

5C-3

Agenda Item #:

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

<b>Meeting Date:</b>	January 24, 2012	<input type="checkbox"/>	Consent	<input checked="" type="checkbox"/>	Regular
		<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public Hearing

**Department:** Facilities Development & Operations

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff requests Board direction on the conclusion of contract negotiations for the sale and development of the Wedge Property located within the Transit Oriented Development District in downtown West Palm Beach.

**Summary:** On December 6, 2011, Staff advised the Board that it had proceeded as far as it could with the negotiations and required direction. The Board requested that the item be rescheduled for January 24 so that: a) information presented by interested property owners could be reviewed and considered and b) the Board could have additional time to review the outstanding issues. Since that time, Transit Village (TV) has modified its position on a couple of issues based on comments made by the Board; the comments of interested property owners have been considered; and traffic analyses and extensive discussions between traffic engineers representing the County, TV and the interested property owners have taken place. The issues which now remain are broad, big-picture concepts which speak directly to the Board's intent when issuing the RFP; a) timing of the project, b) financial assurances, and c) management of traffic impacts. Because the ultimate direction on one or all of these issues impacts almost every term of the contract either directly or indirectly, these are not issues that can be further independently tweaked. The Board is at a point where it must either determine if it wants to conclude the negotiations by; a) providing direction on the three unresolved issues allowing the contract to be re-drafted, the Property Review Committee (PRC) review process to commence and an appraisal ordered, or b) terminating the RFP process. **(FDO) Countywide (HJF)**


**Background & Policy Issues:** In early 2010, an RFP for the development of Transit Oriented Development project on the Wedge Property. The RFP was structured to be conducted in two phases; 1) pre-qualifications and general project scope, and 2) detailed project scope and supporting documentation. Only one response was received. Because the developer, Transit Village LLC (TV), was determined to be qualified by the Selection Committee and submitted a proposal that was responsive to the RFP requirements, the Board directed that Staff commence negotiations with TV rather than completing Phase 2 of the RFP process.

Continued on Page 3

**Attachments:**

1. Summary of contract issues requiring direction
2. Summary of contract issues conceptually resolved
3. Compilation of comments from interested property owners which do not speak directly to specific terms of the contract

**Recommended By:**

  
Department Director

1/10/12  
Date

**Approved By:**

  
County Administrator

1/15/12  
Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>See below</u>	<u>See below</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes \_\_\_\_\_ No \_\_\_\_\_

Budget Account No: Fund \_\_\_\_\_ Dept \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_  
Program \_\_\_\_\_

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

☞ There is no fiscal impact associated with this item. The decisions/direction received from the Board as a result of this item may result in a financial impact. The total financial impact and risk of the contract will be itemized and disclosed in the future item where the Board is considering approval.

### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Development Comments:

OFMB [Signature] 1/12/12  
Contract Development and Control [Signature] 1/18/12  
1-17-12 B. W. [Signature]

### B. Legal Sufficiency:

[Signature] 1/19/12  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

**Background & Policy Issues (Cont'd)**

However, because much of the information that would have been submitted in Phase 2 of the RFP process and have been vetted through the continuation of the competitive process was not submitted by TV, negotiations have been protracted as Staff attempted to secure the information that would have otherwise been provided in Phase 2 of the RFP process and to develop appropriate contract terms to not only address the County's real estate interest but provide protections to the operation of the existing Intermodal Transit Facility.

Following the December 6, 2011 BCC meeting and in response to preliminary comments from the Board and the comments received from the interested property owners at the meeting, TV modified its position on a couple of items, including restructuring the approach to the project to include a commitment to move forward on the entire project at once. Staff modified its written update accordingly and circulated that new draft to TV and the interested property owners again for comment.

Staff received about half a dozen pieces of correspondence from persons representing two interested properties as well as TV. Most correspondence covered a number of diverse issues and some contained detailed traffic and parking analyses. The comments fell into one of four categories.

1. Comments on contract terms addressed in Attachment 1 and 2.
2. Comments on traffic impacts on the Intermodal facility (PalmTran, Tri-Rail and TV parking garage) and are addressed in Attachment 1 and 2.
3. Comments on traffic impacts on the Clearwater Business District and in some cases a wider area.
4. Comments on the TV project that the Board has previously addressed or about the TV and/or TOD project in general.

Staff sorted the comments accordingly to ensure each comment was considered. Staff reviewed the comments from TV and the interested property owners and made changes to clarify and/or incorporate where Staff was in concurrence. However, not all comments by TV and the interested property owner were included in Staff's second draft.

For the Board's convenience, the Category #1 comments were included verbatim as footnotes directly into Attachment 1 and 2. Category #3 and #4 comments were compiled as Attachment 3 to the item, sorted as to topic.

Due to the complexity of the issues associated with the Traffic Circulation/Operations Study and comments from the interested property owners, this issue has not been updated in Attachment #1 nor have the comments of the interested property owners been included. Discussions between the traffic engineers from the County, TV and the interested property owners are continuing. Supplemental back-up will be provided just prior to the meeting addressing this issue.

**Attachment 1**  
**Transit Oriented Development – Wedge Property**  
**Summary of Issues Requiring Direction**  
**Updated January 8, 2012**

**1. Contract Milestones and Timing**

**Issue:** The contract provides up to six (6) years for Transit Village, LLC (TV) to commence construction, and no milestone for completion of construction.

**Background:** The contract provides that the County has the right to terminate the contract if TV does not meet certain default milestones. The timeframes start with approval of this contract. They are as follows:

- Obtain FTA and NEPA approval by end of Year 2.
- Obtain building permits and complete the closing by end of Year 5.
- Commence construction one year after closing or by the end of Year 6; whichever is first. It should be noted that closing does not occur until after the first two milestones have been met.

