



LEVELING THE PLAYING FIELD

Recommendations to Reduce Land Use Conflicts in Clearwater

Clearwater Neighborhoods Coalition, Inc.

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The Clearwater Neighborhoods Coalition, Inc.

The Clearwater Neighborhoods Coalition, Inc., (the CNC) is a community-based organization formed by presidents of home owner and condominium associations in the late 1970s and incorporated as a nonprofit in 1981. The CNC works closely with the City of Clearwater and Pinellas County in achieving its goals. It has been active in the city's development and Clearwater neighborhoods for over forty years.

The CNC is a voluntary city-wide organization of registered neighborhood organizations – home owner associations, condominium associations, and geographic neighborhood associations, as well as individual city residents who live in areas not yet covered by an HOA or condominium member association. Presidents or their designated representatives and alternates meet monthly to receive reports from city officials, police, and other city staff to address concerns common to the neighborhoods. The CNC seeks to be the primary source for information and advocacy for Clearwater neighborhood associations with the goal of enhancing the quality of life, safety and sustainability for Clearwater, its neighborhoods and its residents. The CNC also sponsors city council candidate forums and public forum discussions of all referenda appearing on city ballots to educate and inform the public at large.

The CNC functions as an independent private entity to:

- act as liaison to promote communications, collaboration and cooperation between neighborhoods and the City of Clearwater;
- provide a forum to discuss common neighborhood issues;
- appoint committees to research and discuss common issues facing neighborhoods; and
- when called upon, provide guidance and support for new neighborhood associations.

The CNC also maintains a nonprofit foundation, the Clearwater Neighborhoods Coalition Foundation, Inc., to undertake educational programming on civic issues for the residents of Clearwater. For example, it recently presented “Building Better Neighborhoods Through Sustainability,” a free, public education four-week virtual sustainability series sponsored by the Clearwater Neighborhoods Coalition, the City of Clearwater and the Suncoast Sierra Club, which brought together government, residents and experts in conservation and the environment. Each session featured conversations with local experts about gardening, growing your own vegetables and fruits, and helping your grasses and landscaping to thrive sustainably.

Elected Officers for 2022

Carl D. Schrader, Jr., President

Bill Jonson, Vice President

Rudy Michalek, Treasurer

Kelly Kelly, Secretary

The CNC Land Use Conflict Resolution Committee

CNC President, JoAnna Siskin, appointed a committee in March 2021 to follow up on discussions by the Clearwater’s Charter Review Committee which included, in its report to the City Council, investigation of the ombudsman concept as a means to reduce land use controversies in Clearwater. The committee was originally known as the **CNC Ombudsman Committee**. Before it was done in March 2022, the committee had reviewed 4,799 pages of materials on land use statutes and rules, conflict resolution, quasi-judicial and judicial proceedings, and other related topics, and exchanged over 400 emails to conduct the committee’s business.

However, it soon became apparent to the CNC committee members that the ombudsman concept was not the right tool to resolve the problems the committee was asked to investigate – the perception that in matters involving land use proceedings in Clearwater, the residents are not on a level playing field when faced with developers’ seemingly unlimited funds to employ attorneys and expert witnesses in hearings before the Community Development Board, so-called “Level 2” hearings, or when the City Council acts on Level 3 land use applications.

Thus the name was changed to the **Land Use Conflict Resolution Committee** to broaden the search for any and all conflict resolution techniques that could be applied to the Clearwater Community Development Code (hereafter, the Code).

Members of the Committee

In 2021

JoAnna Siskin, CNC President

Christine Michalek, CNC Vice President

Shelly Kuroghlian, CNC Treasurer

Annette Pardue, CNC Secretary

Liz Drayer

Bill Jonson

Kelly Kelly

David Lillesand (Chair)

In 2022

Carl D. Schrader, Jr., CNC President

Bill Jonson, CNC Vice President

Rudy Michalek, CNC Treasurer

Kelly Kelly, CNC Secretary

Liz Drayer

Marita Lynch

David Lillesand (Chair)

Executive summary of the Committee’s Report

Clearwater has what can be described as a very good to excellent Comprehensive Plan and Community Development Code that works well. It can be better. And it needs 21st Century updating.

In March 2021, the CNC Committee on Land Use Conflict Resolution began its study of Clearwater’s land use change decision-making process and possible ways to make it and the outcome more fair to neighborhood associations and their citizen residents, “leveling the playing field,” as well as improving the process and reducing conflict whenever and however possible.

The first task was to understand the current Code and review the three most recent controversial disputes between citizens and developers (300 S Duncan Storage Unit, Edgewater Drive Condominium, and 850 Bayway Chart House hotel in the Clearwater Point neighborhood). How could these conflicts be avoided? If not avoided and brought before the Community Development Board for a ruling, how can both the perception and the reality be changed to give citizen residents an equal chance to have their case fairly heard and fairly decided given the financial disparity between developer’s substantial resources and the neighborhood associations lack thereof.

The Committee met almost monthly for a year and looked at a variety of traditional conflict resolution strategies such as asynchronous arbitration, mediation, community benefits agreements, use of an ombudsman, creation of residents’ advocate position, and the related legal issues involving recent changes to the “competent substantial evidence” standard, current conflict of interest statutes and caselaw, and administrative law concepts applied to court appeals.

On March 7, 2022, the membership of the CNC received the committee’s report, approved its recommendations, and authorized CNC leadership to lobby the city council to promote a variety of changes to reduce conflict in land use matters: adoption of a Clearwater Neighborhood Association Bill of Rights (to provide early notification), changes to the composition of the Community Development Board, creation of a buffer zone between commercial/tourist zoning and residential neighborhoods, mandatory training for CDB individual members before they rule on any land use appeal, revision of the Citizen’s Guide to Community Development Board Hearings, and updating the Comprehensive Plan and the Code to meet 21st Century sea level rise challenges.

As part of the more long range basis, the Committee recommends that the city appoint a task force to begin to update the Comprehensive Plan and the Community Development Code, and include in that adoption of a Community Benefits Agreement for large-scale projects on city owned land, and address in a significant way, the 21st Century environmental challenges to the city by rising sea levels. Ongoing training on the Code must include all new city planning staff, city attorney’s staff, and new city council members who sit to rule on Level III applications.

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Background – the issues addressed by the committee

State law requires Clearwater, like every other city and county in Florida, to comply with state policy on planning for land use, as expressed in Florida’s “Community Planning Act”, F.S. §163.3161 *et seq.* The Act seeks to use the existing powers of local governments (counties and municipalities) to establish and implement comprehensive planning programs to manage future growth. The intent is, among other things, to preserve and enhance present advantages and deal with future problems that may result from the use of land within the city. Pursuant to state law, no public or private development shall be permitted except in conformity with comprehensive plans.

Accordingly, by statute, in Section 163.3167, the city of Clearwater has the power and responsibility:

- (a) To plan for their future development and growth.
- (b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.
- (c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.
- (d) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.

The city is required to create and maintain a comprehensive plan and establish a “local planning agency” to adopt it. F.S., §163.3174. Clearwater’s established local planning agency is the Community Development Board which has both legislative duties (to make recommendations to the City Council regarding adoption or changes to both the city’s Comprehensive Plan and its Community Development Code) and quasi-judicial duties (to apply the Code to the facts of a particular applicant’s case).

The vast majority of applications for land use changes do not rise to contested matters between developers and neighboring residents. But an increasing number will result in contests because Clearwater has become “built out” and re-development, including higher buildings, will be an option for further development. The system works well most of the time for the nearly 40 applications per year brought before the Community Development Board for a hearing. However, that does not mean that we can’t as a community find a better way to resolve conflicts between developers and surrounding neighborhoods when they do, in fact, arise.

If quoted accurately, the mayor is incorrect that neighborhood residents are saying “everything is broken.”¹ Quite the contrary. Residents have a much more holistic and nuanced view of the system required by state statutes, court rulings in the land use decision-making process, and adherence to our lawfully adopted Community Development Code (hereafter, “the Code”).

City leadership reports being uncomfortable with citizens “talking about the same cases over and over,”² in the mayor’s words; citizens are as uncomfortable when both the perception and the reality is that when there are major disputes in land use, residents are outmanned and outgunned and confronted with an unlevel playing field when they seek their day in court – the quasi-judicial hearings before the Community Development Board (the CDB).

The CNC and the community at large is aware that the system works most of the time when homeowners and others file Level I applications to seek minor variation in land use which are the jurisdiction of the city’s Development Review Committee. Pursuant to the Code, just as this week’s example, the CNC received multiple notices of proposed land use changes.

On February 21, the CNC was advised of seven Public Meeting notices sent to the Clearwater Neighborhoods Coalition. They are all for a city’s Development Review Committee (DRC) meeting on March 3, 2022. Such meetings are held in

¹ Tampa Bay Times, February 18, 2022.

² Ibid.

the Municipal Services Building, but are also available by zoom if a citizen contacts the city's Planning and Development Department for the zoom access code.³

This week's notices received by the CNC, for example, included:

1295 S. Missouri Ave: proposed rebuild of an existing retail sales and services and alcoholic beverage sales uses within an existing Commercial retail plaza. Requesting flexibility for use and height. This is a rebuild of the PUBLIX store at the current location.

1050 Sunset Point Rd: 27 unit attached dwelling in MDR zoning requesting flexibility for use (to allow attached dwellings). This will be a 30 feet high above flood elevation on the north side of Sunset Point a little west of Edgewater Drive in the area near the 1919 Edgewater Drive Project. This project will back up into the LMDR along Sunnydale Dr.

949 Bruce Ave: to allow construction of a pool and deck behind the existing residential structure requesting flexibility from setbacks. This is in the North Clearwater Beach area.

3386 Hunt Club Dr: This is a Residential Infill Application. proposing an accessory use shed to an existing detached dwelling in LMDR with a proposed height of 7 feet and requesting flexibility from setbacks of two (2) feet where normal 15 foot would be required. This is a corner lot (Meadow Wood Dr) in the north Countryside area of Clearwater.

692 Bay Esplanade: Proposed three-unit resort in the Old Florida Character District of Beach by Design of North Beach. The project is requesting 35 feet in height and is requesting flexibility for use and the Design Guidelines. Two of the units have six bedroom and one has 7 bedrooms. The Beach by Design rules for North of Somerset is a maximum of 35 feet. This project is 35 feet to the roof deck, but seems to have a Roof top stairway feature that is above that. This project shows garage space for four cars for each of the three units. I have attached supplemental elevation drawings for this project.

1641 Sand Key Estates Ct: proposed 45-foot long dock to an existing detached dwelling requesting flexibility to the length standard

832 Eldorado Ave: Proposed expansion and reconstruction of the pool and decking accessory to an existing detached dwelling in LMDR. Pool deck will be 12 inches high and requests flexibility from setbacks.

As noted above, the Community Development Board annually rules each year on up to 40 applications for "flexibility" (seeking variance from the Code).

³ Note: the public is invited to the DRC meetings but public comment isn't allowed at these meetings.

On average slightly less than one arises to a major developer-neighborhood association contested matter in a typical year. It is a false narrative proven by a review of the data to state or imply that the CNC and other neighborhood associations allege that “everything is broken” or that neighborhood representatives would seek determinations not on the basis of the rule of law, but “well, I just don’t like it.”⁴

Major disputes arise not when some homeowner seeks flexibility to make a swimming pool too large under the existing Code, but when large projects zoned tourist or commercial abut residential land use. Such projects draw attention when the development impacts the neighborhood visually, or by increased traffic and use patterns or require other adjustments by residents in neighborhoods.

In 2018, the Skycrest Neighborhood Association organized opposition to a commercial storage unit being approved by City Council where the existing land use plan did not allow one. In 2019, the Edgewater Drive Neighborhood Association organized opposition to the developer’s application for a seven-story condo amid one- and two-story homes. In September 2021, the CDB approved the Chart House 60-room hotel with flexibility for an 80-foot height in Clearwater Point, a residential neighborhood. When the latest of these disputes occurred less than six months before this report, it seems inappropriate to consider the problem as “old news.”

So rather than bombard the mayor and city council with calls forcing them to hear, in the mayor’s view, “complaints about the same handful of controversial projects in the last few years,”⁵ the leadership of the Clearwater Neighborhoods Coalition appointed a committee of its members to study and report possible conflict resolution alternatives that could reduce the number of occurrences, or when such conflicts come before the quasi-judicial bodies, seek to level the playing field to create both a perception and a reality of a more fair system for all parties involved.

⁴ Statement by council member Hoyt Hamilton reported by the Tampa Bay Times, February 18, 2022.

⁵ Tampa Bay Times. February 18,2022

The CNC isn't the only entity that was concerned about nearly annual land use controversies in the City of Clearwater. On November 7, 2019, the city's Charter Review Committee, appointed by the City Council, officially reported the results of its eight-month review of the city's charter, and recognized that such disputes existed, repeatedly, and recommended as follows:

The [Charter Review] Committee recommends Council consider instituting an independent ombudsman to evaluate disputed proposed developments, educate the residents on process and issues, and potentially represent the residents where appropriate.⁶

Although the prior city council did not act on the ombudsman proposal,⁷ to his great credit, when the new mayor, Frank Hibbard, came to office he directed the city's Planning and Development Department's Director, Gina Clayton, to look into the application of the ombudsman concept as well. [For reasons explained in greater detail below, the mayor, Ms. Clayton, and the CNC committee all came to the same conclusion: an ombudsman would not be the right tool in this scenario.]

Other leaders in the community have also noted the mood in the community. In the current 2022 city election race for two city council seats, each with three candidates, five of the six candidates listed as one of their top three issues to be addressed if they were elected to Council would be a better and more fair resolution of neighborhood-developer disputes.

⁶ *Summary Report 2019 Revised Final*, of the 8-month Charter Review Committee recommendations, submitted to Council by email October 28, 2019.

⁷ One city council member, David Allbritton, mis-stated at the time that the Charter Review proposal was unnecessary because the city already had a position of ombudsman. In reality it was a never adopted proposal by business owners to create an ombudsman position to shepherd through developer's applications more quickly in city building and zoning offices.

CNC committee proceedings – meetings, interviews, and reports

The committee began meeting in March of 2021 and concluded its report to the CNC membership in March 2022.

A number of known conflict resolution strategies and tools were presented, researched and examined to see if they could possibly be applied to the current land use development process in Clearwater. Included in the list were ombudsman, resident advocate, asynchronous hearings, mediation and arbitration, community benefits agreements and others that are discussed more in detail in a following section of this report.

The committee meetings were preceded by lengthy lists of study materials to review prior to its meetings (listed in the appendix). The committee activities included:

- **March 11, 2021** – organizational meeting; discussion of procedure to examining and report on improvements to current system
- **March 25, 2021** – Review of Clearwater’s **Community Development Code** and CDB procedures using the recent Edgewater Drive proceedings as an example
- **April 7 2021** – review and discussion of the **Community Benefits Agreement** option
- **April 20, 2021** – review of materials and discussion of **ombudsman** concept and relevance in land use issues, and the “**Residents’ Advocate**” option
- **May 11, 2021** – review of state statutes, uses and potential role of **Mediation and Arbitration** before Community Development Board hearings.
- **May 26, 2021** – Committee interim discussion of **the most important and viable changes** discussed to date

- **June 14, 2021** - When the mayor called for a Council Work Session agenda item on the **ombudsman concept**, CNC Committee members appeared and presented an interim report via a PowerPoint of their work to date. The PowerPoint is attached in the Appendix to this report.
- **Summer 2021**⁸ – research shared among CNC Committee members on multiple relevant topics, including caselaw research on “**competent substantial evidence;**” **lay versus expert testimony;** and state statutes and state and federal caselaw defining a legal “**conflict of interest**” requiring recusal from a judicial or quasi-judicial body;
- **Fall 2021** – Sharing between all individual committee members of all possible Code changes
- **November 11, 2021** – Committee **approval of 37 proposed changes** to the Clearwater Community Development Code to be worked into a Final Report.
- **December 21, 2021** – Committee interview via Zoom of Michael Randolph, the CEO of the Center for Non-Profit and Community Development, Inc., the citizen participation component of Tampa’s use of a **Community Benefits Agreement** in its **Rome Yard Mixed-Use Development Project in West Tampa**, a major public-private development project; review and update of materials and discussion of St Peterburg Council’s adoption of a **Community Benefits Agreement Ordinance** in July 2021
- **January 16, 2022** – Review of materials, research and vote on **Neighborhood Association Bill of Rights** concept already in use in some counties, and committee agreement to propose use of a drafted proposed Clearwater **Neighborhood Association Bill of Rights**

⁸ Through summer and early fall, the Committee Chair, David Lillesand, was available in limited quantity due to a prior commitment to The Florida Bar to write a book on the creation, administration and termination of Special Needs Trusts for persons with disabilities.

