



AGENDA
CITY OF LAKE WORTH BEACH
SPECIAL CITY COMMISSION MEETING - DOKA FINAL PRESENTATIONS
CITY HALL COMMISSION CHAMBER
TUESDAY, MAY 11, 2021 - 5:00 PM

NEW BUSINESS:

A. [Appeal - final presentations](#)

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)



LLW

**LEWIS
LONGMAN
WALKER**

Appeal of Umdasch/Doka Project PZB Project Number 20-01400035

Filed by Marlin Industrial Park Owners Assoc., Inc.
& Alfred Malefatto, Lewis, Longman & Walker

Basis of Appeal

- ▶ Marlin Industrial Park Owners Association, Inc. (“Appellant”) is appealing the Planning and Zoning Board’s approval of Project Number 20-01400035 on the following grounds:
 - ▶ The Board’s denial of the Appellant’s request to continue the hearing did not follow the requirements of the City’s Code.
 - ▶ The Applicant failed to meet its burden to show by competent substantial evidence that the Project met all the site qualitative design standards and conditional use requirements of the City’s Code.



Umdasch Real Estate USA, Ltd was not authorized to do business with the City

- ▶ Project applicant/owner “Umdasch Real Estate USA, LTD” had not met the requirements to do business in Florida at the time of the hearing on January 6, 2021.
- ▶ Umdasch Real Estate USA, LTD is incorporated in the State of New Jersey.
- ▶ F.S. 607.1501(1) states:
 - ▶ “A foreign corporation may not transact business in this state until it obtains a certificate of authority from the department.”
 - ▶ Umdasch Real Estate did not register with the State of Florida until April 14, 2021, more than three months after the hearing.
- ▶ The City should not have considered the Project application because Umdasch was not in compliance with state law.



1. Board's denial of Appellant's request to continue the hearing did not comply with City Code

► City Code Section 23.2-16 (as amended by Ordinance 2020-14) states:

g) Continuance. The decision-making body may, on its own motion, continue the hearing to a fixed date, time and place. Also, the applicant or affected party shall have the right to one (1) continuance provided the request is to address neighborhood concerns or new evidence, or to hire legal counsel or a professional services consultant, or the applicant or affected party is unable to be represented at the hearing. The decision-making body will continue hearing to a fixed date, time and place. However, all subsequent continuances shall be granted at the sole discretion of the decision-making body. ...



Appellant was entitled to one continuance

- ▶ Under City Code, a continuance is granted by the decision-making body at a public meeting.
- ▶ An affected party has the right to one continuance in order to hire legal counsel.
- ▶ Appellant submitted its request to continue the December 2, 2020 hearing on the Project application, but the hearing was postponed for lack of a quorum.
- ▶ The postponement of the Board meeting for failing to meet a quorum was not a response to Appellant's request for a continuance.
- ▶ The Board denied Appellant's request for a continuance, which should have been granted by right. As a result, Appellant was forced to present its case without the assistance of legal counsel.



2. Project does not meet the requirements of City Code

Applicant failed to meet its burden to show, by competent substantial evidence, that the Project meets the City's design standards or conditional use requirements. In fact, the evidence shows that:

- ▶ The site was not designed to mitigate noise and odor on Appellant's property.
- ▶ The site was not designed to have a minimum negative impact on the value of Appellant's property.
- ▶ The proposed use will produce significant air pollution and emissions which are not appropriately mitigated.
- ▶ The proposed use will produce significant noise which is not appropriately mitigated.



Site Design Qualitative Standards

City Code Section 23.2-31

(c) *Qualitative development standards*

...

(11) *Off-street parking, loading and vehicular circulation areas.* Off-street parking, loading and vehicular circulation areas shall be located, designed and screened *to minimize the impact of noise, glare and odor on adjacent property.*

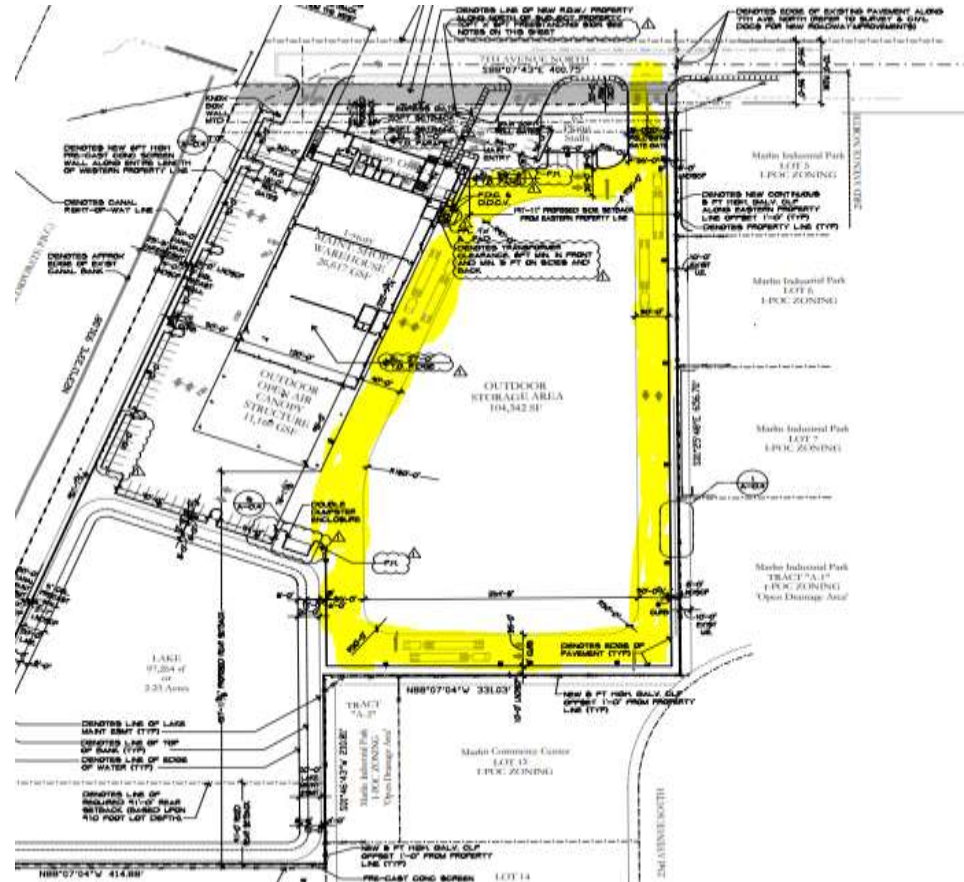
...

(13) *Protection of property values.* The elements of the site plan shall be arranged so as *to have minimum negative impact on the property values of adjoining property.*



Vehicle circulation on the Project site

- Onsite traffic circulates around outdoor storage area.
- Traffic travels approximately 500 feet along Appellant's property line

