve, approve with conditions, or deny the requested Development Agreement. The day, time and place of the second public hearing shall be announced at the first public hearing.
- c) In making a decision on the application, the City Council shall consider the recommendation of the planning and zoning commission and the standards in subsection C of this section.
- d) Within a reasonable time of the conclusion of the second (2nd) public hearing, the City Council shall either grant, grant with conditions or deny the application for a proposed Development Amendment.
- e) Notification of the City Council's decision shall be mailed to all parties, and the decision shall be filed in the office of the City Manager or designee.

C. Standards of a Development Agreement.

1. Mandatory Provisions.

A Development Agreement shall, at a minimum, include the following provisions:

- a) Legal Description and Owner.

A legal description of the land subject to the Development Agreement. In addition, a title opinion of a Florida attorney (which opinion is in a form acceptable to and in favor of the city), abstract of title, or other evidence of title which shall identify all legal and equitable owners having any interest in such parcel of land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, all upon the parcel of land. In the event that any partnerships, corporations, joint ventures or other entities, other than the applicant for a developer's agreement, might own a legal or equitable interest in such parcel of land, all such principals in and other such partnerships, corporations, and joint

ventures shall be revealed. As of the date of recordation of any developer's agreement, the applicant may be required by the city to update the foregoing information in this subparagraph to the date of recording of the developer's agreement.

b) Duration.

The duration of the Development Agreement, which may be up to a maximum of ten (10) years.

c) Uses, Densities, Intensities and Height.

The development uses permitted on the land including population densities, and building intensities and height.

d) Future Land Use Map Designation.

The land use designation of the property under the Future Land Use Element of City of Fellsmere Comprehensive Plan.

e). Zoning.

The current zoning of the land subject to the Development Agreement.

f) Conceptual Site Plan.

A conceptual site plan indicating phases if the development is subject to phasing.

g) Public Facility Adequacy.

A description of public facilities that will service the development, including who shall provide such facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impact of the development. Any public facilities to be designed and/or constructed by the developer shall be in compliance with all applicable Federal, State, County and City standards to ensure the quality of the public facilities. The standards shall include, but not be limited to, guarantees of performance and quality, and project controls (including scheduling, quality controls, and quality assurances).

h) Reservation or Dedication of Land.

A description of any reservations or dedications of land for public purposes.

i) Local Development Permits.

A description of all local Development Permits approved or needed to be approved for the development of the land specifically, to include at least the following:

- 1). Any required Comprehensive Plan amendments.
- 2). Any required rezoning.

- 3). Any required submission to the Treasure Coast Regional Planning Council or to the Florida Department of Community Affairs.
  - 4). Any required permits from the Florida Department of Environmental Protection, the U.S. Army Corps of Engineers, the St. Johns River Water Management District, the United States Environmental Protection Agency and other governmental permissions that are required.
  - 5). A subdivision plat approval.
  - 6). Any Final Development Order authorizing construction in accordance with the provisions of the adequate public facilities regulations in Section 17.24.
  - 7). Site plan approval and agreement that in the event that a site plan is required by this Code, all the requirements of the site plan process shall be met prior to development.
- j) Local Development Permits Obtained by Applicant/Property Owner.

The Development Agreement shall specifically provide that all local Development Permits shall be obtained at the sole cost of the applicant/property owner and, that in the event that any such local Development Permits are not received, no further development of the property shall be allowed until such time as the City Council of the City of Fellsmere has reviewed the matter and determined whether or not to terminate the Development Agreement, or to modify it in a manner consistent with the public interest and the City of Fellsmere Comprehensive Plan.

- k) Consistency with Comprehensive Plan.

A finding that the development permitted or proposed in the Development Agreement is consistent with the City of Fellsmere Comprehensive Plan. No Development Agreement shall be effective or implemented by the City Council of the City of Fellsmere unless the Comprehensive Plan provisions or amendments to the Comprehensive Plan implementing or related to the Agreement are found in compliance by the State Land Planning Agency in accordance with Section 163.3184, Section 163.3187 and Section 163.3189, Florida Statutes.

- l) Consistency with Land Development Code.

A finding that the development permitted or proposed in the Development Agreement is consistent with this Code.

- m) Compliance with laws not identified in Development Agreement.