In addition, any of the milestones can be extended by written action of the Board for up to a total of one (1) year in the event of unreasonable governmental delay when implementing regulatory responsibilities. This includes actions of governmental entities such as FTA, EPA, SFWMD, State of Florida Department of Health, and City of West Palm Beach. This includes the County acting in a regulatory capacity (if any) but does not include the County when administering the terms of the contract.<sup>1</sup>

**Direction Needed:** *Staff believes that the milestones are both reasonable and feasible when functioning as default milestones. However, the Board needs to make a determination as to whether these milestones are consistent with the Board's intent for the sale and development of this property.*<sup>2</sup>

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<sup>1</sup> Oyer – TV and the County Staff have agreed that the commencement milestones can be extended for up to one (1) year by the Board “in the event of unreasonable governmental delay” by any governmental authority with jurisdiction (e.g. FTA, SFWMD, EPA, Florida Department of Health, City of West Palm Beach). Is there a cap on the number of extensions that TV can obtain? If not, what is the purpose of even having a six (6) year commencement deadlines because the practical reality is that TV will have an almost indefinite amount of time to commence construction and an absolutely indefinite amount of time to complete construction, with almost no performance insurance protecting the public in the meantime.

<sup>2</sup> Weaver – The County is proposing to subsidize private development utilizing grants and ad valorem taxes with no meaningful commitment by this developer. ...This timeframe grossly exceeds accepted County standards for development approvals and normal deadlines imposed for completion of a project.

## 2. Financial Requirements Beyond Former First Phase

Issue: TV has now agreed to a contractual commitment to continuously construct the entire project. TV's obligation to complete the work formerly known as the First Phase of the project (ie: ITC modifications, 290 structured parking spaces, structure enclosing the ITC, roadway/intersection improvements and not less than 50,000 square feet of liner buildings) is backed by a letter of credit, completion bond or other third party guarantee in an amount equal to 100% of the construction cost of the former first phase, however, the 100% third party financial guarantee does not carry through to the remainder of the project but is reduced to \$1,000,000. However, \$1,000,000 is not sufficient to complete construction of the remainder of the project, so the \$1,000,000 is acting more as an incentive to complete construction.

***Direction Needed: The Board must consider whether the \$1,000,000 secondary completion guarantee combined with a contractual requirement for continuous construction of the entire project is sufficient to ensure the completion of the remainder of the project so that the economic benefits of the project can be realized.***<sup>3 4 5</sup>

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<sup>3</sup> Weaver – We concur with Staff's opinion that the third party guarantee is woefully insufficient to guarantee completion of construction, or even demolish a partially constructed project in the event it is abandoned. Staff perceives the \$1 million guarantee as only an "incentive" which is not adequate to ensure performance. It is not prudent nor fiscally responsible for the County to enter into such a contract.

<sup>4</sup> Oyer - The County staff is requiring only a "developer guaranty" (presumably not a personal guaranty by the principals of TV) and a \$1 million third party-insured performance bond. Because the County and TV have now agreed that the entire TV project is to be built in one phase, that means that the County has negotiated a \$1M performance bond for a several hundred million dollar construction project. There are virtually no protections here for the taxpayers and there is no development and construction project in my memory that has been so inadequately secured by the County. The County is already considering selling \$8.25 million (which had a \$34.4 million value in 2004) of taxpayer land for \$100,000. Is the County also not going to provide customary performance protections for the taxpayer?

<sup>5</sup> Oyer – TV appears to have successfully negotiated with County staff six (6) years to commence construction of TV's proposed project. However, there is no completion milestone. Because of the very low threshold for what constitutes "commencement" of construction, the most minimal construction could be commenced (e.g. pouring of a concrete slab) that would satisfy the contractual requirements and not further construction completed. This places the County back in the same position that it does not want to be, namely a publically subsidized project that is not being built, not creating jobs and providing the developer an indefinite option on taxpayer owned property. The developer cannot lose. If the property increases in value during this time period, developer wins and taxpayers lose. If the property does not increase in value, the developer waits, with minimal investment. Even worse the developer could abandon the project, causing the surrounding properties to be devalued by the resulting half-built blight and the taxpayers foot the cost of demolishing the partially-completed project. The County Staff's solution to this possibility is inadequate (see footnote #4)

### 3. Traffic Circulation/Operations Study

Issue: The operational sufficiency of the immediately adjacent roadways after completion of the Project remains an outstanding issue.<sup>6</sup>

Background: Traffic engineers on behalf of TV, County, and commercial property owners nearby the Wedge Property re-reviewed the simulation of traffic impacts generated by the full development contemplated under this contract. This review resulted in various assumptions being changed to an extent deemed professionally acceptable to County's traffic engineers, as well as further technical refinements to the simulation. As a result the study now indicates significant impacts on the interior operation of the garage (i.e. egress delay) during the PM peak hour. However, the interior garage operation is an issue for TV and SFRTA. Included in the contract as a condition of pre-closing is the requirement that TV and SFRTA reach agreement on the detailed operation of the garage. If such an agreement is not reached, the development will not proceed.

In addition to the estimated \$1,000,000 in contractually required improvements to surrounding roadways/intersections, the study also now indicates a more immediate need to signalize the intersection of Clearwater Place/Clearwater Park Drive and add a travel lane for westbound traffic approaching the intersection on Clearwater Place. These same improvements were previously required to be bonded by TV in the event of need within the first 24 months following construction completion. TV has now agreed to install the traffic signal and add a travel lane as a requirement of the contract.

The revised study also indicates potentially significant delays on Clearwater Drive even with all of intersection and roadway improvements in place.