- **February 7, 2022** – Presentation of committee interim report to the full membership of the CNC and detailed presentation of the proposed **Clearwater Neighborhood Association Bill of Rights** as part of the CNC committee’s suggested changes to the Community Development Code
- **March 1, 2022** – **preparation and review of the Final Report** of the Committee to be presented to the full CNC membership at its March meeting
- **March 7, 2022** – **presentation to full CNC membership** at its regular March meeting for discussion, amendment, deletion or other changes

The CNC Committee’s future. It is anticipated that if the full membership of the CNC votes to approve the Final Report and instructs the CNC Committee on Land Use Conflict Resolution to present the report to the city, the committee will forward the report to all of the City Council members. CNC leadership will then request individual meetings one-on-one with each of the members of the City Council. Following feedback from the City Council members, the Committee and leadership would present specific proposals to the Community Development Board acting in its legislative capacity and not its quasi-judicial capacity, who would then make recommendations to the City Council.

Community Development Code Revision. There are rumors of general agreement among Clearwater’s powers that be that the current Community Comprehensive Plan and Development Code are badly out of date and need updating. We agree. The Code was established almost a quarter century ago when Clearwater’s population was smaller and congestion and development was less than our built-out community faces today.

At that time, the state was not initiating steps to deal with climate change and sea level rise which are now a part of state policy. As but just one example of being past time for an update, the current Code still refers to the City Council as “the City Commission.”

If the City Council establishes a task force to review the current 660-page Code and recommend changes, the CNC Committee recommends that CNC members be included on that task force to continue to recommend conflict-reducing strategies and other improvements to Clearwater's land use decision-making processes as well as the Comprehensive Plan.

Perception and Reality

The Perception - The Playing Field is Not Level

Reading the introductory sections of Clearwater's Community Development Code would cause one to think that the Code already seeks to balance the interest of citizen resident neighbors and businesses seeking to develop properties located within the city.

For example, the Code states:

It is the purpose of this Development Code to implement the Comprehensive Plan of the city; to promote the health, safety, general welfare and quality of life in the city; to guide the orderly growth and development of the city; to establish rules of procedure for land development approvals; to enhance the character of the city and the preservation of neighborhoods; and to enhance the quality of life of all residents and property owners of the city.

It is the purpose of this Community Development Code to create value for the citizens of the City of Clearwater by:

1. Allowing property owners to enhance the value of their property through innovative and creative redevelopment;
2. Ensuring that development and redevelopment will not have a negative impact on the value of surrounding properties and wherever practicable promoting development and redevelopment which will enhance the value of surrounding properties.

Emphasis added.

Clearwater Development Code (CDC) was developed in 1999 with a stated objective of a win-win within a fully developed community like Clearwater where appropriate redevelopment can be beneficial to all three players: the developer, the adjoining neighbors and the city as a whole.

In practice as well as by design of Clearwater's land use decision-making system, neighborhood residents continually express that the deck is stacked against them when new big developments abut already established residential neighborhoods.

In an average year, 39 of 40 land use change applications are not of that character, and the problems identified here apply mainly to developers' large projects affecting the preservation of neighborhoods and the quality of life of the citizen residents.

Problems with CDB appointments. The most recent comments by some current city council members reinforce that view. Rejected from consideration on a 3-2 vote were CDB candidates without direct financial links to the land use industry. The most experienced and qualified CDB candidate in recent history, Bill Jonson, was immediately rejected. Few individuals have his at-hand ease with the various provisions of the Code provisions having been elected by the citizens for four terms to serve on the city council which considers Level III appeals, nor his direct experience in presentations to the council and to the CDB during quasi-judicial hearings after he was no longer a council member. In rejecting former council member Bill Jonson, Hoyt Hamilton said:

“I want people sitting on that panel that understand our code, understand all the regulations, understand construction, understand zoning and are going to make a determination as they are required based on the rule of law, not based on ‘well, I just don’t like it.’”⁹

Council member David Allbritton added that the makeup of the Community Development Board should not change because “you have to be familiar with land use and how things work in order to make your decisions.”¹⁰ Bill Jonson is intimately familiar with all sections of the Code.

It would appear that some council members believe that no neighborhood representative can serve. Such attitudes further harden citizen residents' perception that hearings before the CDB begin with a stacked deck, only people in the land use industry are competent to serve on the board.

That is obviously not true. As will be shown in the report section below on the CNC Committee's recommendations, there are neighborhood residents who

⁹ Tampa Bay Times, February 18, 2022.

¹⁰ Ibid.

meet the criteria of neighborhood association representatives who can be found to also meet Allbritton's and Hamilton's criteria.

For example, both of them voted together to appoint Bruce Rector this month who is a vice president of the Clearwater Beach Association, on the board of Ocean Allies (the environmental organization), and a multi-year member of the Clearwater Neighborhoods Coalition, and who has in the past done legal work for neighborhood interests in planning and zoning issues in another community (Lexington, Kentucky). Bruce Rector's current employer's website notes that "Bruce has 26 years of law practice experience and he has taught and lectured on Sports Law topics throughout that time. He has worked in professional sports for the Indianapolis Colts, collegiate athletics at the University of Kentucky, and as a volunteer leader for numerous local, state and national youth sports organizations and events... Bruce was President of KBA Sports, Inc., in Lexington, Kentucky where he led a team of professionals in organizing, hosting, and managing large sports and recreation programs, including regional and national championship tournaments. In his final year at KBA Sports, the organization attracted over 500,000 visitors for various tournaments and events."¹¹

So it is apparent that council members can unite to safely ignore their stated requirement of land use industry experience and appoint a member of the CNC to the CDB.

Problems with public understanding of the CDB mission. There are other problems as well in the understanding of the role and mission of the CDB applicants presenting themselves to the city council for selection to the Board.

The 13 public applications for these CDB positions, document the confusion in the community about the purpose of the CDB. The question "What is your understanding of the duties and responsibilities of the Board?" resulted in answers that are all over the place.

- "Discuss each projects (*sic*) idiosyncrasies . . ."

¹¹ https://sportsfacilities.com/team_members/bruce-rector/

- “To assist the BCC¹² with their decision making for development of Clearwater.”
- “Meet the Third Tuesday of every month at 1:00 pm . . .
- “I feel that it is the duties of the boards to determine where to put the resources allocated for that specific committee . . .”
- “To provide guidance for the planning and implementation of projects related to the growth and resilience of Clearwater . . .”
- “Attend Board Meetings. Study upcoming projects being proposed and determine if they are suitable for the City of Clearwater . . .”

The full responses of all the candidates are materials were reviewed by the members of the CNC Committee.

In fact, one of the successful current applicants for a spot on the Community Development Board, Andrew Caudell, wrote in his application in answer to the question **What is your understanding of the duties and responsibilities of the Board?** that his job was not to “make a determination as they are required based on the rule of law”, as Hoyt Hamilton suggests, but to in Mr. Caudell’s words, “Review & approve Development Projects with in the City of Clearwater jurisdiction.” Review, consider, debate and deny applications is not apparently equally on the agenda.

The Code itself leads Mr. Caudell to this false belief.

Problems with Code language. The Code naturally requires the quasi-judicial board to render a decision at the conclusion of the hearing.

The Code lays out the requirements using the word “shall” for its post-hearing report requiring findings of fact and conclusions of law, but gives only

¹² “BCC” is a frequent acronym for Board of County Commissioners.

four alternatives in subparagraph “c”, all of which are an” approval” of the developer’s application in one form or another:

Section 4-206. Notices and public hearings.

D. Conduct of quasi-judicial hearing.

6. Order/recommended order. In the case of a Level Two approval or an appeal, the community development board or the hearing officer **shall issue an order** and, in the case of a Level Three approval, a recommended order, which shall include:

a. Findings of fact in regard to any questions of fact which were presented during the proceedings.

b. Conclusions of law in regard to the applicable provisions of the comprehensive plan and the community development code.

c. **Approval** or **approval** with conditions or a **recommended approval** or **approval with conditions**, in the case of a Level Three approval.

Emphasis added.

There is no stated alternative given to the board to deny the application, by giving its findings of fact and conclusions of law at the conclusion of the hearing in case of denial. This Code provision requires amendment to be fair to the denied developer as well. When denying an application, the CDB should be required to issue findings of fact and conclusions of law so that a review judicial officer or court would see the basis for the CDB members’ decision if the developer appeals.

However, is it oversight that such direction is not given in the case of denials of developers’ applications, or does it merely reflect the extent of the uneven playing field such that no one could ever imagine that the CDB would ever deny an application?

Add to the problematic language above and a deck stacked with other developers and land use professionals of this quasi-judicial body, the citizenry is aware that it’s not a fair fight even if the CDB were equally balanced between industry professionals and citizen neighborhood residents.

Problems to leveling access to equivalent talent and funds. Neighborhood Associations feel outnumbered and outgunned. And they are.

Developers have the financial resources to employ law firms specializing in land use approvals to present and argue their case in hearings, and also provide the resources to employ expert witnesses who can present the developer's side only in support of an application. For example, the Edgewater Drive condominium is a \$70 million project of Valor Capital. That developer describes itself online:

“Valor Capital...[has] over 35 years of experience, [and has] collectively developed approximately one billion dollars in properties around the world including condominium towers, residential lots, golf courses and shopping centers.”¹³
Emphasis added.

Attorneys routinely hired by developers have familiarity with Clearwater's 660-page Community Development Code. Moreover, they are taught effective cross-examination techniques as part of their three-years' post undergraduate law school education and learn more by years of experience as a trial lawyer.

Expert witnesses hired by developers know that they will not face scrutiny by a skilled opposing attorney representing the neighborhood, nor will they have their work questioned by expert witnesses hired by that side. What the developer's expert says will likely face no effective cross-examination. There is no “battle of the experts” to be resolved by the CDB.

Problems with lack of training for both the CDB and the community. The lack of training of CDB board members themselves leads to their receiving only one-sided legal advice about their role and their ability to deny an application based on the law, as will be more fully explained in the next section.

The neighbors often share a misperception about the parameters of the land use decision process as well, and how to properly affect a decision. Due to lack of training by the city for residents as well as CDB members, non-lawyer community members are not aware of the difference between council and the CDB sitting as a legislative bodies, and sitting as a quasi-judicial bodies.

¹³ Serena by the Sea condominium project website, accessed at <https://valorc.com/#about>

Partly to address this lack of knowledge, and again to his credit, the mayor requested that the city’s Planning and Development Department draft a *CLEARWATER CITIZENS GUIDE to Community Development Board Hearings*, in May 2021. In discussing “competent substantial evidence” the guide notes that in quasi-judicial agency hearings, the decision of the CDB must be based on the legal standard of “competent substantial evidence.” On this, Council member Hoyt Hamilton is absolutely correct: the legal standard is not whether one just doesn’t like the project, but whether there is a legal basis to support the approval or the denial of the proposed development, using legal standards developed by case law.

The Guide correctly states that:

“Since the CDB’s decisions are based on the competent and substantial evidence placed before the board, and on nothing else, popular support will not win the day. Bringing large crowds of people, staging demonstrations, or disrupting proceedings with loud noises, cheers, or other supportive or antagonistic statements is not appropriate and ultimately ineffective.”¹⁴

The CNC Committee agrees, but also sees the current practice of neighborhood associations showing up in large crowds as the only way that neighborhood associations and their citizens effectively have to express their displeasure, since they do not have the financial resources to defend their neighborhood through the narrow channels of a judicial or quasi-judicial process. Nor do the well-meaning defenders of their neighborhood understand how to present evidence and cross-examine expert witnesses¹⁵. As amateurs the neighbors are forced to play a game against professionals in the professionals’ home court.

Training of neighborhood association leaders would help explain the difference between CDB hearings that are legislative (making law, that is, changes to the Code itself) versus rendering legally defensible decisions in appeals or other

¹⁴ May 2021 Draft of “Clearwater Citizens Guide to Community Development Board Hearings,” page 8.

¹⁵ In the 2019 Edgewater Drive CDB hearing, even when the neighborhood employed an expert who agreed with its position, the lack of an attorney for the neighborhood meant that the testimony of the expert was not permitted for technical reasons from being entered into the records. In the 2021 Chart House Clearwater Point CDB hearing, the neighbors who had spent dozens of hours preparing for the hearing were thrown off course when they learned, at the hearing, that they could not call and cross-examine the developer’s attorney .

hearings required to be decided by the board on particular case's correct application of the facts to the law.

Other suggestions by the CNC Committee, such as the Clearwater Neighborhood Association Bill of Rights will, if adopted, provide an opportunity for dialogue and understanding, communication, and reduction of issues, and which will train, through experience, staff, developers and residents.

Where the CNC Committee substantially disagrees with the majority of the council on the issue of CDB membership is that the CNC believes that non-land use professionals with the right background, temperament and education can serve and even out-perform in this role as judge and juror those who work in construction or engineering. The American system of justice in our law courts have proven repeatedly that non-professionals can render fair and correct decisions in lawsuits involving even highly technical matters.

Further, it is fair to point out that Level III land use appeals are decided by a five member body, of which only one currently has experience as a land use professional. That body is the City Council.

The Reality - The Playing Field is Not Level

"We live in a system that espouses merit, equality, and a level playing field, but exalts those with wealth and power, however gained." - Derrick Bell, 1971, Harvard Professor of Law.

"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges and to beg in the streets." - Anatole France, 1911, winner of Nobel Prize for Literature.

The Clearwater Development Code, in its majestic equality, allows residents as well as developers to hire expensive attorneys and unlimited expert witnesses of their choosing to represent their interests in quasi-judicial proceedings before the Clearwater Community Development Board. - David Lillesand, 2021, Clearwater attorney and resident.

The legal framework. The law itself *appears* to significantly tilt the playing field to those who have huge financial resources when compared to neighborhood

associations' total lack of any budget or resources that could match what billionaire corporations can throw into the pot to secure decisions to their benefit.

The myth that only expert testimony is competent substantial evidence.

Contested land use cases around the state of Florida have resulted, over the last 50 years or so, in decisions which appear to require the Community Development Board to accept as a basis for their decision, only the testimony of expert witnesses and not the testimony of lay persons such as neighborhood residents. A myth has developed that what residents say as lay persons *always* must be rejected as the basis for a decision denying an applicant's claim.

For example, one of the largest and the oldest law firms in Clearwater, is Macfarlane Ferguson & McMullen, established in 1884 and older than the City of Clearwater itself (established in 1915). With over 30 lawyers¹⁶, Macfarlane Ferguson has a division of specialized lawyers in land use matters who frequently appear as lawyers for developers in Clearwater.

In the firm's closing argument on September 21, 2021, in the 850 Bayway Clearwater Point CDB case, the attorney argued that "there was no expert witness testimony [by the citizen residents] to refuse competent substantial evidence submitted by the applicant" and directed the Board to the full text of the *Katherine's Bay v. Fagan*¹⁷ case. That case discussed lay witness testimony and found that the Administrative Law Judge in that case denying the developer's application committed error by basing the decision in part on lay testimony.

The *Katherine's Bay* court stated:

"Lay witnesses may offer their views in land use cases about matters not requiring expert testimony. *Metro. Dade County v. Blumenthal*, 675 So.2d 598, 601 (Fla. 3d DCA 1995). For example, lay witnesses may testify about the natural beauty of an area because this is not an issue requiring expertise. *Blumenthal*, 675 So.2d at 601. Lay witnesses' speculation about potential "traffic problems, light and noise pollution," and general unfavorable impacts of a proposed land use are not, however, considered competent, substantial evidence. *Pollard v. Palm Beach County*, 560 So.2d 1358, 1359-60 (Fla. 4th DCA 1990).

¹⁶ Per the firm's website at <https://www.mfmlegal.com/>.

¹⁷ *Katherine's Bay v. Fagan*, 52 So.3d 19 (Fla. App. 2010)

Similarly, lay witnesses' opinions that a proposed land use will devalue homes in the area are insufficient to support a finding that such devaluation will occur. See *City of Apopka v. Orange County*, 299 So.2d 657, 659-60 (Fla. 4th DCA 1974) (citation omitted).

There must be evidence other than the lay witnesses' opinions to support such claims. See *BML Invs. v. City of Casselberry*, 476 So.2d 713, 715 (Fla. 5th DCA 1985); *City of Apopka*, 299 So.2d at 660.

Based on these standards, it was error for the ALJ to rely on Appellee's testimony concerning potential light pollution, increased traffic, and negative impacts on the value of the homes in the area. There were no facts to support his concerns, and in fact, the County Staff's report indicates that the traffic issue was studied by an expert and determined that increased traffic would not unduly burden the area."¹⁸

Although it was proper for the ALJ to consider Appellee's observations that, with the exception of the vested non-conforming uses, the area is predominantly residential and that it is peaceful, Appellee presented no competent, substantial evidence to support his claim that the new RV park would unduly interfere with those characteristics of the area. The mere fact that Appellee's property has a different future land use designation than Appellant's re-classified property is insufficient. See *Hillsborough County v. Westshore Realty, Inc.*, 444 So.2d 25, 27 (Fla. 2d DCA 1983) (holding that the mere fact that property is in close proximity to another property with a less restrictive classification does not require reclassification).

