

Staff Presentation



CITY OF LAKE WORTH BEACH
Community
SustainabilitySM

7-11 Appeal

Appeal of PZB Project # 20-00500003:

by Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC, and

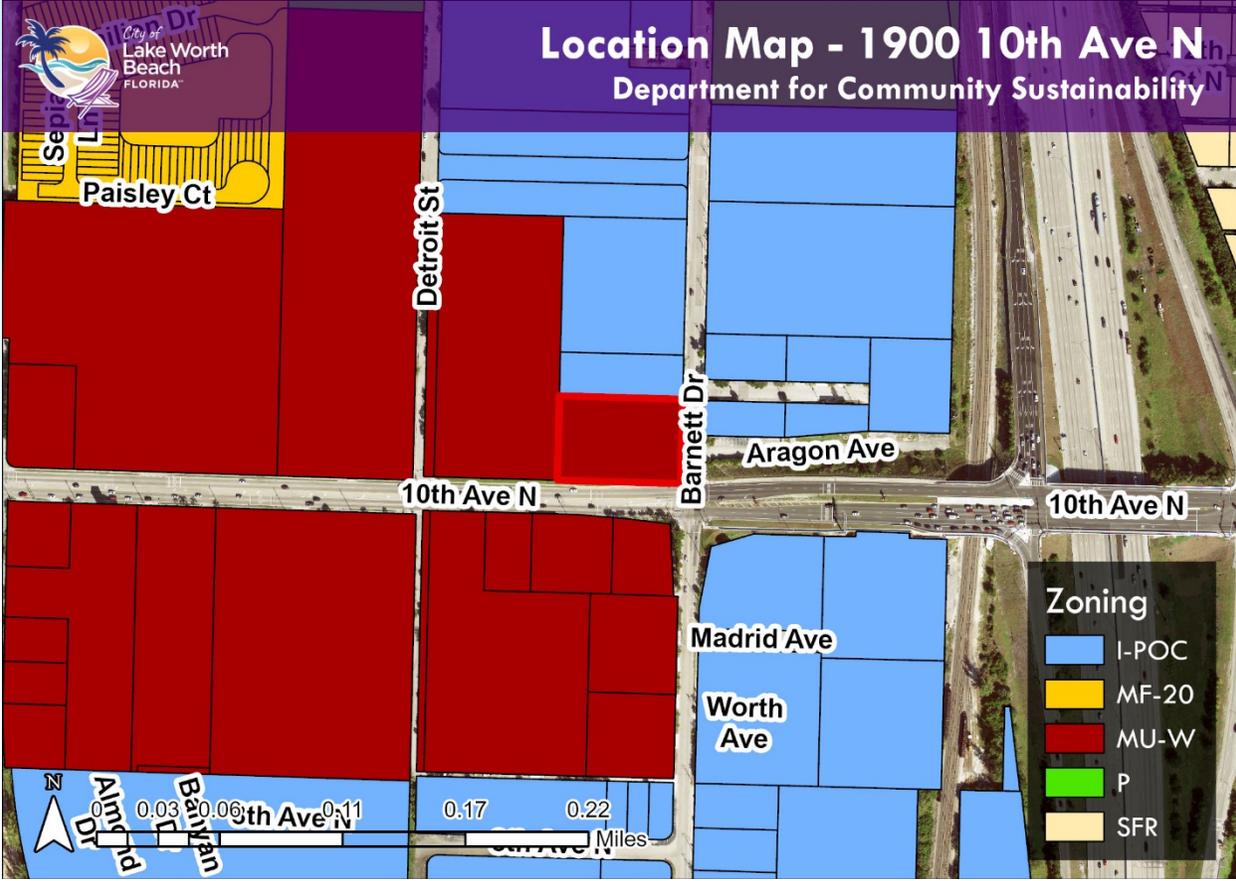
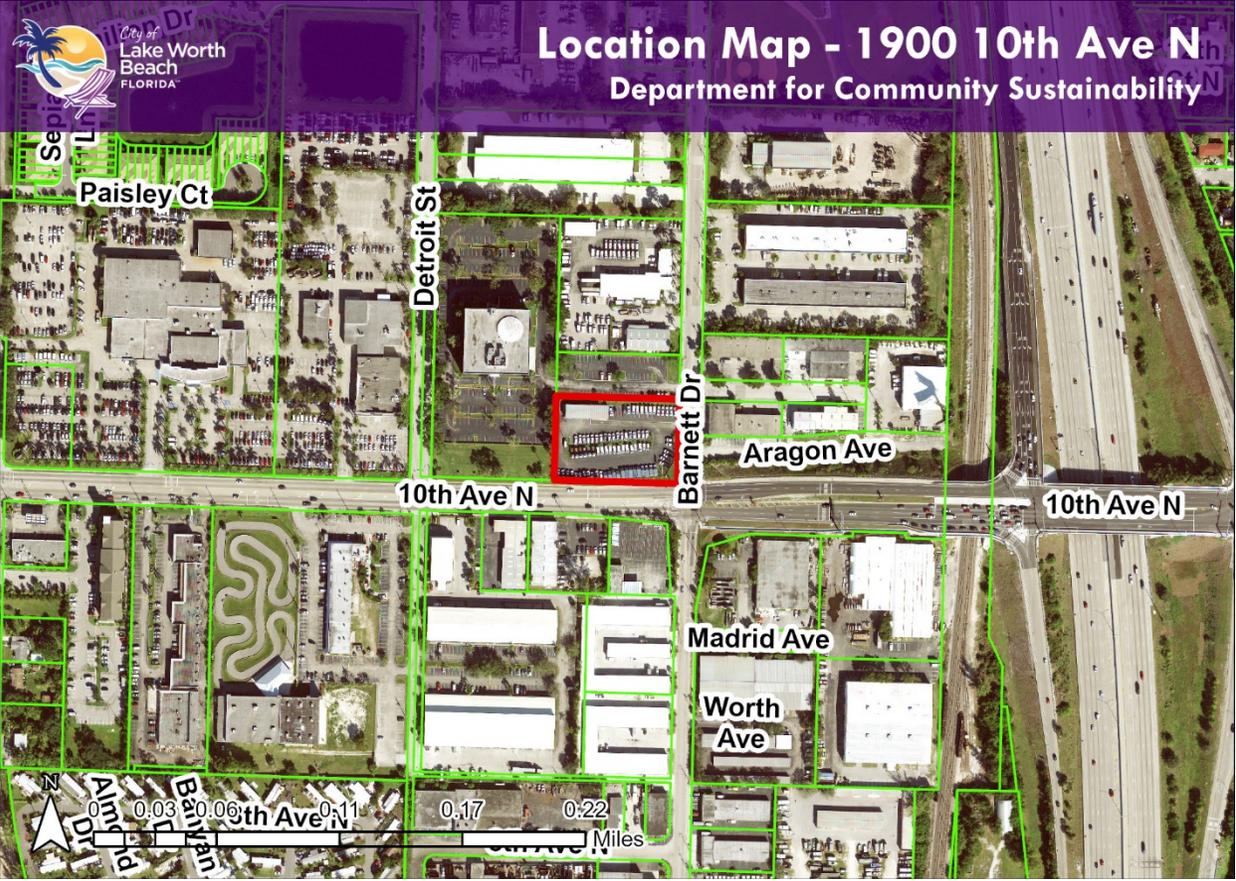
by Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt.