***Direction needed: Staff is working to better understand the range in delay and travel times being produced by the traffic simulation model in order to determine the effectiveness of these traffic improvement mitigation measures for both Palm Tran operations and the nearby commercial property owners.***

***Further information will be presented at the Board meeting or as soon as further discussions have concluded; whichever occurs earlier including outstanding comments of the interested property owners.***

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<sup>6</sup> Weaver, Oyer and Ebersole all made substantial comments on the traffic operations as it impacts PalmTran, Tri-Rail and the functioning of Clearwater Drive. Discussions between all traffic engineers and owners are still on-going and supplemental back-up on this specific issue will be provided just prior to the Board Meeting.

## **Attachment 2**

### **Summary Issues Conceptually Resolved – Contract Language Still To Be Drafted**

**UPDATED JANUARY 8, 2012**

#### **1. Minimum Guaranteed Development**

The development that the Developer (Transit Village, LLC or TV) was originally obligated to do by this contract was; 1) physical site and driveway modifications to the existing ITC to allow for the future development, 2) 290 structured parking spaces to replace the 160 existing surface spaces, 3) a structural “envelop” enclosing the existing intermodal facility, 4) improvements to local roadways/intersections, and 5) the construction of liner buildings of not less than 50,000 square feet which may include 20 affordable housing units. Collectively this was referred to as the First Phase.

The Developer intends that ultimately the site will be developed to include up to the equivalent of; 1) 125,000 sf of civic uses, 2) 600,000 sf of commercial/office, 3) up to 400 hotel rooms, 4) 120 apartment units, 5) 40 luxury condominiums, and 6) 175,000 sf of retail.

TV has since agreed to contractually commit to continuously construct the entire project<sup>7</sup> and provide a 3<sup>rd</sup> party guarantee in the amount of \$1M for work beyond the former first phase. The entire project is defined as the maximum intensity set forth in the Traffic Circulation Plan (uses can be converted to not exceed an equivalent amount of traffic generation) or that which is approved by NEPA, FTA and the City; whichever is less.

#### **2. Restructuring of Contract**

Re-writing the contract to reflect the contractual commitment to build the entire project will be extensive and detail intensive.<sup>8</sup> These details have not been discussed, but Staff believes that the policy issues have been identified and agreed to in broad concept.

#### **3. Day for Day Milestone Extension**

All language referring to the day for day extension will be deleted from the contract.

#### **4. Return of the Deposit**

Language will be revised to indicate that the \$100,000 contract deposit will be returned only for lack of NEPA or FTA approval prior to the two year milestone established by the contract.

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<sup>7</sup> Weaver – This is further justification to require an economic analysis and updated market study as discussed in more depth in Attachment 3, Weaver General and Summary Comment on same topic.

<sup>8</sup> Weaver – These issues have not been resolved.

## **5. Exposure for Damages**

DISCLOSURE ONLY - Language will be added to indicate that in the event of a County default (failure or refusal to perform any term, covenant, or condition of the contract) and after a cure period, TV may 1) terminate the contract if prior to closing, or 2) seek specific performance as its sole remedy and waives its rights to seek damages.

## **6. Traffic Circulation Plan**

The Traffic Circulation Plan which will document the assumptions and provide for enforcement into the future is in the process of being drafted and will provide for: 1) conversion to uses having an equivalent or lesser amount of traffic generation and 2) the process for requesting such changes.

## **7. Road Impact Fees**

Language will be added indicating that the cost of improvements made necessary by the Traffic Circulation/Operations Study are not eligible for Road Impact Fee credits, provided that the approved project is constructed at the intensity level assumed in the traffic study and no changes are made to the assumed background traffic for the remainder of the TOD. If the traffic generation of the approved project is actually less than that which was included in the Traffic Study or the assumed background traffic is lessened after contract approval, TV may seek a determination through the normal process and be subject to whatever protocols are in place at that time for receiving an impact fee credit for those funded improvements which would not have been required if the changed conditions had been known and simulated at the time of contract approval.

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## 8. Australian Ave Right of Way Acquisition

DISCLOSURE ONLY - The contract contains a contractual requirement of the County to acquire, including pursuing condemnation if necessary, right of way at an estimated cost between \$100,000 (immediate land area only) and \$1,000,000 (all inclusive) for the construction of a turn lane on Australian Avenue. It is likely that the County will have to condemn the right of way<sup>9</sup> and the County will have the ability to terminate the contract in the event that the Court determines that there is no public purpose<sup>10</sup> for a condemnation.

The County will budget the acquisition cost from ad valorem sources concurrent with the execution of the contract. The right of way acquisition cost is eligible for funding from Road Impact Fees and the estimated impact fees from the project build-out would be sufficient to cover the cost of the right of way acquisition. At such time that Road Impact Fees are collected, the Board can either reimburse or switch the funding source from ad valorem.

In the event that the acquisition costs exceed the impact fees, TV will be required to fund the difference between the impact fees and the acquisition costs. In the event that TV chooses not to fund the difference, the County will have the right, at its option, to terminate the contract.

