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To: Honorable Mayor and Village Council

Date: October 19, 2015

From: Edward Silva, Village Manager

Re: Ordinance for 1<sup>st</sup> Reading –  
Appeals to Sec. 30-50.21

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**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE VILLAGE OF PALMETTO BAY, RELATING TO SECTION 30-50.21, "PUBLIC FACILITIES"; CREATING SECTION 30-50.21(a)(5); ALLOWING GOVERNMENT APPROVED FACILITIES TO PROCEED TO PERMITTING AND CONSTRUCTION DURING APPEAL, SUBJECT TO SPECIFIED CONDITIONS; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.**

**BACKGROUND:**

On August 20, 2009, the Village Council adopted section 30-50.21, which established an exclusive procedure for the review and adoption of government related site plans. The provisions adopted by the Village are common to many governments and exist due to the unique nature of government facilities and its role to deliver a variety of services to the public. As a result, effective government service delivery often requires the siting of facilities in a variety of zoning districts. Neighborhood parks and libraries contribute to a higher quality of life and appropriate facility location is essential for life saving facilities.

From time to time, approved government facility site plans are subjected to legal challenges. These challenges can result in the delay of delivering the desired public service offered by the facility yet to be constructed. Despite legal challenges, the proposed ordinance allows for a government with an approved site plan to proceed to permitting and construction. In doing so, that government accepts all risk for proceeding and agrees in advance to comply with the result of the final findings of the legal proceeding. Although the current code, 30-50.21 (public facilities), may allow permitting and construction during appeal due to its "exclusive procedures" provision (making other code sections inapplicable, including the requirement of exhaustion of appeal), this proposed code amendment clarifies the matter.

**ANALYSIS:**

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30.7(b). The Background section provided above shall be considered supplemental information to this analysis and shall be incorporated into each criterion delineated below. The following is a review of those criteria:

**Criteria (1)** Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the Village's Concurrency Management Program.

Objective 1.3 Public Facility Levels-of-Service.

Make sure suitable land is available for roads and infrastructure needed to support proposed development and redevelopment, and the expansion of necessary public facility capacity and service concurrent with the impacts of development.

**Analysis:** Typically the siting of a government facility is done with the aim to provide a specified level of service to its residents. The proposed amendment facilitates the construction of those facilities, at the government's own risk, when the associated site plan is the subject of an appeal.

**Finding:** Consistent.

**Criteria (2)** Whether the proposal is in conformance with all applicable requirements of Chapter 30.

**Analysis:** Please see Background section of this report. Section 30-50.21 already provides for an exclusive procedure for the site plan review of government facilities for reasons explained in the Background Section. The proposed ordinance furthers that aim by providing for provisions that allow for a government to pursue, at its own risk, permitting and construction during that time when the site plan is subject to legal challenge.

**Findings:** Consistent.

**Criteria (3)** Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

**Analysis:** Please see Background section of this report. The reason many governments employ an exclusive procedure for the site plan review of government facilities is due to the unique nature of their operations. Such uses do not naturally lend themselves to the development standards of traditional zoning categories. As such, exclusive procedures ensure needed government facilities can be sited. This does not preclude individuals from appealing the decision rendered by a government in approving a site plan. Unfortunately, not all appeals have merit. The result of such a scenario could be an unnecessary delay in delivering the desired service. The proposed ordinance does not deny the right to appeal, nor does it circumvent compliance with the final legal ruling. It merely allows the government to proceed, at their own risk with permitting and construction.

Findings: Consistent.

**Criteria (4)** Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and locations of uses involved, the impact on the adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: Please see Criteria 3 and the Background section of this report.

Finding: Consistent.

**Criteria (5)** Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and service; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: The proposed ordinance does not alter permitted uses, intensities, or densities.

Finding: Consistent.

**Criteria (6)** Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer wildlife habitats, and vegetative communities.

Analysis: The proposed ordinance does not impact the above systems.

Finding: Consistent.

**Criteria (7)** Whether, and to the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Criteria 1 and the Background Section of this report. The principal intent of the proposed ordinance is to facilitate the delivery of government services in a timely manner.

Findings: Consistent.

**Criteria (8)** Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: The proposed ordinance relates to permitting and construction of an approved government site plan that is under appeal and does not relate to land use patterns.

Findings: Not applicable.

**Criteria (9)** Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose of Chapter 30.

Analysis: Please see Criteria 2, 3, 4, and 7, and the Background Section of this report.

Finding: Consistent.

**Criteria (10)** Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: As per the direction of the Village Council.

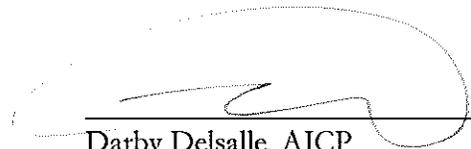
Finding: As determined by the Village Council.

**FISCAL/BUDGETARY IMPACT:**

No budgetary impact is anticipated at this time.

**RECOMMENDATION:**

Approval.



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Darby Delsalle, AICP  
Planning & Zoning Director



- 1 (5) Notwithstanding any contrary provisions of this Code, during an appeal of a  
2 development order for a government facility approved pursuant to this section,  
3 zoning approvals relating to that development order being appealed shall be issued  
4 upon the request of the applying government, providing that:  
5 a. the applying government indicates in writing that it will conform as necessary  
6 to any subsequent changes mandated as a result of the appellate process by  
7 the court or by the Village Council; and  
8 b. that other applicable requirements of law are met.  
9

10  
11 **Section 3. Conflicting Provisions.** The provisions of the Code of Ordinances of the  
12 Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the  
13 provisions of this ordinance are hereby repealed.  
14

15 **Section 4. Severability.** The provisions of this Ordinance are declared to be severable,  
16 and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be  
17 invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences,  
18 sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative  
19 intent that this Ordinance shall stand notwithstanding the invalidity of any part.  
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21 **Section 5. Codification.** It is the intention of the Village Council and it is hereby  
22 ordained the provisions of this Ordinance shall become and be made part of the Code of  
23 Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be  
24 renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be  
25 changed to "Section" or other appropriate word.  
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27 **Section 6. Effective Date.** This ordinance shall take effect immediately upon  
28 enactment.  
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31 **PASSED and ENACTED** this \_\_\_\_ day of \_\_\_\_\_, 2015.  
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33 First Reading: \_\_\_\_\_  
34 Second Reading: \_\_\_\_\_  
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38 Attest: \_\_\_\_\_  
39 Meighan Alexander  
40 Village Clerk  
41

\_\_\_\_\_  
Eugene Flinn  
Mayor

42 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
43 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:  
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46 \_\_\_\_\_  
47 Dexter W. Lehtinen  
48 Village Attorney