A statement indicating that failure of the Development Agreement to address a particular permit, condition, term or restriction shall not relieve the applicant/property owner of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions, and that any matter or thing required to be done under existing

ordinances of the City of Fellsmere shall not be otherwise amended, modified or waived unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the code provisions so waived, modified or amended; and

n) Conditions Necessary to Protect Health, Safety, Welfare.

Such conditions, terms, restrictions, or other requirements determined to be necessary by the City of Fellsmere for the public health, safety, or welfare of its citizens.

D. Applicability of ordinances and resolutions of city to developer's agreement.

1. Excluding application of the Florida Building Code or any other lawfully regulated or enacted code or regulation regulating life safety matters, the ordinances and regulations of the city governing the development of the land at the time of the execution of any developer's agreement provided for hereunder shall continue to govern the development of the parcel of land subject to the developer's agreement during the initial term of the developer's agreement, except as otherwise provided herein. At the termination of the initial term of the developer's agreement, all then existing codes shall become applicable to the development regardless of the terms of the developer's agreement, and as appropriate, the said developer's agreement shall be modified accordingly. The application of such laws and policies governing the development of the parcel of land shall not provide for any vesting as to any fees or fee structure, including any impact fees, then in existence or thereafter imposed.
2. Excluding application of the Florida Building Code or any other lawfully regulated or enacted code or regulation regulating life safety matters, the city may apply ordinances and policies adopted during the initial term of the developer's agreement to the parcel of land subject to the developer's agreement, only if the city has held a public hearing and determined that: (i) such new ordinances or policies are not in conflict with the laws and policies governing the developer's agreement and do not prevent development of the land uses, intensities or densities as allowed under the terms of the developer's agreement; (ii) such new ordinances or policies are essential to the public health, safety, or welfare and the new ordinances or policies expressly state that they shall apply to a development that is subject to a developer's agreement; (iii) the city has demonstrated that substantial changes have occurred in pertinent conditions existing at the time of the approval of the development agreement; or (iv); the developer's agreement is based on substantially inaccurate information supplied by the developer. All developer's agreements shall specifically provide that subsequently adopted ordinances and policies of general application in the city, specifically including but not limited to fees and impact fees shall be applicable to the parcel of land subject to the developer's agreement and that such modifications are specifically anticipated in the developer's agreement.
3. In the event that state and federal laws are enacted after the execution of a developer's agreement which are applicable to and preclude the parties' compliance with the terms of the developer's agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws, such modification or revocation to take place only after the notice provisions provided for the adoption of a developer's agreement have been complied with. Such persons as are defined by Sec. 163.3243 F.S. as amended, shall have standing to enforce the developer's agreement.

E. Execution of Development Agreement.

A Development Agreement shall be executed by all persons having legal or equitable title in the subject property, including the fee simple owner and any mortgagees, unless the City Attorney approves the execution of the Development Agreement without the necessity of such joinder or subordination based on a determination that the substantial interests of the City will not be adversely affected thereby. A Development Agreement is determined to be a legislative act of the City in the furtherance of its powers to plan, zone and regulate development within its boundaries and, as such, shall be superior to the rights of existing mortgagees, lien holders or other persons with a legal or equitable interest in the subject property and the Development Agreement, and the obligations and responsibilities arising thereunder on the property owner shall be superior to the rights of said mortgagees or lien holders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to the execution and recordation of the Development Agreement.

F. Amendment and Cancellation of Agreement by Mutual Consent.

A Development Agreement may be amended or canceled by mutual consent of the parties to the Agreement or by their successors in interest. Prior to amending a Development Agreement, the City Council shall hold two public hearings on the proposed amendment, consistent with the requirements of subsection 13.6 of this section.

G. Term.

The term of a Development Agreement shall not exceed ten (10) years. A Development Agreement may be extended by mutual consent of the City Council and the developer, subject to public hearings in accordance with subsection B. 6. of this section. The term of any one (1) extension shall not exceed five (5) years.

H. Recordation and Effectiveness.

Within fourteen (14) days after the City of Fellsmere enters into the Development Agreement, the City Clerk shall record the agreement in the Public Records of Indian River County. A copy of the recorded Development Agreement shall be submitted to the State of Florida Department of Community Affairs within fourteen (14) days after the Agreement is recorded. If the Agreement is amended, canceled, modified, extended, or revoked, the City Clerk shall have notice of such action recorded in the public records and such recorded notice shall be submitted to the Department of Community Affairs. A copy of all Development Agreements shall be kept by the City Clerk.