Additionally, while it may have been noteworthy that Appellant presently fails to maintain its vested one-acre RV park in an attractive manner, the concern that the yet-to-be-developed RV park would be maintained in the same way is speculative and does not establish long-term negative impacts stemming from the reclassification of the subject property.

In sum, based on the applicable definition of "compatibility," Appellant's argument that there was insufficient evidence to support a finding that the RV park was incompatible is well-taken. It appears that, in finding the proposed use incompatible with the surrounding uses, the ALJ gave undue emphasis to Appellee's preference not to have an RV park as a neighbor. However, this preference in itself is insufficient to override Appellant's desire to build an RV park on its land. See *Conetta v. City of Sarasota*, 400 So.2d 1051, 1053 (Fla. 2d DCA 1981) (suggesting that a land-use decision should not be "based primarily on the sentiments of other residents")

The case above was submitted by the developer's attorney at the CDB hearing as controlling and dispositive of the issue. Neither the other attorney advising the Community Development Board nor the Assistant City Attorney

¹⁸ *Katherine's Bay* at page 30.

attending the CDB hearing on behalf of the city, raised any objection to the developer attorney's statement of the law.

Thus, the CDB, which has not had any independent training in the rule of law for land use disputes since 2004 was left unadvised that the cases cited by the developer's attorney may no longer be the rule of law on the issue of what constitutes "competent substantial evidence."

A publication titled *The City Attorney's Guide to Land-Use Appeals* by Christopher D. Donovan, Esq., an appellate attorney who regularly represents cities and other governmental agencies on appeal from land-use and other administrative decisions, says that the *Katherine's Bay* case may not continue to be "the law" after the state legislature amended the statutes. The argument questioning whether the *Katherine's Bay* case is still controlling precedent is on pages 20-23 of the Chris Donovan's publication, citing the new statute.

Specifically, the Board-certified appellate attorney suggests:

The city attorney should be aware, however, that section 286.0115(2)(b), Florida Statutes, may have abrogated [overturned] the decisions above like *Pollard*, *Ponce Inlet*, *Katherine's Bay*, and *Blumenthal*. Section 286.0115(2)(b) states:

[A] person who appears before the decisionmaking body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decisionmaking body, and may be requested to respond to questions from the decisionmaking body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. *The decisionmaking body shall assign weight and credibility to such testimony as it deems appropriate.* [Emphasis in the original]

He goes on to say:

Contrary to *Pollard*, *Ponce Inlet*, *Katherine's Bay*, and *Blumenthal*, this statute appears to recognize that residents' statements can constitute evidence—even if not sworn as a witness or qualified as an expert—because it gives the city's decisionmakers the exclusive authority to assign weight and credibility to the residents and neighbors' testimony. And since, as noted above, the circuit court cannot invade the city's ability to reweigh the evidence or witness's credibility, then a circuit court may have to deny certiorari even if the only "evidence" supporting the city's decision comes from a lay person. See *Mingo*, 339 So. 2d at 304. But to date, no reported case has invalidated *Pollard*, *Ponce Inlet*,

Katherine's Bay, and *Blumenthal*, all of which stem from a pre-286.0115(2)(b) line of cases—or discussed their interplay with section 286.0115(2)(b).

The land use appellate attorney further advises city attorneys that:

Third, the unsubstantiated opinions and statements for or against a project by neighbors and residents are generally not competent, substantial evidence. *Pollard v. Palm Beach Cnty.*, 560 So. 2d 1358, 1360 (Fla. 4th DCA 1990); *Town of Ponce Inlet v. Rancourt*, 627 So. 2d 586, 588 n.1 (Fla. 5th DCA 1993). But some courts have recognized that if the residents are presenting actual and specific facts relevant to the land-use request – rather than generalizations, conjecture, and opinions—then their statements can constitute competent, substantial evidence. *Marion Cnty. v. Priest*, 786 So. 2d 623, 625-27 (Fla. 5th DCA 2001); *City of Jacksonville Beach v. Car Spa, Inc.*, 772 So. 2d 630, 632 (Fla. 1st DCA 2000).

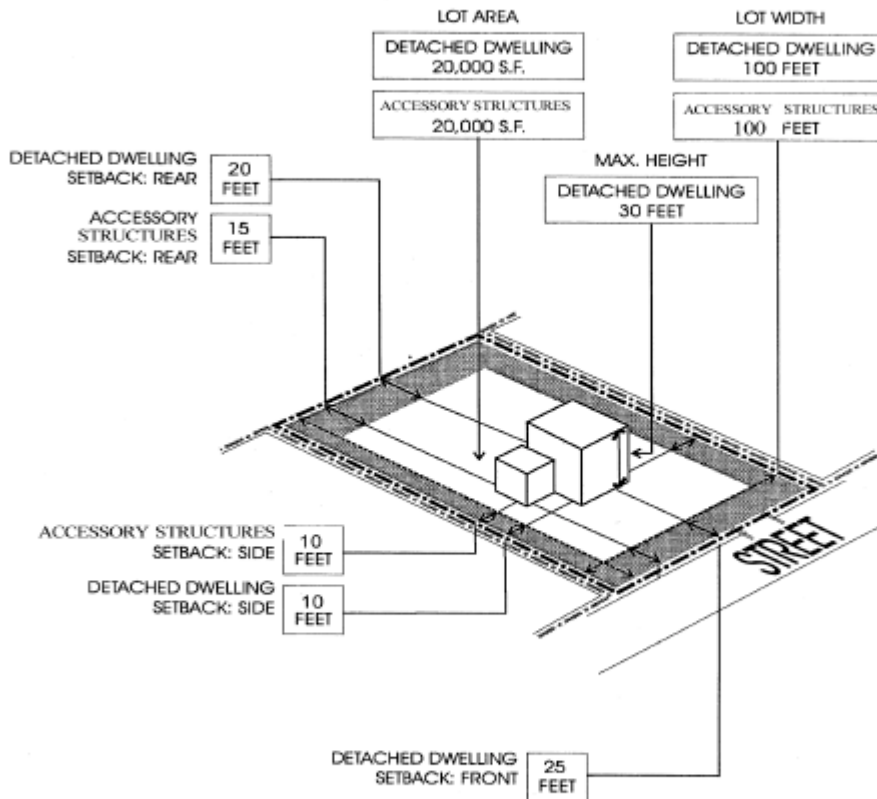
Some courts have also suggested that if lay witnesses offer testimony on technical matters that require expertise—such as potential traffic problems, light and noise pollution, or the impact on home values—then the testimony is not competent, substantial evidence unless the witness is qualified as an expert in that area. *Katherine's Bay, LLC v. Fagan*, 52 So. 3d 19, 30 (Fla. 1st DCA 2010); *Metro. Dade Cnty. v. Blumenthal*, 675 So. 2d 598, 601 (Fla. 3d DCA 1995). **But if the testimony is on subjective matters that do not require expertise—such as the development's impact on the area's natural beauty—then the testimony can constitute competent, substantial evidence (if, of course, the subjective matter is relevant to the legal inquiry).** *Id.* Emphasis added.

Section 3-914 of the Code is a beauty standard. The *Blumenthal* District Court of Appeals case upheld the land use planning agency's vote to deny a developer's application based solely on the testimony of lay witnesses.

It is not difficult to see the difference between strict measurable guidelines in our city's Code for each type of land use, such as those requirements found in Part I - Community Development Code, Article 2. - Zoning Districts, Division 1. for a Low Density Residential District ("LDR") and the specific direction that Section 3-914 of our Code must be met as well.

For example, what follows is a typical portion of the Code describing dimensional standards for development in a particular zoning category.

LOW DENSITY RESIDENTIAL DISTRICT ("LDR")
MINIMUM STANDARD DEVELOPMENT



Low Density Residential District

(Ord. No. 6526-00, § 1, 6-15-00; Ord. No. 6928-02, § 3, 5-2-02; Ord. No. 7449-05, §§ 1, 2, 12-15-05; Ord. No. 7631-06, § 19, 11-2-06; Ord. No. 8540-14, § 2, 4-3-14; Ord. No. 8654-15, § 3, 2-5-15)

Compare the specific dimensions about to the required additional section in Section 3-914 of our Code shown on the following page, particularly Section 3-914.A.1 which requires that “The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.”

Note that the Council in 2005 reinforced the requirements of CDC Sec. 3-914 to require compliance with all six elements.

Section 3-914. General Standards for Level One and Level Two approvals.

A. Level One applications, in order to be approved by the community development coordinator, and Level Two applications, in order to be approved by the community development board, shall meet each and every one of the following criteria:

1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.

2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.

3. The proposed development will not adversely affect the health or safety or (sic) persons residing or working in the neighborhood of the proposed use.

4. The proposed development is designed to minimize traffic congestion.

5. the proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.

6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.

B. In the event of an express conflict between a particular flexibility criterion and a provision of Article 3, the flexibility criterion shall govern unless the context clearly implies that the Article 3 provision should control.

C. The use of low impact development techniques for stormwater management, such as minimal land disturbance, the preservation of native vegetation, and the minimization of impervious cover, shall be required unless determined infeasible by the Engineering Department.

(Ord. No. 7413-05, § 18, 5-05; Ord. No. 8042-09, § 3, 6-4-09; Ord. No. 8070-09, § 7, 12-3-09)

Lay testimony on Section 3-914 can support a CDB's decision. It is not difficult to see the difference between the very technical and specific typical Code section on LDR buildings quoted above versus the much more subjective “beauty standard” which is also required for both Level I and Level II applications. Clearly Section 3-914 is a standard much like “natural beauty” is applied – being “in harmony” with scale, bulk, coverage, density, and with the “character” of adjacent properties. Harmony and character have no measurable height, width, or depth

dimensions. Especially when both the proposed development and the items like the “character” of the other adjacent properties have to be assessed and used as the guide to “measure” whether the new development complies with the requirements of the law. It is very difficult to allege that persons would not be following the rule of law if they came to different conclusions on this beauty standard.

“Beauty in the eye of the beholder” has a literal meaning - that the perception of beauty is subjective - what one person finds beautiful another may not. This saying first appeared in the 3rd century BC in Greek. It didn't appear in English and in its current form in print until the 19th century, but in the meantime there were various written forms that expressed much the same thought.

Shakespeare expressed the concept in *Love's Labours Lost*, 1588:

Good Lord Boyet, my beauty, though but mean,
Needs not the painted flourish of your praise:
Beauty is bought by judgement of the eye,
Not utter'd by base sale of chapmen's tongues

Benjamin Franklin, in *Poor Richard's Almanack*, 1741, wrote:

Beauty, like supreme dominion
Is but supported by opinion

David Hume's *Essays, Moral and Political*, 1742,

"Beauty in things exists merely in the mind which contemplates them."

It would seem, therefore, that Clearwater’s Code section 3-914 meets the criteria of “subjective matters” that do not require expert witness testimony, and the Clearwater Community Development Board would be allowed to use such neighborhood residents’ testimony as a basis for denying an application under the rule of law, following the reasoning of the *Blumenthal* a District Court of Appeals decision, and based on “following the rule of law.”

Training for participants – the necessity of undoing the myth of expert-only testimony. This is yet another example why the CNC Committee is strongly recommending training for

- city staff employed after 2004 (the last training session), along with new Planning Department staff;
- CDB members and requiring that every new CDB member, before they vote on their first case before the board, be given Code training on our city’s particular and unique land use Code and new city council members who will sit in Level III proceedings;
- City Council members, when elected, who sit as quasi-judicial officers applying the Code in Level III appeals; and
- Allowing neighborhood association officers and members who wish to understand the land use decision-making process, to attend Code training sessions.

The playing field will never be level until CDB members are trained that statements like the recent developer’s attorney’s that “only expert witness testimony can be considered” is false and that the oral statements by lay witnesses on the Section 3-914 can be the basis of a rejection of any particular application.

The practical impediments to a level playing field. In addition to the possible legal advantages aiding developers over neighborhood associations and residents, the residents are disadvantaged by other policies adopted in Clearwater in its practice of land use decision-making.

For example, developers and their team of specialist attorneys and experts have access to the city planning staff in private, in advance of any application, and with no participation in early stages by any neighborhood representatives or residents or sufficient advance notice for neighborhoods to mount a defense.

Developers can work on project designs for months or years in advance, lining up their attorneys and all their needed experts. Affected neighborhoods and affected citizen residents within 200 feet of the proposed development are given no less than 10 days notice before a CDB hearing on the developer's plan.

In addition, the city permits developers to change their plans after setting the CDB hearing date. The city staff's recommendation to the CDB to approve or deny the application is legally provided with only 5 days notice to the public. Yet is it fair the residents are supposed to secure an attorney, prepare their case, hire experts, prepare their own lay and expert testimony, and prepared cross-examination of the developers' experts – all within a few days of the hearing.

Even if, by some miracle, a neighborhood association could raise the funds to employ attorneys and expert witnesses, it has been established by neighborhood associations' experience in recent disputes that local attorneys and experts are afraid to represent neighborhood residents because their future business is with developers, not residents, and it's a terrible marketing strategy to represent residents against developers if your income flow depends on developers hiring you in the future.

In sum, both the structure and the way "the law" is presented to an untrained Community Development Board, staff, and others, and the way the city chooses to timeline applicant proposals all work together to disadvantage neighborhood associations and their residents. There are no local attorneys who agree to represent Clearwater residents against developer applicants. And that is even if the neighborhood residents could raise the funds to fully employ an equally trained and experienced land use specialist.

Together, the CNC Committee believes that, as is, these limitations act in concert to effectively prohibit a level playing field.

The CNC Committee's Review of Conflict Resolution Techniques

The Committee recognizes that there are many things good about our current land use development rules, and citizens' response. Another way of looking at the mayor's comments that only one or two disputes arise in the midst of almost 40 CDB hearings every year, is to recognize that 39 of 40 times, neither the neighborhood associations nor its residents mount a challenge to the recommendation of the city staff on the proposed land use change. It is obvious that resident citizens do pick their battles carefully and are not just against everything.

The CNC Committee believes that Clearwater's generally good system for most of the land use applications can be made better for each controversial case that is the but one of 40 annual applications that raise significant opposition.

The Committee began by looking at a number of different known conflict resolution methods and strategies to see which would, if any, be most helpful, beginning with the one suggested by the city's Charter Review Committee. Where the conflict reducing strategy did not fit in this context, the Committee did not recommend its use.

Ombudsman

The ombudsman concept was first discussed in the context of developer-neighborhood disputes at the most recent Clearwater Charter Review Committee. For the reasons explained below, the CNC Committee does not believe it is the right concept to level the playing field in Clearwater's current land use issues.

There is precedent for an ombudsman. That is not the problem. For example, the State of Florida has embraced the use of the ombudsman concept in Section 400.0067, Florida Statutes, in an unusual way by creating a State Long-Term Care Ombudsman Council with power to investigate abuses of elderly residents in

the state's nursing homes, and act as an appellate body to resolve complaints not resolved at local council levels.

The use of that term in this context is what national and international ombudsman organizations would say is inappropriate.

On a federal level, the Congress of the United States has an ombudsman system (their Constituent Services Offices) which is more akin to the normal use of the term: an official, usually appointed by the government, who investigates complaints (usually lodged by private citizens) against businesses, financial institutions, universities, government departments, or other public entities, and attempts to resolve the conflicts or concerns raised, either by mediation or by making recommendations. An ombudsman is not a litigating attorney with a neighborhood client, subject to the usual attorney-client relationship and rules.

Immediately, one can see a few obstacles:

1. The ombudsman concept is not appropriate where there is already an agency with quasi-judicial power to take testimony and render decisions, such as Clearwater's Community Development Board; an ombudsman works in scenarios where an investigation reveals abuses or discrepancies that another body – either legislative or administrative – is ultimately responsible for using its power to address or correct;
2. The CDB is the official Local Planning Agency required by Section 163.3174, Florida Statutes, to develop the city's Comprehensive Plan and land development regulations, as well as decide disputes as a quasi-judicial body, all in compliance with the powers and obligations given to the city by the Florida legislature; it may in fact be illegal for the city to appoint an ombudsman unless the state legislature changes the rules first; and

3. Assuming the retention of the existing system form for managing disputes through Level I, Level II and Level III land use appeals, with its formalized nature and quasi-judicial procedures involving the presentation and cross-examinations of lay and expert witnesses, the ombudsman concept does not provide the assistance neighborhood associations need to employ attorneys and hire expert witnesses when presenting their case to the CDB.

On the outside edge, the most that a city-appointed ombudsman could do is to bring attention to the powers that be that an agency – the city Planning and Development Department or the CDB itself is not following the rules. However, an ombudsman has no authority to bring lawsuits or oversee and directly correct an injustice. It can merely report.

