

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND
FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2024 10007 CICI

BELVEDERE TERMINALS, LLC, a
Florida limited liability company,

Plaintiff,

v.

VOLUSIA COUNTY,

Defendant.

_____ /

**PLAINTIFF'S
EX PARTE MOTION FOR TEMPORARY INJUNCTION**

Plaintiff Belvedere Terminals, LLC (“Belvedere”) by undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.610, submits this *Ex Parte* Motion for Temporary Injunction and, in support, states:

PRELIMINARY STATEMENT

Belvedere has proposed to develop a bulk fuel storage facility (the “Project”) on certain property located in unincorporated Volusia County (the “Property”). *See Affidavit of Michael Benedetto at ¶¶ 2-3.* The Project would be sited adjacent to existing Florida East Coast Railway tracks and would import fuel via rail for subsequent distribution via truck. Belvedere met with County officials in 2022 for a pre-application meeting to discuss the project location, design, and permitting requirements. At that time the County officials told Belvedere that the current Zoning was appropriate, and that the County would require environmental approval and compliance with the County site planning process. Belvedere subsequently began a lengthy and expensive planning process to develop this project at the Property.

When the County Commission learned about the Project, they engaged in a series of attempts to stop the Project, despite having no authority to interfere with site plan applications for properly zoned projects. On November 21, 2023, the County Commission's efforts culminated in their directing County Staff not to process any new site plan applications within the I-2 Heavy Industrial Zoning Classification of Unincorporated Volusia County and the concurrent direction that staff prepare a formal moratorium ordinance for all I-2 Zoning applications for a minimum of nine months. The County provided **absolutely no public notice** that these items would be discussed at the November 21 meeting. The Belvedere Property is the only property that will be directly impacted by the moratorium on applications within the I-2 Zoning Classification.

When Belvedere submitted their conceptual site plan on December 4, 2023, the County immediately refused to process the application, citing the "Pending Ordinance Doctrine" as a basis. The Pending Ordinance Doctrine has not been adopted in the Volusia County Code of Ordinances or in any appellate court of jurisdiction over Volusia County, meaning it is, at best, a judicially created common-law concept in other jurisdictions and, at worst, does not exist. By attempting to use the 'pending ordinance doctrine' in lieu of a duly noticed and properly enacted ordinance, the County has manipulated the concept even further to create a **Pending Moratorium Doctrine**, which is functionally, a moratorium enacted absent due process and in bad faith targeting a single project and property.

The existing I-2 Zoning Classification permits this project **as a matter of right**. County Ordinances require staff to process site plans within a set period of time which has long expired. The Volusia County Charter prohibits the County Commission from interfering with the duties of County Staff. Certain members of the County Commission have made multiple public and semi-private comments making clear that they will stop at nothing to prevent the development of this

Project. Absent injunctive relief, the County will continue to refuse to review Belvedere’s properly submitted site plan application while the County prepares *ex post facto* ordinances to attempt to further and more permanently deprive Belvedere of its property and other constitutional rights.

FACTUAL BACKGROUND

1. Belvedere is seeking to develop the Property defined in paragraph 7 of the Complaint filed January 2, 2024 (the “Property”) in line with the existing zoning and future land use of the Property. *See Benedetto Aff. at ¶ 2.*

2. Belvedere’s sister company currently owns the land and has authorized development and operation by Belvedere of a refined products terminal on the Property (the “Project”). *See Benedetto Aff. at ¶ 2.*

3. The Property has been zoned I-2 Heavy Industrial since March 16, 2006. *See Benedetto Aff. at ¶¶ 5-6.*

4. On June 9, 2022, Belvedere consultants met with Volusia County permitting staff for a pre-application meeting to discuss the plans for the site and begin the site development process. *See Benedetto Aff. at ¶ 7.*

5. County staff informed Belvedere the Project use was permissible under the zoning classification and future land use of the Property. *See Benedetto Aff. at ¶ 8.*

6. Based on the zoning and in line with what the County told Belvedere at the June 9, 2022, meeting, Belvedere expended significant expenses and time designing and permitting the Project at this site and otherwise continued to pursue developing the Project at this site. *See Benedetto Aff. at ¶ 9.*

7. To date, Belvedere has spent well over \$1,200,000 to plan, permit and move develop the Ormond Beach Terminal site. *See Benedetto Aff. at ¶ 10.*

8. On December 4, 2023, Belvedere submitted a complete Conceptual Site Plan application for approval with the County, pursuant to and as set forth in the Volusia County Code. *See Benedetto Aff. at ¶ 11, Ex. B.*