The subject application included site plan and conditional use approvals to allow for the construction of a new vehicle fueling/charging station, single-destination retail, and restaurant at 1900 10th Avenue North (7-Eleven)

Background/Proposal

- Background
 - Applicant: Gunster, Yoakley & Stewart, P.A. on behalf of 1900 10th Ave, LLC
 - Address: 1900 10th Avenue North
 - The owner is requesting to build a 7-Eleven retail store with quick-service restaurant and 7 fuel pumps (14 total fueling positions).
- Request
 - **Major Site Plan** for 4,730 s.f. retail and restaurant building and 3,520 s.f. canopy structure
 - **Conditional Use** for Vehicle Fueling/Charging Station, Single-Destination Retail, and Restaurant uses

Site Location



Project History

- The Project was originally heard at the July 15, 2020 Planning & Zoning Board Meeting.
- The Project was approved by a vote of 4-2 with staff recommended conditions and a Board recommended condition requiring the applicant to address school crossing safety and signage with City, Palm Beach County, and School District staff.

Project History

- Subsequent to the Planning & Zoning approval of the project, the project was appealed to the City Commission. The variance approval was appealed directly to the circuit court.
 - Appealed on September 3, 2020 by Thomas J. Baird, Esq. on behalf of Mr. Francisco Gil, manager of 1920 10th Avenue LLC, an affected party.
 - The City Commission heard the appeal of the Major Site Plan and Conditional Use at the December 15, 2020 City Commission hearing, and voted 3-0 to remand the project back to the Planning & Zoning Board.
 - Again, the variance was appealed to circuit court after the affected party, 1920 10th Avenue LLC, filed a writ of certiorari. The appeal is outstanding.

Project History

- The PZB reheard the application on January 27, 2021 and voted (5-2) to approve the application with conditions.
- The final order was issued on February 2, 2021. The application was appealed again by Thomas J. Baird, Esq. on behalf of 1920 10th Avenue, LLC and a new appeal was filed by Alfred Malefatto on behalf of Daniel Hiatt and Frederick Schmidt.