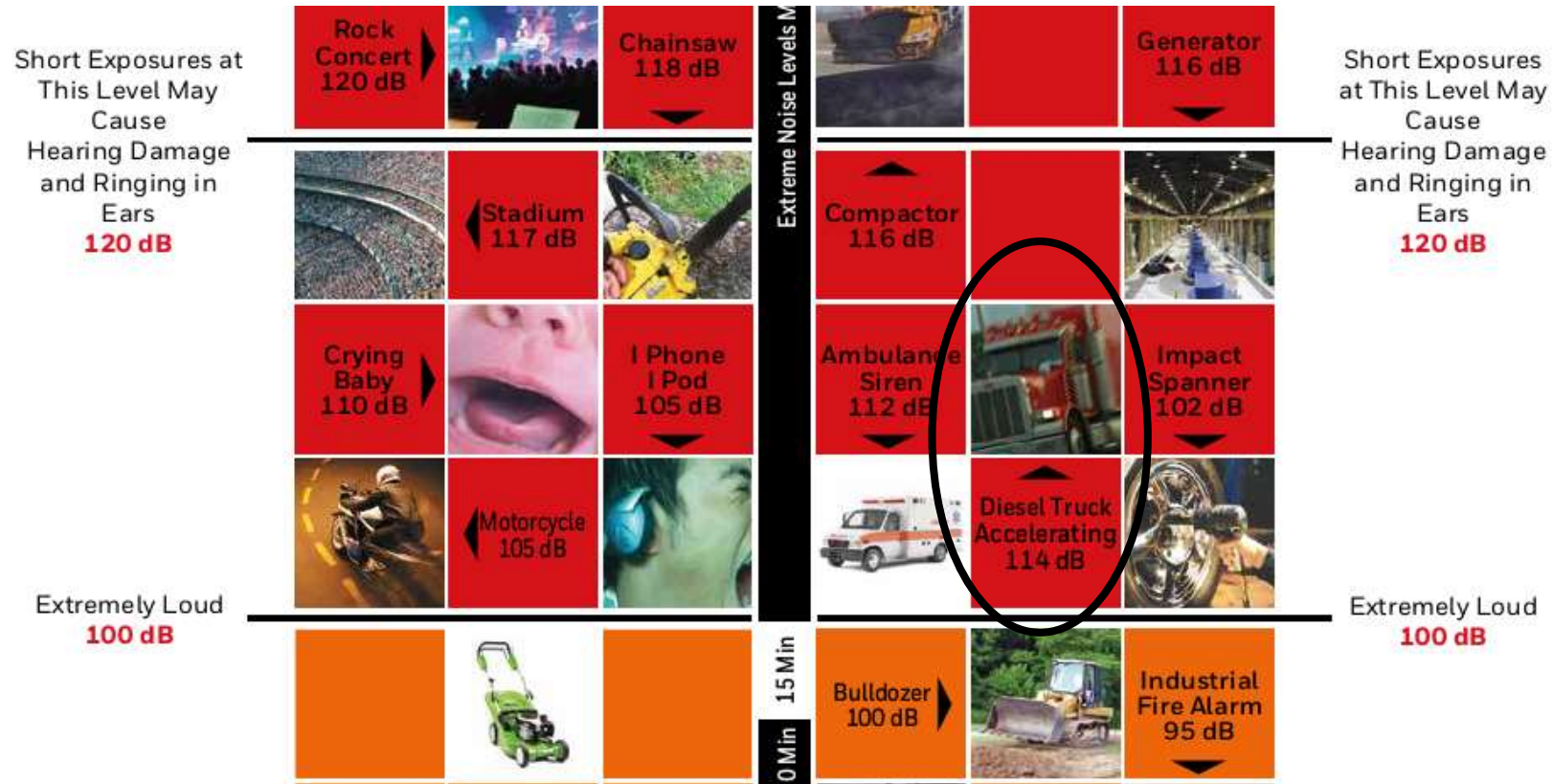


Site design significantly impacts Appellant's property

- ▶ Applicant testified that 10 trucks per day would be accessing the site, which means trucks would be passing by Appellant's property on an hourly basis.
- ▶ Applicant sound expert's report on site noise was limited to an analysis of forklift operation only.
- ▶ However, the "Noise Thermometer" attached to the expert's report shows that the sound from an accelerating diesel truck measures 114 decibels and is "extremely loud" (slightly louder than an ambulance siren).
- ▶ "Extremely loud" trucks travelling alongside Appellant's property on an hourly basis will likely have substantially negative impact of Appellant's property values.
- ▶ Proposed screening material is not sufficient to minimize noise and odor from extremely loud trucks on Appellant's property.



Noise Thermometer provided by expert



Conditional Use Permit Requirements

City Code Section 23.2-29 “Conditional Use Permits”:

(e) *Specific findings for all conditional uses.* Prior to approving any conditional use, the decision making authority shall find that:

...

3.The proposed conditional use **will not produce significant air pollution emissions**, or will appropriately mitigate anticipated emissions to a level compatible with that which would result from a development permitted by right....

7.The proposed conditional use **will not generate significant noise**, or will appropriately mitigate anticipated noise to a level compatible with that which would result from a development permitted by right. **Any proposed use must meet all the requirements and stipulations set forth in section 15.24, Noise control.**



Proposed use produces significant air pollution

- ▶ The Project's proposed use involves manufacturing of construction formwork which produces air pollution in the form of dust.
- ▶ Applicant testified that its Pompano Beach site used for same purpose is “a mess”.
- ▶ Appellant viewed satellite images of Applicant's operations in Pompano Beach and New Jersey, and testified that storage yards and roadways leading in and out of site are covered with a significant amount of white dust.
- ▶ The fact that the dust on the Pompano Beach and New Jersey sites could be viewed from satellite images indicates that the amount of dust produced by the operations is significant.



Conditional use should not be granted if the use generates unreasonable noise

Unreasonable noise, which is defined in Section 15.24-1, is prohibited in the City when noise is:

- ▶ Equal to or greater than 65 dba between 11:00 p.m. and 8:00 a.m., Sunday through Thursday
- ▶ Greater than 85 dba between 8:00 a.m. and 11:00 p.m., Sunday through Thursday □
- ▶ Equal to or greater than 65 dba between 12:00 a.m. and 8:00 a.m., Friday through Saturday □
- ▶ Equal to or greater than 85 dba between 8:00 a.m. and 12:00 a.m., Friday through Saturday



Proposed use will generate unreasonable noise from trucks

- ▶ In its analysis, City staff concluded that the Project was appropriately conditioned to prohibit generating noise levels that exceed 65 decibels at night and 85 decibels during the day.
- ▶ Applicant sound expert's report on noise was limited to an analysis of forklift operation only. He did not analyze the noise related to truck traffic.
- ▶ The noise thermometer that is attached as an exhibit to the expert's report states that an accelerating diesel truck measures 114 decibels, which would be considered "unreasonable noise" under the City's standards.
- ▶ The opaque fence proposed by staff as a condition is not sufficient to mitigate the noise from truck traffic on the site.



Conclusion

- ▶ The Project should be denied because the site was not designed to mitigate noise and odor on Appellant's property and therefore would have a minimum negative impact on the value of Appellant's property.
- ▶ In addition, the conditional use should be denied because the proposed use will produce significant amounts of air pollution and noise which are not appropriately mitigated.
- ▶ In the alternative, the case should be remanded to the Planning and Zoning Board for a new hearing because the Appellant was not granted the continuance he was entitled to by right under the City's Code.





Umdasch/Doka - Appellees

Major Site Plan with Sustainable Bonus and Conditional Use Permit to construct a +/- 47,000 SF facility in Industrial Park of Commerce (I-POC)

PZB Project No.: 20-01400035

Neil Schiller, Esq. May 11, 2021

Request

- **DENY** appellants appeal and **AFFIRM** the Planning & Zoning Board's **UNANIMOUS** decision to **APPROVE**
- Umdasch/Doka seeks to construct and operate a +/- 47,000 SF facility to:
 - Repair and maintain the concrete forms
 - Distribute the concrete forms
- Applications sought:
 - Major site plan: development of a building in excess of 7,500 SF
 - Sustainable Bonus Program Incentive: increase height to 31'
 - Conditional Use Permit: "major" uses greater than 7,500 SF
 - **STAFF RECOMMENDED APPROVAL ON ALL APPLICATIONS**

Aerial

Boutwell Industrial Park of Commerce

[View Property Record](#)

Owners

UMDASCH REAL ESTATE USA LTD

Property Detail

Location 2209 7TH AVE N
Municipality LAKE WORTH BEACH
Parcel No. 38434420010660010
Subdivision MODEL LAND CO IN
Book 32164 Page 1074
Sale Date JAN-2021
Mailing Address 214 GATES RD
LITTLE FERRY NJ 07643 1918
Use Type 4000 - VACANT INDUSTRIAL
Total Square Feet 0

Sales Information

Sales Date	Price
JAN-2021	4500000
OCT-2008	1500000
JUL-2003	825000
MAR-2001	700000
MAR-1991	100

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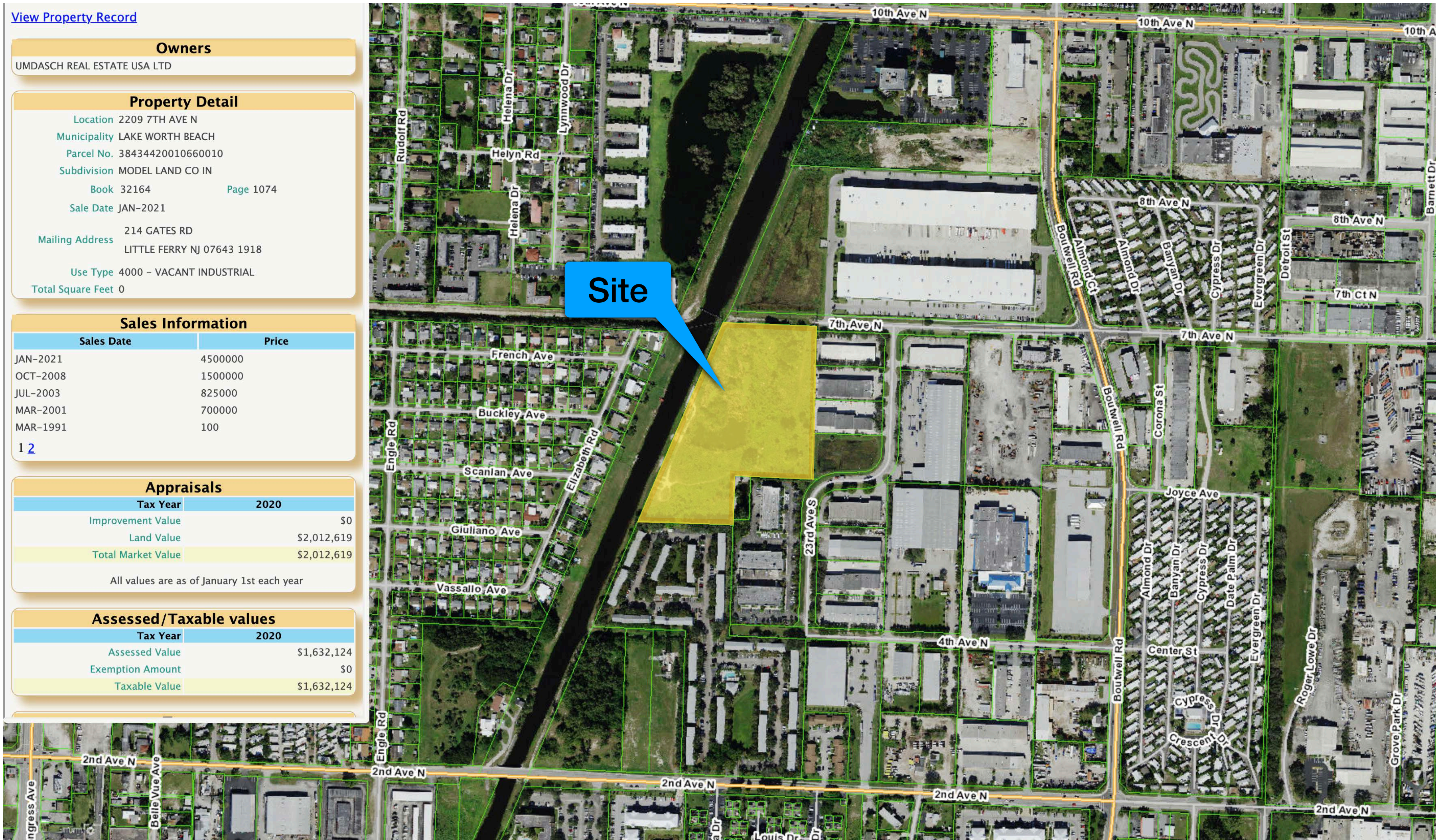
Appraisals

