

MINUTES OF MEETING
DANIA BEACH CITY COMMISSION
HYBRID WORKSHOP
FRIDAY, JANUARY 28, 2021 - 10:00 AM

1. Call to Order/Roll Call

Mayor James called the meeting to order at 10:00 a.m.

Present:

Mayor:	Tamara James
Vice-Mayor:	Marco A. Salvino, Sr.
Commissioners:	Joyce L. Davis – via virtual attendance
	Lori Lewellen
	Lauren Odman
City Manager:	Ana M. Garcia, ICMA-CM
City Attorney:	Eve Boutsis
City Clerk:	Thomas Schneider

2. Items for Discussion

2.1 Regional Activity Center units and moratorium on development

Mayor James noted there have been concerns about recent development and there were surveys of the Commission conducted.

Commissioner Odman commented the reason we are having this workshop is, in light of the RAC units discussion, the question arose if we are building too much or if we want to elevate the standards of new building. The mini survey addressed this issue. Stylistically speaking, we may want to incorporate new standards.

City Attorney Boutsis gave a PowerPoint presentation on a moratorium which is attached to and incorporated into these minutes.

City Attorney Boutsis gave a PowerPoint presentation on the Bert J. Harris Act which is attached to and incorporated into these minutes.

Mayor James asked what happens when there are no RAC units left.

City Attorney Boutsis responded there would be no more for developers to use for residential development.

A brief discussion ensued regarding RAC units.

Corinne Lajoie, Assistant Director of Community Development, gave a PowerPoint presentation which is attached to and incorporated into these minutes.

Commissioner Odman questioned using a moratorium so there is time to discuss and get regulations in place.

Assistant Director of Community Development Lajoie noted those projects in progress would not be affected by a moratorium.

Vice-Mayor Salvino said we are still 18 months away from getting any more RAC units. The same residents complain about development, but other residents are not opposed. The last thing he wants to see is a torn down building on Dania Beach Boulevard and there are no RAC units available for the developer to build. We are hurting our City if we stop development and redevelopment. The buildings we are building right now are not occupied and yet we have the issue with heavy traffic. The traffic is going to be here no matter what happens. He is opposed to anything that changes our direction. Developers have brought a lot of great elements to our City. He addressed the Bert J. Harris Act and reiterated he is opposed to anything that changes the direction we are going.

Commissioner Davis asked for clarification on existing use and gave an example on Dania Beach Boulevard.

City Attorney Boutsis explained developers have a year from the time an ordinance is adopted, and they do not have to have had an application in to seek the Bert J. Harris claim.

Commissioner Davis said she wants to ensure the infrastructure is in place before further development is allowed and she addressed traffic studies.

City Manager Garcia noted these are very good points. With any building, there is a list or check that needs to occur regarding water and sewer. Regarding Fire, we have been augmenting our trucks and enhancing our public safety, for example, through the SAFER Grant. She addressed transportation and transit and noted she has conversations with those who are vested in investing in the City. We need to look at buildings where people can live, work, and play all in one, so those standards are extremely important. As to the moratorium, she agrees with Vice-Mayor Salvino and feels one should not be used. We need to add components that the infrastructure is there, and public safety is in place.

Commissioner Lewellen said part of the problem we are having here is the use of the term moratorium; we are not really wanting to stop everything; we just want to slow it down.

City Attorney Boutsis clarified when and how a moratorium could or should be used and explained the difference between moratorium and zoning in progress.

Commissioner Lewellen noted she is concerned with the legalities of everything. Once you go down this road and start development and progress, it is very hard to take a step back. The notice requirement is what she is most concerned about and if we are doing any change, that the

notice requirement is met. She confirmed any applications in the pipeline would not be affected and the affect on those who had expressed an interest only.

Discussion ensued regarding projects in progress and projects where an interest has been expressed.

Commissioner Lewellen reiterated her concern that we are following the law and noted she is okay with changes so long as we are not impacting people to the point that they are suing us. Once you start down the development road, it is hard to turn back. She agreed with Vice-Mayor Salvino that the traffic is here regardless of development; the traffic comes through the City from Fort Lauderdale and Hollywood. She repeated her concern that the proper notice be given.

City Attorney Boutsis addressed Commissioner Lewellen's concerns.

Commissioner Odman said one of the best things we could do is to focus on what City Attorney Boutsis addressed. She posed the question do we want to do a moratorium or what. We had this workshop about the RAC units and because there are projects the Commission is not wanting to approve because of their design or appearance or affect on the neighborhood. She does think we should not accept everything we are given; we need to up our standards. Regarding the legalities, the City Attorney will ensure we are following the law. We need to decide whether we want to do some sort of moratorium, which she favors a short one, to have time to put in place what we want to see in development. She asked whether we move forward as is or do we want to stop briefly.

Mayor James noted she personally feels it is unfair for a person to purchase property and not be allowed to do with it what is allowed. She questioned whether we want to put in place that we disallow a variance to increase density. She does not view things that if they are going a certain way that you cannot bring change in. She would like to see the RAC units limited and addressed questions about public safety and traffic. We would not just stop development but tweak it; she does not want to feel that her hands are tied. There are certain ordinances and regulations she does not agree with.

Vice-Mayor Salvino said he does not see that we need a moratorium because we are down on RAC units, and it will be a long time until we would get more. Pretend you are an investor and suddenly you are told how you have to spend your money. As far as our hands being tied, our predecessors set the current regulations in place. By the time the other RAC units are available, we can evaluate building standards and changes we would like to see; it is already a mini moratorium. He would hate to see the signal sent to developers that everything is coming to a halt. Keep in mind, everything comes to the Commission individually and we can make our decision yes or no at that time. We need to continue the way we are right now and work on things as we go. A tune up is needed, but do not change the horse.