A Development Agreement shall not be deemed to be effective until it has been recorded in the public records of Indian River County and until 30 days after having been received by the State Land Planning Agency.

I. Periodic Review.

1) Annual Review.

The City shall review the development subject to the Development Agreement every twelve (12) months, commencing twelve (12) months after the effective date of the Agreement.

2) Notice.

The City shall begin the review process by giving notice to the developer that the City intends to undertake a periodic review of the Development Agreement.

3) Compliance.

If the City finds and determines that the developer has complied in good faith with the terms and conditions of the Development Agreement during the period under review, the review for that period is concluded.

4.) Failure To Comply.

If the City makes a preliminary finding that there has been a failure to comply with the terms of the Development Agreement, the City Council shall conduct two (2) public hearings pursuant to requirements of subsection B. 6. of this section at which the developer may demonstrate good faith compliance with the terms of the Development Agreement. If the City Council finds and determines on the basis of substantial competent evidence that the developer has not complied in good faith with the terms and conditions of the Development Agreement during the period under review, the City Council may modify or revoke the Agreement.

J. Effect of Contrary State or Federal Laws.

In the event that state and federal laws are enacted after the execution of a Development Agreement which are applicable to and preclude the parties compliance with the terms of the Development Agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws, such modification or revocation to take place only after the notice and public hearing provisions provided for the adoption of a Development Agreement in subsection B. 6. of this section have been complied with.

K. Enforcement.

Any party or any aggrieved or adversely affected person may file an action for injunctive relief in the Circuit Court for Indian River County to enforce the terms of a Development Agreement or to challenge compliance of the Development Agreement in accordance with the provisions of Section 163.3243, Fla. Stat., as amended.

**Section 17.23 Vested Rights.**

A. In recognition of the fact that certain land development rights of property owners may be vested with respect to the City of Fellsmere Comprehensive Plan and this Code, this Section sets forth a procedure for the determination of vested rights. Any person claiming vested rights to develop property shall make application for a Vested Rights Special Use Permit pursuant to this Section.

B. Determination of Vested Rights.

1. An application for a Vested Rights Special Use Permit shall be approved and a Vested Rights Special Use Permit issued if an applicant has demonstrated rights that are vested under the standards of Section 17.23 C. Possession of a Vested Rights Special Use Permit shall enable a permittee to complete the development approved under such permit up to and through issuance of appropriate certificates of occupancy, subject to the limitations set forth in Section 17.29 F.

and subject to compliance with such laws and regulations against which the development is not vested.

2. An application for Vested Rights Special Use Permit may be submitted to the City Manager or designee. Such application for a Vested Rights Special Use Permit shall be filed within one (1) year after the date of adoption of this Code. Except as provided in subsection 3 below, failure to file an application within the required period will constitute an abandonment of any claim to vested rights. Judicial relief will not be available unless administrative remedies set forth in this Section are exhausted, including the appeal of a vested rights determination to the Fellsmere City Council
3. Notwithstanding the provisions of subsection 2, above, the City Council may, in extraordinary circumstances, allow a property owner to submit an application after the one (1) year deadline where such extension is necessary to avoid undue hardship to the property owner.

C. Application for a Vested Rights Special Use Permit.

An application for Vested Rights Special Use Permit shall be submitted to the City Manager or designee on forms provided by the City Manager or designee, along with the application fee established by resolution by the City Council. The application fee may include any fees and costs incurred by the City for legal, engineering or planning services or otherwise to review the request for a Vested Rights Special Use Permit. After receipt of the application, the City Manager or designee shall determine whether it is complete within fifteen (15) working days. Insufficient applications shall be returned to the applicant specifying the deficiencies. The City Manager or designee shall take no further action on the application unless the deficiencies are remedied.

Within forty-five (45) working days after receipt of a completed application for a Vested Rights Special Use Permit, the City Manager or designee shall review and evaluate the application in light of all of the criteria in this Section. Based on the criteria, the City Manager or designee shall approve, approve with conditions or deny the application for Vested Rights Special Use Permit. The determination shall be in writing and shall include findings of fact for each of the applicable criteria.