Tax Year	2020
Improvement Value	\$0
Land Value	\$2,012,619
Total Market Value	\$2,012,619

All values are as of January 1st each year

Assessed/Taxable values

Tax Year	2020
Assessed Value	\$1,632,124
Exemption Amount	\$0
Taxable Value	\$1,632,124



- Site located in Industrial Park of Commerce
- Is an existing brownfield that the Appellees are cleaning
 - Central and Southern portions of site have muck
- Property is 9.79 acres

Closer Aerial

[View Property Record](#)

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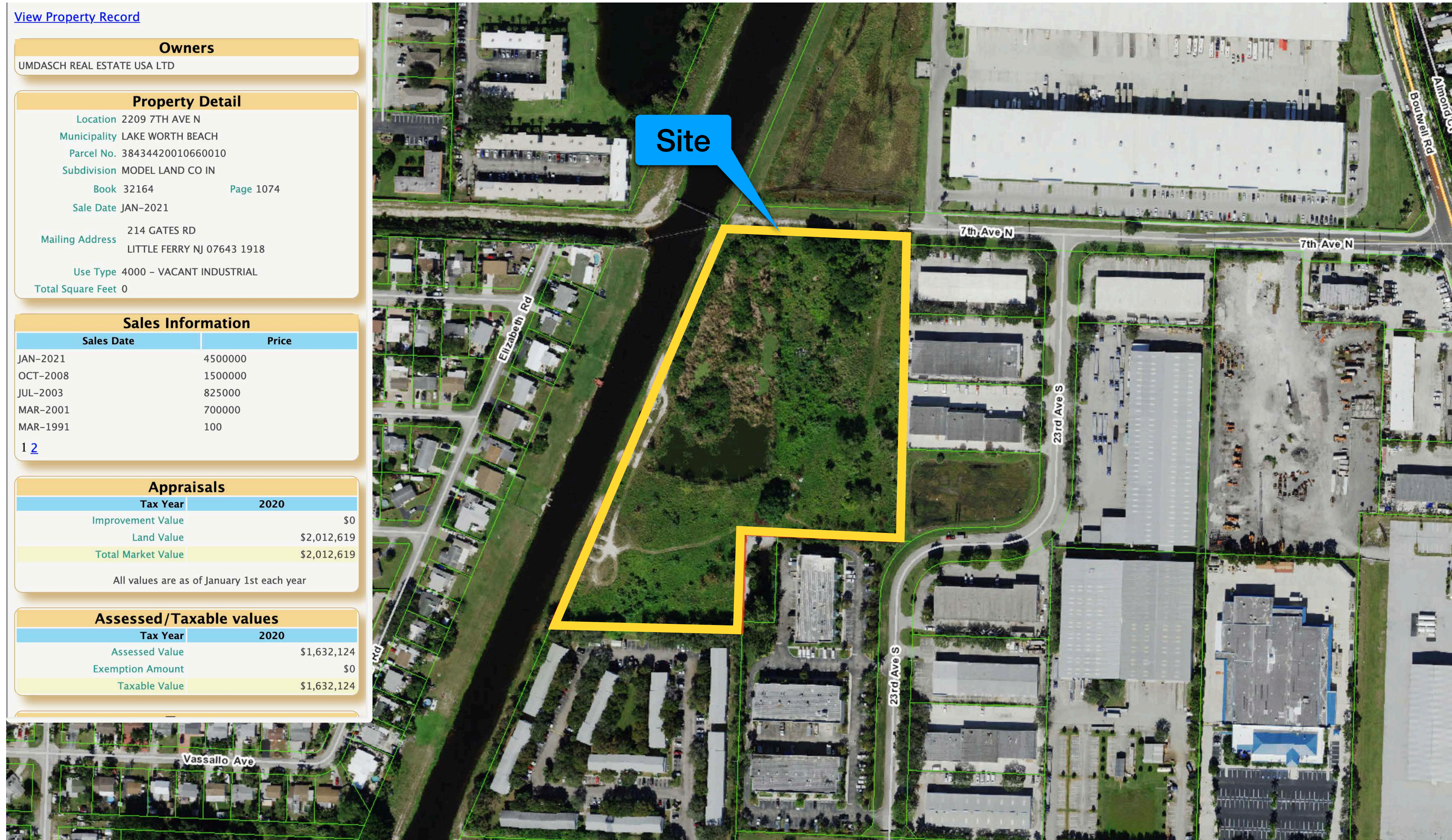
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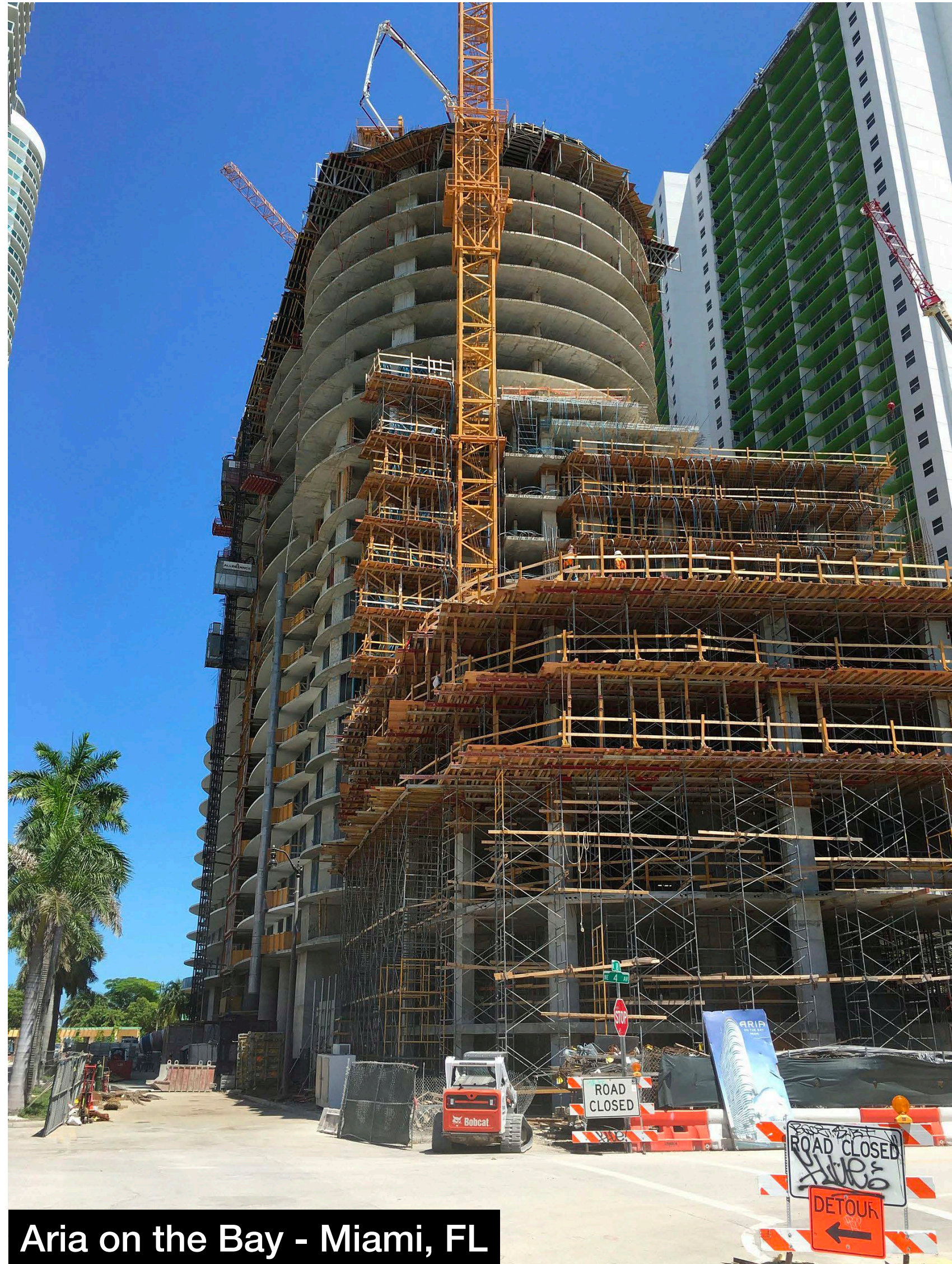


Who is Umdasch/Doka

- International company with locations on 5 continents, in 70 countries and 160 locations worldwide with more than 7,400 employees
- Founded in 1956 with roots that date back to 1868 in Austria
- Distribute, repair and maintain concrete formworks
 - Formworks are used to shape and form concrete used in all types of construction
 - The formwork products, systems and design service include formwork panels, slab formwork, wall formwork, one-sided wall formwork, climbing formwork, tunnel formwork, dam formwork, bridge formwork (cast-in-place balanced cantilever bridge, concrete arch bridge and steel combination bridge formwork), shoring / falsework, tie systems and field support, software and training.
- Doka's business is based on a combination of production, equipment sale & rental, engineering and maintenance.



