



**Minutes
Town of Lake Park, Florida
Second Marina Visioning Workshop,
Immediately Following the
US-1 Medians Workshop
Wednesday, August 28, 2019
Commission Chamber, Lake Park Town Hall
535 Park Avenue**

The Town Commission met for the purpose of a Second Marina Visioning Workshop on Wednesday, August 28, 2019 at 7:30 p.m. Present were Mayor Michael O'Rourke, Vice-Mayor Kimberly Glas-Castro, Commissioners Erin Flaherty, John Linden, Roger Michaud, Town Manager John O. D'Agostino, and Town Clerk Vivian Mendez. Town Attorney Thomas Baird was absent.

Town Clerk Mendez performed the roll call and Vice-Mayor Glas-Castro led the pledge of allegiance.

NEW BUSINESS:

1. Marina Visioning Workshop Discussion Item.

Town Manager D'Agostino began the discussion and provided a brief historical summary of the Lake Park Harbor Marina. Discussion ensued, Town Manager D'Agostino reviewed a Memo provided by Town Attorney Baird regarding Procedures for a "Unsolicited proposal project" under Florida State Statute 255.065 (see Exhibit "A"). Vice-Mayor Glas-Castro questioned why the Town would consider the procedures within Exhibit "A" as opposed to the Towns' Request for Qualifications process. Town Manager D'Agostino explained that most private entities have concerns with the disclosure of privileged information as related to presentations, ideas, and investments. Community Development Director Nadia DiTommaso presented to the Commission (see Exhibit "B"). Town Manager D'Agostino explained continuous correspondence with Palm Beach County regarding the Lake Park Harbor Marina. Community Development Director DiTommaso explained that the goal of the Workshop was to review the list of desired components, amenities, services, and provide direction to the Town Manager. She explained that the Town's preference was to have two separate solicitations, one for the Marina parking lot, and the second for the remaining portion of the Marina. Commissioner Linden explained that he would prefer to have additional education regarding Public-Private Partnerships, and that he had questions regarding the Memo prepared by Town Attorney Baird. He asked for clarification regarding the necessary investments to move forward. Town Manager D'Agostino explained that in order to move forward a private entity would need to make significant investments. Commissioner Linden suggested additional education and /or presentations regarding the pros and cons of solicited and unsolicited Public-Private Partnerships. Town Manager D'Agostino explained that he would request a Consultant presentation take place to address questions and concerns as related to Public-Private Partnerships. Mayor O'Rourke agreed with the suggestion of a Consultant presentation. Town Manager


D'Agostino explained that the Town would identify a Consultant and request a presentation for the Commission.

PUBLIC COMMENTS:


David Decker explained that in 2000, he was employed as a Consultant by the Town of Lake Park to assist in the original Public-Private Partnerships. He explained that he had information regarding the original initiative. He commended the Commission for their due diligence. Mayor O'Rourke thanked him for his attendance and his comments.

ADJOURNMENT

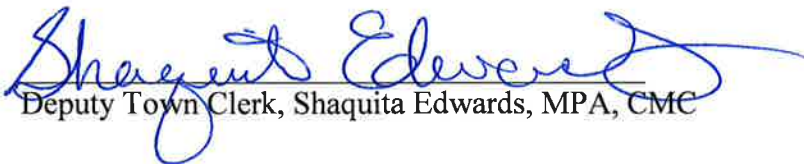
There being no further business to come before the Commission and after a motion to adjourn by Commissioner Vice-Mayor Glas-Castro and seconded by Commissioner Michaud, and by unanimous vote, the meeting adjourned at 8:20 p.m.