Existing Conditions



Existing Conditions



Barnett Drive looking West



10th Avenue North looking Northwest

Conditions of Approval

Electric Utilities:

- Prior to the issuance of a Certificate of Occupancy, the following shall be completed:
 - Provide the load calculations and voltage requirements
- Electric Utilities shall approve all easements and/or alternate transformer configurations prior to the issuance of a building permit.
- Should no alternate transformer and/ or easements be approved by the Electric Utilities, then the following shall be provided and approved prior to the issuance of a building permit:
 - Show the service entrance location on the site plan
 - Provide a ten ft. clearance in front of the transformer and four ft. on the remaining sides
 - Relocate the proposed tree from the transformer location
 - Provide a ten foot easement from the transformer location to the power pole across the street on Barnett Drive. Please keep the utility easement free of landscaping or any other structures.

Planning:

- The landscape screen adjacent to the air/vac mechanical equipment along 10th Avenue North shall be maintained at a height of at least $\frac{3}{4}$ of the height of said equipment so

that it is screened from the right-of-way.

- All proposed signage will be reviewed against the location and size on sheets A200 and A202, as well as in conformance with the Code. Should the type of signage submitted as part of the building permit be significantly different in size, scale, scope, or style from what was indicated in the Site Plan package, the signage will be required to be approved administratively through a Minor Site Plan amendment process prior to the approval of the building permit.
- There shall be no outdoor display of any kind of merchandise.
- Prior to the issuance of a building permit, the following shall be completed:
 - Continue the fenestration toward the ground across the entire building on both sides of the entrance doors.
 - Paint the retail/restaurant building a color other than beige as described in the Major Thoroughfare Design Guidelines; alternative colors and/or materials shall be presented to the PZB for consideration and approval; and architectural plans shall be updated and approved by staff prior to the issuance of a building permit to reflect an alternate color or materials.
 - The comments from the Palm Beach County Traffic Performance Standards Letter dated July 22, 2020 shall be addressed and implemented into the site plan if applicable.

Conditions of Approval

Public Works:

- The issuance of any permits shall comply with all provisions of the Lake Worth Municipal Code and all other applicable standards including but not limited to the Florida Department of Transportation (FDOT), Manual on Uniform Traffic Control Devices (MUTCD), and City of Lake Worth Public Services Construction Standards and Policy and Procedure Manual.
- Prior to performing work in the right of way, the applicant shall apply for and receive issuance of a “Right of Way/Utility Permit” application.
- Prior to the issuance of a certificate of occupancy, the following shall be completed:
 - the Applicant shall ensure the entire surrounding off-site infrastructure inclusive of the roadway, sidewalk, curbing, stormwater system piping and structures, valve boxes, manholes, landscaping, striping, signage, and other improvements are in the same condition as prior to construction.
 - all conditions of approval shall be satisfied under jurisdiction of the Department of Public Services.
 - the applicant shall fine grade and sod all disturbed areas with Bahia sod.
 - the applicant shall broom sweep all areas of the affected right of way and remove of all silt and debris collected as a result of construction activity.
 - the applicant shall restore the right of way to a like or better condition. Any damages to pavement, curbing, striping, sidewalks or other areas shall be restored in kind
- Prior to the issuance of a building permit, the following shall be completed:
 - The applicant shall contact the Lake Worth Drainage (LWDD) District’s Engineering Department and obtain any required permit(s), if necessary, and furnish to the City.
 - The applicant shall contact the South Florida Water Management District’s (SFWMD) Engineering Department and obtain any required permit(s), if necessary.
 - The Applicant shall contact and meet with a representative from the Public Services Refuse and Recycling Division to confirm dumpster enclosure location, accessibility and demand on property and that it is compatible with the requirements of the Department of Public Services. Refuse Division contact number is 561-533-7344.
 - The applicant shall submit an Erosion Control plan and indicate the BMP’s and NPDES compliance practices.

Utilities Water & Sewer:

- System data shows the site uses an existing 1-inch meter, however the drawing reference utilizing the existing 2-inch service. No taps or fitting are allowed upstream of the City water meter on the City’s water service. The potable water service also requires an RPZ.
- Prior to the issuance of a building permit, the following shall be completed:
 - Ensure the plan conforms/integrates with the Palm Beach County (PBC) Roadway widening/improvement project, and provide an acknowledgement from PBC.
 - The vehicular access from Barnett Drive shall permit only right-in/right-out access to and from the site for customer and employee traffic, excluding fuel delivery which can use the driveway for ingress. The improvements limiting such movement shall be approved by the Lake Worth Beach City Engineer, including striping and signage, and should include a mountable curb if feasible.
 - Provide a collection structure in the dumpster pad that is connected to an oil/grease inceptor. This will manage the runoff in this area and will be connected to the stormwater collection system. This shall not be connected to the sanitary sewer system. Minimum size of the oil/grease inceptor is 750 gallons.