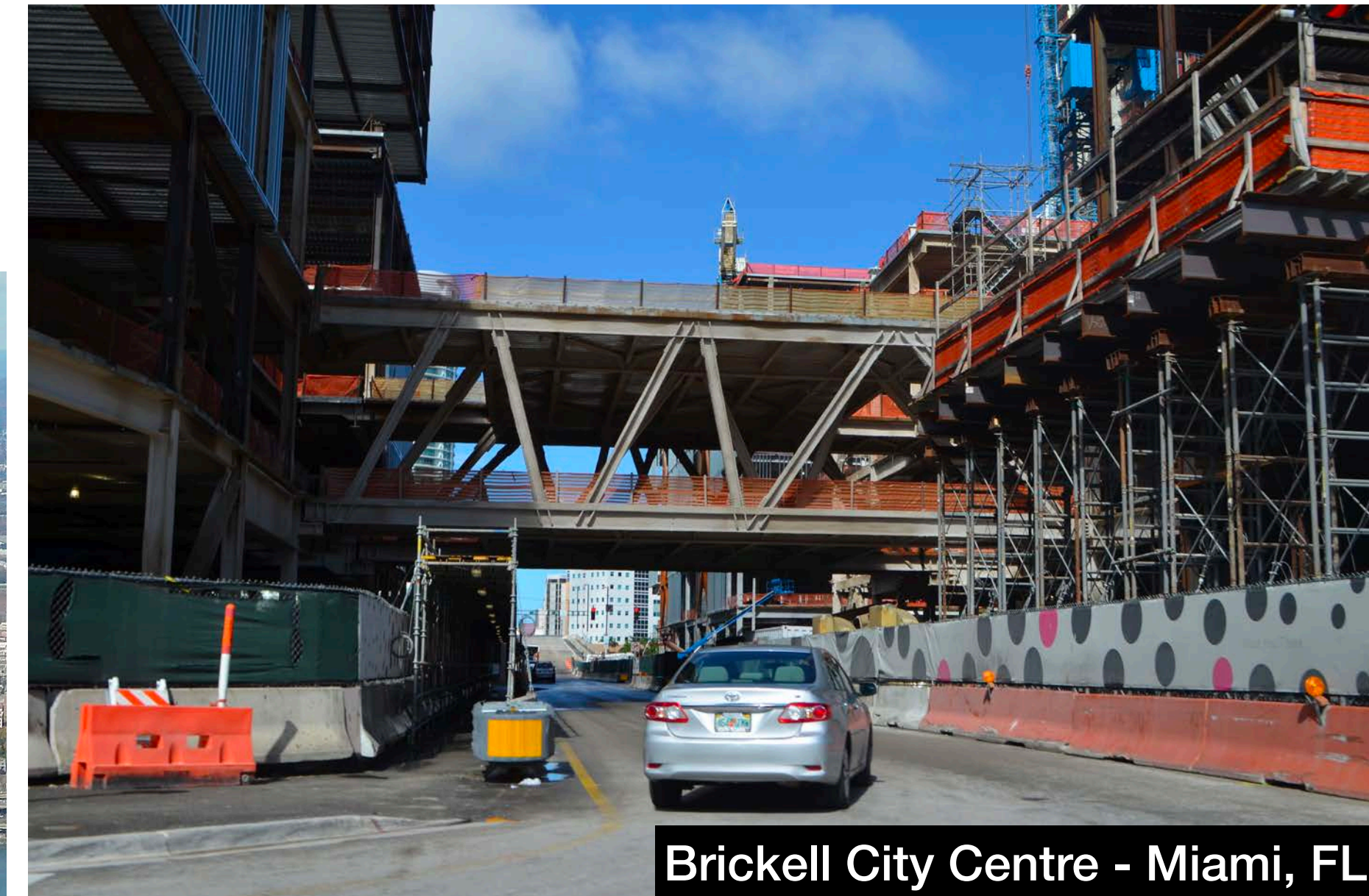
Representative Projects



Aria on the Bay - Miami, FL



Hudson Yards - New York, NY

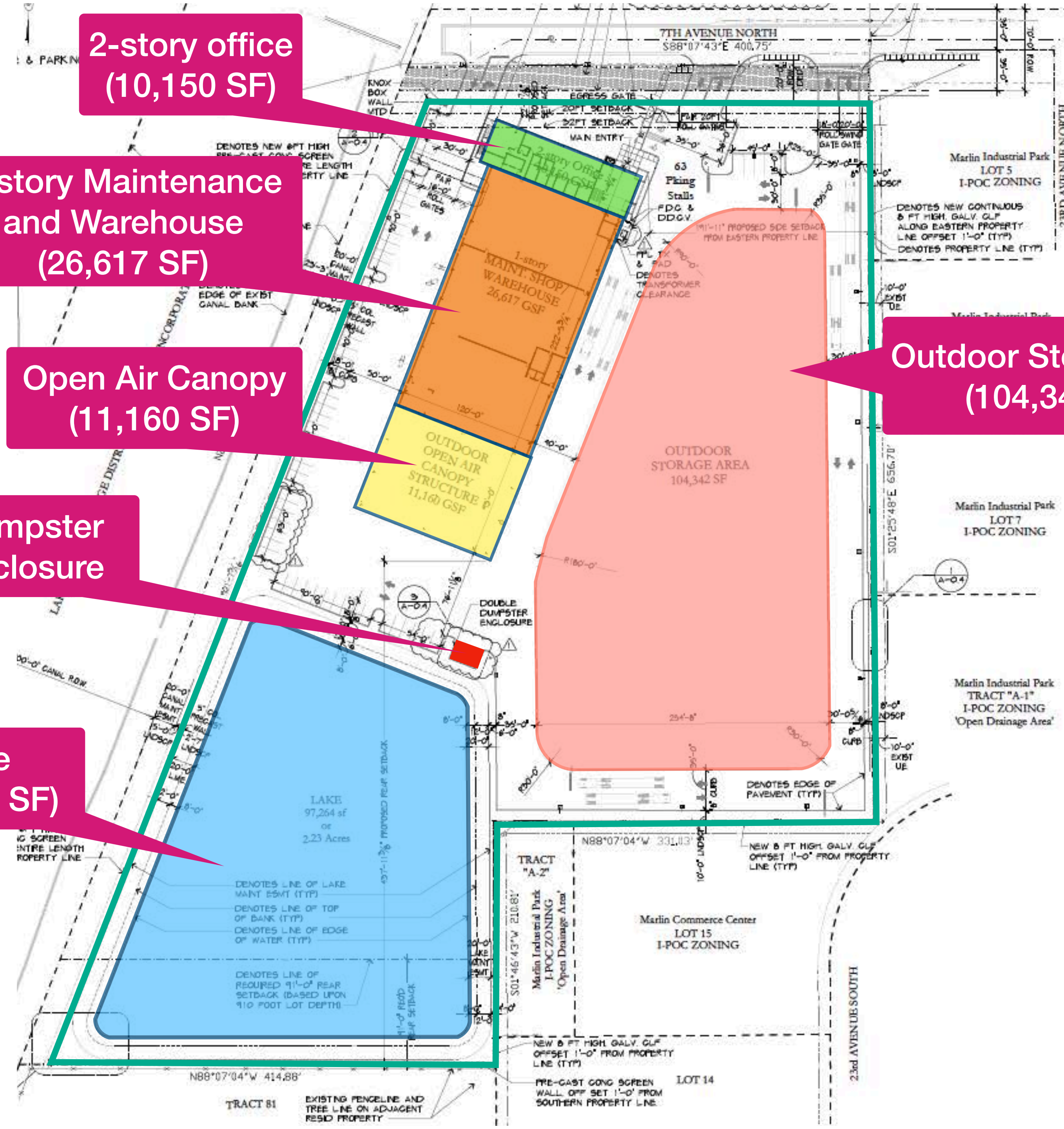


Brickell City Centre - Miami, FL



"Guitar Hotel" Hardrock - Hollywood, FL

Site Plan



2-story office
(10,150 SF)

1-story Maintenance
and Warehouse
(26,617 SF)

Open Air Canopy
(11,160 SF)

Dumpster
Enclosure

Lake
(97,264 SF)

Outdoor Storage Area
(104,342 SF)

Site Plan

UMDASCH REAL ESTATE USA LTD

Property Detail

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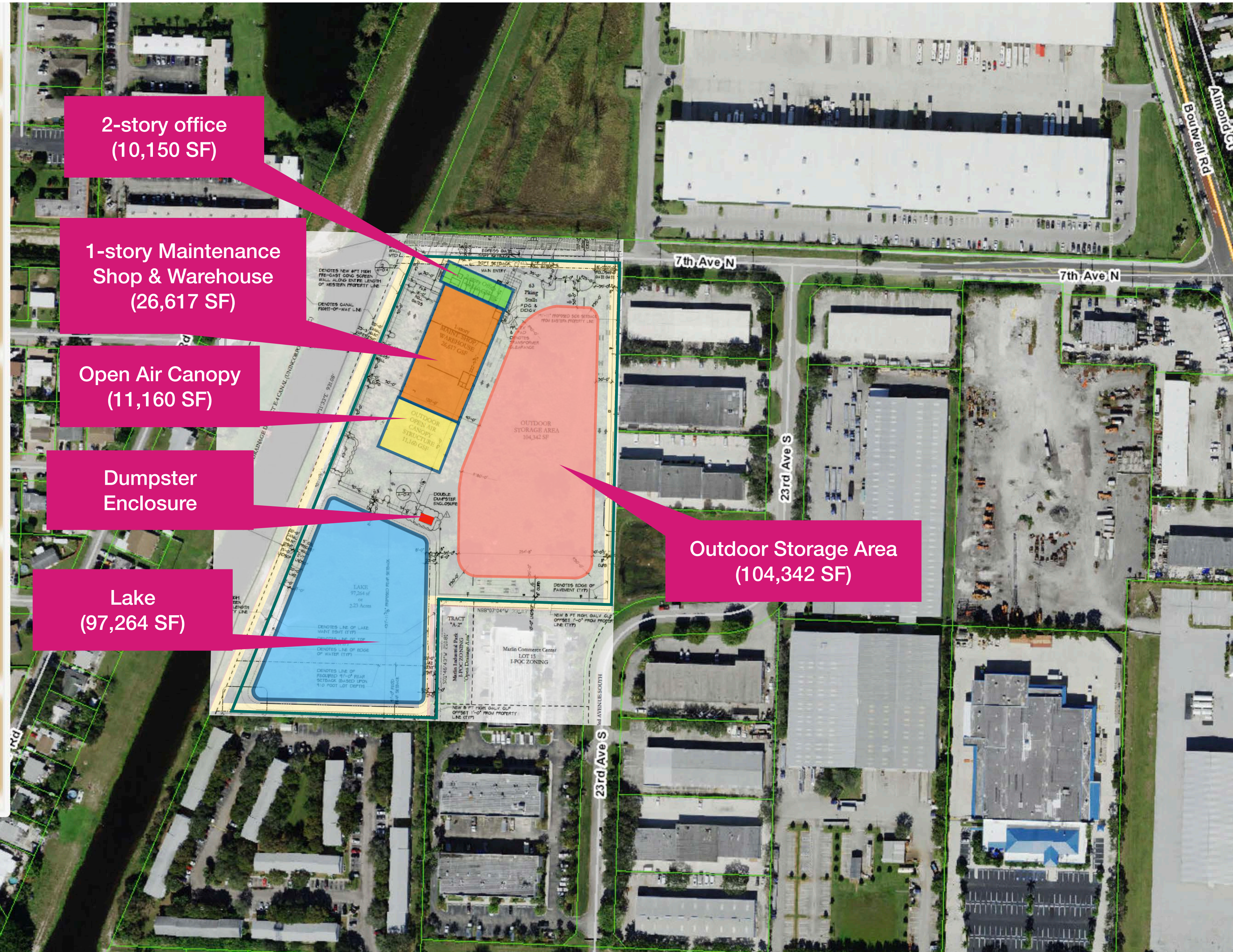
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(10,150 SF)