Assistant Community Development Director Lajoie noted we are in the process of acquiring more RAC units; we requested 4,000 units but the number can be adjusted. The consultant is going through this process now and she gave a timeline for the replenishment. We are at 791 units right now and with the projects in the pike, we have around 600 units. Once those units are

gone, they are gone until we get the replenishment. She explained there is time, and we could continue to review the administrative regulations without a hard stop. There are ways to make changes moving forward while we wait for the replenishment of the RAC units.

Mayor James asked City Attorney Boutsis if we are we still comfortable with going to the County for 4,000 RAC units.

City Attorney Boutsis noted we should just focus on the RAC area when discussing a moratorium.

Discussion ensued.

The Commission consensus was that today's discussion is about the RAC area only.

City Attorney Boutsis questioned the Commission's opinion of changes to the RAC ordinance. She noted the cue would be with the 600 units remaining and not what we might gain from the 4,000-unit replenishment request. She needs to discuss further with staff.

Discussion ensued regarding the cue of the 600 remaining units.

City Manager Garcia addressed sending the wrong message. She noted that people, the developers/our partners, are watching the decisions that the Commission is making today. She does not want people listening in today and thinking it might be getting too complicated. We are in demand because we were way behind the 8-ball in regard to nothing happening in Dania Beach, and she cautioned to be very careful in the message the Commission is sending and be mindful that everything would come forward to the Commission.

City Attorney Boutsis noted from a legal point of view, she has a concern to continue to accept applications and something that we know is coming forward, we are asking for more units, and we are looking to change the rules. And if we are looking to change the rules, then we should not be accepting applications on those units because then it leads to the quandary of a possible Bert J. Harris claim.

Vice-Chair Salvino said he did not think we were looking to change the rules, instead we are looking to discuss the rules. We are not changing anything.

Mayor James felt everybody is not on board that we are not changing rules. She noted she would like to see some changes but that does not mean the changes she wants to see would be super drastic. She questioned if there was a way once the 600 units are used up by the applications that we could put a disclaimer on the cue so that they understand that we are discussing different provisions that may or may not impact their project, but just to be transparent. That way we could still allow developers and then they understand and perhaps they sign some sort of indemnification form that they understand there might be a change.

City Attorney Boutsis said she wants to do more research with Community Development Director Norena and Assistant Community Development Director Lajoie. She does not want to

give a bad answer, but she knows what Mayor James is trying to do. She is not opposed to the concept but wants to make sure legally that she is not putting the Commission in a quandary where they cannot do any modifications should they want to.

City Manager Garcia questioned how we would work with the Commission for those changes they want.

Mayor James said the Commission could think about some of the changes they may want to see.

Commissioner Lewellen felt if we do that you are basically asking developers to waive their rights and that is not going to fly.

City Attorney Boutsis noted that is why she needs more time; this is a very sticky issue. She suggested the Commission go forward to talk about what they are seeking to do and then we can go from there and see if we have consensus for those items.

Mayor James asked if the Commission is okay with de-incentivizing the density levels of certain areas.

Assistant Community Development Director Lajoie noted the incentives get a developer density, height and reduced pervious areas.

Mayor James questioned if any of the other Commissioners are interested in seeing how that process would look and what it would impact and how it would affect it.

Vice-Mayor Salvino felt everyone is going to have an opinion of what direction we are going for. City Attorney Boutsis needs to talk to Community Development and possibly bring back some information. Investors use numbers and they are going to come out there and if you start taking incentives away and the affordability of building in today's world, the developers will not be able to build a building or make a profit. Because of the direction we are trying to go into, we should start this over again and have staff provide us with an analyzation. He added he thinks you will find the developers are going to run if you start cutting things back.

Mayor James said we still need to have a consensus to give staff direction on what to research.

Commissioner Odman noted she has a similar concern to Vice-Mayor Salvino. Regarding green building standards, when she spoke with Larry Baum, he said it is easy, use incentives. She is nervous about taking away the incentives in the RAC area. She wants nicer buildings and is not so worried about the developers. She and developers talked about green and architectural standards, and they said they would not run. A developer may not love it, but they understand what we are trying to do. Just talking about these changes, she does not think it sends the frightening message that we are worried about. She said she wants more information on incentives and what it could look like.

Commissioner Lewellen said she has a hard time making a blanket decision over all projects, including incentives, variances, and all of it. There might be certain situations where a variance

or an incentive would be appropriate. She definitely thinks we need more information from staff.

Assistant Director of Community Development Lajoie restated staff's recommendation to allow development to continue in the CRA on the big corridors: Stirling Griffin, US-1, and East Dania Beach Boulevard. Staff also recommends removal of those incentives (not on remaining units, but on replenishment units) and adding additional criteria or standards. We can look at the architectural classifications and create green initiatives and net zero provisions.

Mayor James asked what Assistant Director of Community Development Lajoie wants from the Commission.

Assistant Director of Community Development Lajoie asked whether changes should be made for the entire CRA or specific locations within the CRA.

Commissioner Davis noted right now her only concern is East Dania Beach Boulevard; her overall opinion is that it will come up on a case-by-case basis or individual projects and staff would provide additional information.

Commissioner Lewellen said she is not sure she could answer without getting further information that we need. She has concerns about East Dania Beach Boulevard and US-1, but she is not sure she can make a choice.

Commissioner Odman answered entire CRA.

Vice-Mayor Salvino noted he is not up for any of it, but since he is not for it, he would go ahead and say the whole CRA because he is hoping we can figure it out at a later date.

Commissioner Lewellen asked that the entire CRA be put down for her response.

Mayor James said her choice is the entire CRA, so the Commission consensus is the entire CRA.

Mayor James asked if the Commission wanted to amend the number of units in the RAC area that we are requesting from the County.

Commissioner Davis said the consultant is still in process and she would rather have that information prior to deciding; 4,000 units sounds like a lot to her.

Commission Lewellen noted it is like a negotiation; go high as they are not going to give you all of them. She would leave it the way it is at 4,000 units.

Commissioner Odman asked if there was a number being discussed to amend it down to.