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<sup>9</sup> Weaver – Due to traffic impacts caused by the proposed TV project, the contract requires the County to acquire right of way to construct a right turn lane from Australian Avenue onto Clearwater Place. This will require the County's acquisition of land from my clients through eminent domain proceedings. Staff has projected right of way acquisition costs of \$100,000 and suggests they be budgeted from ad valorem sources concurrent with the execution of the proposed contract. As an attorney who has practiced in Palm Beach County (and represented Palm Beach County) in eminent domain actions for 30 plus years, I can assure you that these projected costs are totally insufficient and unrealistic. My clients have constitutionally –protected property right and are entitled to full compensation for the land acquired and damages to their remainder property caused by such a taking. We are putting the County on notice that this acquisition will materially harm Clearlake Plaza by taking its established Australian Avenue façade, signage, landscaping and buffered setbacks and will bring this limited access highway within feet of Clearlake Plaza's glass building. Loss of the landscaping and adequate signage will render leasable space in the building less desirable due to safety issues, noise, and pollution, and may require re-glazing of the entire building at an exorbitant expense. My clients would also be entitled to recover their legal fees, expert fees, and costs to defend such a taking. Furthermore, it is likely that a court would deny the right of way acquisition based on a finding that it is not reasonably necessary under Florida law and/or not for a legitimate public purpose. Eminent domain powers previously enjoyed by governmental entities have been severely restricted for all redevelopment projects by amendment to Florida Statute Chapter 73, and by amendment to the Florida Constitution. The County acquisition of right of way would facilitate and make possible the proposed redevelopment of the Wedge Property. No public purpose and necessity exist for this project.

<sup>10</sup> Oyer – Comments substantially similar to Weaver in Footnote 9 omitted)....These (condemnation) costs could conceivably be justified if the TV project were to actually realize the public policy goal of decreasing automobile dependency and increasing utilization of public transit. However, as is explained herein and concluded in the traffic analysis of McMahon Engineering, the proposed TV project fails to meet these public policy goals. Even worse, the proposed TV project exacerbates existing traffic problems, resulting in the TV project having an effect diametrically opposite of the desired effect and costing the taxpayers of Palm Beach County millions of dollars along the way. Our belief is that the more appropriate way of addressing this development proposal would be to correctly and comprehensively analyze all of the impact created by TV's proposed project and require TV to pay all of the costs associated with the off-site improvements necessitated by their project.

## **9. Land Acquisition Grant Repayment**

Language indicating that TV acknowledges the historic requirements and takes full responsibility for complying with those requirements; including repayment of the grant if triggered by the Federal Transit Authority, Florida Department of Transportation, and/or the City of West Palm Beach; each of whom is a funding partner of the County. In the event that repayment is required, TV will have the option to terminate the contract, or repay the grant.

## **10. Former First Phase Guarantees**

The bonding requirements for the Former First Phase are as follows; a) a 255.05 bond for 100% of the cost of the required improvements on County property, and b) a performance bond for 100% of the cost of the former first phase backed by a third-party guarantee in the form of a letter of credit or surety. If TV's developer obligation is met via a letter of credit, the contract will allow for that obligation to be reduced by an amount equal to 80% of the value of materials and work in place. At the end of the one year warranty period, the remaining 20% will be returned to TV. TV will be permitted to modify the form of financial assurance for the developer guarantee mid project. The Former First Phase completion bonds and developer's guaranty will both be provided either; 1) within a year of closing or 2) at the start of construction, whichever is first, or the property will automatically revert. The automatic reversion date can be modified by mutual agreement of the County and TV.

*The reduction in the developer obligation will be made after certification by TV, field observation by the County Project Manager and the formula contained in the contract. No risk assessment will be performed by the County prior to the reduction which may (or may not) be a cause for the actual completion cost exceeding the amount of money remaining in the third party guarantee in the event that TV defaults.*

## **11. Assignment and Vertical Subdivision**

The contract acknowledges that TV is permitted to create a special purpose entity in which control remains with Purchaser to hold title to, develop, and operate the Property and that TV may assign any and all rights it possesses to the special purpose entity. TV may also be permitted to admit or remove members or transfer ownership between its members as long as Michael Masanoff remains a manager of the entity. Any other change in ownership prior to closing shall require the County's approval. With a language modification to address what happens in the event of a death prior to closing, this is satisfactory language prior to closing.

Post closing, TV claims it will need the ability to transfer ownership of portions of the development (vertical subdivision) in order to construct, market and sell the project. The contract will require all future owners to be subject to the requirements of the contract, particularly compliance with the Traffic Circulation Plan. However, compliance enforcement (and potentially property management) will become the responsibility of the County unless a strong property, condominium association or equivalent mechanism is established and funded and with the authority to enforce compliance and take action against those not in compliance.<sup>11</sup> Language is being added to the contract to address the need for a recorded declaration of covenants (or equivalent instrument) to be agreed upon by TV and the County prior to any transfer of rights.

## **12. Other**

Clean-up changes to the document will need to be made to accommodate the direction received and for internal consistency with the added language discussed above.

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<sup>11</sup> Weaver –Staff indicates that the County will retain responsibility to enforce the developer’s compliance with the contract and Traffic Circulation Plan (both of which have not been finalized). Staff also indicates that the County could potentially be responsible for property management. Staff indicates it is still addressing these issues – accordingly they have not been resolved, even though they appear on the Attachment 2 “resolved list.” Again, the county should apply the same criteria and standards to this developer as it does to any other private developer and, certainly, the County should not bear the expense or staffing requirements necessary to act as property manager for a private development of this magnitude.

**Attachment 3**  
**Transit Oriented Development – Wedge Property**  
**Comments by Interested Property Owners**

This attachment reflects the verbatim comments received by interested property owners but not including those which; a) are directly related to a contract term discussed in Attachment 1 or 2 and are addressed as footnotes in Attachment 1 and/or 2, or b) speak directly to Palm Tran, Tri-Rail and/or the project parking and traffic operations which will be addressed in supplemental back-up being provided prior to or at the January 24, 2012 BCC Meeting.

Aside from the various correspondence addressing the traffic study specifically, the County received three (3) primary comment documents representing interested nearby property owners. Those three documents and their authors are as follows.