9. Within a matter of hours, (also on December 4, 2023), the Director of Volusia County Planning and Development Services emailed Belvedere in response to the application, stating that despite the County receiving the site plan application, staff “cannot accept and process the conceptual site plan application at this time” citing direction from the Volusia County Council during their November 21, 2023, Council Meeting to institute a moratorium on all I-2 zoning applications and not to process any site plan applications in the I-2 zoning classification. *See Benedetto Aff. at ¶ 12, Ex. C.*

10. There was no mention of a moratorium, zoning changes, Belvedere, or any such actions on the published agenda for the November 21, 2023, County Council Meeting. Neither Belvedere nor the general public were notified that any such moratorium would be considered, discussed, much less voted on at the November 21, 2023, County Council meeting. *See Benedetto Aff. at ¶ 13, Ex. D.*

11. Belvedere subsequently requested an official transcript of the November 21, 2023 County Commission meeting, which contained the Commission discussion of the moratorium and planned zoning changes. *See Benedetto Aff. at ¶ 14, Ex. E.*

12. The Volusia County Code has no moratorium and mandates that staff expeditiously process conceptual site plan applications. Specifically, Land Development Code Section 72-577(2) states:

The land development manager (LDM) **shall, within three working days of acceptance of the application, review the application for conformity with this article and other development regulations and notify the applicant in writing of**

the results of the review. Thereafter, the applicant may submit an application for an FSP.

See Benedetto Aff. at ¶ 15.

13. The Volusia County Land Development Manager has **not** notified Belvedere in writing of the results of the Conceptual Site Plan review. *See Benedetto Aff. at ¶ 16.*

14. This Property is the only property located within the I-2 zoning classification which remains undeveloped. Its adjacency to rail lines is a necessary feature for Belvedere's Project. *See Benedetto Aff. at ¶ 17 & 18.*

15. To my knowledge, the existing I-2 zoning classification is the only zoning classification in Volusia County that would allow the development of this Project. *See Benedetto Aff. at ¶ 18.*

16. On December 21, 2023, the Volusia County Planning and Land Development Regulation Commission ("PLDRC") held a meeting and considered whether or not to make a formal recommendation of an actual moratorium ordinance prohibiting any new development applications within the I-2 zoning classification, to be retroactively applied beginning November 21, 2023 to the County Council. Over Belvedere's written and verbal objections, the PLDRC voted to recommend this formal moratorium ordinance to the full Volusia County Council for passage. *See Benedetto Aff. at ¶ 19.*

17. The Volusia County Council held a meeting on January 4, 2024, for a first reading of the proposed formal moratorium ordinance. The agenda for that meeting included a summary of the proposed moratorium from County staff that states that there are only five parcels in unincorporated Volusia County with the I-2 zoning classification. *See Benedetto Aff. at ¶ 20, Ex. F.* Review of those parcels show all but the Property are already developed.

18. The County Council, at that meeting, changed the scheduled second reading and vote on the formal moratorium ordinance from their meeting on January 16, 2024 to February 6, 2024. *See Benedetto Aff. at ¶ 21.*

19. If the County continues to change the rules as it goes and prevent Belvedere from continuing the orderly development process for this Project at this Property, Belvedere will suffer an immediate and irreparable injury due to their loss of use of the Property, loss of vested right to the Project, and the County's inordinate burden of the Property. *See Benedetto Aff. at ¶ 22.*

ARGUMENT

A preliminary injunction is an extraordinary remedy which should be granted where the party seeking the injunction establishes the following criteria: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) consideration of the public interest. *Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004). The primary purpose of an ex-parte preliminary injunction is to maintain the status quo, which the courts have held to be the last peaceable, noncontested condition before the parties current dispute. *Gulf Coast Commercial LLC v. KOS Corp.*, 351 So. 3d. 1212 (Fla. 2d DCA 2022). In reversing and sending back to the trial court, the *Gulf Coast* Court explained the injunction sought was not to maintain the status quo. “[Enjoinee] did not recently begin doing something the Property Owners insist it should be enjoined from doing to limit further damage – i.e. a request to restore the status quo to a point in time before the allegedly deleterious behavior of the respondent began.” Here, the last peaceable noncontested condition before the parties’ current dispute was the condition immediately prior to the unnoticed November vote to no longer process I-2 site plan applications.

More specifically, Injunctive relief is proper where a municipality enacts measures without proper notice that substantially change a previously permitted use of property. *Daytona Leisure Corp. v. City of Daytona Beach*, 539 So. 2d 597, 599 (Fla. 5th DCA 1989)(holding that “Florida follows the majority view whereby measures passed in contravention of notice requirements are invalid and null and void if not strictly enacted pursuant to the requirement of section 166.041”). See also *Ellison v. City of Fort Lauderdale*, 183 So.2d 193 (Fla.1966); *Fountain v. City of Jacksonville*, 447 So.2d 353 (Fla. 1st DCA 1984); *City of Gainesville v. G.N.V. Investments*, 413 So.2d 770 (Fla. 1st DCA 1982); *City of Sanibel v. Buntrock*, 409 So.2d 1073 (Fla. 2d DCA); *Malley v. Clay County Zoning Commission*, 225 So.2d 555 (Fla. 1st DCA 1969).