D. Standards for Vested Rights.

An application for a Vested Rights Special Use Permit shall be approved if the applicant has demonstrated all of the following:

1. The applicant:
  - a. As to vesting for the City of Fellsmere Comprehensive Plan, owned the property proposed for development on December 4, 2003;
  - b. As to vesting for this Code adopted to implement the Comprehensive Plan, owned the property on the date of adoption of this Code;
  - c. Entered into a contract or option to purchase the property on or before such dates; or
  - d. Presents facts such that it would be inequitable, unjust or fundamentally unfair to deny an application for a Vested Rights Special Use Permit where the applicant acquired ownership after such dates; and

2. There was a valid, unexpired act of a department of the City of Fellsmere other than an existing future land use map designation or an existing zoning designation upon which the applicant reasonably relied in good faith; and
3. The applicant, in reliance upon the valid, unexpired act of government, has made a substantial change in position or has incurred extensive obligations or expenses; and
4. It would be inequitable, unjust or fundamentally unfair to destroy the rights acquired by the applicant. In making this determination, the City of Fellsmere shall consider a number of factors, including but not limited to:
  - a. Whether construction or other development activity has commenced and is continuing in good faith.
  - b. Whether the expense or obligation incurred cannot be substantially utilized for a development permitted by the City of Fellsmere Comprehensive Plan and this Code.
5. The following are not considered development expenditures or obligations in and of themselves:
  - a. Expenditures for legal and other professional services that are not related to the design or construction of improvements.
  - b. Taxes paid.
  - c. Expenditures for acquisition or the financing costs of the land.

E. Presumptive Vesting.

1. Final Development Orders:
  - a. Notwithstanding the criteria set forth in Section 17.23 D. above, possession of a valid unexpired Final Development Order shall presumptively vest the development approved under such permit:
    - 1) For the purposes of the Comprehensive Plan if the Final Development Order was issued prior to December 4, 2003;
    - 2) For purposes of this Code adopted to implement the Plan, if the Final Development Order was issued prior to the date of adoption of this Code; and
    - 3) For purposes of any Comprehensive Plan amendments adopted pursuant to a Compliance Agreement if the final development order was issued prior to such amendments.
  - b. Such valid approvals or permits shall, in and of themselves, constitute sufficient evidence of compliance with the standards set forth in Section 17.23 D. Verification of such approvals or permits shall be made by the City Manager or designee. If verified, the City Manager or designee shall issue the Vested Rights Special Use Permit.

2. Building Permit Applications for a Single-Family Residence on a Lot of Record:

Building Permit applications for a single-family residence on a lot of record shall be presumptively vested from the provisions of the Comprehensive Plan, the Land Development Code and the concurrency regulations in Section 17.24, provided the lot was a Lot of Record before December 17, 1956. A Building Permit application for a single-family residence on a lot of record shall not be subject to the limitations set out in Section 17.23 F.

F. Limitations On Determination Of Vested Rights.

1. Upon the expiration of five (5) years after the issuance of a Vested Rights Special Use Permit, the issuance of development permits for the property subject to the Vested Rights Special Use Permit shall be subject to the requirements of all current regulations. The foregoing, the Vested Rights Special Use Permit may set forth an extension of the five (5) year period upon a finding by the City Council of the necessity for an extension of such time period.
2. Commencing with the expiration of two (2) years after the issuance of a Vested Rights Special Use Permit, an annual report shall be submitted to the City Manager or designee by the developer or owner of the subject property. Annual reports shall be submitted on forms provided by the City Manager or designee and shall be due on each annual recurrence of the permit issuance date. The annual report shall evidence that development has commenced and is continuing in good faith. Significant physical development or receipt by the applicant of one or more of the following types of permits or approvals in each reporting year shall constitute sufficient evidence for the subject year:
  - a. Building Permit;
  - b. Site Plan Approval or not more than one renewal of each Site Plan Approval;
  - c. Final Plan Approval for a Planned Development;
  - d. Final Plat Approval;
  - e. Such other permits or approvals as shall evidence that development has commenced and is continuing in good faith.

Failure to proceed with significant physical development activity or to obtain one of the foregoing approvals or permits in any reporting year, or failure to file an annual report when due, shall cause the development subject to the Vested Rights Special Use Permit to become subject to the requirements of the adequate public facilities regulations in Section 17.24. A determination by the City Manager or designee of a permittee's failure to proceed may be appealed to the City Council. In addition, the City Manager or designee may grant an extension of time to file the required annual report upon a showing by the applicant, or successor, that strict enforcement would cause undue hardship because of circumstances beyond the applicant's or successor's control. Requests for extensions shall be submitted to the City Manager or designee thirty (30) days prior to the due date for the annual report.