1. Adams Weaver, Esq., Jones Foster, Johnston & Stubbs, PA representing Herb Kahlert to represent the interests of Clear T, LLC and Clear E, LLC, owners of the Clearlake Plaza Office Complex located at 500 Australian Avenue South. Correspondence dated January 3 & a second correspondence January 5, 2012. In this document, this author is referred to as "Weaver."
2. Harvey E. Oyer, III, Shutts & Bowen, LLP representing One Clearlake Center, LLC. Correspondence dated January 5, 2012. In this document, this author is referred to as "Oyer."
3. Trent Ebersole, P.E., Regional Operations Manager – Florida McMahon Transportation Engineers and Planners representing a coalition of CBD property owners. Correspondence dated January 3 and a second correspondence dated January 5, 2012. In this document, this author is referred to as "Ebersole."

The comments have been re-organized into three (3) categories; 1) general and summary comments, 2) traffic in the Clearlake Business District (CBD) and 3) project design. Again, the comments are provided verbatim identify the author of the comments.

**General and Summary Comments**

***Weaver.-** If the County's true goal is to encourage public transit and accessibility to local businesses in West Palm Beach and, if the proposed development of the Wedge Property is really to encourage rail and bus transport in place of private vehicular traffic, construction of a 2,200 unit parking garage and all of these extensive roadway improvements defeat this purpose. This project will create gridlock in the entire*

*Clearlake District. The project is seriously flawed, not supportable of a transit oriented theme, and should be reconsidered.*

**Weaver.** Failure to conduct an economic analysis – There has been no recent independent economic study (as requested by my clients 15 months ago) to ensure that this area can reasonably absorb an additional 600,000 sf of commercial/office space, 400 hotel rooms, 120 apartments, 40 luxury condominiums, and 175,000 sf of amenity retail. Ironically, in the 2004 market study, these intense uses were originally intended to be paced within the entire 36 acre TOD district, not just on the Wedge Parcel as is now proposed. The current surplus of office space, vacant store front and empty residential units in all of downtown West Palm Beach suggests that this intensity of uses are economically appropriate and cannot be absorbed. The proposed project, even if successful, will negatively impact the existing properly planned commercial and residential uses in the Clearlake District.

**Weaver.** *Utilization of an out-dated Market Study. The October 2004 Market Study utilized for the TOD was completed at the peak of South Florida's economic boom. The study is seriously overstated as reflected on page 49 which references dirt value of \$120 per sf. This equates to approximately a \$34 million value for the undeveloped Wedge Parcel. Even a cursory review of the Market Study confirms its reliance on many outdated trends and assumptions, leading to a flawed analysis when considered in today's market.*

**Weaver.** *Conveying a valuable County asset without a qualified written appraisal to substantiate the proposed sale – There has been no determination that the \$100,000 purchase price offered by this private developer for this 6 acre parcel is reasonable. Although the County issued a request for proposals to develop a transit oriented development on the Wedge Parcel, we do not believe the Country intended for this public asset to be a give-away. The current dilemma is largely due to the fact that only one response to the RFP was received for this project and, accordingly, the proposed developer has written its own ticket. The developer can acquire the property for virtually nothing, wait six years to begin any meaningful development, and then flip the property for a windfall as the economy rebounds. The County cannot justify this sale without an independent written appraisal, without showing the need to make public property available for private uses, and without regard for its fiduciary and ethical obligations to make informed decisions which benefit the public at large. The County should preserve this valuable asset until such time as the economy can support additional growth and then reconsider the most fiscally responsible use of this site.*

**Weaver.** *For any normal development project, the County would require the developer to provide a bond, letter of credit or surety to ensure that funds are available for necessary infrastructure improvements. The proposed contract with this developer is insufficient in every form. The County has an ethical, legal and civic obligation to fully and realistically evaluate traffic impacts from this proposed project, including the County's potential financial exposure, prior to executing the proposed TV contract.*

**Weaver.** *If the County's true goal is to create a transit oriented development that will maximize utilization of Tri-Rail , PalmTran and other transit providers, it should do so in a manner which utilized good transit standards and does not create the type of traffic congestions and economic hardships that*

we have described. Clear T, LLC and Clear E, LLC strongly oppose the County's sale and development of the Wedge Parcel as currently proposed and they request that the County; 1) table the proposed contract, 2) obtain several independent written appraisals to determine the value of the 6.6 acre Wedge Parcel, 3) undertake an economic analysis and planning study regarding utilization of the Wedge Parcel and the TOD District, and 4) conduct an updated market study in a good faith, prudent effort to ensure the success of any future transportation-oriented development and the success of the Clearlake District.

**Oyer.** TV's stated position has consistently been that TV's [proposed development will bring new, high value industry to our county and will not drain other un-subsidized, market rate office buildings of their tenants. The county should require TV to honor this pledge in the contract similar to the way that the City of West Palm Beach CRA required Digital Domain to do so prior to selling the "tent site" to Digital Domain. If TV wants the taxpayers (which includes amongst the highest taxpayers the many existing office building in Palm Beach County) to subsidize their project, it is perfectly reasonable to require TV to make good on its professions that it will not pilfer tenants from all of the property owners who did not enjoy the benefit of publically-subsidized land.

**Oyer.** We are unable to identify a benefit to the taxpayer of selling a piece of land valued at \$8.25 million for only \$100,000 with no meaningful commencement milestone, no completion milestones whatsoever, woefully inadequate performance guaranties, public financial exposure for the condemnation costs that exceed collected d impact fees, no adequate contractual protections for existing market-rate office building and hotel owners, and demonstrated material, adverse traffic impacts to the surrounding property owners and downtown commuters, with the only discernable result being the creation of a barrier between access to public transportation and all of the property owners that purchased and developed their properties with public subsidy.