I. Likelihood of Immediate and Irreparable Harm

Based on the existing zoning for the Property, Future Land Use of the Property, and the County’s representations at the June 9, 2022, meeting, Belvedere expended significant expenses and time planning, designing and permitting the Project at this site and otherwise continued to pursue developing the Project at this site. See *Benedetto Aff.* ¶ 8.

The County has already caused Belvedere harm by refusing to consider their application to develop their property without due process. The County’s refusal to process Belvedere’s site plan until the Commission enacts a formal moratorium ordinance in direct derogation of their own Code (and telegraphing a clear intent to ultimately enact changes to prevent the Project) presents an actual harm to Belvedere. Unless injunctive relief is granted, the County will continue to operate under the fictional ‘pending moratorium doctrine’ and not review the Belvedere site plan application as it would any other applicant in the County for any Property outside the five (5) parcels named above, four of which are already developed. Allowing a local government to freeze development applications without notice while it prepares a more formal moratorium, which, in

turn, is just a means to an end to permanently deny a certain project they were well aware of prior to any of these actions is a clear violation of due process. These actions should cause any landowner in such a jurisdiction deep concern about the future of their property rights and reliability of the existing rules.

The County will continue to cause Belvedere irreparable harm if this injunction is not granted. Not only has Belvedere expended substantial funds designing and permitting up to now, but these development steps have likewise created value in the Project and Parcel which will be destroyed unless and until the County proceeds to follow its own rules. The second vote on the formal moratorium ordinance on February 6, 2024, presents such an immediate and irreparable harm because this vote will formalize the existing moratorium on site plan applications for what looks to be nine (9) months or more. Moreover, clear comments from councilmembers in and out of the Council chambers make clear their intent to amend the zoning in such a way as to ‘zone the project out of existence.’ This is so far from the due process and fair dealing mandated of local government by years of State and Federal Law, that the injunction should be granted to stop this injustice.

II. No Adequate Remedy at Law

Belvedere has no adequate remedy available to prevent the irreparable harm posed by the County’s moratorium. First, the permits, rights, plans, and work are unique to this site. The current moratorium has already deprived Belvedere of their right to develop the Property, entirely without due process. When the Commission directed staff not to accept new site plans, they did so without any notice to Belvedere or any other member of the public with an interest in property in the I-2 Zoning Classification. There was no notice of any opportunity to present comments on this action. Now, the Commission is on the verge of enacting a formal moratorium to retroactively apply as of

November 21, 2023, effective until the County can change the I-2 Zoning uses entirely. If an injunction is not granted, the County's original prohibition on site plan applications undertaken without due process will be validated and Belvedere will be permanently without remedy.

III. Substantial Likelihood of Success on the Merits

Government has an obligation to operate in good faith, preserve due process in land use changes and moratoria, and above all – live by the rules it has made. “If men must turn square corners in dealing with the government, it cannot be too much to expect that the government turn square corners when it deals with them.” *Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021)(quoting Justice Holmes in *Rock Island, A & L R. Co. v. United States*, 254 U.S. 141, 143 (1920).

To that end, the ‘square corners’ of the Volusia Land Development Code are clear – the County is required to accept a conceptual site plan application, which contains, as Belvedere’s does, the information required by the Ordinance. The County must then, within three (3) days, review and comment (or waive review and comment). After that three days the County is required to accept the submission of an application for a Final Site Plan. There is no ‘pre-moratorium’ exception in the Code. There is no ‘pending ordinance doctrine’ in the Code. There is no permissible excuse for passing a knee-jerk moratorium in response to information that a site plan application for a project may be coming because of a distaste for the otherwise permissible project. This is particularly true where, as here it was done via ‘suspension of the rules’, was not in any published agenda, and was undertaken with no notice, due process, opportunity to be heard or any of the other required square corners.

Moreover, while not necessary for this injunction, cases statewide have held that substantial investment of time or money in reasonable reliance on existing laws and with no reason

to know that the laws are likely to change can operate to vest a developer with rights to a use or permit. Thus, under Florida law, the doctrine of equitable estoppel operates against a local government “when a property owner (1) in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired.” *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1334 (11th Cir. 2004). In the absence of estoppel, a vested right can also be created where the defendant municipality acted in blatant and obvious bad faith in denying a permit or license. *Id.* (finding that an example of “bad faith includes where a county deliberately withheld a permit it otherwise would have awarded until after a voter-approved moratorium went into effect.)