Assistant Director of Community Development Lajoie explained our infrastructure would support the number of units requested; they set in perpetuity, and we draw down on them as development comes.

Commissioner Odman said to keep the number at 4,000 units.

Vice-Mayor Salvino commented 4,000 is fine and we will work down from there if we need to.

Mayor James noted she is not comfortable with going back for 4,000 units and explained her opposition to that number. She stated the Commission consensus was to move forward with the 4,000 units.

Mayor James said the next question is what incentives staff should look at to add to the new RAC units, specifically removal of incentives, green buildings/net zero, and enhanced architectural standards.

Commissioner Davis said she is in support of the three.

Commissioner Lewellen said she is in support of the three.

Commissioner Odman said she is in support of the three.

Vice-Mayor Salvino said he is in favor of listening to anything.

Mayor James said she is in support of the three.

City Manager Garcia noted the live, work, play mixed use is very important if the Commission is concerned about traffic. We should remember that we are in demand, and we have gotten very attractive, so we do not have to settle. The developers and investors we are dealing with are the type of individuals who do have a level of standard. She felt if we upped the standard, they would be okay with it, but it is important that we also consider an incentive for the live, work, play within those developments that are in the cue that could possibly come to our City.

City Attorney Boutsis summarized that right now we are not looking at a moratorium but instead run through the numbers we have and have further discussions as to these items and from there we can further decide what we want to do.

Commissioner Lewellen asked when you do not have RAC units, or additional units, what that does to the cost of housing overall if anything. It seems like a basic supply and demand thing to her.

City Attorney Boutsis responded when the 600 are used up, those couple of developers who have a vested right could probably sell their units at a premium if somebody wanted to develop there. That is all contingent depending upon what the market is.

Assistant Director of Community Development Lajoie said there is a certain market demand, supply and demand; there is a lag, a number on the paper and delay in projects coming out of the ground. We are only talking about the east side of the City; we still have the west side and interest there as well.

Commissioner Odman commented after we get all this information, she does not want it to be just a CRA thing. She thinks especially if you are going to do significant architectural changes, it would almost be bizarre to not do the rest of the City. After we get this information, we will likely have a discussion item or workshop on this.

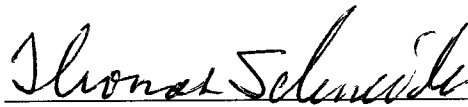
Mayor James said she does not mind asking now if anyone has any issues with these same things, the green building standards and architectural standards, going citywide.

The Commission consensus was to apply the standards citywide.

3. Adjournment

Mayor James adjourned the meeting at 11:34 a.m.

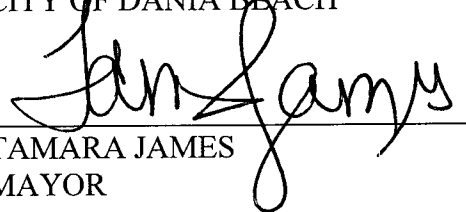
ATTEST:



THOMAS SCHNEIDER, CMC
CITY CLERK



CITY OF DANIA BEACH



TAMARA JAMES
MAYOR

Approved: February 8, 2022

MORATORIUM

WHY IMPLEMENT A MORATORIUM?

- It promotes effective planning.
- It preserves the status quo during the planning process
- It ensures that a community's problems are not exacerbated during the time it takes to formulate a regulatory scheme.
- it prevent developers and landowners from racing to carry out development that is destructive of the community's interests before a new plan goes into effect.
- A race-to-development would permit property owners to evade the land-use plan and undermine its goals.
- It provides the breathing room to helps ensure that the planning process is responsive to the property owners and citizens who will be affected by the resulting land-use regulations.
- An emergency is not required to justify the use of a moratorium

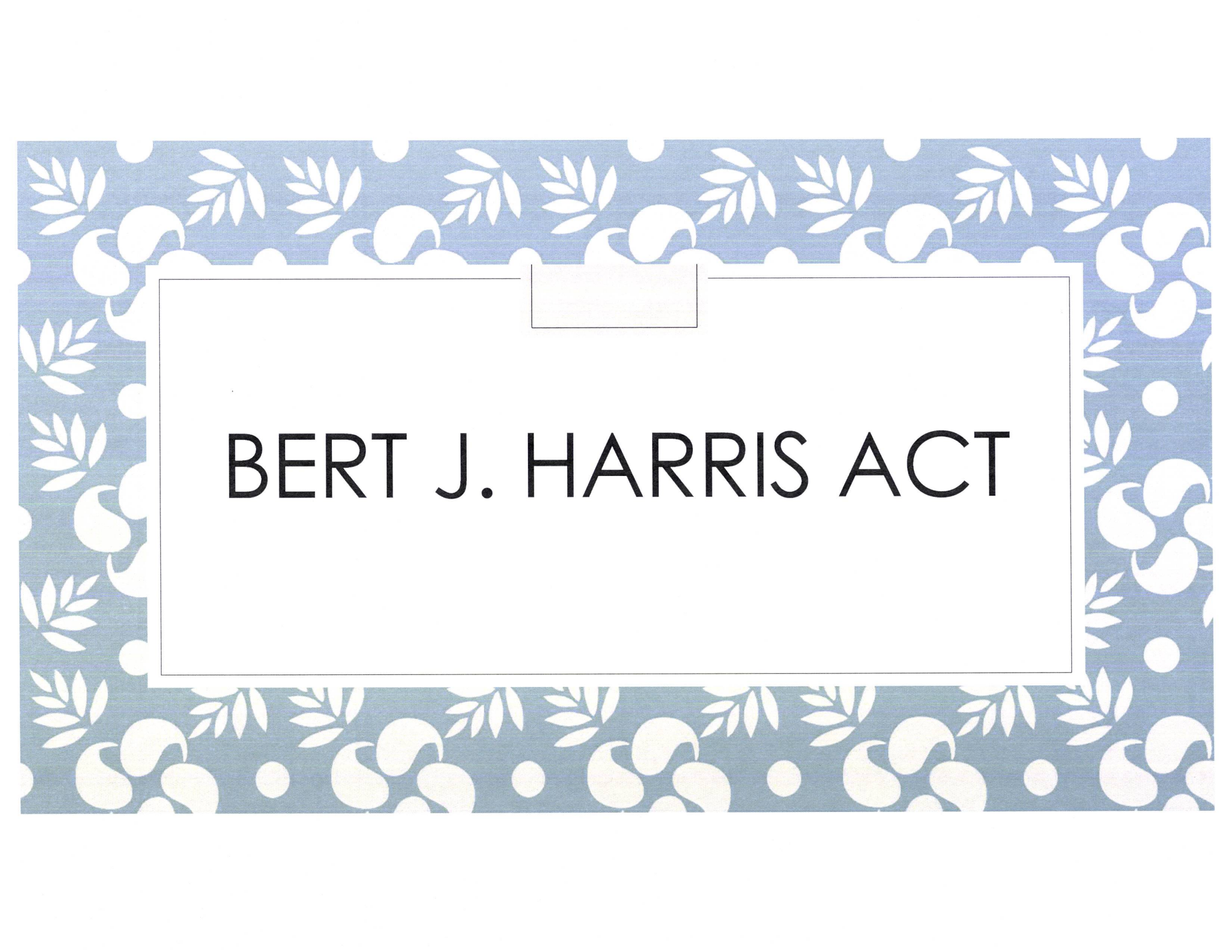
WHAT SHOULD BE THE MAXIMUM LENGTH OF A MORATORIUM?