There are typically other functions of an ombudsman that could be useful, such as investigating and exposing illegal behaviors, serving as a source of information about policies and procedures, and serving as an unbiased party to promote communication between parties and clarify issues that prevent parties from resolving their differences.

Unlike parties' lawyers, ombudsmen are impartial. According to standards and rules of national and international societies of ombudsmen, even though a particular ombudsman may have legal training or a law degree, they cannot in their role as ombudsman, provide legal advice and representation. An ombudsman cannot investigate a case after it is submitted to a court. That last prohibition would, if national and international rules are followed, prevent a Clearwater ombudsman from taking any action after Level I land use proceedings in Clearwater to assist a neighborhood association.

Because much time was spent on the concept by the mayor, the Clearwater Planning and Development Department, the Charter Review Committee, and the city council in receiving and reviewing the Charter Review Committee's report recommending the ombudsman concept, the CNC Committee wanted to make sure

that there was no value in moving forward with the ombudsman idea without a substantial and thorough review.

The committee reviewed hundreds of pages of documents from multiple national and international sources¹⁹ and it is confident in its determination that the ombudsman concept will not significantly address or resolve land use disputes in Clearwater.

The CNC Committee does not recommend the ombudsman strategy in this context.

¹⁹ A complete list of sources reviewed is included in the appendix.

Residents' Advocate

Since the CNC Committee determined that the ombudsman concept is not a tool to address the disparity in resources between developers and neighborhood associations and their citizen residents, discussion focused on other ways to get legal representation for neighborhood associations and residents.

Civil justice system inundated with unrepresented clients. There is no right to civil counsel in the United States. Even in cases with significant disparities between the litigants, unless the possibility of incarceration is involved, the requirement that the state or the federal government provide representation does not apply. It wasn't until the 1960s that persons charged with a crime had a right to defense counsel in court. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

There is no comparable right to civil counsel when an individual or a group needs to level the playing field. Currently more than 30 million people are self-represented litigants (SRLs) in America's civil courts annually.²⁰ This includes persons whose children and being taken from them in some jurisdictions, tenants being evicted without cause, improper mortgage foreclosures, improper debt collections procedures, and the most frequent, people involved in contested divorce proceedings where either one party, or both parties are not represented by counsel.

In Arizona, for example, the rate of family law cases in which at least one party was without counsel doubled in five years, from 24 percent in 1980 to 47 percent in 1985. By 1990, this rate had grown to 88 percent. By the mid-1990s, in Washington state the rate of family law cases in which at least one party was unrepresented had reached 77 percent, in Massachusetts it was 80 percent, and in Oregon it was 89 percent.

Another national report confirms that most contested divorce matters are heard with one party not represented and with increasing frequency, neither party having a divorce attorney.

²⁰ "Voices in the Civil Justice System: Learning from Self-Represented Litigants and Their Trusted Intermediaries," Florida Commission on Access to Civil Justice, March 2020, page 5, <https://www.flcourts.org/content/download/633407/file/voices-in-the-civil-justice-system-final.pdf>

While the lack of legal representation is clearly an enormous barrier for the public, it also creates a structural gap for the courts. Court operational systems, in accord with traditional adversarial jurisprudence, have been designed to manage a flow of cases in which the vast majority of litigants have had attorneys to represent them. . In today's civil litigation world where the majority of litigants are not represented, the operational components required to accomplish effective court management have changed.²¹

Studies in the mid-1990s determined that most citizens in the United States could not afford to hire an attorney for any personal legal matter, big or small.

What's the data of unrepresented individuals in Florida. The Florida Bar Foundation organized a count of self-represented litigants at multiple courthouses throughout Miami-Dade County on a single day, with the goal to capture a countywide snapshot on March 20, 2017, to determine the prevalence of self-represented litigants in different divisions of the courts (family, probate, juvenile, etc).

On that day, nearly forty volunteer attorneys observed 190 hearings involving 277 litigants in seven Miami-Dade courthouses. Matters included domestic violence, family law, dependency, foreclosure and others. The volunteer attorneys took shifts and recorded data such as which party, or parties, had an attorney to represent them, the type of hearing, the issue at hand, and which side, if any, "won" the hearing.

In all, 63 percent of litigants were self-represented. Almost a third of the cases involved two self-represented parties. In civil proceedings apart from family or domestic violence, including foreclosure and consumer matters, 37 percent of litigants were not represented by counsel. Thirty percent of cases involved a party with representation versus a self-represented party.

Data from family law proceedings (including, but not limited to, a single spouse seeking divorce, dependency matters, and general calendar calls in divorce proceedings), showed that 62 percent of individuals were not represented by counsel.

Domestic violence court had the highest number of self-represented litigants at more than 80 percent. During domestic violence proceedings (including, but not limited to, motions for temporary injunction and permanent injunctions), only 12 percent of litigants were represented by counsel. In 60 percent of proceedings, both parties were self-represented.

²¹ Final Report, Task Force on Self-Represented Litigants, Judicial Council of California, October 2014, page 2

Does it matter if parties to a dispute lack counsel? A study by the Colorado Center on Law and Policy looked at the data using 93,000 eviction filings:

The study found that from 2014-2016, renters who lacked legal representation were evicted 68 percent of the time from private housing and 43 percent of the time from public housing.

Meanwhile, those who were represented by counsel kept their private housing 94 percent of the time and public housing 80 percent of the time.

Interventions make a difference.²²

Limited attempts to provide counsel. This well-known problem has not been addressed in any significant way. When it is addressed in some limited jurisdictions, it is for life and health threatening issues like prevention of homelessness.

In 2017, New York City became the first city in the United States to enact legislation providing low-income tenants facing eviction with legal representation. In 2016, California put into force a 2009 state law establishing publicly funded counsel for poor litigants in cases about housing, child custody, conservatorship, and guardianship. In 2016, the Supreme Court of New Jersey held that parents have a right to counsel in adoption cases.²³

However, a thorough search by CNC Committee members could find no existing program anywhere in the United States that would address the lack of counsel, as well as funds for expert witnesses, in developer versus neighborhood resident conflicts. Further, existing programs to reduce the number of self-representing litigants address those individuals who are financially qualified but not receiving limited legal aid program services.

Middle class – the last to benefit. Middle income individuals comprising membership of neighborhood associations are too poor to afford counsel even as a group, but also too wealthy to qualify for the assistance of any experienced land

²² Aubrey Hasvold and Jack Regenbogen, "Facing Eviction Alone: A Study of Evictions, Denver, CO, 2014-2016," Colorado Coalition for the Homeless, September 11, 2017, http://cclponline.org/wp-content/uploads/2017/10/Facing-Eviction-Alone-9-11-17_revised.pdf, cited in J 2017 Justice Gap Report: Measuring the Civil Legal Needs of Low-income Americans, Legal Services Corporation, June 2017, <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

²³ *Voices*, supra, at page 57,

use attorney via legal aid or legal services program. They would be the last to be served even if there were such a program.

Private funding availability? With no current public or private programs to assist neighborhood associations, the CNC Committee will look in the future to private resources from foundations and other philanthropic resources who may be interested in establishing a pilot program to fund a county, region, or state-wide civil legal assistance program with attorneys specializing in land use hearings in Florida jurisdictions.

Ironically, provision of legal counsel to neighborhood associations would very likely have the side-effect of making CDB hearings less painful. It is painfully difficult to watch non-lawyer individuals with “party status” attempt to cross-examine city or developer experts, or to watch them raise as points in opposition to a particular development that the Code requires a public parking garage within 1000 feet of the project when it does not in a particular application.

Greater understanding of the Code, and opportunities for face-to-face informal meetings with developers, city staff, and counsel could substantially reduce time spent by CDB board members dealing with non-issues, and increase the time spent on legitimate objections to be address in the application.

The CNC Committee does not see an opportunity for legal representation for neighborhood residents, it does not recommend the resident advocate concept in this context.

Asynchronous Hearings

One of the problems expressed by neighborhood associations is that their members are often working full time jobs, and cannot attend CDB hearings at one o'clock in the afternoon on a specific work date.

The CNC Committee discussed a resolution of this problem for non-routine, controversial cases: if a matter is disputed and it is expected that significant numbers of individuals receiving notices of a particular CDB meeting will be seeking to participate, the CDB hearing could be re-scheduled to an evening meeting in the same way as City Council meetings are always scheduled in the evening. This change could be implemented by the existing Community Development Board on an ad hoc, case by case basis.

In the alternative, it was thought that perhaps the asynchronous hearing concept could help address this issue. "Asynchronous" means, in its simplest terms, "not at the same time." As applied to judicial bodies, it means to separate out phases of a judicial or quasi-judicial proceeding, and use technology to permit parties to provide input at the various stages. The impetus recently comes from courts in the U.S. and around the world which had to shut down due to COVID-19. Two challenges emerged – keeping the decision-making business moving forward when necessary parties cannot be in the same place at the same time, and secondly, preparing for the backlog of unresolved matters that will soon strain the system as COVID-19 recedes.

Traditionally hearings are the result of a synchronous hearing timetable, where the hearing is conducted in a single, continuous and consecutive seating, typically in person, with attorneys, witnesses and parties in the same place at the same time. With video hearings becoming the new normal during the last two COVID years, the possibility of asynchronous proceedings caused a re-assessment of why a trial or quasi-judicial proceeding has to occur at the same date, place, and time.

Richard Susskind’s article describes the third challenge:

The third challenge, the long-standing one, flows from an alarming truth—that even in justice systems that we regard as the most advanced, dispute resolution in public courts generally takes too long, costs too much, and the process is unintelligible to all but lawyers.

In the most general terms, we call this the “access to justice” problem. We can choose to blame the widespread reduction in public legal funding, we can argue that the current judicial and court machinery is disproportionate in many cases, we can claim that sometimes lawyers are the problem because they can inflame disputes, we can regret how little data is available to help us even to understand the dilemma, we can condemn the system for being antiquated and arcane, and more.

But whatever explanation is preferred, the unvarnished reality is that most people on our planet cannot afford to enforce their legal entitlements in public courts. Globally, the statistics are stark. According to the Organization for Economic Co-operation and Development, only 46 percent of human beings live under the protection of the law.²⁴

Is there some indication that the concept of asynchronous hearings would address the problem of working parties attending day-time meetings?

As applied to a CDB proceeding, the board would devise a timetable that gives each party a reasonable opportunity of explaining its case and responding to its opponent’s, by dividing the hearing into segments - opening statements, witness evidence, expert evidence, questions by members of the board, and closing statements.

Submissions are exchanged over video-recordings in an agreed sequence, with appropriate time windows between each submission to allow the CDB and opposing counsel and parties to review the video-recording submission. Perhaps the examination of witnesses, answering questions from the board and closing submissions may be dealt with in a subsequent synchronous hearing session.

Even in justice systems that we regard as the most advanced, dispute resolution in public courts generally takes too long, costs too much, and the process is unintelligible to all but lawyers.

²⁴ “The Future of Courts,” by Richard Susskind, Harvard Law School’s Center on the Legal Profession, The Practice, Volume 6, Issue 5, July/August 2020, page 2 accessed online at <https://thepractice.law.harvard.edu/article/the-future-of-courts>.

After further review, the CNC Committee decided that such a massive change to traditional quasi-judicial procedures, the “cure.” would be too large to address the smaller “problem” of working residents’ difficulty in appearing during the daytime at a CDB hearing.

Even though there are numerous examples around the world where asynchronous hearings are proving to be extremely effective for all parties involved on many levels; the CDB hearing would not one of them because even in large disputes, the proceeding is relative short (hours) rather than weeks or months for other subject matters.

Neighborhood associations and their residents will just have to be inconvenienced on those rare times that a particular neighborhood is affected by a proposed land use change.

The CNC Committee does not recommend the asynchronous hearings in this context.

Mediation and Arbitration

There are many ways to settle disputes. Many people's first reaction when harmed or threatened with harm is "I'll take you to court and sue you!" Ask anyone who has been involved in civil litigation (contract disputes, divorce, probate, auto accidents, and other non-criminal matters), and they will most likely agree that the Chinese Curse should be avoided if at all possible: "May you be involved in a lawsuit in which you are right!"

Taking a person to court is the least satisfying, most frustrating, time-consuming, lengthy, inefficient and the expensive procedure for settling disputes ever devised to replace dueling at dawn which, on some levels, still beats filing a complaint in court (at least it's quick and only costs the price of a bullet).

Civil litigation always begins with a consideration of financial resources and the disparity between those that have and those that don't have access to them. How much justice can you afford.

Criminal justice reform initiated mandatory public defender representation when there is the possible loss of liberty involved due to the lack of a level playing field when a poor defendant faces the massive resources of the police and prosecutor's offices. Justice Black wrote of the government "machinery used to try defendants accused of crime" in *Gideon v. Wainwright*, 372 U.S. 335 (1963), a landmark case on the right to counsel for indigent defendants in criminal cases where the possibility of incarceration is involved. Justice Black emphasized that:

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

The courts have struggled for years on how to similarly "level the playing field" in civil litigation matters. AS noted earlier, representation makes a difference in the final resolution of a case.

"Civil right to counsel", sometimes called "Civil Gideon", refers to the idea that people who are unable to afford lawyers in legal matters involving basic human needs - such as shelter, sustenance, safety, health, and child custody - should have access to a lawyer at no charge.

At present, the Supreme Court recognizes no express right to counsel in civil cases. Whether the Supreme Court will eventually hold that an indigent civil litigant is, under some circumstances, entitled as a matter of right to have counsel appointed by the court is at this point conjectural.

However, the concept of right to counsel has been extended to some civil matters. For example, as materials from the Pinellas Community Law Program note, a tenant's right to counsel has been extended in eviction cases. Some jurisdictions across the country - New York City, San Francisco, and Cleveland - have enacted legislation to provide indigent tenants with attorneys in these cases. The right to counsel in civil matters is currently extended to involuntary guardianship proceedings, civil commitment to mental hospitals, and termination of a parent's rights.

Note, however, that all the discussion about right to counsel in civil matters is limited to indigents - those who cannot afford an attorney using federal poverty level guidelines. The CNC Committee could find no reference to using "community disadvantage" or disparity in resources between billionaire developers adversely affecting the property values of middle income families and the neighborhood residents individually affected.

The CNC Committee's review of alternatives. There is no right to counsel at government expense for neighbors affected by developer's plans, whether that be in quasi-judicial proceedings, like the Community Development Board, or in trial and appellate proceedings.

Members of the committee have expressed the fear if not the reality that in disputes between residents and developers, the system favors the developer in many ways, most importantly in the disparate financial ability of the residents to organize and present their point of view, and have it heard by a truly neutral, trained body.

On May 11th the CNC Committee met to consider Florida standard mediation as a tool to help residents in the land use process, and reviewed Florida Statutes, Chapter 44, and other materials on mediation listed in the Appendices.

Introduction to Mediation Concept. People often confuse mediation with arbitration. The two are very different. Mediation is defined in Florida law as:

a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Florida Statutes, section 44.1011(2).

A mediator is not an expert in any legal subject matter including zoning and other land use processes, but is trained as a facilitator with no skin in the game other than helping both sides explore the possibility of reaching an agreement that both sides can live with. A Florida mediator is an extensively trained facilitator of the conversations, licensed by the Supreme Court after attending mediation training and both observing other trained mediators and being observed in mediations by other trainers. The goal in a successful mediation is to produce a written agreement, enforceable by law.

Florida has taken the national lead in using mediation to settle disputes:

Mediation, firmly rooted as a vital component of Florida's court system, is the present, not the wave of the future. The Florida Legislature and judiciary have created "one of the most comprehensive court-connected mediation programs in the country." Over 18,000 people have completed a Supreme Court of Florida certified mediation training program, and over 5,000 people are certified by the Supreme Court of Florida as county, family, circuit, or dependency mediators. All

20 judicial circuits routinely refer cases to mediation. Additional cases go to mediation by agreement of the parties or as a requirement prior to filing suit.

Significant changes in mediation law and ethical rules have taken place over the last four years. In 2004, the Mediation Confidentiality and Privilege Act (act) came into effect, and in 2006, the Florida Rules for Certified and Court-appointed Mediators (Mediator Rules) were amended to be consistent with the act. Also in 2006, the Rules Regulating The Florida Bar were amended to include third-party neutrals in the rule regarding conflict of interest and to add a rule specific to third-party neutrals. Additionally, the Mediator Ethics Advisory Committee (MEAC), a standing committee of the Supreme Court of Florida, continues to respond to written ethical questions posed by mediators subject to the Florida Rules for Certified and Court-appointed Mediators. MEAC has issued over 100 advisory opinions, which, while not law, serve as guidance on which mediators may rely in good faith when grappling with ethical dilemmas.²⁵

Arbitration, on the other hand, can be said to be an alternative to a judicial or quasi-judicial body in which the arbitrator or arbitration panel acts like a private court. The Florida Statutes define arbitration as:

Arbitration” means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding. F.S. 44.1011(1).