Here, Belvedere relied on the statements of the County staff during the June 9, 2022, pre-application meeting that the Property was zoned appropriately for this proposed project. Acting in good faith reliance on those statements, Belvedere proceeded to spend a substantial amount of money to develop the project at this site. Belvedere had no reason to know that the I-2 Zoning ordinance was likely to change, or that a moratorium was to be considered, because the County Commission never provided any public notice of these considerations before their vote. The instant matter is also analogous to the example provided in *Coral Springs*, under the existing I-2 Zoning, Belvedere’s use is permissible, and their site plans must be reviewed as a matter of right, the refusal to process Belvedere’s site plan is a deliberate attempt to stop this project until a moratorium ordinance can go into effect. When discussing the moratorium at the November 21 meeting, County Chair Jeff Brower specifically stated “I vow to continue to fight until this [the Belvedere Project] is no longer an issue for us.” *Benedetto Aff. Ex. E at P. 46*. After the County voted on

the moratorium Councilman Troy Kent went on to state “...the Moratorium started as soon as we voted on it. I mean, it was instant right then.” *Benedetto Aff. Ex. E at P. 54*.

Nonetheless, here the vesting of right is important to the instant request for an injunction but not as vital as the procedural violations and utter disregard the County showed for due process, notice, the opportunity to be heard, their own ordinance requirements, and the proper passage of such an impactful ordinance. In other words, the primary focus of this request is very simple – the Volusia County Code mandates the development review coordinator process and respond to an application like the one submitted by Belvedere within three days, otherwise the application is deemed acceptable and the developer moves forward to the site plan application process. To that end, this Court should maintain the status quo which existed immediately prior to the Thanksgiving-week un-noticed vote and enjoin the County from refusing to move Belvedere’s applications through the ordinary process.

The record is clear that Belvedere has been denied due process in the enactment of the current moratorium on site plan applications. The County Commission acted in bad faith when they directed staff not to process these applications until they could put this moratorium in place to stop the Belvedere project. But for these bad faith actions, the review of Belvedere’s site plan is required as a matter of right and Belvedere has shown a substantial likelihood of success on the merits of the claims presented in their Complaint.

IV. An Injunction is Consistent with the Public Interest

It is in the public interest that zoning actions that substantially impact land use must be adopted subject to statutory notice and hearing requirements. Under Florida law, strict compliance with the notice requirements of the state statute is a jurisdictional and mandatory prerequisite to the valid enactment of a zoning measure. *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.

Supp. 1428, 1434 (M.D. Fla. 1997), aff'd in part, rev'd in part (on other grounds), 176 F.3d 1358 (11th Cir. 1999) citing *Ellison v. City of Fort Lauderdale*, 183 So.2d 193 (Fla.1966). Ordinances which do not comply with the notice requirements are void. *Daytona Leisure Corp. v. Daytona Beach*, 539 So.2d 597, 599 (Fla. 5th DCA1989).

Further, actions that affect only a limited number of owners or properties must be subject to quasi-judicial procedures. *Bd. of Cnty. Comm'rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469 (Fla. 1993)(holding actions which can be viewed as policy application, rather than policy setting, and which have an impact on a limited number of persons or property owners are quasi-judicial in nature and are properly reviewable by petition for certiorari; on such review they are subject to strict scrutiny and to substantial evidence standard.).

Attached as **Exhibit A** is the published agenda and agenda packet available to the public prior to the November meeting. Absent from the Agenda is any mention of moratoria, I-2 zoning, Belvedere or anything remotely close to the issues the Council discussed and voted on. Here, no notice was provided before staff was directed to stop processing applications, while the County attempted to change the zoning ordinances. This vote must follow the statutory process as the effect of this direction is identical to the effect of a zoning moratorium ordinance. Moreover, the County has never provided any quasi-judicial proceedings for any of their actions, despite the extremely limited number of properties and parties to be affected.

The public will not experience any harm if the County is required to continue to process site plans under the Existing I-2 Zoning Ordinances. The true harm comes to the public in allowing a local government to refuse to follow its own rules under a made-up amalgamation of various questionable legal concepts. The existing requirements have been in place on this property for 19 years. *Benedetto Aff. Ex. A*. Further, the moratorium applies only to I-2 Zoned Properties in

Unincorporated Volusia County. The County admits that only five properties are currently within this Zoning Classification. *Benedetto Aff. Ex. F*. It is clear only this Project is actually impacted by the ‘pre-moratorium’ refusal to process and would be impacted by the pending moratorium. Restoring the status quo in the absence of a duly noticed hearing and treating the Project, Property, and Belvedere with their deserved due process clearly does not represent any hardship to the public.