- There have been challenges to moratoria as a taking. As long as the moratoria is for a reasonable amount of time it would not be considered a taking, but should be less than a year in length, preferably no more than six months in length.

- It is well-settled that permissible bases for land use restrictions include concern about the effect of the proposed development on traffic, on congestion, on surrounding property values, on demand for city services, and on other aspects of the general welfare. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.
- *See Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1375 (11th Cir. 1993); and *CI Cmtys., Inc. v. City of Coral Springs*, 885 So. 2d 912, 915.

HOW TO ENACT A MORATORIUM:

- Two readings of an ordinance enacting the moratorium
- The ordinance needs to identify:
 - the zones that are included in the moratorium,
 - the proposed length of the moratorium,
 - what is the goal of the moratorium



BERT J. HARRIS ACT

Chapter 70, Florida Statutes

- The Act provides relief to private landowners when a law, regulation, or ordinance **inordinately burdens, restricts, or limits private property** without amounting to a taking under the U.S. Constitution.
- The Act provides a specific process for landowners to seek relief when their property is unfairly affected by government action – to seek monetary damages and legal fees.

BRINGING A CLAIM

- Under the Act, the property owner needs to provide an appraisal of his/her land, and document the “loss” in value to the land due to the governmental action.
- The claim must be that the governmental act “inordinately burdens “ an existing use of the property; or a vested right to a specific use of the land.
- A claim exists if a “governmental entity *inordinately burdens* an *existing use* of real property or a *vested right to a specific use* of real property.”

- Florida Statute Section 70.45, entitled "government exactions," allows a property owner to claim damages due to "conditions imposed by a governmental entity on a property owner's proposed use of real property that lacks a nexus to a legitimate public purpose."
- These terms are not defined. It has been argued that an "onerous" conditions placed in a resolution authorizing a development approval may qualify for a property owner to file a challenge under the Act.

Section 70.45 – Government Exactions

- The Act provides that a claim (versus a lawsuit) must be presented to the governmental agency within one year from the time the law or regulation is *first applied* by the governmental entity to the property at issue.
- The one-year statute of limitations not only accrues once the law or regulation is first applied, but also when notice is provided by mail to the property owner.
- In some cases, the claim can only arise when seeking a development approval, and the ordinance is applied to the property, which can extend the one-year period to a longer period of time (to one year of filing for the development approval).

One Year to
file a claim
(with
exceptions)

PROCESS FOR FILING A CLAIM

A claim under the Act must be submitted not less than 150 days prior to filing a lawsuit under the Act.

A bona fide valid appraisal that supports the claim and demonstrates the loss must be provided to the governmental entity.

The government entity must then make a written settlement offer or state that the city will take no action.

If no settlement is reached during the 150-day notice period, the government entity must issue a written statement of allowable uses.

Settlements

In any settlement offer the government entity must make a written settlement offer that can include:

- adjustment of land development;
- increase in density, intensity, or use;
- transfer of developmental rights;
- land swaps or exchanges;
- mitigation, including payments in lieu of onsite mitigation;
- location on the least sensitive portion of the property;
- conditioning the amount of development or use permitted; etc.

WHO CAN USE ACT?

- The Act now defines a property owner as the owner of "the real property that is *the subject of and directly impacted by* the action of a governmental entity."
- The Act defines "real property" to include, "only parcels that are the *subject of and directly impacted by* the act of the governmental entity."
- This language now clarifies that a property owner adjacent to the alleged government action could not maintain a cause of action pursuant to the act.

What is a vested right?

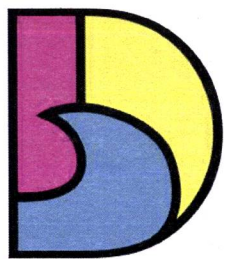
- To determine a vested right, the courts apply the principles of equitable estoppel, which provides a three part test.
- A property owner has a vested right if he or she
 - 1) in good faith;
 - 2) upon some act or omission of the government; and
 - 3) has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he acquired.

What is an existing use?

- An "existing use" is defined by the Act as:
 - An **actual, present use or activity** on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or activity or such reasonably foreseeable, non-speculative land uses which are suitable for the subject real property, and compatible with adjacent land uses and **which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.**

Inordinate Burden

- An inordinate burden occurs when a governmental action directly restricts or limits the use of real property such that the **owner is unable to attain the reasonable, investment-backed expectation for the existing use or vested right to a specific use**; temporary burdens or those impacts caused by governmental action to remediate a public nuisance are not included.
- A property owner cannot bring a claim until he has applied for a development permit approval and the approval is denied.