Mayor Michael O'Rourke



Town Clerk, Vivian Mendez, MMC



Deputy Town Clerk, Shaquita Edwards, MPA, CMC



Approved on this 18 of September, 2019

Exhibit "A"

J O N E S
F O S T E R

Memo

To: Mayor & Commissioners
From: Thomas J. Baird, Town Attorney
Date: August 28, 2019
Subject: Procedures for a "Unsolicited proposal project" under § 255.065
Cc: John D'Agostino, Town Manager

This memorandum has been prepared to inform the Commission of the statutory procedures the Town must follow should it receive or solicit proposals for a "Qualifying Project" (hereinafter "Project") with a private entity or entities, for the building, upgrading, operating, ownership, or financing of facilities. The first step is to determine whether the proposed public/private partnership meets the definition in the statute of a Qualifying Project.

Qualifying Project

The Town Manager has proposed the redevelopment of the Lake Harbor Marina (the Marina) in "partnership" with a private developer pursuant to an unsolicited proposal. The first step is to determine whether the redevelopment of the Marina would be a Project. A "Qualifying Project" is broadly defined in § 255.065(1)(i), Fla. Stat. :

"A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport, or seaport facility, rail facility project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; ..."

In the Commission's first workshop this proposal was described as a "luxury marina." To the extent the Commission accepted this as a description of the "Qualifying Project", it meets the broad definition set forth hereinabove, provided it predominately serves a public purpose.

Public Purpose

There is no "absolute standard" to confirm whether a project serves a public purpose, but it is clear the Marina must remain open to the residents of Lake Park, specifically, and generally to the residents and visitors to Palm Beach County. In other words, the Marina must remain predominately available to the public, and no portion of it can become "privatized" such that it is

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“off limits” to the public (the actual private vessels docked in the Marina would not be accessible to the public). The Town Commission must find that there is a public need for the construction or upgrade of the Marina. Finally, it should be noted that the Project must remain accessible to the public because of the County’s use of funds from its “Access to the Waterfront” Bond whereby the boat trailer parking lot property was acquired and because of the deed restrictions on specific parcels of the marina.

Unsolicited Proposals

Although governmental entities would typically solicit proposals for the development of publically owned lands or facilities, § 255.065, Fla. Stat., specifically authorizes the Town to receive unsolicited proposals for the development or redevelopment of its land provided it is a Qualifying Project. However, the statute imposes some rigorous requirements on public entities and would require the Town to consider other “unsolicited proposals” at the beginning of the process. A proposal is defined by § 255.065(1), Fla. Stat. as “a plan for a qualifying project with detail **beyond a conceptual level for which terms such as fixing costs, payment schedules, financing,** deliverables, and project schedule are defined.” Pursuant to this definition, if the Commission elects to pursue a Project, it must be presented with something more than simply illustrations of the unsolicited proposal from a private entity. It is not clear from the statute if the authorized fee is intended to be a true “cost recovery” fee whereby the Town could recover the entire cost of review of the unsolicited proposal.

If the unsolicited proposal involves architecture, engineering or landscape architecture (which would be expected here), the Town is responsible for ensuring a professional review and evaluation of the design and construction proposed to assure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards consistent with other municipal projects. Furthermore, the proposal must include a design criteria package prepared by an architect or engineer licensed in Florida with enough specifications that will allow other private entities to prepare a bid.

The Town would be financially responsible for retaining an architect, a landscape architect, and an engineer all of who are licensed in Florida and qualified to perform a review of the proposal. These professionals would advise the Town through completion of the design and construction of the Project. The statute offers no specific guidance of whether the Town is permitted to charge a fee true “cost recovery” fee which would enable the Town to recover all of its costs of the review of the Project.

Notice of the Receipt of an Unsolicited Proposal

Before moving forward with the unsolicited proposal, the Town must publish notice of its receipt of the unsolicited proposal in the Florida Administrative Register and a newspaper of general circulation (Palm Beach Post) at least once a week for 2 weeks. The ad must state that the Town has received an unsolicited proposal and *state that the Town will accept other proposals for the same project.* The timeframe for accepting other proposals pursuant to this notice may vary but it must be between 21-120 days.