The inescapable conclusion is that the TV proposal and the County's review has been focused on the private development and not the transit facility. The private development is enhanced by the proximity of transit, but the transit facilities are not being enhanced by the proposed development, which is contrary to the TOD principles and the very purpose o the RFP for the Wedge Parcel.

We do want to be clear that we are not opposed to development of the Wedge Parcel as a TOD. In fact, we are very supportive of such a concept. However, any such development of the Wedge Parcel needs to be carried out in a less dense and more thoughtful manner. At this point, TV's proposal is so far removed from the TOD concept that was explained to the public and the current proposed draft contract between TV and the County is so different from the RFP that the only fair resolution is to Re-bid the Wedge Parcel project. The new RFP should provide very clear parameters that any response clearly demonstrated how it enhances the use of public transit both for existing development and the proposed development, how it does not materially harm existing property owners and businesses, how it creates jobs now, how it is cost neutral to the taxpayers, and how it brings new sustainable value added industry to our community. If a proposal cannot meet these basic criteria, it should not be considered by the Board of County Commissioners.

### **Traffic in Clearlake Business District and Beyond**

**Oyer.** What will be the additional delay to commuters that work in Downtown West Palm Beach?

**Ebersole Response.** To be consistent with previous analysis and correspondence, I determined the delay of PM peak hour commuters at the Banyan Boulevard/Tamarind Avenue intersection headed westbound. I used the SimTraffic results from the existing conditions model that I developed and the future conditions model that you provided on 12/22/11. I determined the west bound through average delay to be 55 seconds per vehicle in the existing model and 1015 seconds per vehicle for future conditions. This is an increase of 960 seconds or 16 minutes.

**Oyer.** What delays will be incurred by the employees exiting existing parking facilities in the Clearlake Business District during the PM peak hour?

**Ebersole Response.** The answer will vary from garage to garage and scenario to scenario. Based on a modified version of the Palm Beach County model that you provided 12/22/11 with an added driveway, I measured an average delay of 15 minutes per vehicle leaving the garage at 500 Clearlake Building. This was based on 120 vehicles leaving the garage during peak hour. The garage capacity is reported to be 240 spaces. The building is at 100% capacity. I will add that my analysis has a higher northbound approach volume to the Clearwater Place/Clearwater Park intersection as determined when we balanced existing traffic volumes. Based on the number of vehicles that park at 500 Clearlake alone, 35 vehicles per hour (vph) in the County model seems low for that approach. My analysis assumes 169 vph for the same approach.

**Oyer.** The existing buildings in the CBD unload onto the same road network (all 2 lane, undivided, and un-signalized side streets) as TV's proposed project. The projected unloading times for many of these parking garages will exceed that of TV's parking garage. The result will be complete gridlock.

The County staff has elected not to consider the impacts at the Banyan Boulevard/Tamarind Avenue intersection because the existing level of service (Los) at this intersection is F. However, this approach fails to account for the increased adverse impacts associated with the TV project. It is simply putting our heads in the sands. For example McMahon Engineering traffic modeling illustrates the existing west bound through average delay to be 56 seconds per vehicle and a whopping 1015 seconds per vehicle delay after construction of the TV project. This is an increase of 960 seconds or 16 minutes for downtown commuters to make it through this intersection during peak hours. Remember that almost all jurors and City, County, Federal Courthouse, and County judicial Center employees utilize this route into and out of downtown from I-95.

Other areas of concern regarding traffic include; 1) vehicle queues that will block at least a half a dozen driveways of existing buildings along Clear water Drive, Clearwater Place and Clearwater Park; 2) lack of adequately planned pedestrian access to the Tri-Rail and PalmTran transit facilities, 3) TV's proposal will

*discourage transit use within the CBD that already has an underutilized transit mode split, 4) ingress and egress to TV's parking garage with over 2,000 spaces cannot be adequately provided by a single driveway; and 5) the result of this inadequate design will be significant impacts to park and ride commuters who will experience delays of more than a half hour exiting the garage during the evening peak hours. This will in turn cause community ridership to significantly decrease.*

*In sum, the proposed TV project will have significant adverse traffic impacts on downtown, the government hill areas, the CBD, and the proposed TV project itself. These impacts will adversely affect ridership on Palm Tran and Tri Rail and will result in a completely opposite outcome than the TOD was intended to provide. The recommendation is that TV be required to analyze the traffic impacts holistically rather than each element in isolation. Each time TV addressed an adverse impact in one location, it simply transfers the problem to a different location.*

#### **Design of TV Project**

**Oyer.** *The CCBD property owners continue to object to the design of the TV project, which effectively turns its back to the CBD and walls off the existing CBD from the intermodal facility. The very purpose of the public even entertaining the idea of conveying the Wedge Parcel to TV at below market rate was to create a project that promotes the use of public transportation. The proposed TV project, on the other hand, does exactly the opposite. It prevents the existing 3,000+ tenants/property owners/votes and taxpayers in the CBD from having access to public transit. TV's project should be re-designed to provide connectivity between the CBD and the public transit facilities.*





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**MEMORANDUM**

**DATE:** January 20, 2012

**TO:** Audrey Wolf – Director, Facilities Development & Operations  
Ross Hering – Director, Property and Real Estate Management  
Eric McClellan – Sr. Planner, Property and Real Estate Management