July 15, 2020 Planning & Zoning Board Condition:

- The applicant shall provide additional school area signage by working in conjunction with City Staff, the Palm Beach County School Board, and/or Palm Beach County. Any new signage shall be installed prior to the issuance of a Certificate of Occupancy.



Appellent Presentation - Malefatto



Reconsideration of Major Site Plan with Variance and Conditional Use Permit

1900 10th Avenue North, City of Lake Worth Beach

PZB Project Number 20-00500003

Planning & Zoning Board - January 27, 2021



Transportation Policy 2.1.4.3.

- Policy 2.1.4.3 states:

“Heavy traffic generating land uses (as defined in the City’s LDRs) **shall be carefully considered** before permitting along Tenth Avenue North immediately west of I-95.” *(emphasis added)*

- Heavy traffic land uses include vehicular uses and are typically located at a major intersection
- Vehicle charging & fueling stations (such as the proposed 7-Eleven) are *High Intensity Vehicular Uses* according to the City’s Code (Definitions and Sec. 23.3-6. - Use Tables) |



Transportation Policy 2.1.4.3.

- The intersection of 10th Avenue North and Barnett Drive is not a major intersection
- Barnett Drive provides direct access to Lake Worth Middle School
- **Careful consideration** of the introduction of a *High Intensity Vehicular Use* to a congested area that includes a school and related pedestrian activity should result in the conclusion that the proposed use at this location is not consistent with this Policy



Transportation Policy 2.1.4.7.

- ▶ Policy 2.1.4.7 states:

“The City shall encourage the development of mixed-use development to reduce the need for vehicular trips.”

- ▶ Mixed-use development in urban areas typically includes a residential component
- ▶ Mixed-use development generally consists of two or more distinct types of uses (e.g. residential – commercial (retail) – commercial (office) – industrial – civic – recreation, etc.) or some combination thereof



Transportation Policy 2.1.4.7.

- A c-store with gas sales and take-out food are 3 retail commercial uses (same type of use), not a mix of uses as contemplated by the Comprehensive Plan
 - A mix of uses is not included in the proposed project
 - Accordingly, the proposed project is not consistent with this Policy in the Comprehensive Plan
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Consistency with Comprehensive Plan

- ▶ The information presented to the Planning & Zoning Board in July 2020 focused only on Policy 1.1.1.6. to support the conclusion the application is consistent with the Comprehensive Plan
 - The intent of the Policy, however, is to promote development with a mix of 2 or more distinct uses in the area west of I-95 on 10th Avenue North
 - The proposed development consists of 3 repetitive types of uses, as demonstrated by the traffic analysis



Consistency with Comprehensive Plan

- ▶ The traffic analysis submitted by the Applicant characterizes the 3 proposed retail uses as **Convenience Store, Gas Station, and a Fast-Food Restaurant**
 - ▶ Which are 3 commercial retail uses, not a mix of distinctly different uses
- ▶ There is not even a mix of non-residential uses as contemplated by the Policy in the project
 - ▶ Rather, the proposed uses are all commercial retail uses: retail sales, retail gas sales, and a fast-food restaurant



Consistency with Comprehensive Plan

- ▶ The Policy further states:

“The preferred mix of uses area-wide is 75% residential and 25% non-residential.”

- ▶ The intent of the Policy is to have a mix of uses that is primarily residential
 - ▶ The application does not include a residential component
 - ▶ The application is 100% commercial retail



Conclusions

- ▶ The Policy clearly states that mixed-use projects are intended within the MU-W land use category.
- ▶ To accept the interpretation that **repetitive uses = mixed-use** undermines the purpose and intent of the MU-West land use category, the development and redevelopment goals established by the City, and the design guidelines adopted by the City Commission for this area of the City



Conclusions

- ▶ The proposed 7-Eleven is a “heavy traffic generating land use” as defined by the City’s LDRs. According to the City’s Comprehensive Plan:

"Heavy traffic generating land uses (as defined in the City's LDRs) shall be carefully considered before permitting along Tenth Avenue North immediately west of 1-95."

- ▶ Heavy traffic land uses include vehicular uses and are typically located at a major intersection
- ▶ Vehicle charging & fueling stations (such as the proposed 7-Eleven) are *High Intensity Vehicular Uses* according to the City's Code (Definitions and Sec. 23.3-6. - Use Tables)



Conclusions

- The intersection of 10th Avenue North and Barnett Drive is not a major intersection
- Barnett Drive provides direct access to Lake Worth Middle School
- Careful consideration of the introduction of a *High Intensity Vehicular Use* to a congested area that includes a middle school and related pedestrian activity should result in the conclusion that the proposed use at this location is not consistent with this Policy in the Plan



Appellent Presentation – Thomas J. Baird



THE COMPREHENSIVE PLAN DESIGNATES THE 7-ELEVEN PROPERTY AS MIXED USE WEST THE PROPERTY IS ZONED MIXED USED WEST

- ▶ The planning theory for mixed use land use is that the combination of uses will work together to minimize traffic and the uses will compliment one another
- ▶ To achieve this planning theory there must be a mix of uses that works.
- ▶ The area where the 7-Eleven is proposed consists of office and commercial workplace uses. These uses are a significant tax base for the City.