Pre-requisites to an Agreement

Before coming to an agreement with a private entity for the Project, the Town must:

- Ensure that a provision is made for the private entity's performance and payment of subcontractors, ensure that the agreement addresses termination upon a material default of the agreement.
- *Perform an independent analysis of the proposed public-private partnership* which demonstrates the cost-effectiveness and overall public benefit of the Project **before** the Town initiates the procurement process.
- Establish a date for the commencement of activities related to the Project.
- If the Town received unsolicited proposals, after the required notification period has expired (21-120 days), the Town must rank the proposals received in order of preference.¹
- Before developing or operating the Project, the private entity must enter into an agreement with the Town.

Requirements of a "Comprehensive Agreement"

The agreement between the Town and the private developer must include:

- Delivery of performance and payment bonds, letters of credit, a review of the design for the project by the Town.
- Maintenance of a policy of public liability insurance, a copy of which must be filed with the Town and accompanied by proofs of coverage, or self-insurance.
- Periodic filing by the private entity of the appropriate financial statements that pertain to the project.

¹ The Town may then begin negotiations for an agreement with the highest-ranked firm. If the Town is not satisfied with the results of the negotiations, the Town may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure.

- Procedures that govern the rights and responsibilities of the Town and the private entity including in the event of the termination of the agreement or a material default by the private entity.²

Miscellaneous Provisions

- Prior to construction, the Town must provide a copy of the comprehensive agreement to the Department of Management Services. The Department maintains a copy of this agreement and may share it with other responsible public entities.
- An unsolicited proposal is exempt from § 119.07(1) until such time as the Town provides notice of its intended decision for a qualifying project, but it is exempt for no longer than 90 days from disclosure.

Marina Deed Restrictions

This statute offers the Town the opportunity to consider unsolicited proposals whereby the Town can form a “public – private” partnership to accomplish the redevelopment of the Marina. The process is detailed and requires the retention of various professionals to assist the Town in evaluating any unsolicited proposals. In this respect it will likely involve the Commission’s retention of professionals in the fields of finance, architecture, and engineering.

The Commission and its partner must be cognizant of the deed restrictions that exist with respect to parcels which comprise the marina. In August of 2004, the Commission directed then Town Manager Paul Carlisle and me to investigate the possibility of allowing a private developer to develop a restaurant at the Marina. The Town retained the assistance of a lawyer to assist it with this proposal. We exchanged communications and had conversations with the Department of Environmental Protection regarding this modest proposed public private project. At that time, the Town was informed by the Chief of the Bureau of Public Land Administration in the Division of state lands that because the deed restricted the Marina parcels to “public park and boat ramp purposes,” the state would only consider a modification to the deeds only if some portion of the revenue from the private commercial operation was shared with the state. The state’s share was described to us as a per square foot fee of the project of 12 cents, or 6% of gross revenue whichever is greater. It is recommended that this issue be disclosed to whatever private partners the Town might consider before the Town incurs the substantial expenses of retaining professionals in the evaluation of any proposed Project.

² The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the project or by the Town, and must provide for the transfer or purchase of property or other interests of the private entity by the Town as well as, fees, lease payments, or service payments.

Exhibit "B"