3. All development subject to a Vested Rights Special Use Permit must be consistent with the terms of the Development Order upon which the Vested Rights Special Use Permit was based. Any substantial deviation from a prior approval, except a deviation required by governmental action, shall cause the development involved to be subject to the policies and implementing decisions and regulations set forth in all current regulations. The City Manager or designee shall determine whether a proposed change is a substantial deviation in light of the following criteria:
  - a. Any change in use or intensity of use that would increase the development's impacts on those public facilities subject to section 17.24 by more than five (5) percent shall be presumed to be a substantial deviation.
  - b. Any change in access to the project that would increase the development's transportation impacts by more than five (5) percent on any road subject to Section 17.24 shall be presumed to be a substantial deviation unless the access change would result in an overall improvement to the transportation network.
  - c. A Vested Rights Special Use Permit shall apply to the land and is therefore transferable from owner to owner of the land subject to the permit.
  - d. Anything in this Section to the contrary notwithstanding, a Vested Rights Special Use Permit may be revoked upon a showing by the City Council of a peril to public health, safety or general welfare of the residents of the City of Fellsmere unknown at the time of approval.

#### **Section 17.24 Concurrency Management.**

##### **A. Purpose.**

Concurrency is a finding that public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impacts of the development. The Concurrency Management System (CMS) for the City of Fellsmere is intended to provide a systematic process for the review and evaluation of all proposed development for its impact on public facilities and services, as required by the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, Part II, FS, and Rule 9J-5.0055, Florida Administrative Code. The purpose of the CMS is to ensure that development orders and permits are conditioned on the availability of concurrency facilities and services to meet adopted level of service requirements identified in this Element. The CMS is also intended to describe the requirements and procedures for determining consistency of proposed development with the City of Fellsmere's Comprehensive Plan.

Facilities in Fellsmere that are subject to these regulations and their controlling agencies include:

1. Potable Water (City of Fellsmere).
2. Recreation (City of Fellsmere).
3. Sanitary Sewer (City of Fellsmere, Indian River County).
4. Solid Waste (Indian River County).

5. Drainage (St. Johns River Water Management District, Fellsmere Water Control District, City of Fellsmere).
6. Roads (City of Fellsmere, Indian River County, Fellsmere Water Control District).

B. Consistency with the City's Comprehensive Plan.

All development applications shall demonstrate compliance with the City of Fellsmere Comprehensive Plan as well as with all applicable provisions of the City Land Development Regulations. Further, development applications shall demonstrate that specific concurrency facilities shall be available at prescribed levels of service concurrent with the development's impact on those facilities.

C. Exemptions.

All applications for final development orders shall be subject to concurrency review unless specifically exempted below. The following shall be exempt from the provisions of this Chapter:

1. A Final Development Order issued on or before the date of adoption of this Code, if:
  - a. The construction authorized by the Final Development Order has commenced before the Development Order expires according to its terms;
  - b. The construction continues without interruption and in good faith until it is complete. If the Final Development Order expires, any further development shall be in conformance with the requirements of this Article and all laws in effect at that time;
  - c. Development that is vested pursuant to section 17.23.
2. Construction of public facilities that are identified in the Capital Improvement Element of the City of Fellsmere Comprehensive Plan and are required in order to achieve level of service standards for those facilities identified in this section and public schools.
3. Construction of public facilities that are identified in the Capital Improvement Element of the City of Fellsmere Comprehensive Plan other than those public facilities that are exempt pursuant to subsection C. 2. above and which need to be constructed because of an emergency as determined by the City Council.
4. An alteration or expansion of development that does not create additional impact on public facilities.
5. The construction of accessory buildings and structures that do not create additional impact on public facilities.
6. The replacement of an existing dwelling unit when no additional dwelling units are created.
7. Building permit applications for a single family Lot of Record on or before the date of the adoption of this land development code.