1-story Maintenance
Shop & Warehouse
(26,617 SF)

Open Air Canopy
(11,160 SF)

Dumpster
Enclosure

Lake
(97,264 SF)

Outdoor Storage Area
(104,342 SF)

Landscape Plan

Entrance landscaping will include: Compact Firebush, Pigeon Plum, Dwarf Fakahatchee Grass, and Verawood

Trees buffering the canal and residential to the West:
Laurel Oak, Wax Myrtle, Silver Buttonwood, Green Buttonwood, and Southern Live Oak

71 Bald Cypress trees to be planted around the lake



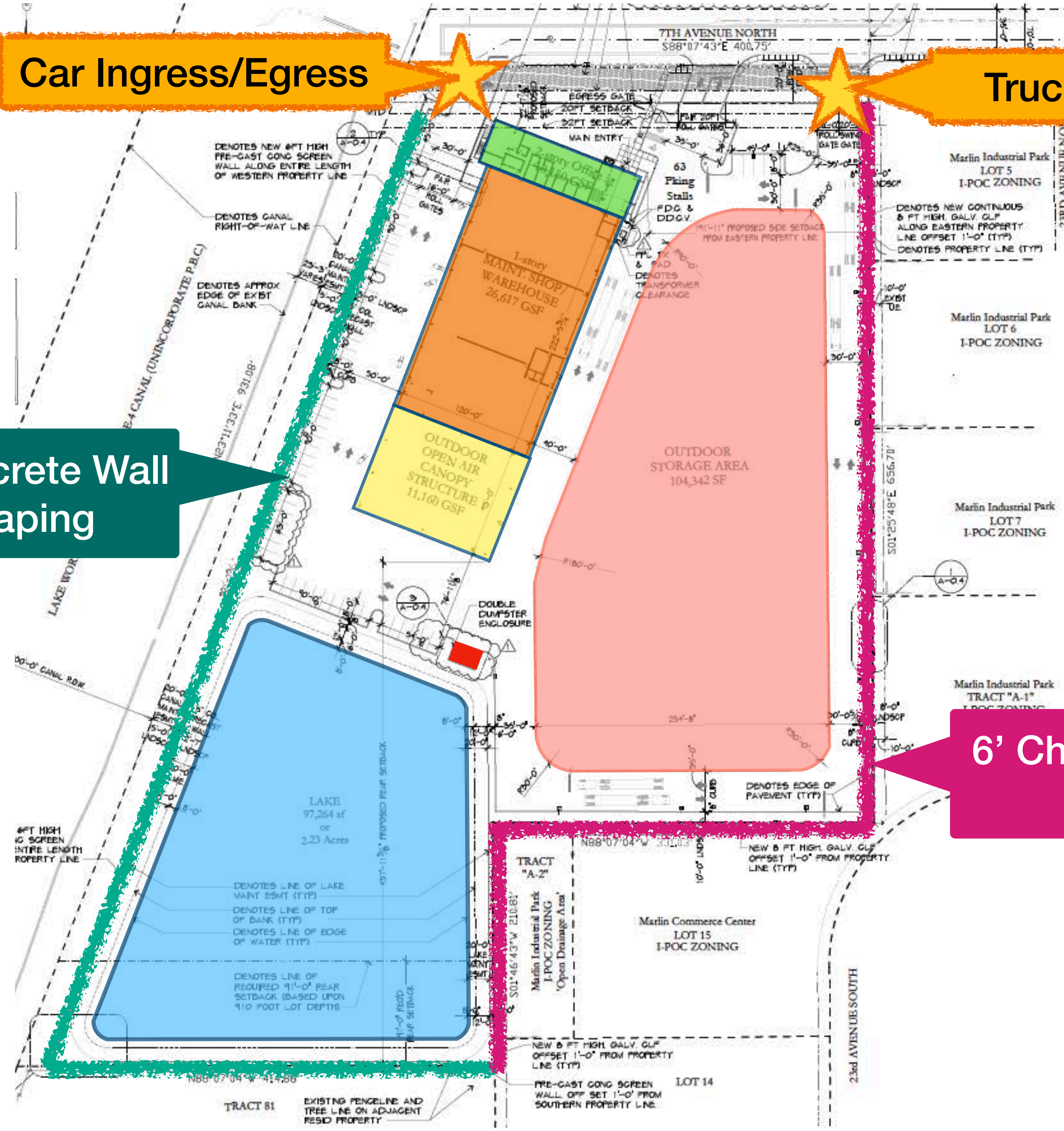
Access & Buffers

Car Ingress/Egress

Truck Ingress/Egress

6' Pre-Cast Concrete Wall with Landscaping

6' Chain Link Fence with Landscaping



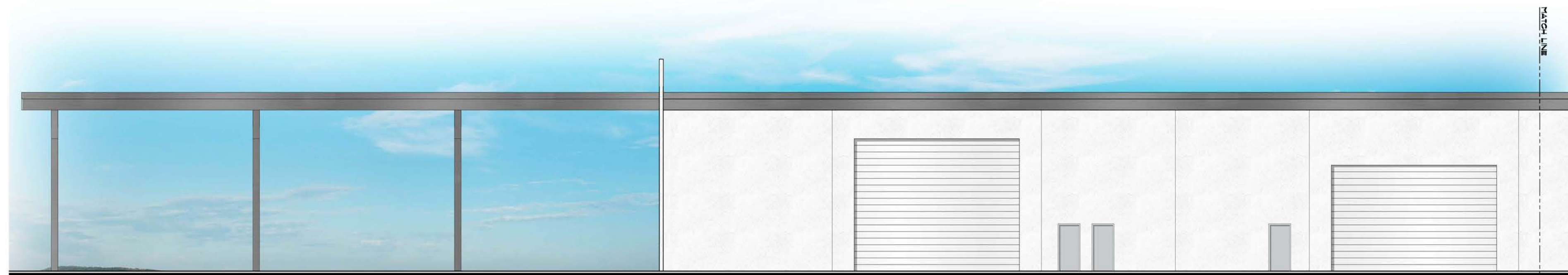
Renderings



$\frac{1}{8" = 1'-0"$ NORTH ELEVATION



$\frac{1}{8" = 1'-0"$ PARTIAL EAST ELEVATION

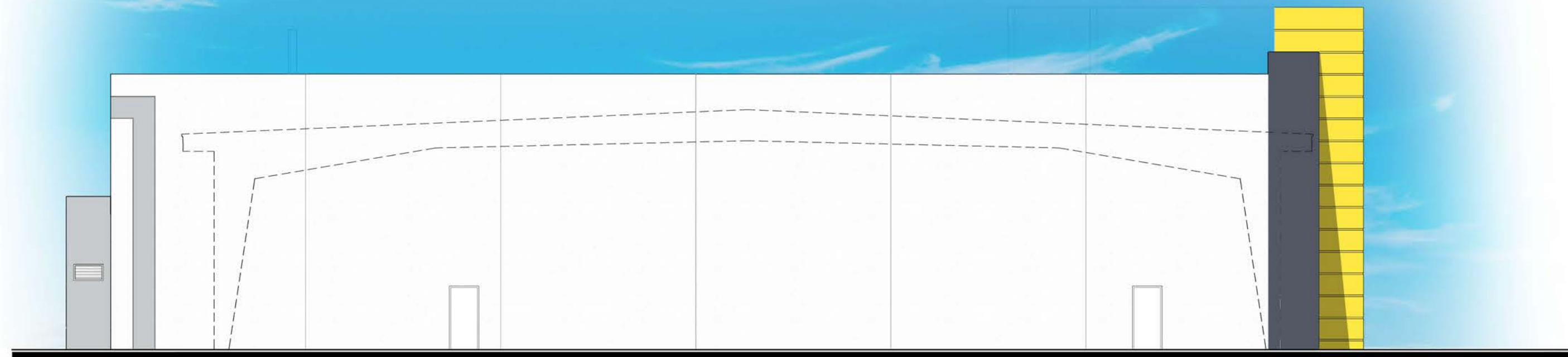


$\frac{2}{8" = 1'-0"$ EAST ELEVATION

Renderings



$\frac{1}{8'' = 1'-0''}$ SOUTH ELEVATION



$\frac{2}{8'' = 1'-0''}$ SOUTH ELEVATION @ OFFICE AREA

Renderings



$\frac{1}{8" = 1'-0"$ WEST ELEVATION



$\frac{1A}{8" = 1'-0"$ WEST ELEVATION - STAIR FACADE

Points of Appeal

Appeal

Reply To: West Palm Beach

- Appeal should be summarily denied:
- Appellants lack standing:
 - Marlin Industrial Park Owners Association is NOT located at 2209 7th Avenue, Lake Worth Beach
 - That is the Appellee's property address at issue
- Appellants failed to prove any grounds that the City's Staff or Planning and Zoning acted erroneously or illegally

February 14, 2021

William Waters, Director of the Community Sustainability Department
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460

RE: APPEAL BY AFFECTED PARTY MARLIN INDUSTRIAL PARK OWNERS' ASSOCIATION INC.
PZB Project Number 20-01400035: Major Site Plan Approval, Bonus & Conditional Use Permit

Dear Mr. Waters:

We have been retained to represent the Marlin Industrial Park Owners Association and its representatives, George Garamy, President and Daniel Hiatt, Vice President ("Petitioner" and "Petitioners"). Mr. Garamy has filed for this appeal on behalf of Marlin Industrial Park, which is located at 2209 7th Avenue North in the City of Lake Worth Beach. Marlin Industrial Park is adjacent to the east side of the mixed-use project that is the subject of PZB Project Number 20-01400035 ("Project").