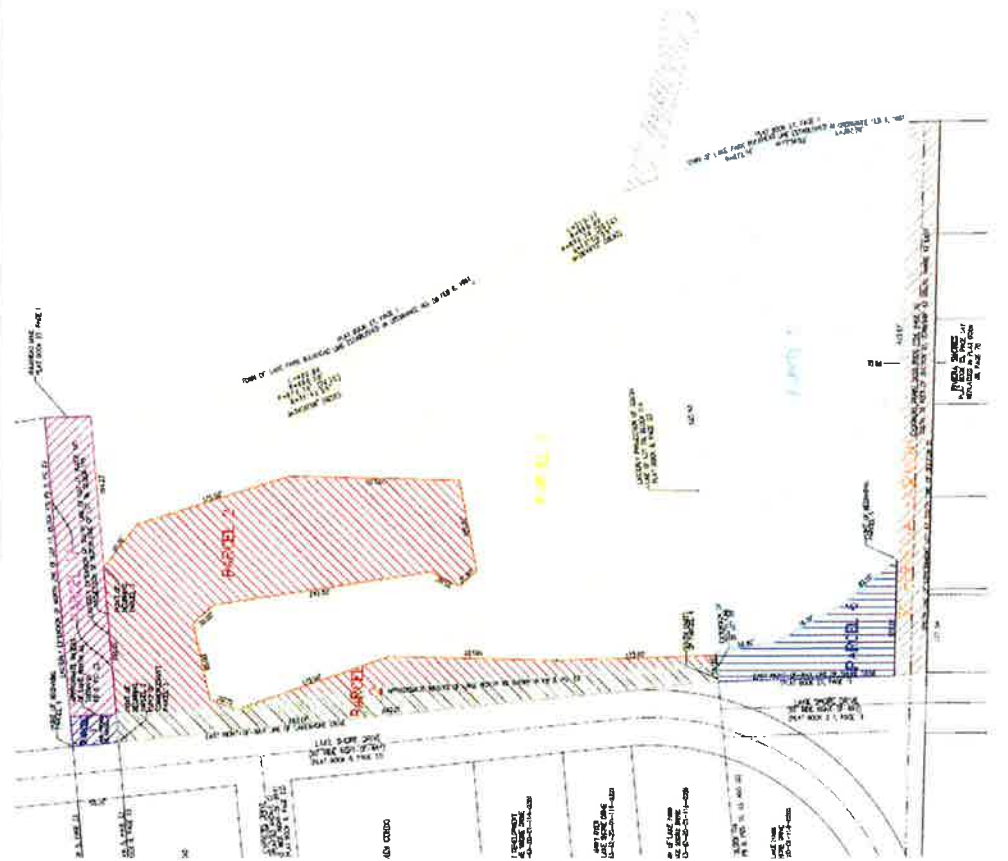
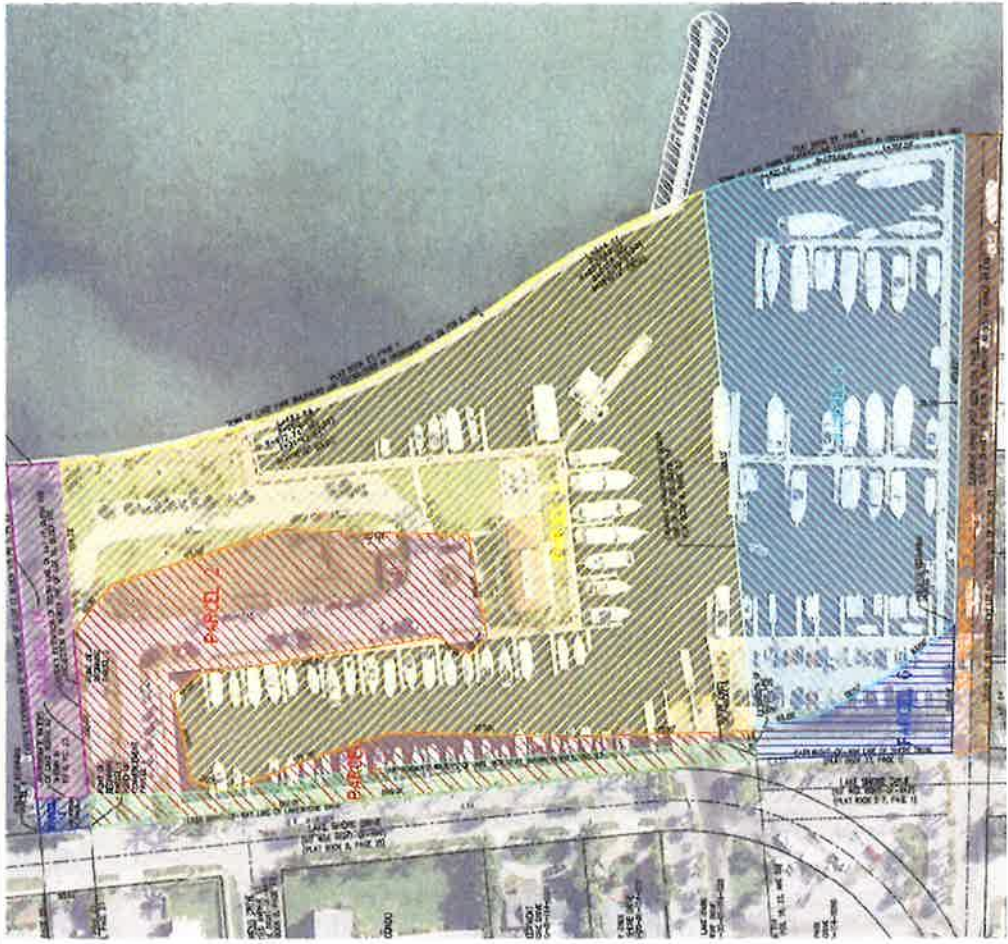
MARINA VISIONING TOWN COMMISSION (2nd) WORKSHOP