**FROM:** *NU* Nick Uhren, P.E. – Senior Engineer, Traffic Division

**RE:** Wedge Property TOD – Traffic Circulation/Operations Study

**ADD'L BACKUP**

Traffic Division staff prepared a final traffic analysis of the Clearlake Business District and surrounding roadway network to evaluate the impacts of development on the Wedge Property as contemplated in the Transit Village (TV) proposal. The roadway network is bounded by Australian Ave. to the west, Banyan Blvd. to the north, Tamarind Ave. to the east and Clearwater Place to the south (see attached graphic). The final analysis was prepared with input from the traffic consultants retained by TV and also by property owners in the Clearlake Business District. The final analysis evaluates both morning and afternoon peak hours and includes traffic impacts associated with the following sources:

- 1) Existing demand based on field counts collected in peak season 2011,
- 2) TV's proposed development of the Wedge Property (including 290 public use parking spaces),
- 3) Redevelopment of the remainder of the TOD (on the east side of Tamarind Ave.) as contemplated by the TCRPC charrette,
- 4) Bus traffic associated with the Intermodal Transit Center (ITC) at approximately double its current usage,
- 5) Background traffic associated with buildout of the approved but un-built 261 multi-family units of "The Edge" project, and
- 6) A nominal 0.5% compounded growth rate to account for background traffic from other sources.

TV's proposed development on the Wedge Property has the potential to generate an additional 1,275 trips in the morning peak hour (942 inbound) and 1,699 trips in the afternoon peak hour (1,178 outbound). The development impacts represent a 200 percent increase over existing volumes on Clearwater Drive at Banyan Blvd. and a 180 percent increase over existing volumes on Clearwater Place at Australian Ave.

Please note that all mitigation measures that have been identified over the course of our ongoing analysis (e.g. northbound turn lane on Australian Ave. at Clearwater Place, traffic signal on Banyan Blvd. at Clearwater Drive, traffic signal on Clearwater Place at Clearwater Park Drive, turn lane improvements and stop controls on Clearwater Drive, and widening on Clearwater Place) were assumed to be present in the final analysis. The current draft contract would require TV to install all of these improvements during construction of the project.

The following summarizes the performance of the roadway network as observed in the final analysis.

Australian Ave. at Clearwater Place

In the AM peak, the northbound right turn movement would increase from 450 vehicles to 1,000 vehicles. The increase would be mitigated by the construction of an exclusive right turn lane of the maximum length practicable, allowing the existing three northbound



lanes on Australian Ave. to service the through movement. In the PM peak, the westbound left turn movement would increase from 440 vehicles to 1,300 vehicles. Although this additional demand would be mitigated through signal timing adjustments which allow the intersection to operate at adopted level of service, it should be noted that green time for the southbound through movement on Australian Ave. would be reduced by 25 percent.

Australian Ave. at Banyan Blvd.

This intersection is projected to continue operating within adopted level of service in both peak hours. The northbound right turn queues in the AM peak will be increased however because Wedge Property trips will increase the southbound left turn movement by 33 percent which reduces the capacity for the northbound right turn at this intersection.

Banyan Blvd. at Tamarind Ave./CSX Railroad Crossing

In the AM peak, *existing* eastbound queues back up beyond Clearwater Drive during railroad closures. In the PM peak, *existing* westbound and northbound queues are of similar lengths and duration. Although queue lengths and congestion increase beyond existing levels when trips associated with TV's proposal for the Wedge Property and background traffic have been added to the intersection, it should be noted that the trips associated with TV's proposal for the Wedge Property would comprise only 3% of the total eastbound volume in the AM peak (63 trips) and 5% of the northbound/westbound volume in the PM peak (91 trips). The intersection is projected to operate poorly even in the absence of any further development on the Wedge Property.

Banyan Blvd. at Clearwater Drive

The analysis indicates need to signalize this intersection, which is located approximately 400 feet west of the existing railroad crossing. Although the intersection itself is projected to function acceptably, installation of the new traffic signal would further increase the congestion of the Banyan Blvd. corridor and would further extend queues on Banyan Blvd., especially during railroad closures.

Proposed Project Garage Driveway and Clearwater Drive

The proposed garage entrance on Clearwater Drive is approximately 250 feet south of Banyan Blvd. The analysis indicates need to construct a southbound left turn lane and a northbound right turn lane to service vehicles entering the garage, but because of the location of the entrance and proposed site layout these turn lanes are very short. The analysis assumes the provision of one left turn lane and two right turn lanes exiting the proposed project garage, as depicted on TV's Level 01 Site Plan. Traffic exiting the proposed garage in the PM peak warrants the construction of an additional northbound lane on Clearwater Drive between the proposed garage and Banyan Blvd. to serve outbound traffic.

In the AM peak, the analysis indicates that eastbound queues on Banyan Blvd. will periodically extend across Clearwater Drive. When this occurs, northbound queues on Clearwater Drive will extend across the proposed project garage entrance and prevent ingress. Due to this blockage and the high demand to enter the garage from the south (700 vehicles per hour), vehicles will backup on Clearwater Drive as far as Australian Ave.

In both peak hours, the analysis indicates that the projected volume exiting the proposed garage is not effectively served by a single point of egress, with departure delay of up to 8 minutes in the AM peak and 25 minutes in the PM peak. It should be noted that the heaviest demand for exiting vehicles in the PM peak comes from the retail (175,000 sf) and office (600,000 sf) components of TV's proposal.



Memorandum  
January 20, 2012  
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#### Intermodal Transit Center on Clearwater Drive

The analysis indicates a need for 3-way stop control at this intersection. Absent periodic queues that are projected to occur on Clearwater Drive, the approximate travel time to enter the ITC from Australian Ave. in the AM peak is 1-2 minutes. Conversely, the approximate time to reach Australian Ave. from the ITC in the PM peak is 1-2 minutes.