Arbitration would not be appropriate in the Community Development Board scenario for substantial legal reasons: the Community Development Code is enacted to comply with Florida state law which binds municipalities like our city. The city is required to have a local land use planning agency, named in Clearwater as the Community Development Board, which must be a quasi-judicial body with the ability to hear applicants’ claims and render decisions. There is no provision in state law to allow the city to transfer power to an arbitrator or arbitration panel.

Mediation, however, is a voluntary process and there is no requirement that either party agree to anything. It is solely a method to reach agreement on some if not all of the issues. Thus the power imbalance could continue even if the developer agreed to enter into mediation with residents. The developer could just wait out the mediation process agreeing in the end to the least important of the residents’ concerns, or not entering into any agreement at all. Under mediation

²⁵ “*Mediation Myths And Urban Legends*,” Florida Bar Journal, Vol. 82, No. 5 May 2008 Pg 52, Fran L. Tetunic for the Public Interest Law Section.

confidentiality rules, nothing said or done, or left unsaid, can be used in any way to prejudice one side or the other in any subsequent legal process, such as proceedings before the CDB.

Typical Mediation. The mediator is jointly selected by agreement of the parties. “The mediator’s role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.” Florida Statutes, Section 44.403(4).

The legislative goal stated in Section 44.108(1) on funding of alternative conflict resolution remedies is that mediation should be accessible to all parties regardless of financial status. In the CDB context, however, it may be appropriate for the city to pay the mediator’s fee. Fees are generally hourly at the rate for the selected mediator which could be \$400 to \$600 per hour.

Mediation sessions last typically from four to eight hours, or longer, and take place in a neutral location, usually the mediator’s offices. Each side must have persons in the mediation who have the authority to enter into a binding agreement at the end of the process, should all or some of the issues end in agreement.²⁶

Mediators initially meet with both sides together to listen to (and have the other side hear) their initial description of what brought them to mediation, and present the issues and their position on each of the issues from their point of view.

After the initial joint session, mediators often put the two sides in separate rooms with the mediator meeting with one and then the other, going back and forth between the rooms, to explore in more detail the issues to be resolved and any possible middle ground or tradeoffs.

²⁶ This may be a problem on the residents’ side as we explored and understood in the context of Community Benefits Agreements as well. Who has the authority to bind the residents, especially in the context of an unorganized neighborhood as opposed to a homeowners’ association? The end agreement in mediation, like CBAs, should be an enforceable agreement with rights and obligations on both sides, and enforceable in court. The CNC Committee’s the Neighborhood Association Bill of Rights proposal resolves this issue.

The mediation begins when the parties agree to mediate or as required by agency rule, agency order and ends when:

- (a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law or rule, approved by the quasi-judicial body;
- (b) The mediator declares an impasse to the parties;
- (c) The mediation is terminated by court order, court rule, or applicable law; or
- (d) The mediation is terminated by:
 - 1. Agreement of the parties; or
 - 2. One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

Florida Statutes, Section 44.404(2).

At the conclusion of mediation, parties need to be mindful that everything and anything said during mediation is confidential and may not be disclosed. The mediator cannot be subpoenaed to reveal what one side said or did during mediation, or to produce the mediator's notes taken during mediation. Offers made or withdrawn during mediation cannot be revealed or used in any subsequent proceedings per F.S. §44.405, and violations of confidentiality are the subject of civil suit for compensatory damages, attorney's fees and court costs, per F.S. §44.406.

Application of Mediation in the Edgewater Drive matter. One of the several tragedies of the Edgewater Drive matter was that the residents employed an expensive expert who never got to testify on direct examination at the CDB hearing because the residents, who were unrepresented by counsel, did not follow the strict rules of evidence in presenting their position. One of the positives of mediation, had it occurred prior to the CDB hearing, would have been the ability to have their viewpoint heard and to present the expert's findings without

technical rules of court that excluded much of the neighborhood's paid expert's testimony at the hearing.

To the extent that the developer would want to see their project blossom in a happy neighborhood, the developer would have an interest in resolving as many complaints about the project as possible.

It should be clear, however, that the power dynamic is not changed in voluntary mediation. For zero/sum arguments like the minimum height to make a developer's project economically feasible against an argument of "neighborhood compatibility" requiring a non-economical two story height, a voluntary agreement of a major point may not be possible.

If compromise cannot be achieved in mediation of an essential criteria, the parties can agree to disagree and move on, take whatever partial agreements were achieved on other issues, and present their best arguments before the CDB on whether the project meets the criteria of Section 3-914 of the Code.

In another case, however, where a proponent perceives a need or wants to have community support, mediation would be a very useful remedy if other concerns could be resolved, like who pays the professional certified mediator, and who speaks to legally bind the opposition to the project.

There are other issues, such as whether city planning staff should be a party to the mediation process between developer and residents. Should mediation be required in the Code and under what circumstances, such as being triggered if X number of residents file for party status? The advantage to both developers and residents is lost if the residents do not coalesce around a particular set of named representatives of the community and the CDB quasi-judicial process has to proceed in full anyway.

Recognizing those impediments and others, the CNC Committee does not see traditional Chapter 44 mediation as useful as conflict resolution techniques in Clearwater land use controversies. However, the CNC Committee is proposing a tripartite "Informal Meeting" early on in the process of applications that would

look a lot like voluntary mediation but without the presence and skills of a state certified professional mediator, and the formality and costs of such.

The CNC Committee does not recommend the standard mediation in this context.

Community Benefits Agreements

A voluminous amount of material resulted from online searches and research on the concept of a “Community Benefits Agreement (CBA).”

Definition of CBAs. In a law journal article²⁷ titled “Community Benefits Agreements: Definitions, Values, and Legal Enforceability” by Julian Gross, the director of the Community Benefits Law Center (CBLC), the legal program of the Partnership for Working Families. He has represented coalitions of community-based organizations in negotiation of numerous CBAs. The author recognizes that there are many alternative definitions of CBAs, but suggests that:

A CBA is a legally binding contract (or set of related contracts), setting forth a range of community benefits regarding a development project, and resulting from substantial community involvement.

Other Partnership for Working Families’ materials define a CBA as follows:

A CBA is a project-specific, negotiated agreement between a developer and a community coalition that outlines the project’s contributions to the community and ensures community support for the project. Covering a broad range of issues, CBAs are legally binding and are commonly incorporated into the City’s developer agreements.

A CBA is the result of a negotiation process between the developer and organized representatives of affected communities, in which the developer agrees to shape the development in a certain way or to provide specified community benefits. In exchange, the community groups promise to support the proposed project before government bodies that provide the necessary permits and subsidies. The CBA is both a process to work towards these mutually beneficial objectives, and a mechanism to enforce both sides’ promises.²⁸

Use of CBAs around the country. Typically, CBAs are used in developments involving city-owned lands and resources. Sometimes they are not based on true CBA principles. For example, the construction of a new stadium for the New York Yankees, or massive expansion of Columbia University – both projects which were extremely controversial when first proposed.

²⁷ Journal of Affordable Housing, Vol. 17:1-2 Fall 2007/Winter 2008.

²⁸ *Community Benefits Agreements: Making Development Projects Accountable*, a 127-page handbook on CBAs with specific contract language, published by Good Jobs First, 2004, page 14

There have been CBA contracts in multiple cities and counties across the nation, including Los Angeles LAX expansion (described in a Wall Street Journal article), New Haven, San Jose, San Diego, Miami, Milwaukee, Berkeley and Denver.

True CBAs involve legally enforceable agreements (contracts) signed jointly by neighborhood associations, the city, and the developers as, for example, a May 2001 CBA for the Los Angeles Staples Center sports arena project, which was:

“a broad coalition of labor and community-based organizations—the Figueroa Corridor Coalition for Economic Justice—negotiated a comprehensive CBA for the Los Angeles Sports and Entertainment District development, a large multipurpose project that will include a hotel, a 7,000-seat theater, a convention center expansion, a housing complex, and plazas for entertainment, restaurant, and retail businesses. Public subsidies for the project [were anticipated to] run as high as \$150 million.”²⁹

Key Elements. A description of Community Benefits Agreement by The Partnership for Working Families notes that the key elements of the community benefits approach is based on a few simple principles:

Lift all boats. When local governments make major public investments in private development projects, there should be clear and specific mechanisms for distributing the benefits of that investment throughout the community.

Address real needs through public participation. Meaningful public participation in development decisions ensures that new projects meet self-identified community needs. Community members should have a say in decisions that affect them, and development should enhance their quality of life.

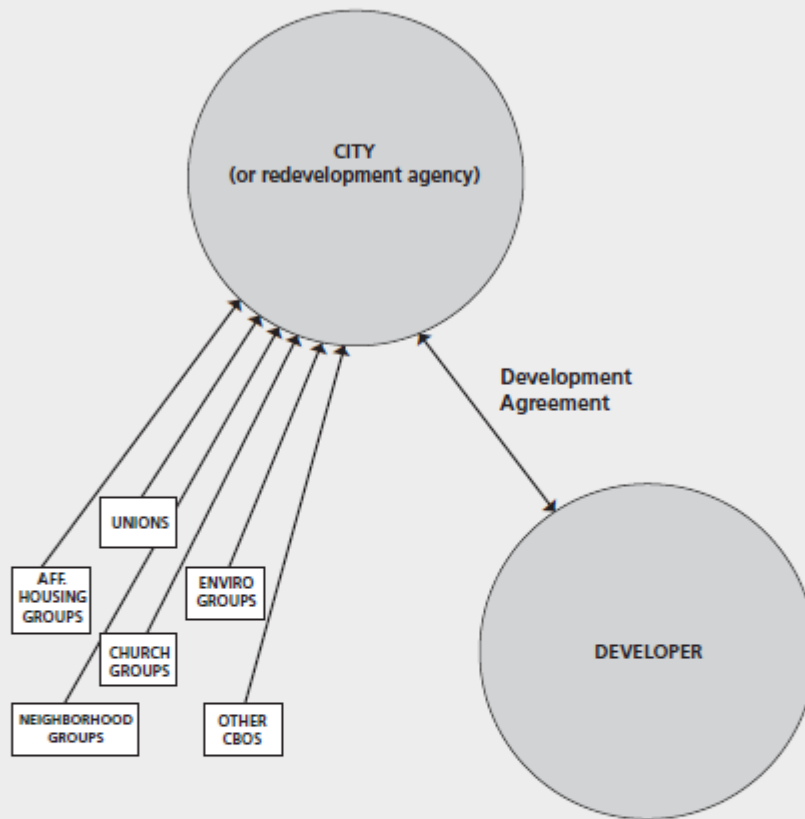
Establish clear expectations. The expected benefits from development projects should be clearly articulated and incorporated into all development documents. Writing down developers’ and community members’ responsibilities creates more public trust, allows for honest assessment of projects, and establishes legal standing to enforce developers’ promises.

Create real accountability and ensure meaningful implementation. Local officials and developers should be held accountable for making sure development expectations are met. Under the community benefits model, monitoring and reporting on outcomes ensures that developers meet stated goals. Local governments and community leaders are empowered to impose consequences for non-compliance.

A graphic description of development with and without a CBA is as follows:

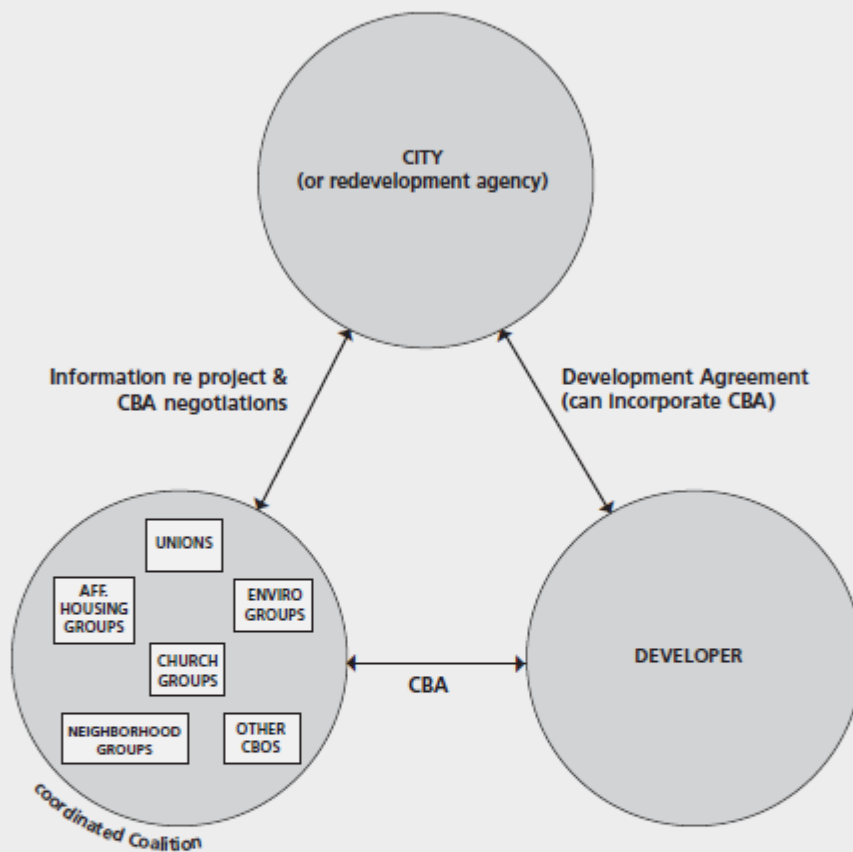
²⁹ Ibid, page 9..

WITHOUT A CBA



- Little or no direct communication b/w community groups and developer
- All developer commitments go into development agreement – city & developer draft language
- No coordination & shared power among community groups
- Community groups cannot enforce developer commitments

WITH A CBA



- Developer commitments re community benefits go into CBA
- Coalition & developer draft language together
- Community groups can enforce developer commitments (City and agency can too, if CBA is included in the development agreement.)
- Community groups share information, have strength in numbers, and coordinate their advocacy

Clearwater's most likely upcoming local private/public project that could involve a Community Benefits Agreement approach, following the leads of Tampa and St Petersburg creating CBAs, would be application of CBA strategies to the development of the three parcels of city-owned land on the bluffs involved in the city's Imagine Clearwater project.

The current Tampa CBA for Rome Yard. After our committee's initial review of CBAs in April 2021, a person posting on the Clearwater city counsel's meeting feed in December touted CBAs as a solution to Clearwater's issues, as they are doing in Tampa. One member of our committee, Kelly Kelly, suggested that we contact the individual to just make sure that we are not missing something.

On December 21st, the committee interviewed the person who posted via Zoom. Michael Randolph, the CEO of the Center for Non-Profit and Community Development, Inc., the citizen participation component of Tampa's use of a Community Benefits Agreement in its Rome Yard Mixed-Use Development Project in West Tampa, a major public-private development project.

The City of Tampa engaged in an extensive process to identify a developer to lead transformative and inclusive development in the West Tampa community. Tampa Mayor Jane Castor and her administration announced that Related Urban Development Group, in partnership with the Tampa Housing Authority, would develop the Rome Yard multi-use project.

The project is a critical economic driver and will add more than 600 mixed-income housing units in West Tampa to align with the City's strategic housing affordability goals. It will also drive opportunities for place-making, retail services and community investment that complements the surrounding community, while accounting for transportation and sustainability goals.

A committee comprised of City staff, housing and building experts, and the West Tampa Citizen Advisory Committee (CAC) chair selected the Related Group after interviewing the top three Request for Proposal (RFP) candidates on March 12, 2020. The Miami-based real estate development company collaborated

with the Tampa Housing Authority and a wide range of local diverse talent on the RFP.

We learned that the residents felt that The Related team's commitment to exceeding the affordable housing and workforce diversity goals established for the project emerged as a critical advantage for the developer. Their proposal included a range of income-qualifying levels in addition to market rate and 'for-sale' options as well. Related also earmarked a minimum of 40% of the project budget estimated at \$75 million for minority and woman-owned local businesses.

The Rome Yard development project represented an opportunity to bring additional residential development to West Tampa, while providing workforce and apprenticeship opportunities. The plan also included dozens of community-centric features including a Cultural Center & Art Pavilion highlighting the rich history of West Tampa and a Workforce Training Center focused on providing community services such as free resume building, budget management and interview training classes.

The project site is located on 18-acres of City-owned property immediately west of the Hillsborough River, east of Rome Avenue, south of Columbus Drive and north of Spruce Street in the West Tampa Community Redevelopment Area (CRA).

St Petersburg CBA ordinance. At the same CNC committee meeting we reviewed and discussed updated reports on the St Peterburg Council's formal adoption of a Community Benefits Agreement Ordinance in July 2021 which requires developers who get city money to provide community benefits through a Community Benefits Agreement.

Depending on the amount of funding received, the requirements can include building new affordable or workforce housing or paying into a fund for those projects, paying into a fund to improve local schools and renovate historic buildings, and providing job training. Developers would also have to hold public meetings to get input on their projects.