D. Redevelopment Projects.

Any proposed redevelopment shall be credited for the existing demand on available capacity. If a redevelopment project generates demand in excess of the existing demand which it is replacing, a concurrency review shall be required; however, the concurrency review shall only address the amount by which the proposed demand generated exceeds the demand of existing development. The development plan for redevelopment must be submitted no more than one (1) year after the prior use is discontinued in order to qualify for a concurrency credit. If the proposed redevelopment generates equal or less demand than the existing project, the applicant shall be given a concurrency credit enabling the applicant to reserve the unused capacity. The concurrency credit will expire within five (5) years of the change or discontinuance of the use. The applicant's submission of an application for a demolition permit shall also initiate a concurrency review for the express purpose of issuing credits for redevelopment.

E. Criteria for Concurrency and Final Development Orders:

1. A Final Development Order shall not be granted for any proposed development unless the City finds that adequate capacity for all required concurrency review facilities exists at or above the adopted level of service for those facilities in order to accommodate the impacts of the proposed development, or that improvements necessary to bring the required concurrency facilities up to their adopted level of service will be in place concurrent with the impacts of the development.
2. Prior to issuing any Final Development Order, the City shall review all proposed development to ensure consistency with adopted Level Of Service (LOS) standards. No development shall be approved that is projected to decrease the existing LOS below the adopted standard, unless those are mitigated by the developer, except as provided in the Florida Statutes. Level of service standards for those public facilities for which concurrency is required are set forth in Policy CIE.5.1, of the City of Fellsmere Comprehensive Plan.
3. Sanitary Sewer and Potable Water.

For sanitary sewer, potable water, solid waste, and drainage facilities, the City shall find that the following criteria have been met in order for any proposed development, required to undergo concurrency review, to be found in compliance with concurrency management requirements:

- a. A final development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are planned for and funded, or in place and available to serve the new development pursuant to Florida Statutes; or
- b. At the time the final development order is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to §163.3220, FS, or an agreement or development order issued pursuant to Chapter 380, FS, to be in place and available to serve new development at the time of the issuance of a certificate of occupancy.
- c. For purposes of evaluating concurrency determination applications, the supply (capacity of a facility) shall be determined by adding together:
  - 1) The total existing capacity of the facility:

- a) Design capacity of the sanitary sewer treatment plant measured by gallons per day for sanitary sewer facilities;
  - b) Design capacity of the potable water plant measured by gallons per day for potable water facilities; and
- 2) The total capacity of proposed improvements to the facility or the total capacity of proposed facilities, if any, that will become available within the service area, if one (1) or more of the following is demonstrated:
- a) Construction of the new facilities is underway at the time the application for the concurrency determination is being evaluated;
  - b) The new facilities are the subject of a binding executed contract for the construction of the facilities or the provision of services at the time the application for the concurrency determination is being evaluated;
  - c) The new facilities have been included in the adopted City of Fellsmere Capital Budget for the fiscal year in effect at the time the application for the concurrency determination is being evaluated;
  - d) The new facilities are guaranteed in an enforceable development agreement for the development under consideration. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220 et seq., Florida Statutes, as amended. Such facilities shall be consistent with the Capital Improvements Element of the City of Fellsmere Comprehensive plan or the Indian River County Comprehensive Plan, as they may be amended from time to time; or
  - e) The new facilities are guaranteed in an enforceable development agreement for a development different than the one (1) under consideration, provided that the new facilities are the subject of a binding executed contract for construction with a start date during the fiscal year in effect at the time the application for the concurrency determination is being evaluated; or
- f) A development order or permit is issued subject to the condition that the necessary facilities and services will be in place and available at the time of the issuance of a certificate of occupancy.
- d. Sanitary sewer and potable water demand.
- The demand on a facility shall be determined by adding together:
- 1) The demand for the services or facilities created by existing development (existing flows);
  - 2) The projected demand for the services or facilities created by the anticipated completion of other approved developments for which initial or final concurrency determination certificates have been approved and the projected demand anticipated by completion of other vested development projects; and

- 3) The projected demand for the services or facilities created by the anticipated completion of the proposed development under consideration for initial or final concurrency determination.
- e. Sanitary sewer and potable water available capacity.
  - 1) Available capacity for each facility is the resulting balance of supply minus demand not including demand for the application under consideration.