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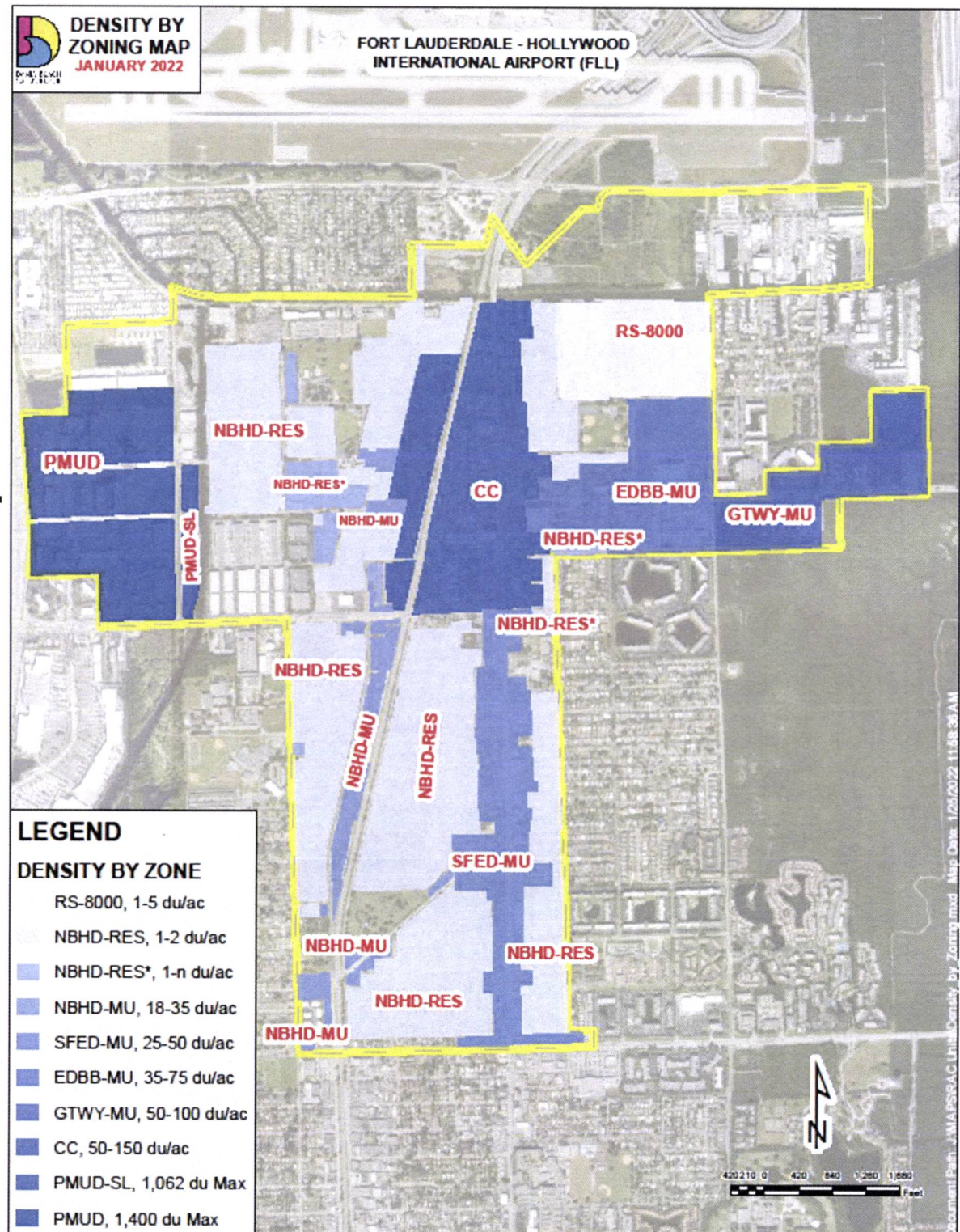
RAC Workshop

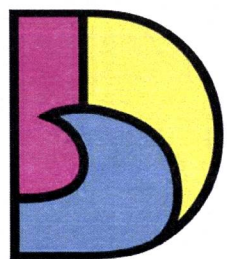
Community Development
January 28, 2022



Regional Activity Center (RAC)

- RAC units
- Form-based Code
- Incentives





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RAC dwelling units

Dania Beach RAC units available: **791 du.**

Site Plans currently under review: **210 du.**

- City Place (affordable housing) 110 d.u.
- Seaview II 100 d.u.

Dania Beach RAC units available: **581 du.***

(*If projects above approved by Commission)