The ordinance applies to development and redevelopment projects that cost \$2 million or more and receive city funds equal to 20 percent or more of their cost, or \$10 million or more of city funds regardless of cost. Projects that get more city money would come with higher requirements for developers.

A CBA is not applicable to our recent disputes: private development on private property using only private funds. After the hour-long interview with Michael Randolph on December 21st, the CNC Committee re-affirmed its earlier analysis that while a CBA is a useful strategy for public-private partnership involving substantial amounts of public lands and public resources, our task was to identify conflict resolution methods when private developers are using private funds that result in community disputes going before the Community Development Board

The Committee determined that a Community Benefits Agreement is not useful to level the playing field in the Committee's mission of finding conflict resolution measures for private developer vs. neighbor controversies.

The CNC Committee does not recommend the CBAs in this context.

Committee's Recommendations for Reducing Conflict

Amend the current 1999 Community Development Code

The CNC Committee recommends changes in the existing 1999 Community Development Code, while also recommending that a task force be created to review and update the Community Land Use Plan and then modifications to the Community Development Code to effectuate the plan. The city council has the authority to amend the plan and the Code, after receiving a recommendation from the CDB itself.

In the near term, the CNC Committee recommends modifying the current Code to appoint 8 individuals to the Community Development Board, balance the appointments between land use industry professionals and non-professionals, adopt the CNC-proposed Clearwater Neighborhood Association Bill of Rights, and re-draft the *Citizen's Guide to Community Development Hearings*, and immediately begin training for city staff and CDB members. Although updating and modifying the city's Comprehensive Plan and the Community Development Code to address 21st century changes in addition to a new Comprehensive Plan and Code is a longer term project, city council should begin the process now.

These proposals are discussed more in depth below.

Keep the CDB membership at 8 individuals appointed by city council

The current Code's Section 5-202 on the composition of the Community Development Board should be modified as follows:

Section 5-202. - Membership; terms; vacancies; removal.

A. The community development board shall be composed of ~~seven regular~~ eight members ~~and one alternate~~, who are residents of the city, to be appointed by the city commission.

B. In making appointments to the community development board, the city commission shall seek a membership with diverse economic, social and professional representation and shall include four members qualified and experienced in the fields of architecture, planning, landscape architecture,

engineering, construction, environmental impact, planning and land use law, and real estate, and four members who are not land use professionals.

[~~strikethroughs~~ indicated deletion of the word; underlines indicate additions to the Code].

Change the composition of the eight-member CDB to 4 x 4

The CNC Committee recommends that the number of members of the CDB be the same, at eight individuals, all of whom must rule solely on the basis of the rule of law. But to reduce the perception of a stacked deck, there should be a balance of individuals from different industries and backgrounds with four qualified specifically in the land use professional categories .

The proposed change retains the same number (8) but changes the qualifications to a 4 x 4 composition: four land use professionals and four non-land use professionals who have no possible current or future conflicts of interest with developers, attorneys, or experts appearing before them.

What is to be achieved by an even number of CDB members. In major cases the city has a special perception problem: the deck is apparently stacked with fellow land use professionals who won't support a neighborhood over a fellow developer. The perception is further strengthened by the fact that multiple neighborhoods have been unable to find local land use attorneys or experts willing to be involved on the neighbors' side for fear of losing future business from developers.

The City Council has the ability to change the perception by changing the composition of the board, and by appointing an equal number of land use professionals and persons not in that industry. The non-land use appointees can be professionals in other occupations, business owners, and others who have not even a remotely-possible conflict of interest with developers and others on the CDB or persons with cases before the board.

Action to balance the CDB adheres to the principles of the Code which talk about balancing development with protecting neighborhood values.

But why an even number? Haven't we been taught in grade school that an odd number is the only way to go? Yes, we were, but when we went to college we learned that achieving harmony in our community of neighbors is as important as "winning." And harmony is achieved when there's some votes by both sides.

With an 8 member, 4 x 4 Community Development Board, we support the concept of compromise, discussion of issues before reaching a decision, using the art of persuasion, and reaching a consensus agreement, but if not, giving every applicant who "wins" a majority agreement that is supported by both land use professionals and non-industry CDB members as well. The four professionals need to convince at least only one of the non-land use professionals to vote with them.

For the vast majority of CDB decisions, it is clear that achieving a bilateral favorable decision will not be a problem. In an even numbered board of eight, a five member majority vote is required to approve land use change which ensures some professional and some non-professional votes to approve a project – thus bilateral support.

Is it unheard of to have an even-number membered body as important as the CDB? No, not exactly. Common sense might suggest than an odd number is better because it's harder for the decision-making body to tie.

The U.S. Supreme Court has functioned effectively with an even number of Justices, even within the past few years.

Historically, the Founding Fathers created an even-number Supreme Court. The Constitution does not specify how many justices should serve on the Supreme Court. It is up to Congress.

The first Congress created a six-person court. Over the years, Congress changed the number up, then down, then up again, including 10 justices during

the Civil War. When Justice Scalia unexpectedly died, the Supreme Court conducted business effectively for nearly the whole term with eight members.

In 2020, a recent review by the conservative far-right Heritage Society recommended an 8-person U.S. Supreme Court be made permanent. They looked at the decisions of the Supreme Court when the Senate refused to move on Merrick Garland's appointment to the Court, and during the 2019 term:

Contrary to popular belief, unanimous (or nearly unanimous) decisions are far more common than 5-4 decisions. Looking at the Supreme Court's more [2019] term, only 23 percent of its cases were 5-4, compared with 66 percent that were either 9-0, 8-1 or 7-2. This is similar to past court terms, as the percentage of 5-4 decisions since 2005 is 21 percent.³⁰

The Chief Justice, John Roberts, was asked how the court functioned when it had for a considerable amount of time, only eight justices. He remarked,

"I try to achieve as much consensus as I can," Chief Justice Roberts said at a judicial conference in White Sulphur Springs, W.Va. "We kind of have to have a commitment as a group. I think we spend a fair amount of time – maybe a little more than others in the past – talking about things, talking them out. It sometimes brings you a bit closer together."³¹

Alternatively, keep the CDB at 7 + 1, but make it 4-3-1

If the concept of an even number is too hard to grasp, the CNC Committee would recommend as an alternative, keeping the current 7 members + 1 alternate, but designate the Chair to be a non-land use professional along with three additional non-land use industry members, with three land use professionals as regular members, and a fourth land use professional as the alternate to serve in the absence of one of the other land use professionals.

But how will the CDB conduct business without a professional panel? One needs to remember that the City Council handles all Level III appeals.

On the current City Council are four non-land use professionals of the five seats – some 80% of the City Council. Voters have never required that the

³⁰ <https://www.politico.com/news/magazine/2020/10/06/supreme-courteight-justices-425295>

³¹ "Rulings and Remarks Tell Divided Story of an 8-Member Supreme Court", New York Times, May 30, 2016.

majority of the council be land use professionals, yet there is no question that they have the responsibility and conduct hearings and render decisions even though they are composed of persons who are not “members qualified and experienced in the fields of architecture, planning, landscape architecture, engineering, constructions, planning and land use law, and real estate.”³²

The same expert resources available to the CDB members are available to City Council. Clearwater employs experts in their Planning and Development Department who advise the council in Level III hearings. The same is true in Level II hearings before the CDB. Legal resources are as available to the CDB as they are to the council – an attorney represents and advises the CDB and another attorney, an assistant city attorney is present at all Level II CDB hearings. Council has the participation of the City Attorney at Level III hearings. Land use applicants may have their own attorneys and experts who can answer questions seeking clarification posed by the CDB members, just as City Council members do. There is no lack of experts available to the non-land use members whether it is on the City Council, or it is to non-professionals serving on the CDB.

Adopt the “Clearwater Neighborhood Association Bill of Rights”

The CNC Committee believes that much conflict resolution can be achieved by dialogue, exchange of ideas, explanation, and education on the specific Code provisions controlling a particular land use application. As noted above, there is no appropriate opportunity to use a Florida Chapter 44 mediation with an independent mediator, certified by the Florida Supreme Court, and paid jointly by the parties – the city, the affected neighborhood association and the developer.

However, thanks to CNC Committee member Marita Lynch, the concept of the Neighborhood Association Bill of Rights was brought to the committee’s attention. The CNC Committee looked at the Hillsborough Neighborhood Bill of Rights and saw that their limited approach has already been adopted in Clearwater. Specifically, Hillsborough allows registration of neighborhood

³² Clearwater Community Development Code, Section 5-202(b).

associations and then requires notice of coming land use hearings be given to affected neighborhoods.

That already happens in Clearwater. The city's Planning and Development Department maintains a list of registered Home Owner Associations (HOAs), condominium associations, and geographic neighborhood associations such as the Sand Key, Island Estates, and Clearwater Beach Associations. However, the Hillsborough County Bill of Rights³³ gives a much earlier notice of applications, and a wider broadcast of persons to be notified – those within one mile of the project instead of Clearwater's 200 feet.

Our current Code provides notice to registered neighborhood associations, and to the city-wide association, the CNC, in Section 4-206(C), as follows:

2. All notices of public hearings shall be provided:

a. For Level Two approvals:

1. By sending a copy of the notice by mail to each owner of record of any land within a 200-foot radius of the perimeter boundaries of the subject property. Notice shall also be mailed to any affected registered local neighborhood association and to any citywide neighborhood association. Notice shall be provided no less than ten days prior to the review of the application before the community development board.

2. By posting a sign at least three square feet in area and not exceeding six feet in height facing the street(s) on the parcel proposed for development. The sign shall include the case number, property address, hearing dates and a contact phone number.

b. For Level Three approvals:

1. By publication of a copy of the notice in one or more newspapers with general circulation in the City of Clearwater.

2. By sending a copy of the notice by mail to each owner of record of any land within a 200-foot radius of the perimeter boundaries of the subject property. Notice shall also be mailed to any affected registered local neighborhood association and to any citywide neighborhood association. Notice shall be provided no less than ten days prior to the review of the application before the city council. If more than 30 owners of property are involved, unless otherwise

³³ Hillsborough County Neighborhood Bill of Rights, found in Section 10.03.02.F. of the county's Land Development Code. Section 13.0 et seq. contains the details of registering as a neighborhood organization or area wide civic association.

directed by the city council, in-lieu of mailing such notice, the clerk may publish the notice at least twice in a newspaper of general circulation in the City of Clearwater.

3. By posting a sign at least three square feet in area and not exceeding six feet in height facing the street(s) on the parcel proposed for development. However, if a single application includes more than 25 contiguous parcels and/or is greater than ten acres, then no sign shall be required to be posted.

4. By certified mail to the property owner for the voluntary annexation of a noncontiguous property in an enclave as defined in F.S. § 171.031(13)(a), within the city's service area. The certified mailing shall be sent prior to each reading of the ordinance.

Notice to the CNC and to targeted neighborhood associations automatically results in the granting of “party status” to them in CDB hearings. Party status allows a person or entity, pursuant to 4-206.(D)(3)(b) to:

- i. Personally testify.
- ii. Present evidence by documentary submittal.
- iii. Present witnesses.
- iv. Conduct cross examination of any witness.
- v. Present argument.
- vi. Appeal the decision.

Party status shall be granted by the community development board or the hearing officer, as the case may be, if the person requesting such status demonstrates that he is a substantially affected person. Any other interested person (not a party) shall be entitled to participate in the hearing, subject to the control by the body conducting the hearing and may be requested to respond to questions from the body conducting the hearing, but need not be subject to cross-examination or qualified as an expert witness.

Many, many suggestions by CNC Committee members for ways to level the playing field involved more advance notice to affected neighborhoods to prepare and understand the details of a developer’s proposal than the ten days before a CDB hearing.

Transparency is a basic building block of good government. Accessibility to information reduces paranoia. Dialogue reduces misunderstandings. Paranoia often causes one party to put words into another party's mouth – but uninformed beliefs about what the other side thinks or wants is often cured by applying the antiseptic of direct dialog.

The St Johns County Board of County Commissioners identified issues to be addressed based on past experience that sound similar to problems in Clearwater.

The St. Johns County Government website lays out the history of the adoption of their ordinance:

The Neighborhood Bill of Rights is an ordinance which gives neighborhood or homeowner associations increased notification, the ability to acquire more information, and the right to increase participation in matters of concern to their communities.

The idea for this Ordinance originated in a meeting of the St. Johns County Civic Association Roundtable in 2005 where Suzanne Jenkins, a Commissioner from Duval County presented a program on Duval's Neighborhood Bill of Rights. For the next two years the idea gained momentum as it was presented to large numbers of homeowner associations and civic groups around the County.

At the end of 2006 the Board of county Commissioners had a draft ordinance prepared and allowed those concerned citizens to review and modify it before its presentation. The Neighborhood bill of Rights was adopted in January 2007 and implemented on April 2, 2007.³⁴

The St. Johns County Ordinance laid out the goals of the Neighborhood Association Bill of Rights in the "whereas" clauses introducing it. The ordinance is the basis for which the CNC Committee re-drafted in the proposed Clearwater Neighborhood Association Bill of Rights, after making changes appropriate to our city:

WHEREAS, public participation in local government decision making is recognized and promoted by the Florida Legislature, Florida courts, and the Florida Attorney General's Office; and

WHEREAS, timely and informed public participation in local government land use planning benefits Clearwater's neighborhoods, natural resources, scenic beauty, and community design; and

³⁴ St. Johns County government website

WHEREAS, the Clearwater City Council has found through experience that many issues that are deliberated at public hearings may be resolved by promoting dialogue between the land use applicant, area residents, and other interested persons; and

WHEREAS, efficiency and proper planning are facilitated by promoting the opportunity for land use applicants and informed citizens to timely interact, share viewpoints, and share information pertaining to a proposed land use change; and

WHEREAS, Florida courts recognize that the essential tenets of due process are providing fair notice and affording a meaningful opportunity to be heard; and

WHEREAS, the rights of property owners and land use change applicants are protected by having an informed public hearing on the merits of an application; and

WHEREAS, this Ordinance will allow Neighborhood Associations the right to request a meeting, for the purposes of discussion and/or negotiation, with applicants requesting changes in land use as identified in the Ordinance; and

WHEREAS, it is the intent of the Clearwater City Council to ensure such Associations have the opportunity to engage in informed interaction with those applicants whose requests may most directly affect the quality of life issues of the Association(s) members.

The proposed Clearwater Neighborhood Association Bill of Rights addresses multiple significant issues –

- adherence to the values identified in the Code’s preamble that balances developer and citizen residents when making land use decisions,
- access to complete information,
- transparency in the process,
- earliest possible notice providing opportunity to avoid conflict,
- opportunities for positive contribution to the development of the project,
- education of all parties (city, developer, and residents) on the correct application of the Code to the proposed development,

- elimination of non-issues through exchange of information,
- and most importantly, opening a dialogue in a non-threatening, informal, non-binding meeting between the three main parties at interest – the city represented by staff, the developer and the public represented by the neighborhood association – without the need to employ attorneys and pay for expert witnesses.

This element is accomplished primarily by paragraphs 2.D. and 2.E. of the proposed ordinance:

D. Notification of the submission of any application or pre-application for City approval of a Special Use, Temporary Use, Flexibility (formerly variance), Vesting, Rezoning, Development of City-wide Impact, PUD, PRD, Comprehensive Plan change, or other significant land use change application, or change or amendment thereof, within 10 business days of its submission to the City.

This notice shall at a minimum contain a general description of the location of property subject to the land use change, the date, time and place of all applicable public hearings, if known, and other opportunities for public input on the application, and a reasonable explanation of the standard of review and the type of evidence that Florida Courts have recognized as being relevant from non-experts. Applicants, Neighborhood Associations, and other persons are responsible for obtaining their own legal advice.

E. Upon request from the Applicant or a Neighborhood Association, a City scheduled meeting with representatives of the Applicant of a land use application type listed above, at a reasonable time and place determined by the City; to allow members of one or more Neighborhood Associations to ask questions or to voice support, objections, concerns, or suggestions regarding said application. City staff shall ensure that a record shall be made to document all commitments or agreements made during such meetings.

If history is a judge, in 39 of the 40 applications for a land use change, no neighborhood association will seek to trigger an “informal meeting.” While the tripartite informal meeting has similarities to standard mediation, the difference is that there is no paid, trained and certified mediator to conduct the triadic meeting. There is no need for any of the three participants to have counsel, experts or other staff present at the meeting.

Secondly, the proposed ordinance also seeks to improve the actual hearing of matters before the CDB by making sure that all parties are operating with the same data, received in a timely fashion. The actual final proposal to be presented to the CDB shall be furnished no later than 15 days prior to the CDB hearing. See Section 2.D:

D. A final version of all land use change application documents must be provided to the City no later than 15 days prior to any public hearing on the matter. Any material changes to the application documents other than changes requested by staff or changes proposed in the course of the hearing shall cause the subject hearing to be rescheduled to comply with this 15-day requirement unless waived by all affected parties in writing.