4. Solid Waste, and Drainage.

For solid waste, and drainage facilities, the City shall find that the following criteria have been met in order for any proposed development, required to undergo concurrency review, to be found in compliance with concurrency management requirements:

- a. A final development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the new development; or
- b. At the time the final development order is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to §163.3220, FS, or an agreement or development order issued pursuant to Chapter 380, FS, to be in place and available to serve new development at the time of the issuance of a certificate of occupancy.

5. Parks and Recreations.

For parks and recreation facilities, at a minimum, the City shall find that the following criteria have been met in order for any proposed development, required to undergo concurrency review, to be found in compliance with concurrency management requirements:

- a. At the time the final development order is issued, the necessary facilities and services are in place or under actual construction; or
- b. A final development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy, the acreage for the necessary facilities and services to serve the new development is dedicated or acquired by the City, or funds in the amount of the developer's fair share are committed; and
- c. A final development order is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy as provided in the City's adopted Five Year Capital Improvements Program; or
- d. At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than one year after issuance of a certificate of occupancy; or

- e. At the time the final development order is issued, the necessary facilities and services are guaranteed in an enforceable development agreement pursuant to §163.3220, FS, or are guaranteed in an agreement or development order issued pursuant to Chapter 380, FS, and shall be in place or under actual construction not more than one year after issuance of a certificate of occupancy.

6. Transportation Facilities.

For transportation facilities, the City shall find that the following criteria have been met in order for any proposed development, required to undergo concurrency review, to be found in compliance with concurrency management requirements:

- a. At the time the final development order is issued, the necessary facilities and services are in place or under actual construction; or
- b. A final development order is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than three years after issuance of a certificate of occupancy as provided in the City's adopted Five Year Capital Improvements Program (CIP). The CIP may recognize and include transportation projects included in the first three years of the adopted Florida Department of Transportation Five Year work program and Indian River County transportation improvement program. The Capital Improvements Program must include the estimated fiscal year of commencement of actual construction and the estimated fiscal year the project will be completed.
- c. At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than three years after issuance of a certificate of occupancy; or
- d. At the time the final development order is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to §163.3220, FS, or are guaranteed by an agreement or development order issued pursuant to Chapter 380, FS, to be in place or under actual construction not more than three years after issuance of a certificate of occupancy; or
- e. For purposes of evaluating concurrency determination applications, the supply (capacity of a facility) shall be determined by adding together:
  - 1) Transportation demand.
 

The demand for each segment shall be determined by adding together:

    - a) The existing peak season, peak hour, peak direction volume for the segment;
    - b) The projected peak season, peak hour, peak direction volume for the segment created by the anticipated completion of other approved developments for which initial or final concurrency determination certificates have been approved and the projected demand anticipated by completion of other vested development projects; and

- c) The projected peak season, peak hour, peak direction volume for the segment (if the segment is expected to receive five (5) percent or more of project trips) created by the anticipated completion of the proposed development under consideration for initial or final concurrency determination. For concurrency determinations for single-family dwelling units, affected segments will be limited to the most directly accessed segment.

2) Transportation Available Capacity.

Available capacity for each segment is the resulting balance of supply minus demand not including demand for the application under consideration.

F. Concurrency Review Process:

1. Application for Concurrency Review.

Concurrency review shall be initiated upon submission and acceptance of an application for a site plan approval, subdivision construction permit, subdivision plan, certificate of occupancy, or a building permit, whichever first occurs. At the request of the applicant and pursuant to payment of a concurrency review fee as may be established by resolution of the City Council, the City shall render concurrency findings.

2. Project Impact Assessment.

The applicant shall use the best available information to establish and evaluate existing capacities for concurrency facilities. The applicant shall be responsible for supplying the anticipated land uses, densities and/or intensities, of a proposed development together with the anticipated date of completion of the proposed development, and provide an analysis of the impacts on concurrency management facilities. The City shall review the anticipated impacts of the proposed development on concurrency facilities.

3. Project Phasing/Timing of Improvements.

Concurrency facilities associated with a phased development may also be phased. However, all concurrency facilities necessary to accommodate the impacts of each phase must be available or a schedule for the acquired improvements must be approved prior to the issuance of a final development order. The schedule of facility improvements shall ensure that all facility improvements necessary to accommodate the impacts of the development (or portion thereof) for which a certificate of occupancy has been requested shall be in place prior to the issuance of the certificate. Under no circumstances shall the final certificate of occupancy be issued for a project unless all facility improvements required by the development order or development agreement have been completed.