V. Balance of Hardships

As discussed above, this ‘pre-moratorium’ refusal-to-process is a serious hardship on Belvedere and the Project. Merely removing the improper barrier to the County accepting and continuing the processing of a site plan, something the County Staff does daily, presents no countervailing hardship. The balancing easily weighs in favor of injunction.

In *Daytona Leisure Corp.*, the Fifth District Court of Appeal recognized that the threatened loss of an \$800,000 investment in property affected by municipal zoning actions represented a harm to the developer, and the injunction was proper. 539 So. 2d 597 at 599. Here, Belvedere has invested well over \$1,200,000, far beyond the amount in *Daytona Leisure*. Moreover, certain County Councilmembers’ direction to staff to find ways to stop the project ‘at all costs’ including changing the permissible uses in I-2 Zoning show the true motives and intent and make injunction to maintain the status quo all the more necessary and appropriate.

VI. Proposed Bond

The amount of an injunction bond should reflect the court's determination of the foreseeable damages for a wrongful injunction; in addition, the court may consider factors other than anticipated costs and damages in setting an injunction bond, including the adverse party's

chances of overturning the temporary injunction. *Avalon Legal Info. Servs., Inc. v. Keating*, 110 So. 3d 75 (Fla. 5th DCA 2013).

Plaintiff has a good faith belief that no bond should be required for the relief sought. This injunction merely restores the status quo and requires the County to remove any instruction to staff to treat the Belvedere applications differently from any other application. There is no potential risk to the County of any financial damages associated with an injunction requiring the site plan review of this specific property.

VII. Rule 1.610(a)(1)(B) Certificate Regarding Notice/Ex Parte Relief

On January 19, 2024, Deputy County Attorney Kevin Bledsoe sent a Request to Produce to Plaintiff. While the County failed to file a Notice of Appearance, a copy of this Motion was sent both through the Portal and directly to Attorney Beldsoe who filed the Request to Produce. Accordingly, undersigned counsel certifies that they provided notice of this *ex parte* proceeding to Defendant, VOLUSIA COUNTY, on January 22, 2024 by emailing this Motion and a copy of the Notice of Ex Party Hearing to the County.

While Plaintiff has provided notice of this proceeding to Defendant, notice of this proceeding should not be required because this Motion is simply to maintain the status quo. The Volusia County Commission has created the emergency situation by forcing the issue and scheduling a February 6, 2024 vote to approve a ‘formal moratorium’ ordinance prohibiting processing of any development permits within the I-2 Zoning Classification for at least nine (9) months.

CONCLUSION

Plaintiff respectfully requests that the Court grant this *ex parte* motion and enter a temporary injunction holding the ‘moratorium’ invalid and directing the County to immediately

process Plaintiff's site plan application under the regulations, zoning, and Comprehensive Plan as they otherwise existed when the application was submitted, and awarding any further relief that this Court deems just and proper.

DATED this 22nd day of January, 2024.

/s/ Nick Dancaescu

NICK DANCAESCU, ESQ.

Florida Bar No.: 12739

Nick.dancaescu@gray-robinson.com

Donna.flynn@gray-robinson.com

Mariah.richardson@gray-robinson.com

RACHAEL M. CREWS, ESQ.

Florida Bar No.: 795321

Rachael.crews@gray-robinson.com

jamal.wilson@gray-robinson.com

WILLIAM T. DOVE, ESQ.

Florida Bar No.: 1032175

billy.dove@gray-robinson.com

GRAYROBINSON, P.A.

301 East Pine Street

Suite 1400

Orlando, Florida 32801

407-843-8880

407-244-5690 fax

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of January, 2024, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using Florida's E-Portal filing system which will automatically transmit a copy of this pleading to all counsel of record and sent a copy mail via regular U.S. Mail to: Volusia County, 123 W Indiana Ave Deland, Fl 32720.

/s/ V. Nicholas Dancaescu

V. Nicholas Dancaescu, Esq.



County Council of Volusia County, Florida

November 21, 2023
Call to Order: 4:00 p.m.

AGENDA

Revised November 17, 2023

Revised November 20, 2023

The Frank T. Bruno, Jr. County Council Chambers, Room 204
Thomas C. Kelly Administration Center
123 West Indiana Avenue, DeLand, FL 32720

COUNCIL MEMBERS:

Jeffrey S. Brower, County Chair
Jake Johansson, At-Large
Don Dempsey, District 1
Matt Reinhart, District 2
Danny Robins, Vice Chair/District 3
Troy Kent, District 4
David Santiago, District 5

STAFF:

George Recktenwald, County Manager
Michael G. Dyer, County Attorney

PUBLIC PARTICIPATION INFORMATION

Public participation is welcomed and encouraged by the Volusia County Council (Council). In order to be recognized by the Chair during public participation periods, a speaker shall fill out a request form (the back of the form may be used if necessary) and present it to the Deputy Clerk for the Council, prior to public comment periods.