The Project was initially scheduled for a hearing on December 2, 2020 before the decision-making body, the City's Planning and Zoning Board ("Board"). Since the Board did not satisfy the quorum requirements for its December meeting, City staff postponed all items on the meeting agenda to the Board's next regularly scheduled meeting on January 6, 2021. The Petitioners were recognized by the City as affected parties and presented evidence at the January 6th hearing. The Board issued its written decision approving the Project on January 15, 2021. The Petitioner filed a Notice of Appeal within 14 days as required by the City's Code. This letter is the basis for the appeal, which is required 30 days after the Board issues its written decision.

As an initial matter, it must be noted that Umdasch Real Estate USA, Ltd. ("Applicant") has not met the requirements to do business in the State of Florida. Applicant is a foreign corporation based out of New Jersey. Section 607.1501(1), *Florida Statutes* requires all foreign corporations transacting business in Florida to obtain a certificate of authority from the state. There is no evidence in the record that the Applicant has received the required certificate of authority. It is a matter of public record that the Applicant is not listed as an active business on the Florida Division of Corporations website (Sunbiz.org). The Applicant submitted its application to the City on August 12, 2020. Therefore, the Applicant's communications with the City with respect to this application have exceeded 30 days and constitute the

JACKSONVILLE
245 Riverside Ave., Suite 510
Jacksonville, Florida 32202
T: 904.353.6410
F: 904.353.7619

ST. PETERSBURG
100 Second Ave., South
Suite 501-S
St. Petersburg, Florida 33701
T: 727.245.0820
F: 727.290.4057

TALLAHASSEE
315 South Calhoun St., Suite 830
Tallahassee, Florida 32301
T: 850.222.5702
F: 850.224.9242

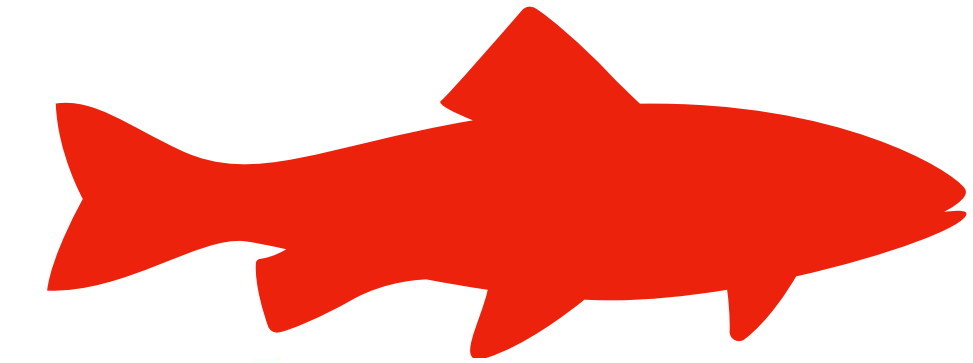
TAMPA
301 West Platt St.
Suite 364
Tampa, Florida 33606
T: 813.775.2331

WEST PALM BEACH
515 North Flagler Dr., Suite 1500
West Palm Beach, Florida 33401
T: 561.640.0820
F: 561.640.8202

Appellants' Arguments

Registration with the State of Florida

- Not raised at the Planning and Zoning hearing and thus is not applicable to be argued on appeal when the appeal is based on the record below
- Statute exempts “owning, protecting and maintaining real property”
- Doka USA, the operating entity, that conducts business, is registered with the state of Florida
 - Since 2007



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Entity Name

Foreign Profit Corporation
DOKA USA LTD. INC

Filing Information

Document Number	F07000006332
FEI/EIN Number	22-1866944
Date Filed	12/26/2007
State	NJ
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	04/26/2013

Principal Address

214 GATES ROAD
LITTLE FERRY, NJ 07643

Mailing Address

214 GATES ROAD
LITTLE FERRY, NJ 07643

Registered Agent Name & Address

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301-2525

Name Changed: 08/01/2018

Address Changed: 08/01/2018

Appellants' Arguments

1) Appellant was not granted a continuance

- Umdasch/Doka filed its applications to the City in **August 2020**
- Planning and Zoning Board was set for **December 2, 2020**
 - Appellants asked for a continuance on **December 2, 2020**
 - Appellants received email from City Attorney:
 - Hearing continued to **January 6, 2021**
 - Planning and Zoning **DENIED** Appellant's request for a continuance at the meeting
 - City Attorney ruled that the continuance was given to Appellants
- Appellants attended the hearing, provided direct and rebuttal testimony for **more than 60 min.**
 - They had their arguments heard by and considered by the Planning and Zoning Board

35 total days

APPEAL HAS DELAYED THE PROJECT 6 MONTHS

Appellants' Arguments

1) Appellant was not granted a continuance

- Appellant didn't file for affected party status in the appropriate amount of time; nor did he prove that he qualified
- Staff allowed for the continuance anyway

City Attorney responded within 70 minutes

From: Pamala Ryan <pryan@torcivialaw.com>
Sent: Wednesday, December 2, 2020 5:54 PM
To: Erin Sita <esita@LakeWorthBeachfl.gov>; Daniel Hiatt <danielhiatt@bellsouth.net>
Cc: William Waters <wwaters@lakeworthbeachfl.gov>; Sherie Coale <scoale@lakeworthbeachfl.gov>
Subject: RE: PBZ PROJECT #20-01400035

Caution: This is an external email. Do not click links or open attachments from unknown or unverified sources.

From: Daniel Hiatt <danielhiatt@bellsouth.net>
Sent: Wednesday, December 2, 2020 4:47 PM
To: Erin Sita <esita@LakeWorthBeachfl.gov>
Subject: PBZ PROJECT #20-01400035

Request sent 73 minutes before the P&Z meeting

Caution: This is an external email. Do not click links or open attachments from unknown or unverified sources.

Dear Ms Sita

I would like to apply for affected party status on the above named project (PZB # 20-01400035)

I also would like to request a minimum of a 30 day postponement on this matter.

My property is directly east of the subject property. Located @ 3599 23rd Ave South, Lake Worth Fl.

LOT # 7 MARLIN INDUSTRIAL PARK.

Thank You Daniel W. Hiatt. 561-389-1989

Mr. Hiatt,

The city is in receipt of your request. Are you stating that you did not get notice via US mail although courtesy notice was delivered in accordance with the city's code? It is my understanding that your property manager, Christina Morrison, was aware no later than November 25, 2020 when she sent an email to city staff requesting the staff report. Under the code, an affected party must give five days' notice.

Having said that the city will continue this case to no later than January 6, 2020. A date is being determined now and you will be notified expeditiously via email, mail and legal notice. The city will send you an affected party status form for either you or your attorney to fill out.

Thank you.

Pamala H. Ryan
Board Certified in City County & Local Govt. Law

**TORCIVIA, DONLON &
GODDEAU, P.A.**

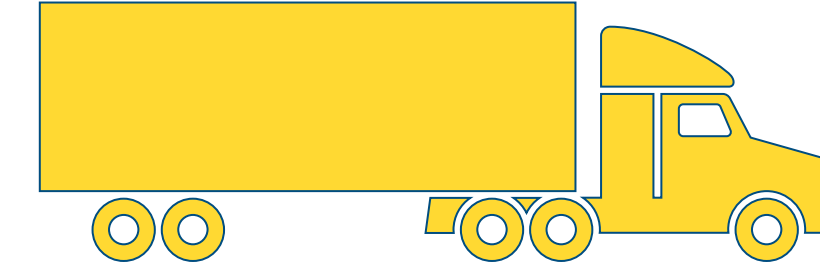
Appellants' Arguments

2) Site Circulation and Building Placement Creates Adverse Impacts to Appellants

- Maximum of 15 trucks a day
 - No reason for trucks to use the interior road network
- No noxious odors or noises emanate from the site
- Location of buildings is as far away as possible



Appellants' Arguments



2) Site Circulation and Building Placement Creates Adverse Impacts to Appellants

- No competent substantial evidence produced at P&Z hearing or in appeal letter
- Staff Report shows site circulation and placement actually mitigates any impacts

8. *Design of ingress and egress drives.* The location, size and numbers of ingress and egress drives to the site will be arranged to minimize the negative impacts on public and private ways and on adjacent private property. Merging and turnout lanes traffic dividers shall be provided where they would significantly improve safety for vehicles and pedestrians.