Site Plans discussions but not yet submitted: **(1,878 du)**

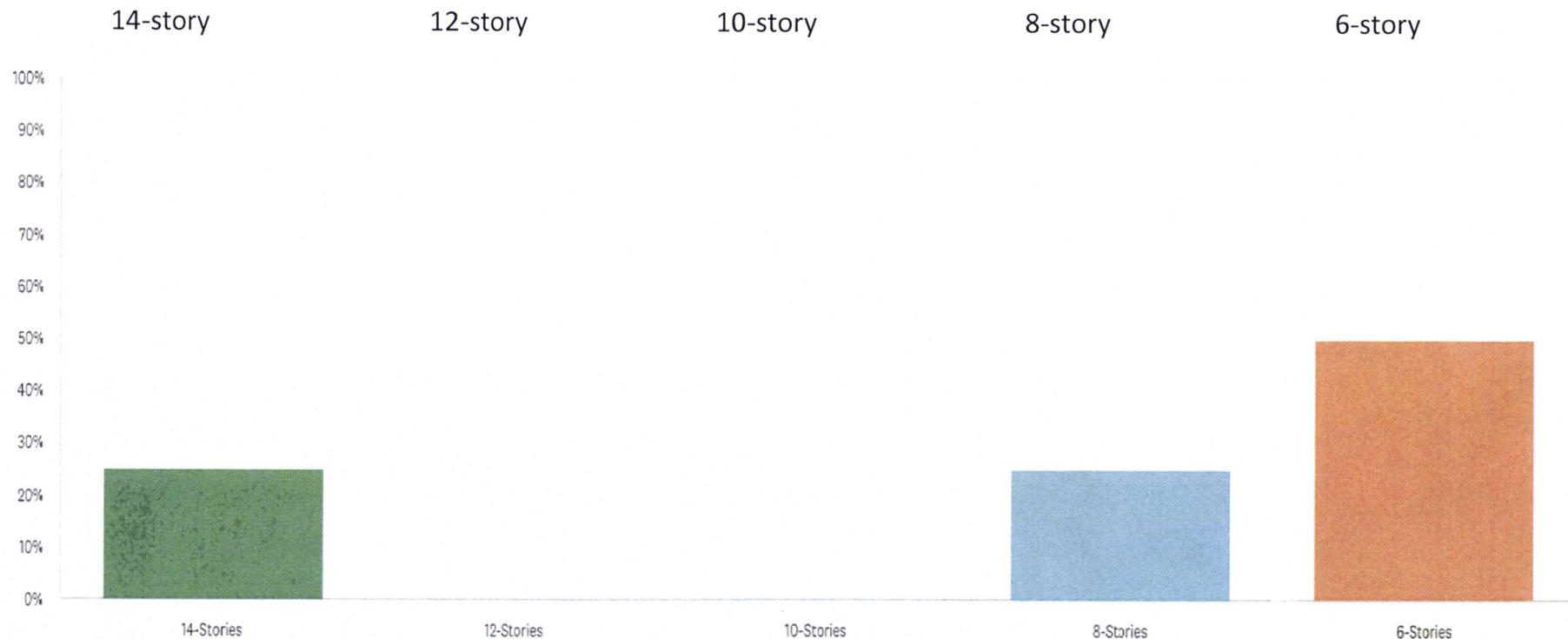
- Jaxson's assembly on SW 1 Avenue 250 d.u.
- Ryan & Ryan site on E. Dania Bch. Blvd 354 d.u.
- Neptune Fireworks site on E. Dania Bch. Blvd 517 d.u.
- Mobile home site on S. Federal Highway 227 d.u.
- Tomato Field north of Jai Alai 530 d.u.

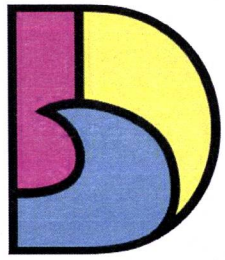


Survey Question #1

What is the maximum building size you are comfortable seeing in Dania Beach?

(Answered: 4 Skipped: 1)



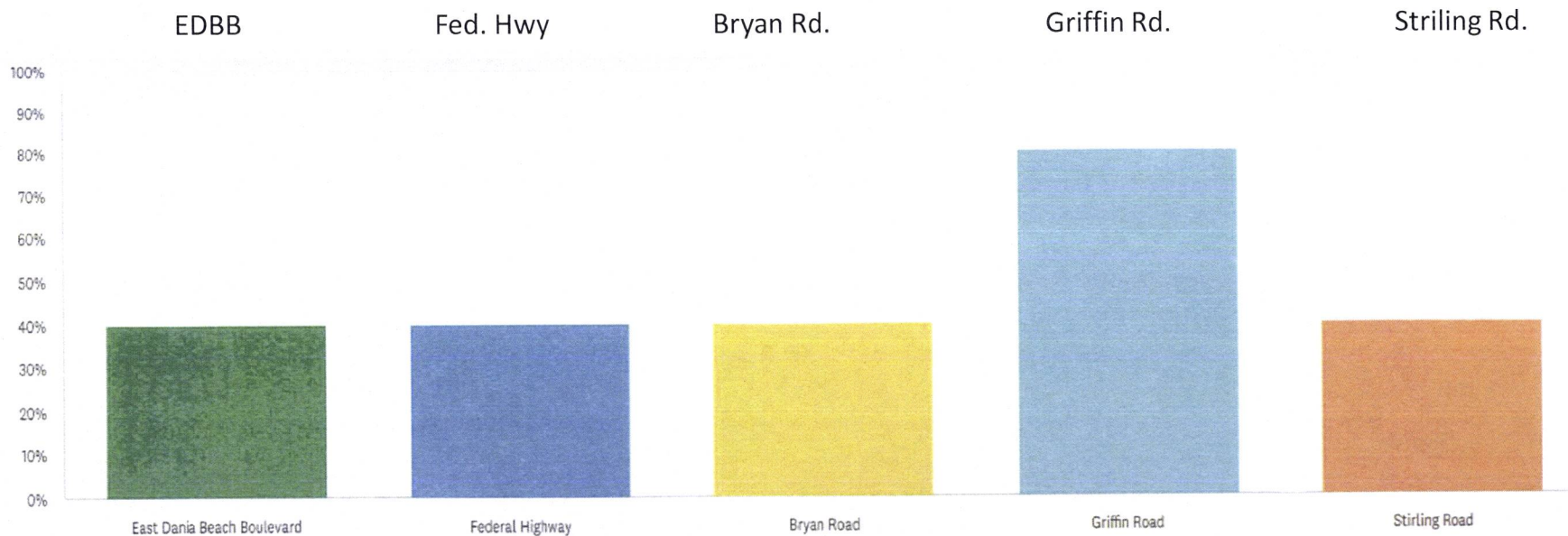


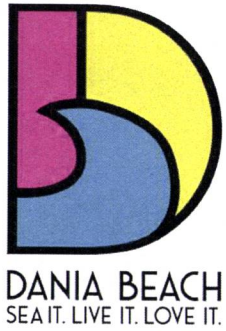
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Survey Question #2

What areas of the city are you most comfortable with seeing grow/redevelop?