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- The introduction of a Regional Highway Use with 14 fueling positions, a huge convenience store, and a fast food restaurant is not complimentary to the existing businesses and it certainly will not work in synergy with the office uses to reduce traffic – just the opposite.
 - As was presented to the P&Z Board, the 7-Eleven use will pull traffic from I-95 and direct it to an intersection, Barnett Drive and 10th Avenue North which is already over capacity.
 - Traffic backs up from Barnett, north to the school.



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- At the Planning & Zoning Hearing, we presented two experts:
 - Dr. William Whiteford a Planning Professor at UF and Planning Consultant. Dr. Whiteford was also the Director of Zoning at Palm Beach County for many years.
 - Mr. Masoud Atefi an expert in transportation planning. Mr. Atefi was the Supervisor of the PBC Traffic Engineering Division for 15 years, where he supervised the review of every Traffic Report submitted by every developer in the cities and counties of Palm Beach County



Dr. Whiteford's findings re the 7-Eleven Application

- Not consistent with the City's Comp Plan Policies, specifically land use and traffic.
- The project is not consistent with Future Land Use Element Policy 1.1.1.6
- The project is not consistent with Transportation Element Policies 2.1.4.23. and 2.1.4.7.

- Policy 1.1.1.6 states:

“The Mixed Use-West category is intended to provide for a mixture of residential, office, service and commercial retail uses within specific areas west of I-95.”

The intent of the Policy is to promote development with a mix of two or more distinct uses.

The proposed 7-Eleven application is **100% commercial retail uses.**

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- The project would not meet Policy 2.1.4.3 which states:

“Heavy traffic generating land uses (as defined in the City’s LDRs) **shall be carefully considered** before permitting along Tenth Avenue North immediately west of I-95.” *(emphasis added)*

- Heavy traffic land uses include vehicular uses and are typically located at a major intersection
- The proposed 7-Eleven) is a *High Intensity Vehicular Uses* according to the City’s Code (Definitions and Sec. 23.3-6. - Use Tables)



The 7-Eleven project is not consistent with Policy 2.1.4.7 states:

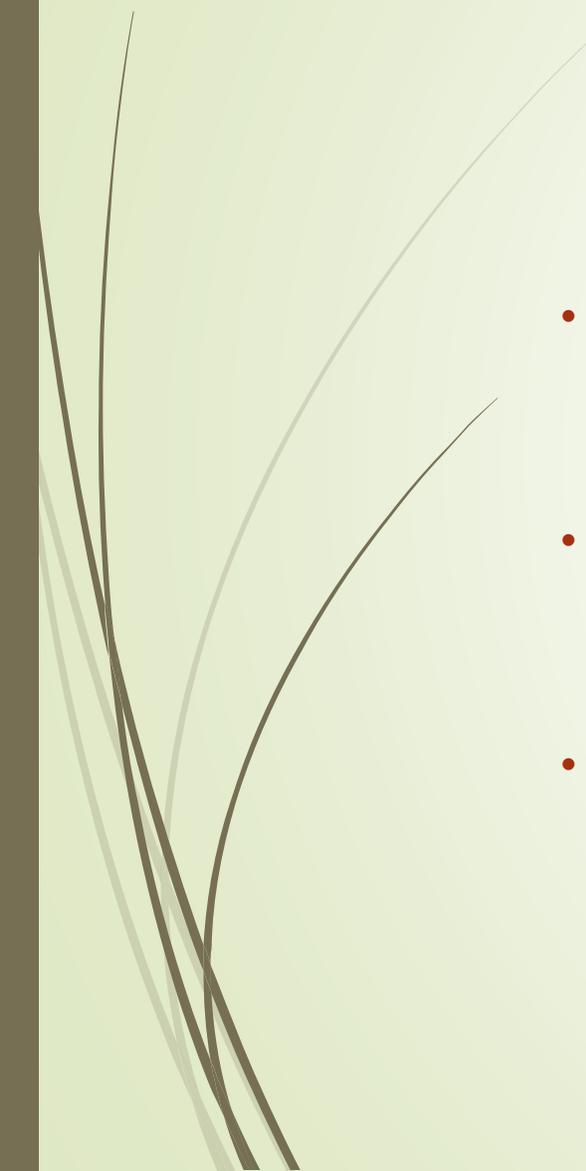
“The City shall encourage the development of mixed-use development to reduce the need for vehicular trips.”