Staff Analysis: As stated earlier, the site has 3 access points from 7th Avenue North. This portion of 7th Avenue North is currently not paved and will be improved as part of the construction of this project. **No other properties obtain access from this portion of 7th Avenue North adjacent to the project site, and as such there is no anticipated negative impact on adjacent properties. Meets Criterion.**

11. *Off-street parking, loading and vehicular circulation areas.* Off-street parking, loading and vehicular circulation areas shall be located, designed and screened to minimize the impact of noise, glare and odor on adjacent property.

Staff Analysis: The site proposes 3 points of ingress/egress. The westernmost ingress/egress point is for personal and regular-sized vehicles. The two easterly points of ingress/egress will be for larger truck traffic. **These have been located away from the single-family and multi-family residences to the west and south to minimize the impact of noise, glare and odor to these properties.** The loading and unloading of equipment and materials occurs east of the building, which helps minimize the impact of noise, glare, and odor to the single-family and multi-family residences on the opposite side of the building to the west. **Meets Criterion.**

Appellants' Arguments

3) Conditions Imposed Are Not Enough to Mitigate Adverse Impacts

- Staff recommended **APPROVAL** on the Conditional Use and that Applicant meet or exceeded all of the criteria
- Staff included 40 conditions of approval for the project
- Staff Report does not express any adverse impacts created by the Project

3. *Screening and buffering.* Fences, walls or vegetative screening shall be provided where needed and practical to protect residents and users from undesirable views, lighting, noise, odors or other adverse off-site effects, and to protect residents and users of off-site development from on-site adverse effects. This section may be interpreted to require screening and buffering in addition to that specifically required by other sections of these LDRs, but not less.

Staff Analysis: The project proposes landscaping along the perimeter of the property. Additional tree landscaping, along with a 6' high pre-cast wall is also proposed along the western property line to provide buffering of the site from the existing single-family residences to the west. The trees comprising of this buffer include Laurel Oak, Wax Myrtle, Silver Buttonwood, Green Buttonwood, and Southern Live Oak. The precast concrete wall also continues along the southern edge of the site and buffers the site from the multi-family residences to the south. In addition, 71 bald cypress trees have been proposed between the lake and the precast wall along the southern property line adjacent to the multi-residential development. **Meets Criterion**

Appellants' Arguments

3) Conditions Imposed Are Not Enough to Mitigate Adverse Impacts

- Staff Report does not indicate any adverse impacts created by the Project:

12. *Refuse and service areas.* Refuse and service areas shall be located, designed and screened to minimize the impact of noise, glare and odor on adjacent property.

Staff Analysis: The site plan shows the refuse area is located toward the middle of the site and away from any existing property lines. The dumpster enclosure is also screened and opens toward the building and away from any adjacent properties, **minimizing the impact of noise, glare and odor on adjacent property.** **Meets Criterion.**

13. *Protection of property values.* The elements of the site plan shall be arranged so as to have minimum negative impact on the property values of adjoining property.

Staff Analysis: As stated earlier in this staff report, the **elements of the site plan are arranged insofar as feasible to minimize negative impacts to property values of adjoining properties.** The site provides landscaping and buffering from adjacent properties, and orients building and site activities and circulation away from adjacent properties. **Meets Criterion.**

(b) Do the proposed on-site features or improvements adequately provide sustainable project enhancements beyond those otherwise required by these LDRs for the development proposal that are attainable and reasonable in the context of the proposed project?

Staff Analysis: The **proposed on-site features and improvements provide enhancements that exceed the base requirements of the LDRs.** The **project will provide a wall on the west and south side of the property, which provides a greater degree of buffering than a fence required by code.** The wall is above and beyond the minimum requirements of the code, and the difference in value between the fence and the wall meets the required valuation of the SBIP. **Meets Criterion.**

Appellants' Arguments

3) Conditions Imposed Are Not Enough to Mitigate Adverse Impacts

- Staff Report on Traffic, Air Pollution, and Noise

2. The proposed conditional use will not result in a significantly greater amount of through traffic on local streets than would result from a development permitted by right and is appropriately located with respect to collector and arterial streets.

Staff Analysis: The I-POC zoning district allows for the establishment of industrial uses without restriction on traffic generating characteristics. As stated in the above criterion, only uses under 2,500 square feet are permitted by right in the I-POC zoning district. If these uses were developed individually on separate lots over time to an intensity equal in square footage to the proposed project, they would generate traffic in excess of the traffic generated by the proposed use. **The site will not be open to the general public and will only be open to customers picking up rental equipment. There is no showroom or retail store. Therefore, the traffic generated from the proposed mixed-use development will not be significantly greater than that of adjacent uses and other anticipated uses in this area. Meets Criterion.**

TRAFFIC: site is not open to general public, max. of 15 trucks a day, normal business hours

3. The proposed conditional use will not produce significant air pollution emissions, to a level compatible with that which would result from a development permitted by right.

Staff Analysis: The mixed-use project is not anticipated to produce significant air pollution emissions that are greater than that of a development permitted by right. The applicant states that no manufacturing or fabrication will occur on-site. **The repair and maintenance of rented equipment will be done indoors. The proposed use of a distribution facility and repair and maintenance do not pose a pollution hazard to the nearby properties. Meets Criterion.**

AIR POLLUTION: no pollution hazard

NOISE: study included in application shows that noise generated by forklift is within the levels set by ordinance

7. The proposed conditional use will not generate significant noise, or will appropriately mitigate anticipated noise to a level compatible with that which would result from a development permitted by right. Any proposed use must meet all the requirements and stipulations set forth in section 15.24, Noise control.

Staff Analysis: Unreasonable noise, which is defined in Section 15.24-1, is prohibited in the City when:

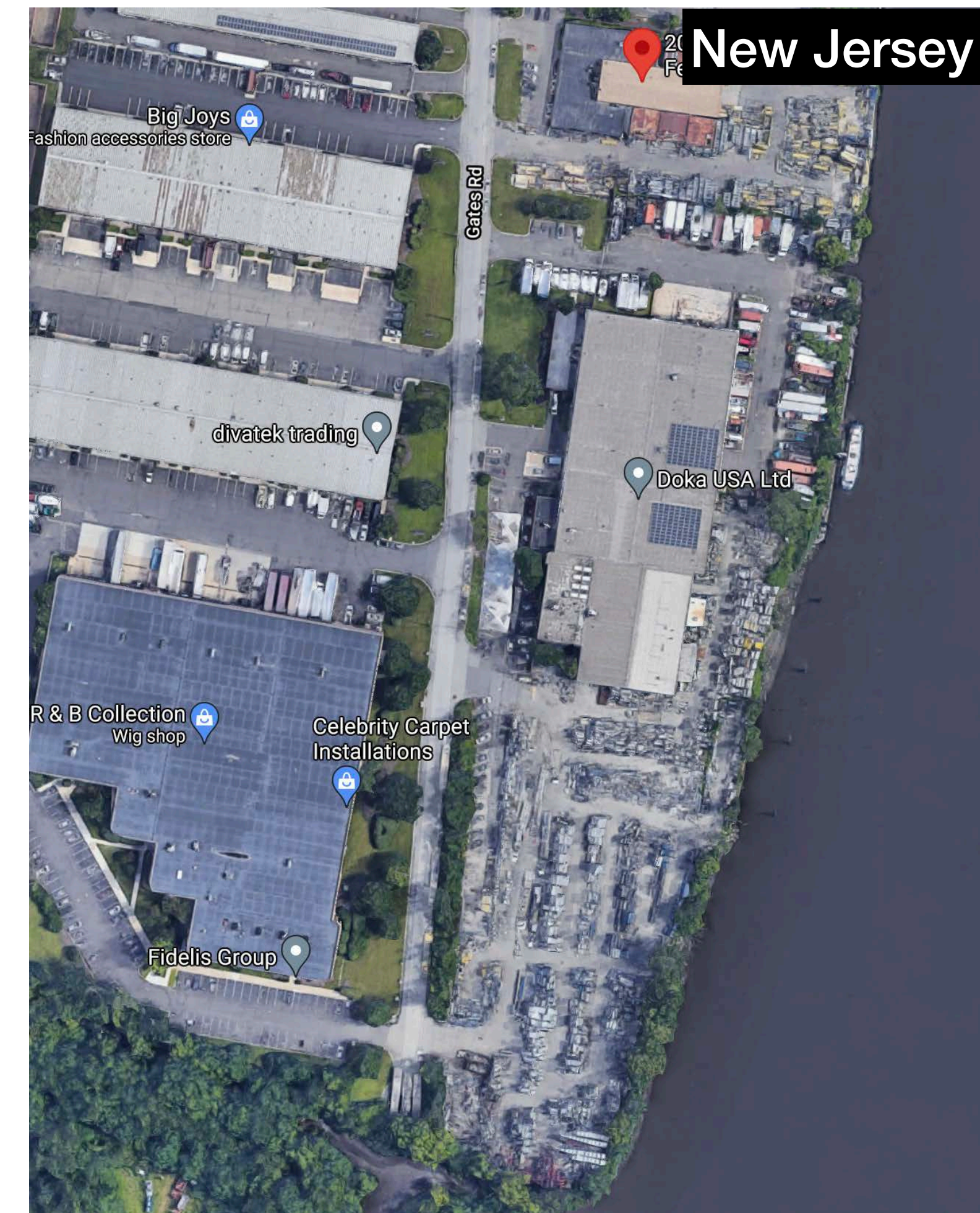
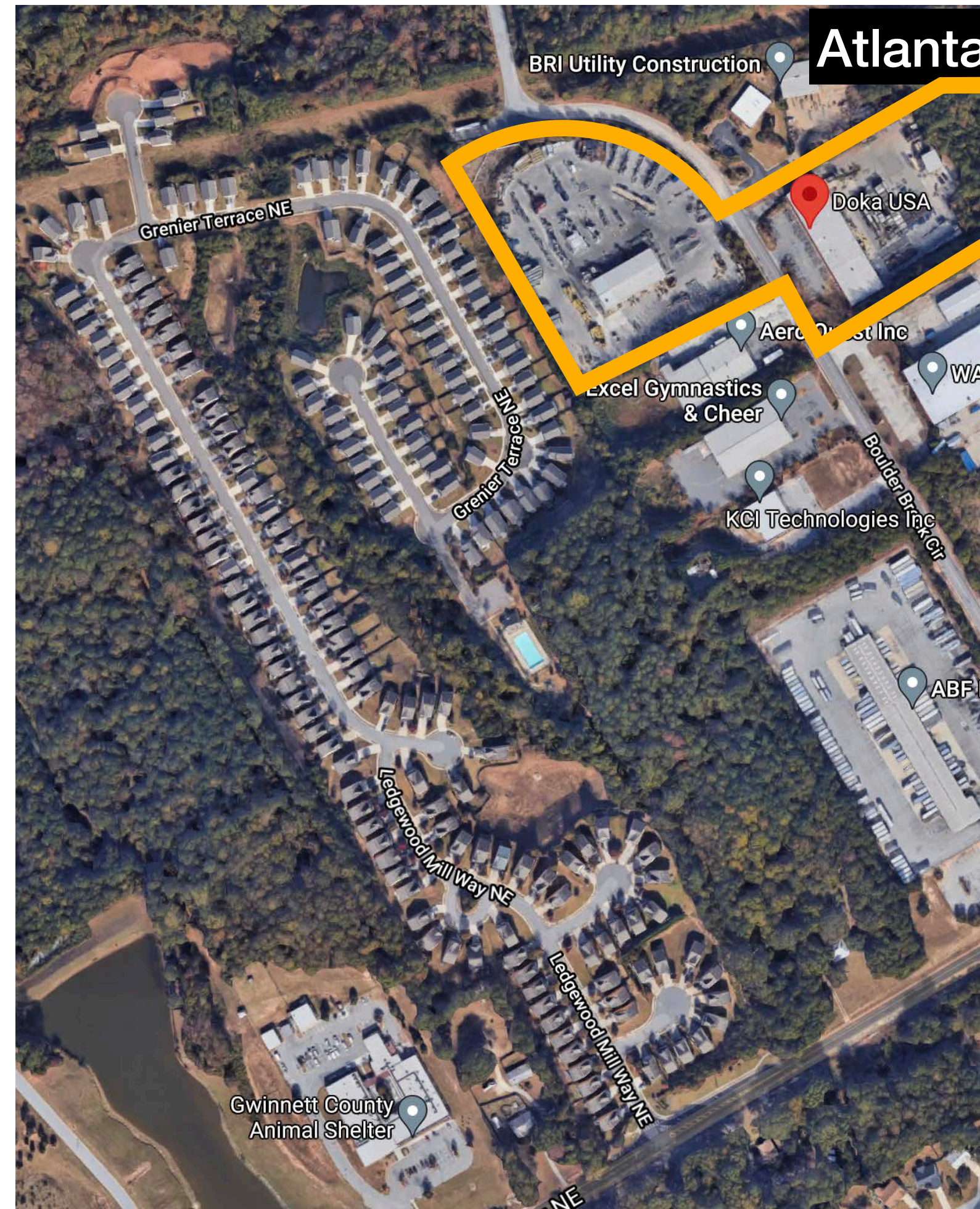
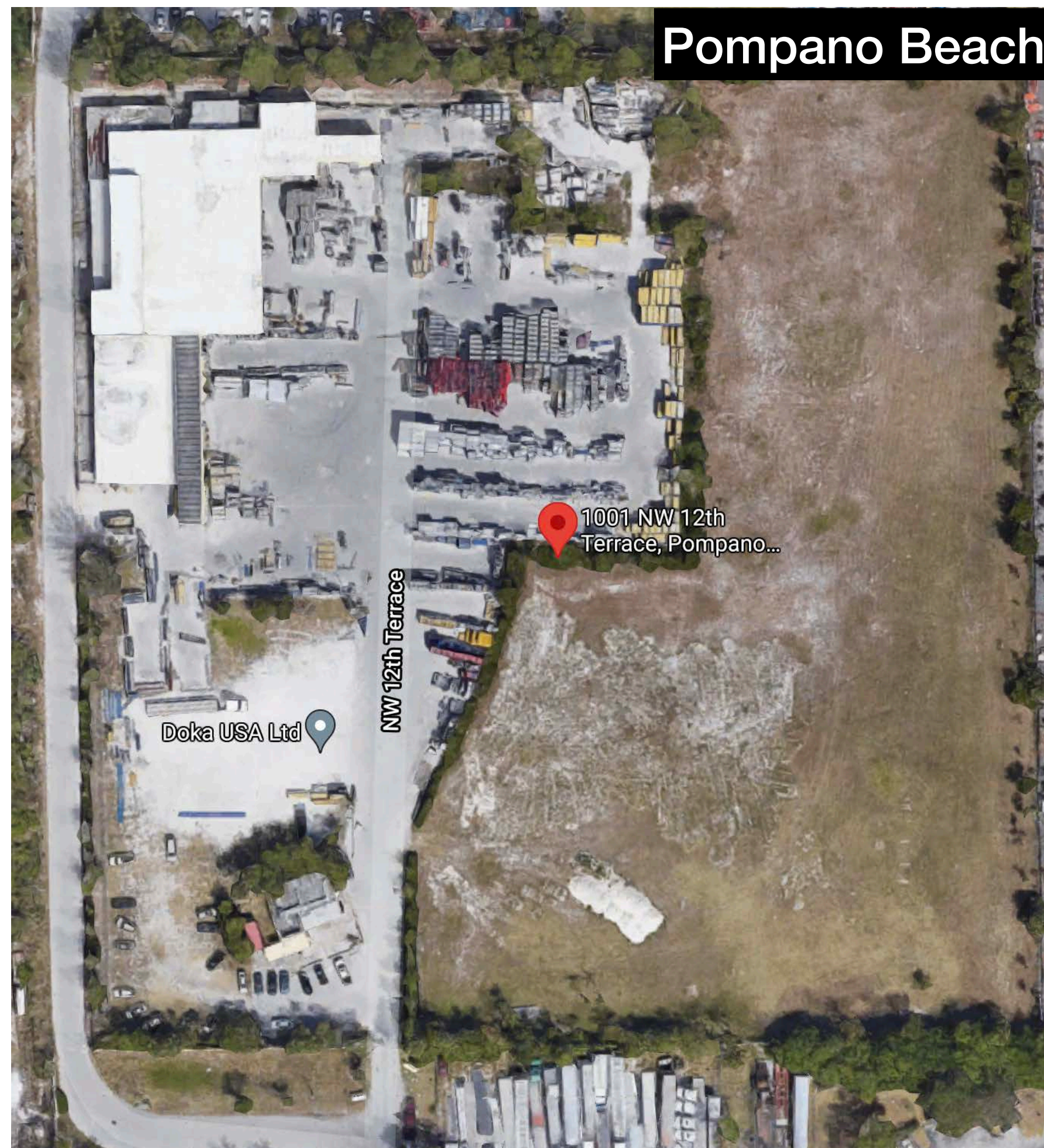
- Equal to or greater than 65 dba between 11:00 p.m. and 8:00 a.m., Sunday through Thursday
- Greater than 85 dba between 8:00 a.m. and 11:00 p.m., Sunday through Thursday
- Equal to or greater than 65 dba between 12:00 a.m. and 8:00 a.m., Friday through Saturday
- Equal to or greater than 85 dba between 8:00 a.m. and 12:00 a.m., Friday through Saturday

Based on the uses being proposed, the **project is conditioned to prohibit generating noise levels** that exceed Section 15.24. **Meets Criterion.**

Appellants' Arguments

3) Conditions Imposed Are Not Enough to Mitigate Adverse Impacts

- Appellants claim that operations create excessive dust and air pollution based on Google Earth photos of these facilities



Appellants' Arguments

4) Project is Not Consistent With the Comprehensive Plan

- Staff report is competent substantial evidence that Appellees meet the goals, policies and objectives of the comprehensive plan
 - **15 of 15** Qualitative Development Standards (Sec. 23.2-31(c)) **“MEET CRITERION”**
 - **4 of 4** Community Appearance Criteria (Sec. 23.2-31(l)) **“MEET CRITERION”**
 - **4 of 4** Sustainability Bonus Incentive Program (Sec. 23.2-33(c)(2)) **“MEET CRITERION”**
 - **4 of 4** General Findings Relating to Harmony with LDRs and Protection of Public Interest (Sec. 23.2-29(d)) **“MEET CRITERION”**
 - **8 of 8** Specific Standards For All Conditional Uses (Sec. 23.2-29(e)) **“MEET CRITERION”**
 - **5 of 5** Outdoor Criteria (Sec. 23.4-19) **“MEET CRITERION”**

40 OF 40 CRITERIA “MEET CRITERION”

Conclusion

- **DENY** the appeal and **AFFIRM** the decision of the Planning and Zoning Board
 - Project has been delayed for more than 6 months
 - Project will generate \$41,666 in ad valorem taxes in 2020, much more once operating due to personal property taxes
 - Appellee will remediate the brownfield site at a cost of \$600,000
 - Basis for appeal is not based in law or fact, and not based on competent and substantial evidence
 - Staff recommends **APPROVAL**
 - Applicant meets 40 of 40 criteria required for project approval
 - 40 conditions of approval incorporated to ensure adequate compatibility
 - Planning and Zoning Board unanimously **APPROVED** the Project
 - We want to be good neighbors and good corporate citizens
 - Hiring 50 employees for the Project - focused on LWB
- 