There are three opportunities for public participation during each Council meeting; at the beginning of each meeting, at the end of each meeting, and for each voted agenda item.

Public comment on issues on the agenda or public participation shall be limited to 3 minutes. If you wish to speak on an agenda item, indicate the item number/letter on the public participation form.

Public hearings and time-certain matters may be heard later, but not sooner, than the designated time.

If any person decides to appeal a decision made by the County Council with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made.

For public participation procedures please contact PublicParticipation@volusia.org.

We respectfully request that all electronic devices are set for no audible notification.

Electronic Information! County Council agendas, minutes and live audio of meetings are available on the internet: <http://www.volusia.org/government/>

The Volusia County Council Chambers is a Wi-Fi Zone.



County Council of Volusia County, Florida

November 21, 2023
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AGENDA

Revised November 17, 2023

Revised November 20, 2023

CALL TO ORDER - 4:00 P.M.

INVOCATION

By: Rabbi Paul Falk with Ariel Congregation, Orange City.

Any opening invocation that is offered prior to the deliberation of Council business shall be the voluntary offering of a private person, to and for the sole benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council or the County staff, and the County is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance are welcome to stand in recognition of the pledge of allegiance and invocation, should they so wish, though such invitation is in no way construed as a demand, order, or command. Members of the public are also allowed to leave Council chambers until such time as the invocation is completed.

PLEDGE OF ALLEGIANCE

Led by the county chair.

ROLL CALL

PUBLIC PARTICIPATION

The Council welcomes and encourages comments from the public.

In order to be recognized by the Chair during public participation periods, a speaker shall fill out a request form (the back of the form may be used if necessary) and present it to the Deputy Clerk for the Council, prior to public comment periods.

Each speaker is allowed one (1) opportunity to speak during a public comment period for a maximum of three (3) minutes. Speakers may not yield their allotted three (3) minutes to another speaker. The Council may, by majority vote, reduce the time limit based on the number of speakers in order to accommodate the opportunity for public comment.

When called to speak by the Chair, all comments shall be made from the podium or other reasonable accommodation by the Chair. Speakers shall identify themselves by name and state their address; and if the speaker is representing a group or organization, the group or organization should also be identified.



County Council of Volusia County, Florida

November 21, 2023
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AGENDA

Revised November 17, 2023

Revised November 20, 2023

All comments shall be directed to the Council as a whole. Comments shall not be addressed to a single member of the Council or to County staff members. Generally, Council members do not ask questions of speakers or respond to questions during public participation. Speakers shall make their comments and request the County Council members consider their comments.

The Council is committed to conducting its meetings such that all participants have a fair and adequate opportunity to be heard, the regular agenda of the Council is completed, and the Council's time is used efficiently. Meetings of the Council shall be conducted in a professional, business-like and civil manner.

COMMENTS ON CONSENT ITEMS

PULL CONSENT AGENDA ITEMS

If discussion is desired by any member of the council, that item must be removed from the consent agenda and considered separately. All other matters included under the consent agenda will be approved by one motion. Citizens with concerns should address those concerns by filling out a public participation slip and giving it to the deputy clerk prior to consent agenda items being pulled.

Item 01 consent agenda

BUSINESS SERVICES

-Facility Management

A.

FILE NUMBER 11336

Award of contract to A. G. Pifer Construction Co., Inc. for the Animal Services building and site rehabilitation, 23-B-162LL, C1910.

Expenditure: \$484,484

Jeaniene Jennings (386) 822-5789 x15789 James Corbett (386) 248-1760 x11359

Removed from Agenda

~~B.~~

~~FILE NUMBER 11361~~

~~Award of contract to A. G. Pifer Construction Co., Inc. for the Fire Station 32 (DeLand — Spring Lakes) ADA and building code upgrades and improvements, 23-B-187LL, C1920.~~

~~Expenditure: \$105,393~~

~~Jeaniene Jennings (386) 822-5789 x15789 James Corbett (386) 248-1760 x11359~~





County Council of Volusia County, Florida

November 21, 2023
Call to Order: 4:00 p.m.

AGENDA

Revised November 17, 2023

Revised November 20, 2023

-Transit Services

C.

FILE NUMBER 11346

Approval of amendment no. 4 with Avail Technologies Inc., for Intelligent Transportation System software maintenance and support.

Annual expenditure: \$313,826

Jeaniene Jennings (386) 736-5972 x15789 Bobbie King (386) 943-7029 x17029

D.

FILE NUMBER 11367

Single Source approval with Genfare, a division of SPX Corporation for fareboxes, OEM parts and maintenance.