(Answered:5 Skipped:0)

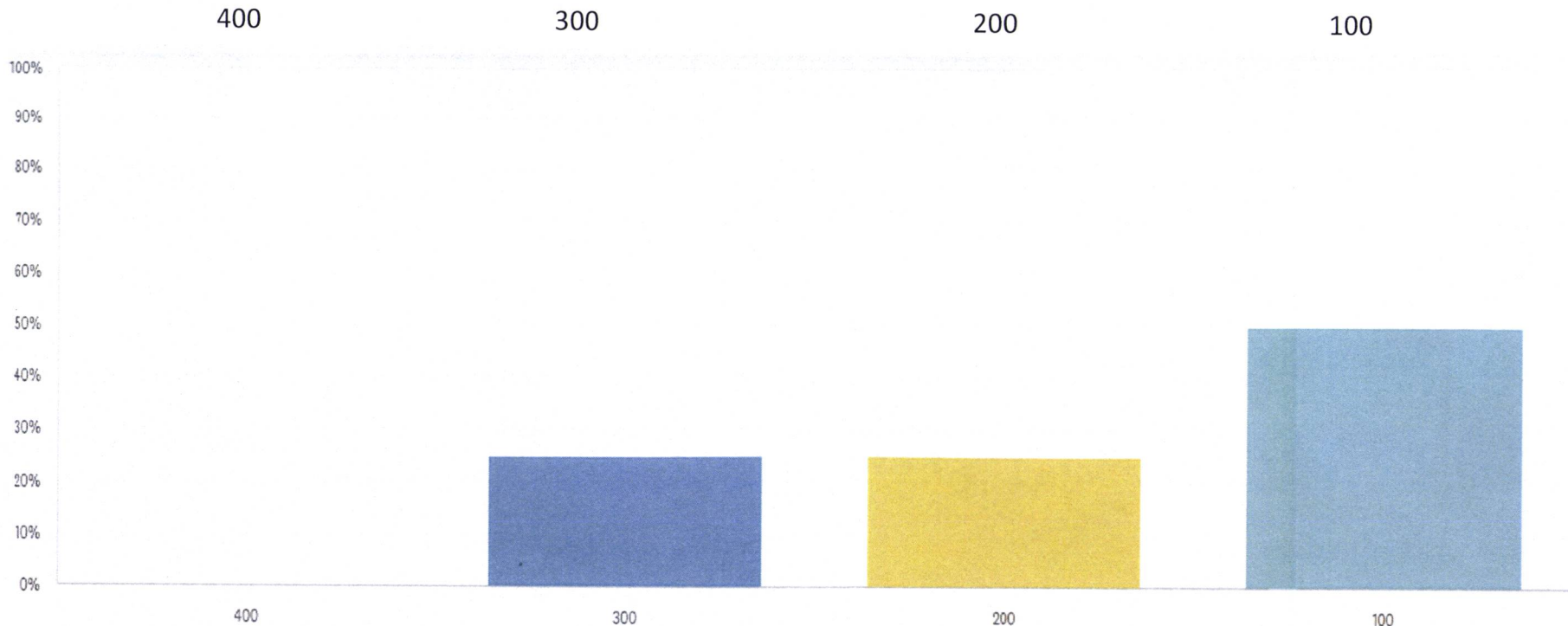


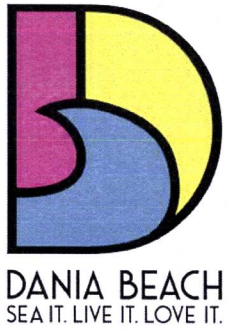


Survey Question #3

How many units per project are you comfortable with?

(Answered:4 Skipped:1)