The full text of the CNC Committee's proposed ordinance follows:

Text of the Clearwater Neighborhood Association Bill of Rights

Clearwater Neighborhood Association Bill of Rights

Section 1. Definitions.

For purposes of this Ordinance, the following definitions shall apply:

"Applicant" shall mean the applicant for any land use change as described in Section 2.D.

"Neighborhood Association" or "Association" shall be any formal or informal association of persons that voluntarily join to register as a Neighborhood Association with the City Planning Department or its designee on an application form provided by the City for purpose of acquiring the benefits of this Ordinance. Such registrations must include a geographic Neighborhood Association boundary reasonably described in the registration by the Neighborhood Association, or by a city-wide neighborhood organization. The area within such boundary must be limited to an area within the City which is characterized by a substantial commonality of interest and history of identification as a neighborhood separate from others within the City of Clearwater.

Section 2. Clearwater Neighborhood Association Bill of Rights.

Each "Neighborhood Association" in Clearwater properly and currently registered according to the terms of this Ordinance shall be accorded the following rights which it shall be the duty of the City Manager and his or her designees to provide:

A. Advance notification and a reasonable opportunity to provide input to the City of any substantial City-initiated or permitted public works or utility projects. Such notification shall include the day(s) and probable length of any street closures, utility interruptions, or other adverse impacts on the neighborhoods, and the name and phone number of the City representative most knowledgeable and able to immediately answer questions during the course of the project.

B. Notification of the submission of any application or pre-application for City approval of a Special Use, Temporary Use, Flexibility (formerly variance), Vesting, Rezoning, Development of City-wide Impact, PUD, PRD, Comprehensive Plan change, or other significant land use change application³⁵, or change or amendment thereof, within 10 business days of its submission to the City. This notice shall at a minimum contain a general description of the location of property subject to the land use change, the date, time and place of all applicable public hearings, if known, and other opportunities for public input on the application, and a reasonable explanation of the standard of review and the type of evidence that Florida Courts have recognized as being relevant from non-experts. Applicants, Neighborhood Associations, and other persons are responsible for obtaining their own legal advice.

C. Upon request from the Applicant or a Neighborhood Association, a City scheduled meeting with representatives of the Applicant of a land use application type listed above, at a reasonable time and place determined by the City; to allow members of one or more Neighborhood Associations to ask questions or to voice

³⁵ For the purposes of this Ordinance, each of these applications is deemed to be a "land use change."

support, objections, concerns, or suggestions regarding said application. City staff shall ensure that a record shall be made to document all commitments or agreements made during such meetings.

D. A final version of all land use change application documents must be provided to the City no later than 15 days prior to any public hearing on the matter. Any material changes to the application documents other than changes requested by staff or changes proposed in the course of the hearing shall cause the subject hearing to be rescheduled to comply with this 15-day requirement unless waived by all affected parties in writing. The City Manager, or his or her designee, shall reasonably determine what constitutes a material change, and such determination shall be deemed valid unless clearly erroneous. Material changes shall include, but not be limited to changes in use, increase in use, increase in height, change of access, size and location of buffers, change in financial data exceeding 5%, any change other than minor changes to locations of facilities on a site plan.

E. One or more representatives of each Neighborhood Association representing property within 200 feet of the subject property shall be accorded an opportunity to share a reasonable length of time to address and present evidence to any City board, committee, or commission, including the Community Development Board, during any quasi-judicial hearing on a land use application. Such Association representative shall also be accorded the right to reasonably cross-examine the applicant's witnesses on the issues which such witness testifies. No representative of any Neighborhood Association shall be restricted by this rule from presenting individual information or questions separate from the Association's presentation.

F. Any material misrepresentation, as reasonably determined by the City, provided by the Association in materials or testimony provided in accordance with this Ordinance or at the hearing shall cause such Association to lose its registration status for one (1) year from the hearing date.

G. Opportunity for formal input into the annual budget process, including the opportunity to express preferred City government priorities, suggested capital improvement projects and other statements that represent the opinion of the neighborhood's residents.

H. The opportunity to provide input into the design of publicly-funded projects within or adjacent to the neighborhood, including the opportunity early in the planning process to express neighborhood preferences about choice of location, materials, orientation, size, land use intensity, and other features.

Section 3. Procedures.

A. "Neighborhood Association" must be registered with the City Manager by its authorized representative initially, and henceforth re-register during the month of October in each year in order to qualify for the benefits of this Ordinance. Such registration shall be effective until the end of that same month in the following year. One member of each Association must be designated in such registration as the agent for the Association to receive all notices due the Association pursuant to this Ordinance. Such member may assign his or her right to notice for the Association to another agreeing member of the Association. Any request for an informal meeting pursuant to Section 2E above with an applicant based on this Ordinance must be submitted to the City by the Neighborhood Association agent designated to receive notices, or his/her assignee, pursuant to this Ordinance within 30 days of filing the application. Any Association may be re-registered with the addition or deletion of members by written communication to the City Manager or his designee signed by the designated notice agent or his/her designee during the annual registration month.

B. No such Neighborhood Association shall be favored, disfavored, or excluded in regards to the benefits of this Ordinance based on the opinions, race, gender, age, ethnicity, religion, or political affiliations of any or all of its members.

C. Each Applicant, Neighborhood Association, and person associated therewith is responsible for obtaining legal advice and liability protection as may be required.

D. In order to implement and assure the effective implementation of the goals and policies of this Ordinance and resolve complaints, the City Manager is authorized to establish written administrative procedures consistent with the purpose of this Ordinance. The City Manager is authorized to revise such procedures from time to time to best effectuate the goals and policies of this Ordinance.

Section 4. Enforcement: Disclaimer.

A. The City Council shall enforce this Ordinance by hearing unresolved complaints regarding registrations of Neighborhood Associations, procedures, and alleged failure to accord Rights hereunder during a regularly scheduled and publicly advertised City Council meeting after reasonable notice has been given to the complaining Association(s) and other substantially affected parties. Upon hearing the matter, the City Council may order the City Manager to take designated action within his or her jurisdiction to enforce this Ordinance or correct violations thereof.

B. Errors by City staff pertaining to this Ordinance shall not be deemed grounds for a cause of action, petition for writ of certiorari, or any element thereof.

C. No right to notice or participation in local government matters provided for in this Ordinance shall cancel or replace any concurrent right of a person or entity under another provision of federal, state, or local law.

Section 5. Severability.

It is the intent of the City Council and is hereby provided, that if any section, subsection, sentence, clause, phrase, or provision of this Ordinance is held to be invalid, unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid, or unconstitutional the remaining provisions, sections, subsections, clauses, phrases or provisions of this Ordinance.

Provide enhanced funding and new procedures and policies to improve Code Enforcement activities.

Although this suggestion is not related to planning and zoning, the city should acknowledge it has struggled to enforce the existing Code with current budget allocations and enforcement activities. It is one step forward but two steps back if the Code's rules are not followed when approving a land use change, but it is another problem when enforcement of the rules is not followed after construction.

Without evicting any persons from their homes, the St Pete Code Enforcement director has targeted owners of abandoned homes and vacant lots in St Petersburg and began pursuing foreclosures against 635 properties, leaving only 70 that remain in foreclosure to day. They started with 830 abandoned derelict homes in 2014, and now are down to 110 vacant and boarded properties.³⁶

They hired outside counsel at a cost of \$1.3 million in attorney's fees, but have collected \$4.4 million in unpaid fines collected. Of the 635 foreclosure proceedings, 235 result in homes being sold and 330 reach lien repayments or settlement agreements.

Zombie lots were the primary targets, and often the property owners owed more in taxes and fines than the properties were worth.

One real estate firm in Broward County owned 60 zombie lots.

When the city foreclosed, the fines were paid or the foreclosed properties were turned into affordable housing. One foreclosed lot turned into a Habitat for Humanity house.

Clearwater currently has liens on 179 properties totaling \$33,239,284.23 as of February 1, 2022. The value of the top 15 liened properties is \$7,574,728 with liens totaling \$11,836,878.80. Land use codes must be enforced.

³⁶ Florida Trend magazine, February 2022, page 64.

Modify the *Citizens' Guide to CDB Hearings*

The fact that the city's Planning and Development Department even attempted to explain professional land use concepts and procedures to citizen neighbors who are not land use professions is applauded by the CNC Committee.

The city's Code is 660 pages and 262,200 words long, with portions related to operations by the CDB and requirements for hearings strewn throughout the Code. Some would say the Community Development Code rivals the U.S. Tax Code or the Social Security Code, the latter of which has been described by the U.S. Supreme Court as:

“among the most intricate ever drafted by Congress. Its Byzantine construction . . . makes the Act almost unintelligible to the uninitiated.” and it is. . . “an aggravated assault on the English language, resistant to attempts to understand it.” *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981). n.14.

At a minimum, to the new initiate, the Community Development Code is a riddle, wrapped in a mystery, inside an enigma. Fortunately, both the CDB and the City employ lawyers to guide the decision-makers in both Level II and Level III hearings.

The *Citizens' Guide* is a great and significant undertaking. The *Guide* is a very helpful orientation to the CDB quasi-judicial process utilized for Level Two project approvals. It provides information for the average citizen and the development professional about the CDB Hearing process. This is a major step forward. It can be improved and should be re-issued to the public.

- The committee believes the *Guide* should start from the beginning – when a person receives a notice, and start explaining the processes from the perspective of a citizen resident who needs to understand what the Code does, how it applies, and how a property owner should decide whether to respond to a required notice received at his address. The *Guide* should start from that perspective.
- As currently written, for example, the *Guide* instructs that a Level I will be heard before the Development Review Board, Level II before

the CDB, and Level III before the city council. But it does not say why or how any particular land use change is put into Level I to be heard by the DRC alone, as opposed to a project that must be decided at Levels II or III.

- The term “party status” is used in the document before it is defined later on in the document.
- The *Guide* should be re-drafted to indicate what actions are available to those residents who are denied party status.
- Typographical errors need to be corrected. For example, *the Citizens’ Guide* says that notices will be sent to property owners within 250 feet of the project, not 200 feet as appears in the Code.
- The *Guide* on page 1 includes a reference to the “general applicability criteria found in section 3-914 of the Code.” This is a unique feature of the Clearwater Land Development Code, but one that must be more completely explained for the public. As explained by the Code author during a training session on December 10, 2004, this is the balancing provision for the increased flexibility within the Code. Since the public is primarily interested in the neighborhood impacts, the operation of 3-914 is of principle importance and should be more fully explained in the Citizens Guide.

While the focus of the *Guide* is on what the CDB does, the document should present what is the most relevant feature of the Code from the common neighborhood resident’s perspective, Section 3-914.

- There is a section on page 3 entitled “Do I need to have an attorney?” The answer given in the paragraph is that it is “not mandatory.” In the section “Who should attend?”, the document reports “You may want to consider employing a land use attorney who will understand what standards apply and what type of evidence will be persuasive in front of the board.” Both of these sections are technically correct, but

really don't present the great disadvantage of not being represented by an experienced land use attorney especially with not having a de novo appeal option. It is important that the land use professional also have working familiarity with the procedure and rules of the CDB.

While the city cannot provide legal advice, the *Guide* should state that because the CDB hearing is a quasi-judicial process (and explain what "quasi-judicial" means) a consultation if not representation with an attorney can aid residents, and the CDB, in promptly and efficiently presenting the resident's case.

- A more definitive explanation about citizen notification and timing should be added.
 - The Citizen Guide does not include several key timeline events, especially considering the short interval of public notice.
 - Only a 10-day mailed notice is required of a project CDB hearing to those within 200 feet of the project and posting at the project site. This timeline isn't included in the Citizen Guide.
 - The staff report isn't required by Code to be available until 5 days prior to the CDB hearing, so the public doesn't know what the staff recommendations will be. This timeline isn't included in the Citizen Guide either.
 - Even knowing the timeline, 5 days doesn't allow adequate time to find a land use attorney (and other professionals) and get them up to speed in time for the CDB hearing.
 - There is a reference on page 6 of the *Citizens' Guide* to the CDB "consent agenda" with a note that this is "available online the Monday prior to the meeting", but since the meeting is generally on Tuesday's this isn't much notice to plan attendance at the meeting. If the length of notice cannot be changed, at a

minimum the reader should be alerted to the fact that the notice of the consent agenda may only be 24 hours.

- According to the *Citizens' Guide* cross-examination is apparently limited to “what was discussed by that party,” that is, oral testimony, but should be revised to make clear that cross-examination may include questions challenging the documentary evidence submitted as well.
- There are other aspects of the *Citizens' Guide* reflect what is the current rules of procedure under the Code. However, the CNC Committee is hopeful that an update of the 1999 Code will address some of the proven problems regarding notice in general, and a later re-draft of the *Guide* will be required.

Many of the proposed changes have been previously furnished to Gina Clayton, Director of the Clearwater Planning and Development Department, and she responded positively in May, 2021, to many of the proposed changes, but the *Guide* has not yet been revised, corrected and re-published.

The CNC is offering to be a ongoing participant in the process to improve Clearwater's *Citizen's Guide to Community Development Board Hearings*.

Update the Comprehensive Plan and the Code to Reflect 21st Century Challenges to the City

The city council should create an equally balanced task force of land use industry and non-industry residents to review and update provisions in Clearwater's land use Comprehensive Plan and the Community Development Code.

Several leaders in the community have publicly stated that it is time to re-look at the Community Development Code adopted in 1999, almost a quarter century ago. As noted earlier, the Code refers to the city council as the "city commission." While that alone is not a big deal, it indicates that things have changed and it is time to update the Code.

Update the City's Comprehensive Plan before updating the Code

However, the city's Comprehensive Plan should first be revised since it is the document that is the basis for Code's administration of the Comprehensive Plan.

The city has recently been in the process of developing the strategic plan for 2045, and it makes sense to coordinate all three activities.

Create a "buffer zone" between tourist/commercial and residential zones.

All three of the recent controversies have involved large developments abutting primarily residential land. Two of the three (Clearwater Point and Edgewater Drive) were properties zoned tourist in neighborhoods of full time residents who owned their residences and which were declared almost uniformly as Florida Homestead by permanent residents.

Large apartment complexes may be a useful buffer between tourist/commercial and single family owned properties. Tenants are monthly renters and have not invested their life savings into permanent residences in the space they are currently occupying. Tenants are residents like home owners are, but neither are commercial enterprises or property used to tourists' needs.

Such buffers would help to assure compliance with the Code’s §1-103 and its purpose to “ensure development will not have a negative impact on the value of surrounding properties.”

Others would suggest that the function of Code Section 3-914 is already to create such buffers or transition zones, and if applied correctly, would step-down and create the buffer the neighborhood demands.

The 2004 training on the then “new” Code described this as an additional purpose of Section 3-914. Recall that Section 3-914 states that general standards for CDB approvals can and should limit application of the purely dimensional approach as to what’s allowed:

Section 3-914. General Standards for Level One and Level Two approvals.

A. Level One applications, in order to be approved by the community development coordinator, and Level Two applications, in order to be approved by the community development board, shall meet each and every one of the following criteria:

1. The proposed development of the land will be in harmony with the scale, bulk, coverage, density, and character of adjacent properties in which it is located.

2. The proposed development will not hinder or discourage the appropriate development and use of adjacent land and buildings or significantly impair the value thereof.

3. The proposed development will not adversely affect the health or safety or (sic) persons residing or working in the neighborhood of the proposed use.

4. The proposed development is designed to minimize traffic congestion.

5. the proposed development is consistent with the community character of the immediate vicinity of the parcel proposed for development.

6. The design of the proposed development minimizes adverse effects, including visual, acoustic and olfactory and hours of operation impacts, on adjacent properties.

B. In the event of an express conflict between a particular flexibility criterion and a provision of Article 3, the flexibility criterion shall govern unless the context clearly implies that the Article 3 provision should control.

C. The use of low impact development techniques for stormwater management, such as minimal land disturbance, the preservation of native vegetation, and the minimization of impervious cover, shall be required unless determined infeasible by the Engineering Department.

(Ord. No. 7413-05, § 18, 5-05; Ord. No. 8042-09, § 3, 6-4-09; Ord. No. 8070-09, § 7, 12-3-09)

The 300 S Duncan Street Storage Facility controversy touched directly on the need to have “transitions” or buffers. At the Council Work Session on April 16,, 2018, Michael Delk explained to the Council that good zoning practice seeks to have a transition between “intense commercial uses” and residential properties. As a general principal in land use planning it is not recommended to have two sides of the street with harsh differences like intense commercial and single family homes. Like uses fronting each other is better planning, according to Michael Delk, who was at the time, the Director of Planning and Development for Clearwater. Michael’s degree is in Urban and Regional Planning, and he is a member of the American Institute of Certified Planners (AICP). He has been a planner in the State of Florida since 1985, and currently serves as Interim Assistant City Manager for the city of Clearwater.