Estimated annual expenditure: \$28,000

Jeaniene Jennings (386) 822-5789 x15789 Bobbie King (386) 756-7496 x4103

COMMUNITY SERVICES

-Community Assistance

E.

FILE NUMBER 11360

Award of FY 2023/24 Dori Slosberg Driver Education Program Grant Funds

Expenditure: \$234,252 [from grant funds]

Brad Burbaugh (386) 943-7081 x13455 Carmen Hall (386) 736-5955 x12044

-Library Services

F.

FILE NUMBER 11307

Daytona Beach Regional Library Flood Adaptation Grant.

Grant revenue: \$800,000

Local match: \$800,000

Bradley Burbaugh (386) 943-7029 x12893 Lucinda Colee (386) 248-1745 x11212



County Council of Volusia County, Florida

November 21, 2023
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AGENDA

Revised November 17, 2023

Revised November 20, 2023

-Resource Stewardship

G.

FILE NUMBER 11352

Scope change request for ECHO grant 21-06, Volusia County Parks, Recreation & Culture Veterans Memorial Plaza.

Brad Burbaugh (386) 943-7081 x13455 Nick Dunnam (386) 943-7081 x13459

H.

FILE NUMBER 11353

Scope and budget change request for ECHO grant 22-05 South Daytona Magnolia Park Renovations.

Brad Burbaugh (386) 943-7081 x13455 Nick Dunnam (386) 943-7081 x13459

I.

FILE NUMBER 11354

Budget change request ECHO grant 23-02, Daytona Playhouse Renaissance Phase II.

Brad Burbaugh (386) 943-7081 x13455 Nick Dunnam (386) 943-7081 x13459

LEADERSHIP

-Community Information

J.

FILE NUMBER 11313

Renewal of advertising master agreements with multiple vendors.

Estimated annual expenditure: \$175,000

Suzanne Konchan (386) 736-5920 x15060 Michael Ryan (386) 822-5637 x15637

K.

FILE NUMBER 11159

Community events list.

Michael Ryan (386) 822-5062 x15637



County Council of Volusia County, Florida

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AGENDA

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K-1

FILE NUMBER 11411

Proclamation to be presented outside county council chambers.

- Small Business Saturday - November 25, 2023.

Michael Ryan (386) 822-5062 x15637 Pat Kuehn (386) 822-6062 x12934

-Leadership

L.

FILE NUMBER 11381

Approval of previous County Council meeting minutes.

Karissa Green (386) 736-5920 x15928

LEGAL DEPARTMENT

-Legal

M.

FILE NUMBER 11355

Risk Management Program Committee Resolution Update.

W. Kevin Bledsoe (386) 736-5950 x12111 Charles Spencer (386) 736-5963 x12884

PUBLIC PROTECTION

-Animal Services

N.

FILE NUMBER 11339

First Amendment Agreement for Services Between Halifax Humane Society, Inc. and County of Volusia to extend the term of current contract.

Estimated expenditure: \$22,000

Mark Swanson (386) 740-5120 x12904 Angela Miedema (386) 248-1790 x11398



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PUBLIC WORKS

-Engineering

O.

FILE NUMBER 11369

Selection of Hall Construction Co., Inc., for the construction management/general contracting services for the new Doris Leeper Doan Parcel Park, 23-SQ183SR, C1917.
Tadd Kasbeer (386) 736-5967 x15846

-Solid Waste

P.

FILE NUMBER 11349

Approval of lease with Daytona Beach Radio Control Association for Radio Controlled Hobby Flying Facility, ITB 23-B-123AK.

Revenue: \$3,500

Benjamin Bartlett (386) 736-5341 x12712 Regina Montgomery (386) 947-2952 x21347

See revised agenda item.

-Traffic Engineering

Q.

FILE NUMBER 11400

Amendment to Traffic Signal Maintenance & Compensation Agreement with the Florida Department of Transportation.

Increased Revenue: \$100,000

Benjamin Bartlett (386) 736-5965 x12712 Jay Williams (386) 736-5968 x12139

--END CONSENT AGENDA--



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PRESENTATIONS / AWARDS / REPORTS / PROCLAMATIONS / RETIREMENTS, etc.

(May be heard anytime throughout County Council as time permits)

PRESENTATIONS

Item 02

FILE NUMBER 11386

Proclamation to be presented inside county council chambers.

- Dr. Roy A. Walters Day - November 21, 2023.

Michael Ryan (386) 822-5062 x15637 Pat Kuehn (386) 822-6062 x12934

See revised agenda item.

OTHER BUSINESS

Item 03

FILE NUMBER 11366

Request of financial support from CLASH Endurance for the 5th annual CLASH Endurance sports festival.