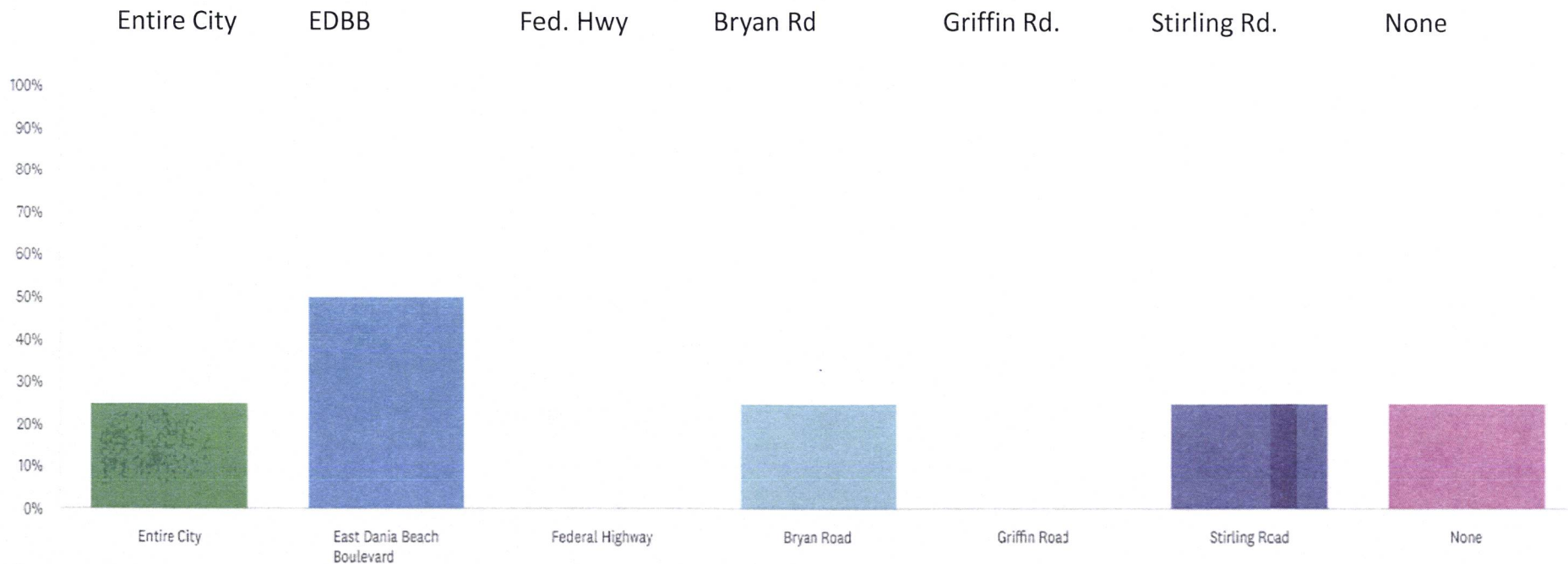


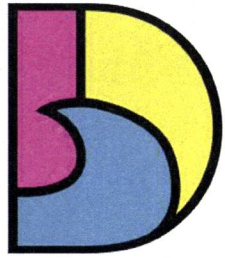


Survey Question #4

What areas are you comfortable seeing/seeking a moratorium for?

(Answered: 4 Skipped:1)





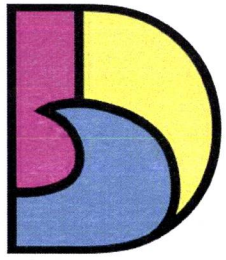
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Survey Question #5

Do you want a City-wide moratorium, that include residential and industrial areas of the city?

(Answered: 4 Skipped:1)

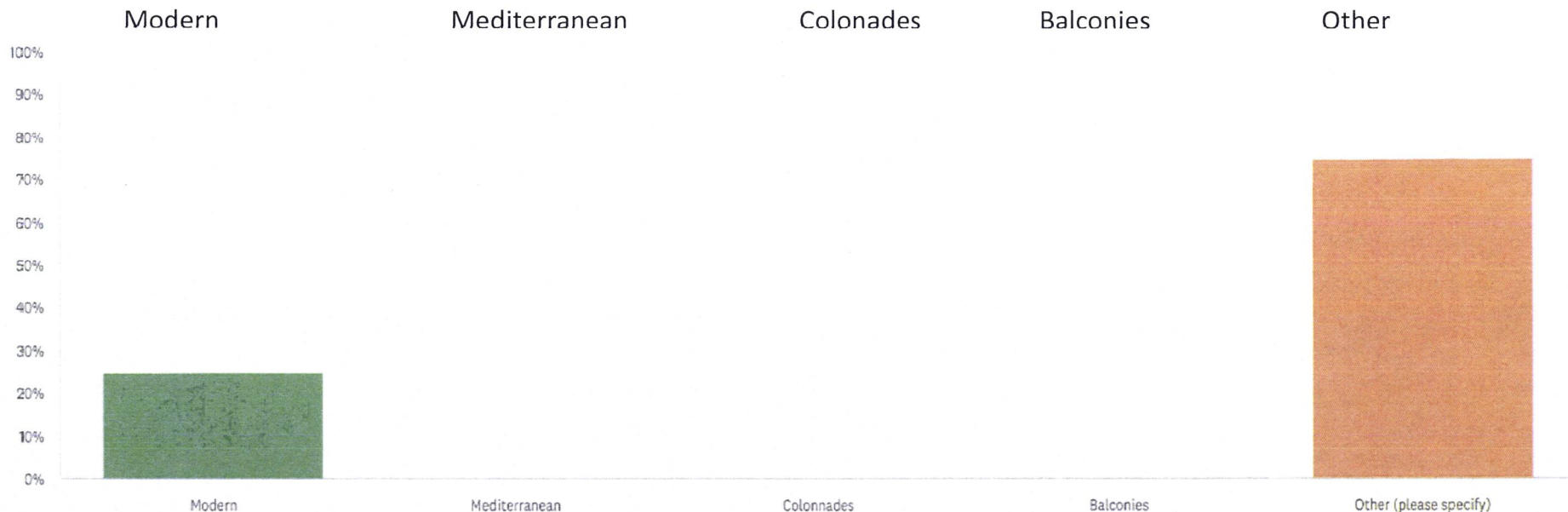


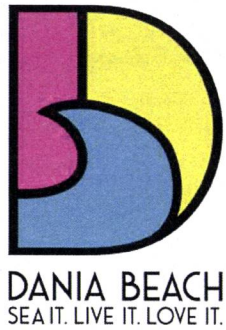


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Survey Question #6

Do you want to create architectural criteria for new construction, and if so, please advise what you are looking for?
(Answered: 4 Skipped:1)

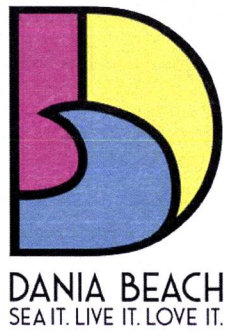




Survey Question #7

Identify any other concerns or comments you want to share:

“We need to look at each project individually. Some projects may have more units while others may be single family. Most of my answered to the above would be ‘it depends’.”



Text Amendment allocating RAC units

- 1st Reading – December 14, 2021
- 2nd Reading – January 11, 2022 (continued to 2/8 due to workshop)
- 2nd Reading – February 8, 2022

When RAC unit count falls below 15%:

(1) Use of all incentives increasing density will be suspended, except:

- (a) For affordable housing
- (b) For increasing density by 5 dwelling units or less.

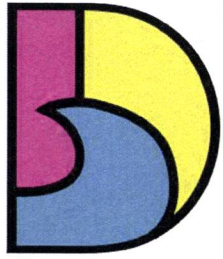
(2) Provide a developer's agreement stating no extensions, returning any unused RAC units.

(3) Provide a project proforma prior to public hearing.

(4) Provide a tax benefit/cost analysis of the project.

(5) Identify how the project approval and construction will benefit the community.

(6) Any project in which the City has partnered with another person or entity utilizing Florida Housing Finance Corporation funds shall be exempt from subparagraphs 1 -5 above.



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City Commission discussion