Wednesday, August 28, 2019

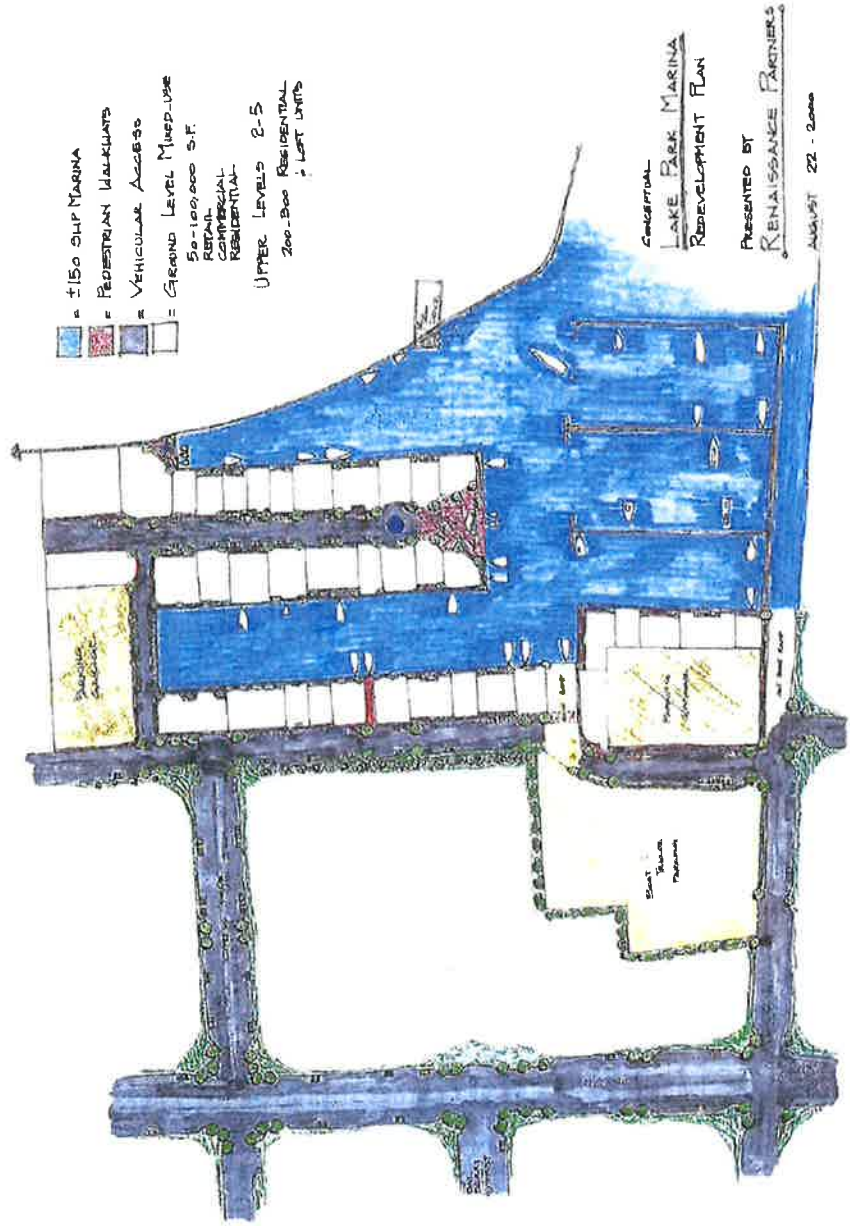
Immediately following US-1 Medians Workshop at 6:00pm