- The intersection of 10th Avenue North and Barnett Drive is not a major intersection
- Barnett Drive provides direct access to Lake Worth Middle School
- **Careful consideration** of the introduction of a *High Intensity Vehicular Use* to a congested area that includes a school and related pedestrian activity should result in the conclusion that the proposed use at this location is not consistent with this Policy



Dr. Whiteford also testified that the 7-Eleven application did not meet the Criteria for a Conditional Use

- ▶ Conditional uses are allowed in the MU-W district subject to meeting the following specific criteria:
 - *“to ensure they will not created excessive problems for through traffic or have a negative impact on nearby residential areas or the commercial viability of their neighbors” (emphasis added)*
 - As demonstrated by the traffic expert, the proposed project increases traffic congestion in the area, and adversely affects the viability of commercial redevelopment on the established neighboring commercial properties.

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- There was no evidence introduced at the P&Z Hearing regarding the variance necessary and upon which the Site Plan relies;
 - Consequently, Dr. Whiteford demonstrated that the Site Plan Criteria cannot be met without the variance.
 - The variance approval by the P&Z Board is currently on appeal.

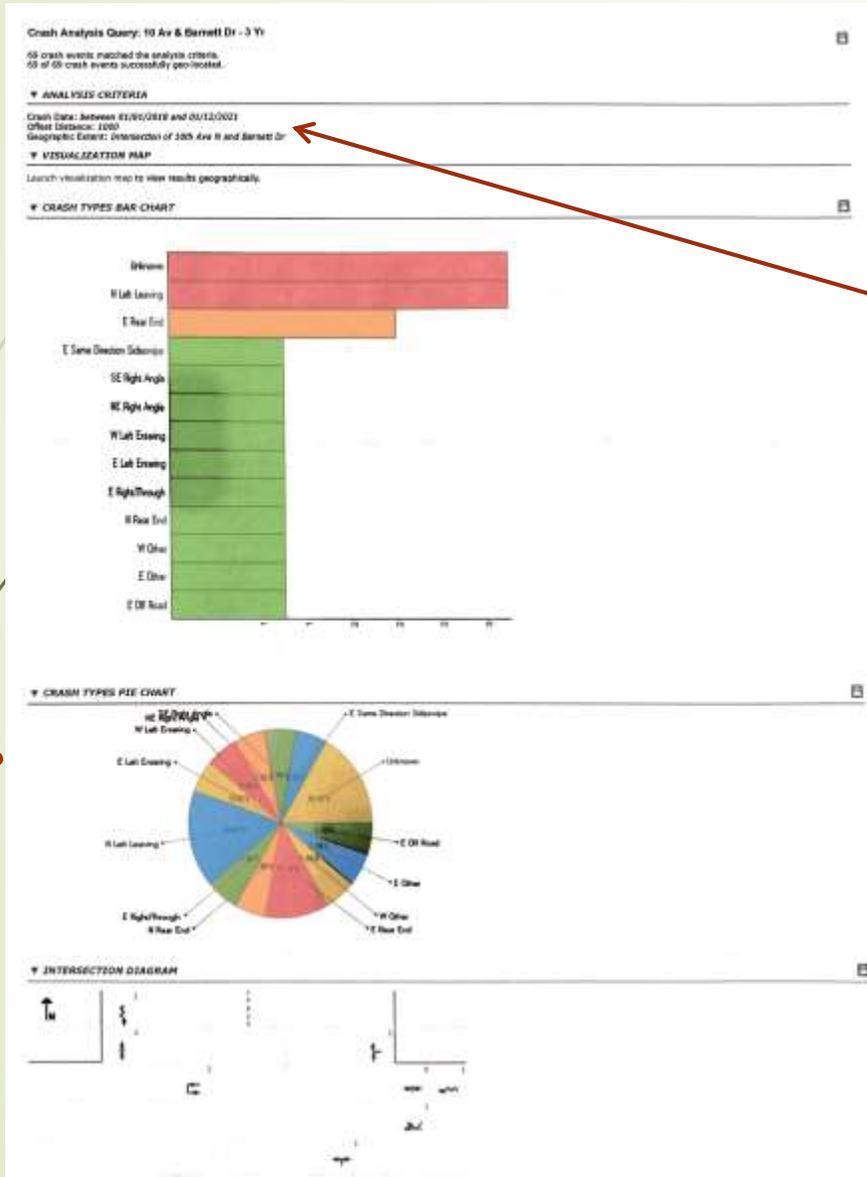


Mr. Altefi - Expert testimony that the Barnett Drive and 10th Avenue North intersection Fails

- Traffic backs up at this intersection
- The left turn from this intersection heading east is **unsafe**, which he demonstrated by producing Intersection Crash Data from the County.