It is noteworthy that much time was spent during the Edgewater Drive dispute by Michael Boutzoukas, Esq., the Chair of the CDB, and the various witnesses and attorneys discussing what the definitions of the terms in Section 3-914 are, and how staff, and presumably the CDB, are to apply them.³⁷

Staff responded that they use their professional judgment to determine if a proposed project is in harmony with the scale, bulk, coverage, density and character of adjacent properties. “Professional judgment” is, like beauty, in the eye of the beholder, and not a standard subject to a specific yardstick. Professionals trained the same way in the same industry by the same educators can come to the opposite conclusions.

If the CDB and City Council were to apply Section 3-914 in a way consistent with the way residents living in the affected neighborhood see it, there would be

³⁷ Transcript of the Clearwater Community Development Board Meeting, June 25, 2019, Volume 2, pages 142 to 145.

no need to create an additional zoning category to create the buffer between tourist/commercial and residential zoning.

However, given the lack of training on the Code there is even lack of agreement whether the terms of 3-914 are applicable to land use claims where the project complies with all other technical elements of the Code – e.g., height, setback, etc..

Consistent and complete training on the entire Code, and the purpose and application of 3-914 would be helpful. But a buffer zone may be necessary in view of the misapplication of Section 3-914.

Adopt a Community Benefits Agreement for major public/private projects

Adopt the Community Benefits Agreement as substance when city land and city funds are involved in a public development partnership with private developers. The materials listed in the Appendices provide a blue print to make sure that future public-private partnerships truly benefit the community at large and its residents.

Address climate change and sea level rise

The CNC Committee has already proposed above that a scientist with an environmental background and sea level rise expertise be added as a land use professional candidate to the CDB.

According to Tracey McManus' recent story, Clearwater is playing catch up with other Tampa Bay municipalities.³⁸ Our city is now taking significant steps to move towards carbon neutral and not add to the climate change problem, with measurable steps to reduce greenhouse gas emissions:

- The City Council hired Cenergistic to help reduce electric, water and natural gas consumption;

³⁸ "Clearwater aims to catch up with other cities on the environment," Tampa Bay Times, February 24, 2022.

- The city is completing a solar feasibility study to determine whether to install solar panels in municipal buildings;
- The new City Manager has created two new positions – a sustainability specialist and an innovation and energy officer; and
- This past year the council adopted a new Greenprint 2.0 plan to cut greenhouse gas emission by 80 percent of 2007 levels by the year 2050.

Surprisingly, our current governor, unlike previous administrations, has officially recognized climate change and sea level rise as a major challenge to a state like Florida which has one of the longest coastlines in the country, and which is composed of lands that were submerged beneath the ocean in recent epochs.³⁹

The Florida Legislature is appropriating hundreds of millions of dollars in sea level rise mitigation. “Sunny Day Flooding” is now a normal and accepted occurrence in Miami where some members of the CNC Committee lived for decades.

Many cities and states are doing the same, but many are not, and many nations who are the biggest polluters are not participating in efforts to save the planet. We need to consider our defenses if efforts to avoid the problem are unsuccessful.

Being a coastal city, Clearwater is in the cross-hairs of the most adverse and direct effects of coastal flooding. Our Comprehensive Land Use Plan was created in 1999, long before the battle over whether sea level rise was real.

If we are going to revise our Comprehensive Plan only every two+ decades or so, it is time to consider serious changes to the Plan and the Code in anticipation of massive adverse effects from environmental changes that will occur in this 21st Century.

³⁹ “Florida gets another \$404 million for climate change prep” Tampa Bay Times, February 1, 2022

Although the CNC Committee has recommended amendments to the Clearwater land use Comprehensive Plan and the Code, the residents of the city should consider that minor changes to the Plan and the Code, while worthy ideas that might help citizens win an occasional victory over unwanted development, are grossly insufficient for saving the city from climate change and sea level rise.

In the long run residents will lose this war, because population growth and developer clout may steamroll neighborhood goals.

To save natural Florida and the beauty we enjoy here, systemic changes are needed that redefine “progress” to mean restoration of nature. This is true not just for Clearwater but everywhere. For this reason the CNC Committee hopes that a task force recommending changes to the Comprehensive Plan will consider:

1. Passing an ordinance giving natural entities legal rights and allowing humans to sue on nature’s behalf when development threatens nature’s destruction;
2. Designating in the city charter one city council seat for a nature guardian to represent the air, water, plants and wildlife on which human survival depend;
3. Denying requests to intensify use of any parcel without the creation of open space elsewhere;
4. And in preparation for sea level rise:
 - a) providing incentives for property owners to relocate further inland; and
 - b) purchasing coastal properties and leasing them back, so that when such properties are no longer viable they can be abandoned, instead of buttressing doomed properties with costly new infrastructure.

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The Clearwater Neighborhoods Coalition

March 7, 2022

APPENDICES – List of study materials by topics, alphabetical

Asynchronous Hearings

- The Future of Courts, Professor Richard Susskind, President of Society for Computers and Law and technology adviser to the Lord Chief Justice of England and Wales, in The Practice, Harvard Law School, 2021 – 20 pages*
- Asynchronous Hearings: The Next New Normal?, Maxi Schere, WilmerHale & Queen Mary University of London, September 9, 2020 – 4 pages*
- Rethinking arbitration hearings: A shift towards asynchronous hearing timetables? Practical Law Arbitration, February 16, 2021 – 4 pages*
- Streamlining Justice: How Online Courts Can Resolve The Challenges Of Pro Se Litigation, Ayelet Sela, CORNELL JOURNAL OF LAW AND PUBLIC POLICY [Vol. 26:331, 2016 - 58 pages*
- Online Dispute Resolution Offers a New Way to Access Local Courts: How private-sector technologies can be repurposed to serve the civil legal system, PEW Civil Legal System Modernization Project, 2021 – 4 pages*
- Judicial Perspectives on ODR and Other Virtual Court Processes, Joint Technology Committee (JTC) established by the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM) and the National Center for State Courts (NCSC)., May 18, 2020 – 9 pages*
- Online Dispute Resolution Pilot Program Report, Recommendations from the Online Dispute Resolution Workgroup of the Commission on Trial Court Performance and Accountability and the Committee on Alternative Dispute Resolution Rules and Policy, January 2021 – 183 pages*

Environment

- “Florida gets another \$404 million for climate change prep,” Tampa Bay Times, February 1, 2022 – 8 pages*
- “Sunny day flooding could get a lot worse in St. Petersburg, study shows,” Tampa Bay Times, July 19, 2021 – 8 pages*
- “Here’s what Tampa Bay can expect from new level rise projections,” Tampa Bay Times, February 16, 2022 – 8 pages*
- How FEMA’s new flood insurance program works, David Maurstad, FEMA Senior Executive of the National Florida Insurance Program, 2022 – 2 pages*

Cases – Florida Appellate Courts on Competent Substantial Evidence

- BML Invs. V. City of Casselberry, 476 So.2d, 713 (Fla. 5th DCA 1985)*
- City of Apopka v. Orange County, 299 So.2d 657 (Fa. 4th DCA 1974)*
- Katherine’s Bay v. Fagan, 52 So. 3d 19 (Fla. 1st DCA 2010)*
- Metro. Dade County v. Blumenthal, 675 So.2d 598 (Fla 3d DCA 1995)*
- Pollard v. Palm Beach County, 560 So.2d 1358 (Fla. 4th DCA 1990)*

Citizens' Guide to Community Development Board Hearings

Citizens' Guide to Community Development Board Hearings, Clearwater Planning & Development Department, May 2021 – 18 pages

Email correspondence between Gina Clayton and Bill Jonson re changes needed in the Guide, May 2021, - 4 pages

Clearwater Point 850 Bayway Dispute

City Council Meeting Minutes, January 17, 2019, - 38 pages

Observations on Clearwater Point Proposed Hotel at 850 Bayway Boulevard, June 25, 2021 by Bill Jonson – 3 pages

Transcription of Attorney's Closing Argument, 850 Bayway CDB meeting, September 21, 2021 – 14 pages

Cross examination Notes by Resident, February 7, 2022 – 5 pages

Code Enforcement

CONA Codes Committee and Advisory Group July, 13 2021 Meeting Minutes – 2 pages

Excel spreadsheet of Clearwater's 2/22/2022 Code Liens top 15 biggest - 1 page

Excel spreadsheet of Clearwater List of Code Enforcement Liens by type and detail, 2/1/22, 18 pages

"Fewer Eyesores," Florida Trend Magazine, Pages 64-68, February 2022 - 4 pages

Community Benefits Agreements

Community Benefits Agreements: Making Development Projects Accountable, Julian Gross, Legal Director, California Partnership for Working Families, published by Good Jobs First, 2005 – 127 pages

Community Benefits Agreements: Definitions, Values, and Legal Enforceability, Journal of Affordable Housing, Vol. 17:1-2, 2008 - 32 pages

Community Benefits: Practical Tools for Proactive Development, 2022 – 12 pages

Common Challenges in Negotiating Community Benefits Agreements – And How to Avoid them, Partnership for Working Families and Community Benefits Law Center, January 2016 – 21 pages

Improving the Development Process, Community Benefits Law Center, - 2 pages

"Proposed community benefits plan raises questions in St. Pete Council, Tampa Bay times, February 25, 2021 – 2 pages

Community Benefits Agreements: A tool for economic equity, Deirdre O'Leary, Staff Writer, October 2, 2020, report of Interfaith Tampa Bay virtual meeting September 17, 2020 – 2 pages

St. Petersburg to require developers who get city money to provide community benefits; The plan requires developers who get significant city funding to reinvest in the community, Tampa Bay Times, July 22, 2021 – 1 page

Rome Yard Community Benefits Public Engagement Initial Meeting, Meeting announcement and explanation, October 13, 2021 – 2 pages

Anti-Community Benefits Agreement bill heads to Michigan House, online news story, 2008 – 1 page

Center for Nonprofit and Community Development, Inc., Taking Nonprofits to the Next Level description of organization and 10 state projects, 2021 – 1 page

Michael Randolph, CEO of Center for Nonprofit and Community Development, Inc., Resume – 2021 - 1 page

Community Benefits Agreements (CBA) Pueblo, Colorado: A Case Study U.S. Environmental Protection Agency, Region 8, PowerPoint – 24 pages

Community Development Board and Board Training Materials

Community Development Board Training Materials, December 10, 2004 – 24 pages

Thirty minute Video of 2004 Training by Charlie Siemen, December 10, 2004, furnished by Bill Jonson, attendee at the 2004 training.

“Clearwater neighborhoods wanted more say on planning board. The council said no.” Tampa Bay Times, February 18, 2022. – 4 pages

New CDB Candidate Summary Update Chart, Chris Michalak, February 17, 2022 – 1 page

Chart, CDB Non-Prof Residents, David Lillesand – 1 page

Community Development Code

Lillesand Compendium of Community Development Code in one single PDF searchable document, secured from www.MyClearwater.com and provided to all committee members - 662 pages

Clearwater Development Review Process Observations, Bill Jonson, February 4, 2022 – 5 pages

Competent Substantial Evidence

Administrative Procedure For The Generalist, Florida Bar Journal, Vol. 95, No. 6 November/December 2021, Pg 8 David G. Tucker. – 19 pages

The City Attorney’s Guide to Land-Use Appeals, Christopher D. Donovan, B.C.S., Roetzel & Andress, Naples FL – 25 pages

BML Investments v. City of Casselberry, 476 So.2d 713, 10 Fla. L. Weekly 2124 (Fla. App. 1985) – 4 pages

City of Apopka v. Orange County, 299 So.2d 657 (Fla. App. 1974) – 4 pages

Conetta v. City of Sarasota, 400 So.2d 1051 (Fla. App. 1981)- 3 pages

Metropolitan Dade County v. Blumenthal, 675 So.2d 598 (Fla. App. 1995) – 16 pages

Pollard v. Palm Beach County, 560 So.2d 1358 (Fla. App. 1990) – 3 pages

Conflict of Interest

- Barber v. MacKenzie*, 562 So. 2d 755 - Fla: Dist. Court of Appeals, 3rd Dist. 1990 – 3 pages
- In re Drexel Burnham Lambert Inc.*, 861 F. 2d 1307 - Court of Appeals, 2nd Circuit 1988 – 8 pages
- Livingston v. State*, 441 So. 2d 1083 - Fla: Supreme Court 1983 – 5 pages
- Chapter 112, Florida Statutes, PART III CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES – 89 pages

Edgewater Drive Land Use Dispute

- Clearwater Community Development Board Meeting Transcript, June 25, 2019, Volume 1* – 124 pages
- Clearwater Community Development Board Meeting Transcript, June 25, 2019, Volume 2* – 166 pages
- Clearwater Community Development Board Meeting Transcript, June 25, 2019, Volume 3* – 113 pages
- Edgewater Drive Neighborhood Association, Inc., v. Edgewater Valor Capital, LLC; Community Development Board; and City of Clearwater, Final Order, Case No. 19-3976, State of Florida, division of Administrative Hearings, October, 2021* – 17 pages

Mediation and Arbitration

- Mediation Myths And Urban Legends, FLORIDA BAR JOURNAL Vol. 82, No. 5 May 2008 Pg 52 Fran L. Tetunic, Public Interest Law* – 12 pages
- Chapter 44, *Mediation Alternatives To Judicial Action, 2020 Florida Statutes* – 11 pages
- How to Become a Florida Supreme Court Certified Mediator: Step by Step Guide including amended requirements effective from April 7, 2020 – December 31, 2021, - 15 pages*
- Mediation as a tool in neighborhood/developer conflict resolution: How it would have applied in the Edgewater Drive dispute, David Lillesand, May 9, 2021* – 4 pages
- Everyone Counts: Taking a Snapshot of Self-Represented Litigants in Miami-Dade, DIALOGUE – AMERICAN BAR ASSOCIATION, November 17, 2017* – 3 pages

Neighborhood Bill of Rights

- “A Guide to Participating in Planning and Development Processes in Your Neighborhood,” Hillsborough County Neighborhood Relations pamphlet, 2022.* – 2 pages
- Hillsborough Land Development Code, SECTION 13.0 - NEIGHBORHOOD ORGANIZATIONS—AREA WIDE CIVIC ASSOCIATIONS* – 2 pages
- St. Johns County Ordinance No. 2007-1, <https://www.sjcf.us/NBR/media/BillofRights.pdf>. – 4 pages
- St. Johns County Government, webpage on Neighborhood Bill of Rights, <https://www.sjcf.us/NBR/#:~:text=> – 2 pages
- Model Property Rights Element, 1000 Friends of Florida, 9/30/21.*- 6 pages

Ombudsman

Governmental Ombudsman Standards, United States Ombudsman Association, October 14, 2003- 12 pages

Ombudsman, Ombudswoman, Ombuds, Aggregation various information sources for the CNC Committee, David Lillesand, April 10, 2021 – 12 pages, along with:

Municipal Government Ombudsman (City of Portland, Oregon), Michael Mills, September 23, 1994 – 9 pages

Ombudsman: History, types, alternatives and current use in Florida government, David Lillesand, April 2021 – 9 pages

State Government Ombudsman (Hawaii), September 10, 1999 – 9 pages

The Ombudsman’s Guide to Fairness, manuscript by Gerald R. Papica, Ed.D. – 20 pages with extensive list of references to other material

Ombudsman Websites – April 2021, provided to CNC Committee members for additional sources

Ombudsman (a significant entry on Wikipedia) from international perspective – 2022 – 48 pages

Ombudsmen in the United States, Wikipedia entry describing six federal agencies using ombudsmen and five state legislatures employing full-time ombudsmen, and four city or county ombudsman across the country – 2022 – 6 pages

Other materials

“Neighbors win fight to stop development – Largo,” Tampa Bay times, May 6, 2021 – 1 page

A.H. SAKOLSKY, Petitioner, v. The CITY OF CORAL GABLES, Florida, a municipal corporation, Respondent Supreme Court of Florida, 151 So.2d 433 (1963) (Can Code Changes be Retroactive) – 23 pages

PowerPoint presented at the City Council Work Session on the Ombudsman Concept, Interim Report by CNC Committee, presented by David Lillesand, June 11, 2021

Residents’ Advocate

The Right to Civil Counsel, Daedalus, the Journal of the American Academy of Arts & Sciences, Tonya L. Brito, 148 (1) Winter 2019, - 6 pages

Statutes

“Community Planning Act”, F.S. §163.3161 et seq.

Section 163.3177 – Required and optional elements of comprehensive plan: studies and surveys. – 24 pages

Section 400.0067 – State Long-Term Care Ombudsman Council – 2 pages

Chapter 44, Mediation Alternatives To Judicial Action, 2020 Florida Statutes – 11 pages

Chapter 112, Florida Statutes, PART III CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES – 89 pages