George Recktenwald (386) 736-5920 x15920

See supplemental documents.

Item 04

FILE NUMBER 11365

Presentation and Resolution supporting Bike/Walk Central Florida's Best Foot Forward Pedestrian Safety Program.

Ben Bartlett (386) 736-5965 x12712 Jay Williams (386) 736-5968 x12139

Item 05

FILE NUMBER 11356

Authorizing an application for the National Oceanic and Atmospheric Administration (NOAA) Climate Resilience Regional Challenge (Grant).

Clay Ervin (386) 522-5013 x12000 Ginger Adair (386) 736-5927 x12059

Samantha West (386) 736-5927 x15850



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Item 06

FILE NUMBER 11388

Publication of legal notices on the County website.

Paolo Soria (386) 736-5950 x12940 Michael Dyer (386) 736-595 x13238

See revised agenda item.

Item 07

FILE NUMBER 11375

Fiscal Year 2022-23 revised budget year-end fund reconciliation and appropriation.

Gross Amount: \$70,399,807

Ryan Ossowski (386) 943-7054 x12725 Aaron Van Kleeck (386) 736-5934 x12458

[COUNCIL MAY BREAK AT AN UNSCHEDULED TIME FOR LUNCH]

PUBLIC PARTICIPATION

The Council welcomes and encourages comments from the public.

In order to be recognized by the Chair during public participation periods, a speaker shall fill out a request form (the back of the form may be used if necessary) and present it to the Deputy Clerk for the Council, prior to public comment periods.

Each speaker is allowed one (1) opportunity to speak during a public comment period for a maximum of three (3) minutes. Speakers may not yield their allotted three (3) minutes to another speaker. The Council may, by majority vote, reduce the time limit based on the number of speakers in order to accommodate the opportunity for public comment.

When called to speak by the Chair, all comments shall be made from the podium or other reasonable accommodation by the Chair. Speakers shall identify themselves by name and state their address; and if the speaker is representing a group or organization, the group or organization should also be identified.

All comments shall be directed to the Council as a whole. Comments shall not be addressed to a single member of the Council or to County staff members. Generally, Council members do not ask questions of speakers or respond to questions during public participation. Speakers shall make their comments and request the County Council members consider their comments.



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The Council is committed to conducting its meetings such that all participants have a fair and adequate opportunity to be heard, the regular agenda of the Council is completed, and the Council's time is used efficiently. Meetings of the Council shall be conducted in a professional, business-like and civil manner.

DISCUSSION OF MATTERS NOT ON AGENDA / REQUESTS

County Manager
County Attorney
County Council

ADJOURNMENT

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT (TITLE II)

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the County of Volusia ("County") will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

County does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

County will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in County programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

The ADA does not require the County to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

County will make such reasonable modification to policies and programs for qualified persons with disabilities to ensure they have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in County offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of County, should contact the office of the County's ADA Title II Coordinator, Jim Corbett, at (386) 248-1760 as soon as possible but no later than 2 business days before the scheduled event or meeting. This paragraph shall likewise apply to written requests by a physically



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handicapped person needing a special accommodation to attend a public meeting in accordance with section 286.26, Florida Statutes.

Complaints that a program, service, or activity of County is not accessible to persons with disabilities should be directed to the County in accordance with the County of Volusia Grievance Procedure under the Americans with Disabilities Act (Title II). A copy of the procedure may be obtained by contacting the office of the County's ADA Coordinator, (386) 248-1760.

County will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by calling the County Manager's Office at 386-736-5920.



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TITLE VI - NONDISCRIMINATION POLICY

Volusia County values diversity and welcomes input from all interested parties, regardless of cultural identity, background or income level. Moreover, Volusia County believes that the best programs and services result from careful consideration of the needs of all of its communities and when those communities are involved in the public policy and governmental services decision making process. Thus, Volusia County does not tolerate discrimination in any of its various programs, services, or activities. Pursuant to Title VI of the Civil Rights Act of 1964 and other federal and state authorities, Volusia County will not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

In accordance with the foregoing, Volusia County has established a discrimination complaint procedure and will take prompt and reasonable action to investigate and eliminate discrimination when found. Any person who believes that he or she has been subjected to discrimination based upon race, color, national origin, sex, religion, age, disability, family or income status in any of Volusia County's programs, services, or activities may file a complaint with the Volusia County Title VI Nondiscrimination Coordinator:

Tammy King
Title VI Coordinator
County of Volusia
123 W. Indiana Avenue, DeLand, FL 32720
Email: tking@volusia.org
Phone: (386) 736-5951
Fax: (386) 740-5149
Hearing Impaired: 711 (Florida Relay) / (800)-955-8771 (Florida Relay for TTY Users)