Palm Beach County Intersection Crash Analysis

10th Ave N./Barnett Dr. - 3 Years Data (1/1/2018 to 1/12/2021)



Crash Analysis Query: 10 Av & Barnett Dr - 3 Yr

69 crash events matched the analysis criteria.
69 of 69 crash events successfully geo-located.

ANALYSIS CRITERIA

Crash Date: *between 01/01/2018 and 01/12/2021*
Offset Distance: *1000*
Geographic Extent: *Intersection of 10th Ave N and Barnett Dr*

VISUALIZATION MAP

Launch visualization map to view results geographically.

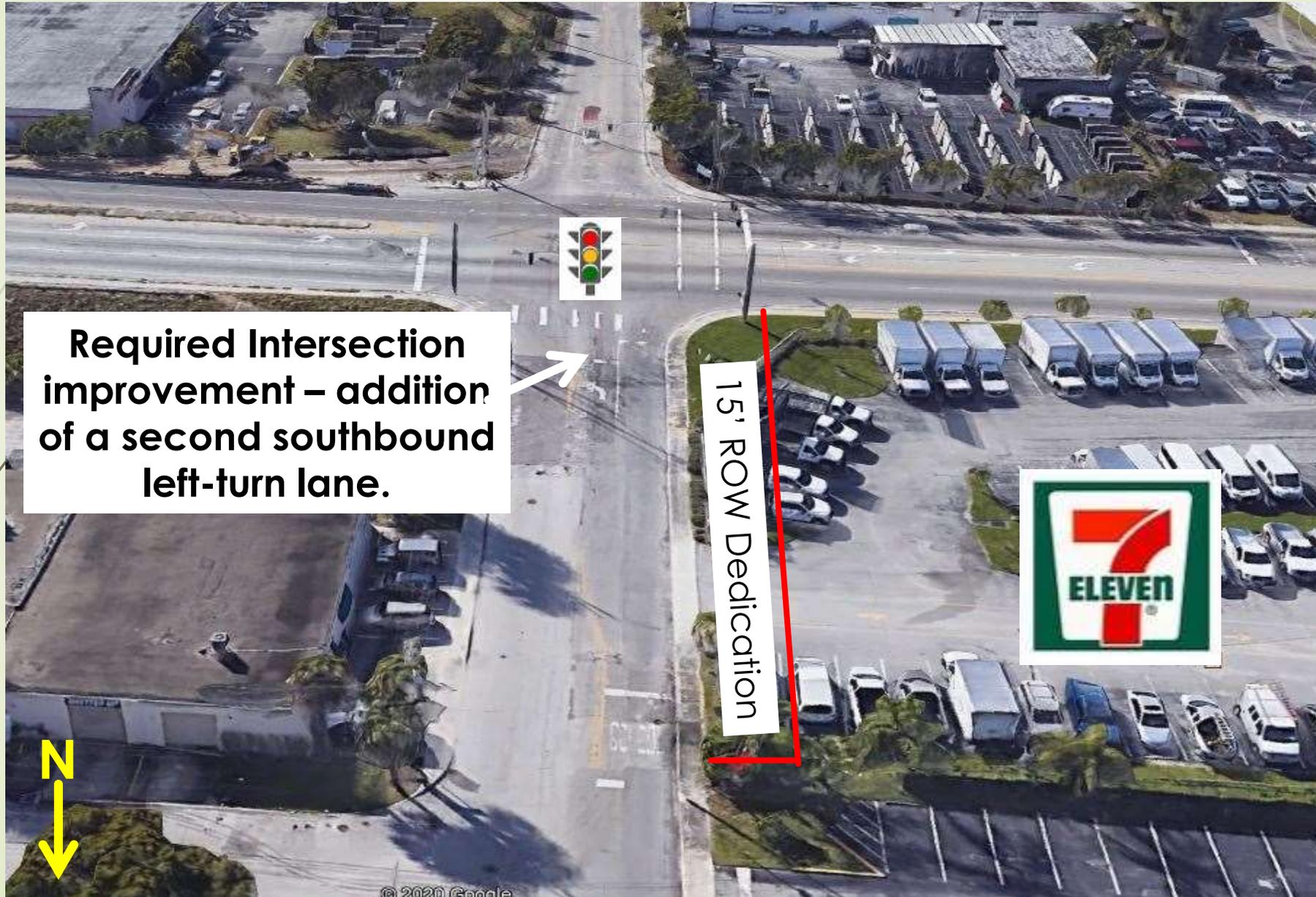




Mr. Altefi testified that

- ▶ To make this intersection close to safe and allow it to function, a turn lane would have to be added by the developer to its property.
- ▶ The Developer's attorney argued that the City should **FUND** this needed safety improvement.