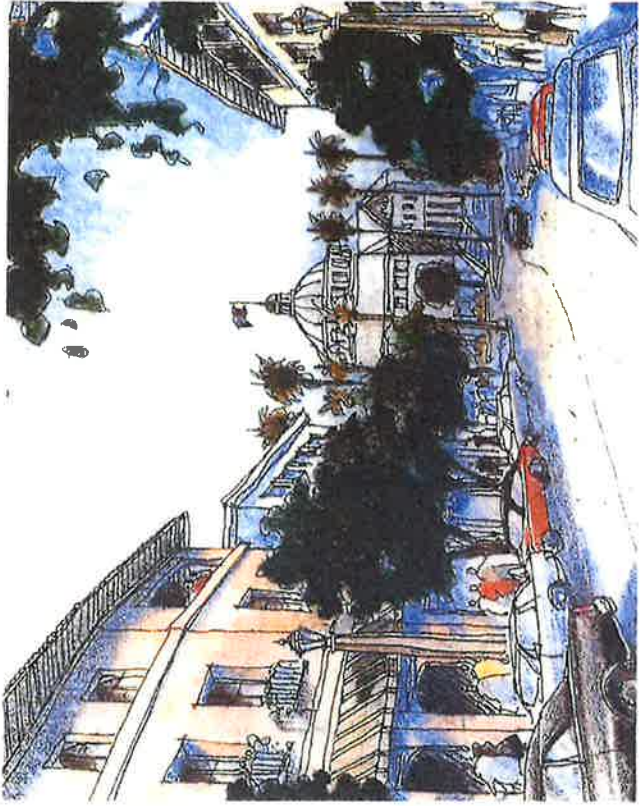


Marina Deed Document Parcels



2000 P3 Proposal Visuals





Desired Components from the 1st Workshop

- Adequate management
- Services that increase revenue and provide a better quality of life to residents
- Restaurant
- Pool
- Outdoor Showers
- Friendly, cozy atmosphere (design)
- Open area for public activities and music
- Rates that remain reasonable for residents
- Adequate maintenance plan for buildings and grounds
- Adequate vehicular and boat trailer parking
- Dry docks
- New Fueling stations and pump out station
- More floating docks
- Maintain commercial businesses already in place
- Entertain a partial overhaul, along with a complete overhaul since some components may be able to stay in place

Questions for the Town Commission to Consider

- (1) Confirmation that the Town should entertain two (2) separate P3's. One for the Marina parking lot areas and a second for the 'peninsula' area where the office building is currently located; and**
- (2) Confirmation on the desired amenities and services and other desired elements that should be incorporated into the P3 negotiations**

Next Steps

Next Steps/Timeline for STAFF to Complete Based on the Input Provided:

Months 2 through 5 (September through December 2019):

1. Identify the Need
2. Is a P3 the Best Delivery Method?
3. Clearly Define How Success Will Be Measured
4. Retain Consultants for Financial, Legal and Property Development Issues
5. Identify Parties and Each Party's Role
6. How Will the Project Be Procured?

Months 6 through 11 (January 2020 through June 2020):

7. Pursue the Selected Solicitation (Procurement) Procedure

Month 12 (for Marina parking lot area redevelopment):

8. Present Selected Contract/Agreement to the Palm Beach County Board of County Commissioners

The goal will be to enter into a contract/agreement within the next 12 months. Design ideas, expenditures and contract agreements will require a public review process. Following negotiations and once a contract/agreement is solidified and funding sources are identified, the implementation will commence and may take a few years depending on what is required and anticipated funding sources.