4. Development Agreements.

If the minimum requirements for concurrency cannot be met, concurrency may be achieved by guaranteeing necessary facility improvements in an enforceable development agreement. Said development agreement may include guarantees

to construct required facility improvements or to provide funds equivalent to the cost of providing such facility improvements.

5. Concurrency Review Determination.

Upon the conclusion of the concurrency review, the City shall prepare a written determination concerning the proposed development. This determination shall address, but is not limited to:

- a. The anticipated public facility impacts of the proposed development;
- b. The ability of existing facilities to accommodate the proposed development at the adopted level of service standards;
- c. Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development;
- d. The facility improvements or additions necessary to accommodate the impact of the proposed development at the adopted level of service standards and the entities responsible for the design and installation of all required facility improvements or additions; and
- e. The date such facility improvements or additions will need to be completed to be concurrent with the impacts on such facilities created by the proposed development.

6. Actions by the City.

- a. In the event that the City's concurrency review reveals that the proposed development would generate public facility impacts which can be absorbed by the existing available capacity with or without developer funded improvements, the City Council or its designee shall issue a certificate of concurrency or a conditional certificate of concurrency as may be applicable.
- b. In the event that the City's concurrency review reveals that the proposed development would generate public facility impacts beyond that which can be absorbed by available capacity, the City Council shall determine whether there is a financial or other legally binding commitment to ensure that public facilities necessary to correct the anticipated deficiency will be in place concurrent with the impacts of the proposed development. If the City and/or a developer are unable to provide such assurances, the application for certificate for capacity shall be rejected and the project shall be denied.

7. Reservation of Capacity.

Following receipt of certificate of concurrency or a conditional certificate of concurrency, the capacity demand of the approved development shall be considered to be reserved. The time frame of the concurrency reservation shall be based on the time frame of the final development order or development agreement. If the time frame of the final development order and/or the development agreement lapses, the available capacity assigned to the development order shall be returned to the available capacity pool.

Capacity shall be reserved on a first-come-first-served basis by the City. Such reservation shall be valid only for the specific final development order and for the specified land uses, densities, intensities, construction and improvement

schedules contained in the approved final development order. The final development order shall state the terms of the concurrency reservation, including the allocation of available capacity, the time-frame for the allocation, and other appropriate legal assurances.

8. Assignability and Transferability.

- a. A certificate of concurrency shall run with the land and shall transfer to a successor in interest to the original applicant upon written disclosure of such transfer to the City Manager, or designee, as to the identity of the successor. The disclosure shall provide the full legal name of the person or business entity acquiring the interest in the property; the nature of the interest; the address of the principal place of business of the successor; telephone number, name and address of registered agent if corporation; name, address and title of officers or agents authorized to transact business with the City, together with proof of authorization if other than president or vice-president or general partner; and the name and address of any new design professional for the project if applicable. A transferee applicant must also assume in writing on form acceptable to the City Attorney all commitments, responsibilities, and obligations of the prior applicant, including all special conditions of the concurrency determination certificate.
- b. Failure to make the required disclosure and assumption shall suspend a concurrency determination until such time as proper disclosure and assumption are made.
- c. Transfer of the certificate of concurrency shall not toll or modify the calculation of time limits set forth in the concurrency determination certificate. Following any transfer, such time limits shall be calculated as if the transfer had not occurred.
- d. A certificate of concurrency shall not be assignable or transferable to other developments or property.

G. Project Deferrals/Development Moratoriums.

The City will maintain an inventory of the available capacity for each required concurrency facility. If at any time this inventory indicates that a required concurrency facility or facilities do not satisfactorily meet a adopted level of service standard, the City shall cease to issue development orders for projects which would impact the deficient facilities or the area impacted by the deficient concurrency facilities, as defined within this policy. Such a suspension or moratorium on the issuance of development orders shall continue until such time as the adopted level of service standard is re-established, the Comprehensive Plan is amended to reflect an acceptable level of service standard for the facilities in question, or alternative arrangements are made to ensure capacity will be available, consistent with Section 5 of the CMS in the Comprehensive Plan.

**Section 17.25 Transportation Impact Fee.**

A. Applicable Regulations.

The Indian River county Traffic Facilities and Fair Share Roadway Improvement Ordinance shall apply within the City limits, until such time as the City adopts its own transportation impact fee program for local roadways within the City.

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