#### Clearwater Place at Clearwater Park Drive

The analysis indicates need to signalize this intersection, which lies approximately 200 feet east of Australian Ave. The projected queue for southbound traffic approaching the signalized intersection causes need to widen Clearwater Place to provide two continuous westbound lanes from Clearwater Drive to Australian Ave., where only one westbound lane current exists.

In the AM peak, the analysis supports the new signal being set to flash so no additional stoppage or delay will occur for the east/west vehicles on Clearwater Place. In the PM peak, the signal is projected to introduce an additional delay of 30-45 seconds for westbound vehicles to reach Australian Avenue. At the same time, however, the signal preserves the ability of northbound vehicles to exit Clearwater Park Drive onto Clearwater Place without significant queues or delays.

#### Summary and Conclusions

1. Although significant congestion is anticipated at the Banyan Blvd./Tamarind/CSX railroad intersection, traffic associated with the Wedge Property is primarily in the off-peak direction and therefore not a primary cause of the congestion.
2. The remainder of the major intersections along Australian Ave. and Banyan Blvd. are projected to operate acceptably when the mitigation measures identified herein and included in the analysis are constructed.
3. The intersection of Clearwater Place and Clearwater Park Drive is projected to operate acceptably when the mitigation measures identified herein and included in the analysis are constructed.
4. Because of the proximity to Banyan Blvd., the proposed garage entrance location on Clearwater Drive as depicted on the TV Level 01 Site Plan is susceptible to queue blockages in the AM peak hour which will create additional queues on Clearwater Drive that may extend as far as Australian Avenue.
5. The proposed single egress point for the parking garage does not operate well, with departure delay of up to 8 minutes in the AM peak and 25 minutes in the PM peak. However, a second garage access point directly to Banyan Blvd. is not recommended due to proximity to the railroad crossing.

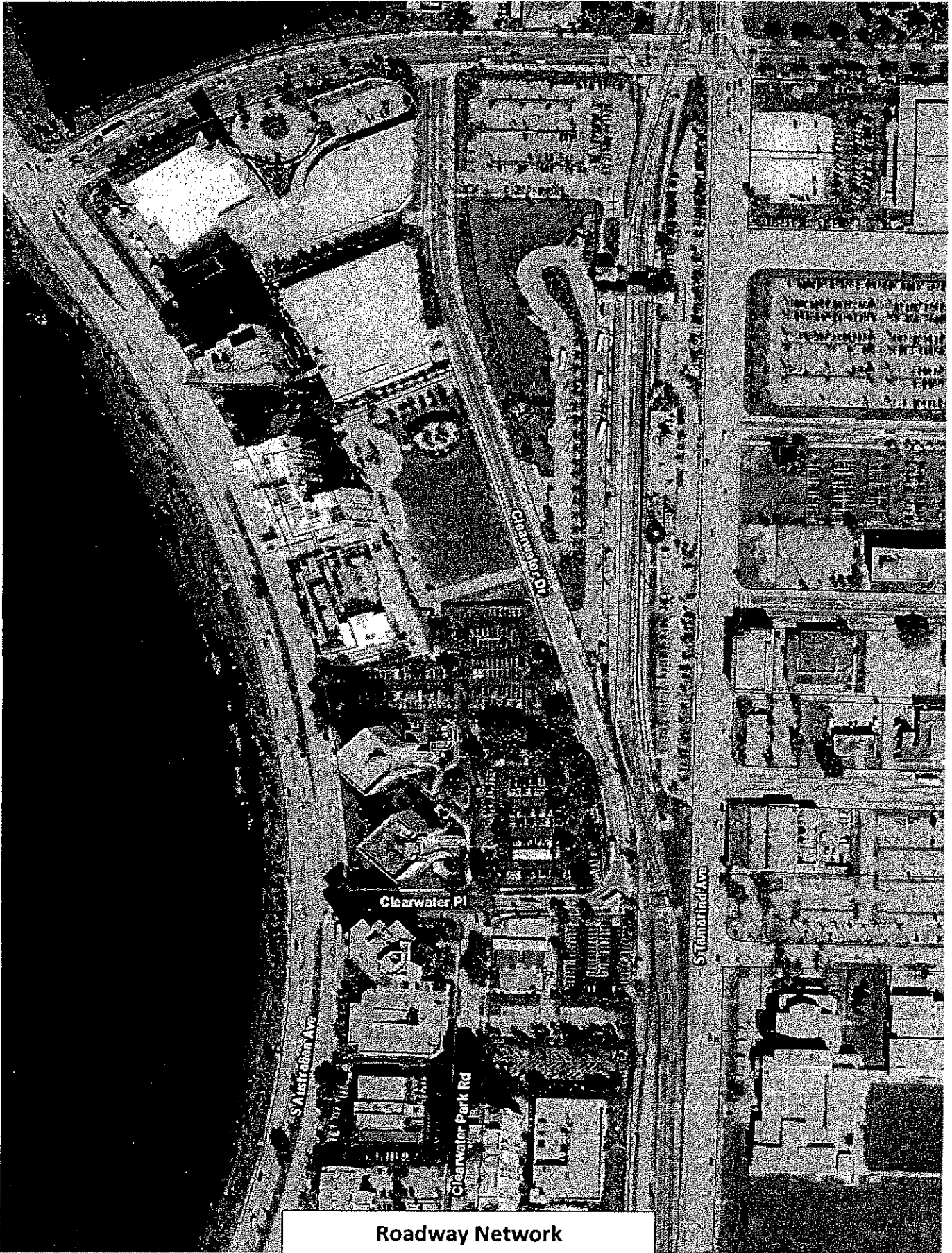
Please contact me with any questions or if you require additional information.

cc: George Webb, P.E. – County Engineer

Attachment: Roadway Network Graphic

File: Developments – Misc.

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Roadway Network