Required Intersection Improvement



Required Intersection improvement – addition of a second southbound left-turn lane.

15' ROW Dedication





Legal Consequences:

- ▶ City cannot approve development that is NOT CONSISTENT with it's Plan's policies – Sections 163.3161(6) and 163.3194(1), F.S.
- ▶ The approval of a project that is not consistent with the polices of the City's Comprehensive Plan exposes the City to a lawsuit from the businesses which have formed its economic base for many years.



Legally Defensible Motion

- ▶ The Planning & Zoning decision was 1) not based on Competent Substantial Evidence because 7-Eleven's evidence was not sufficiently relevant and material to lead a reasonable mind to accept it as adequate to support an approval. 2) The Board's decision did not comply with the essential requirements of law because it was not consistent with Comprehensive Plan policies and did not meet the criteria in the zoning code and the conditional use criteria in the Code.
- ▶ Finally, the Board had no evidence on the variance at the second hearing, therefore the site plan did not meet setback criteria of the code for site plans.



IS THE PRESERVATION OF THE CITY'S EXISTING BUSINESSES
IMPORTANT?

WHO DO YOU SUPPORT, THE FRANCHISED CORPORATE GIANT OR
THE LOCAL BUSINESSMEN AND THEIR BUSINESSES THAT HAVE
CONTRIBUTED TO THE CITY'S TAX BASE FOR DECADES?

Applicant Presentation

7-Eleven @ 1900 10th Avenue North



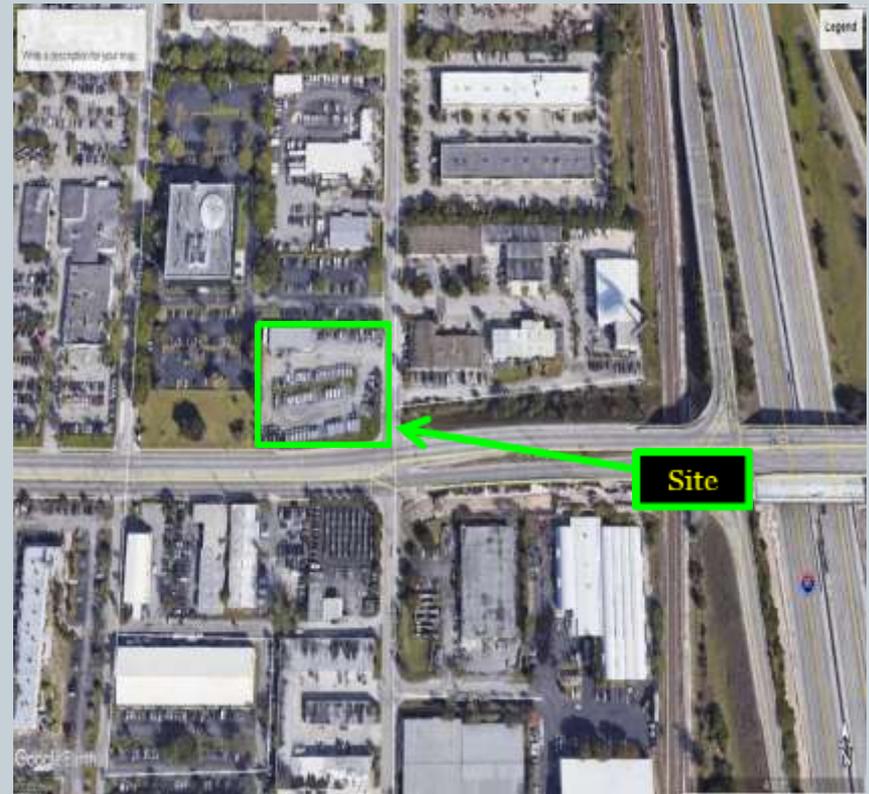
LAKE WORTH BEACH
CITY COMMISSION APPEAL
MAY 20, 2021

PZB PROJECT # 20-00500003



Property Information

- Site is Vacant and approximately 1.24 acres in size, located on NW Corner of 10th Avenue North & Barnett Drive
- Zoning is Mixed-Use West (MU-W)
- Site was formerly used as Vehicle Rental Lot for Wayne Akers Ford



Approvals at Issue



1. **Major Site Plan:** For the development of a 4,730 sq. ft. retail and restaurant building and a 3,520 sq. ft. fuel canopy structure.
2. **Conditional Use Permit:** To establish Vehicle Fueling/Charging Station, Single-Destination Retail and Restaurant Uses.
3. **Together Providing For:**
 - **4,730 SF Retail/Restaurant (4,496 SF Retail/234 SF Restaurant)**
 - **3,520 SF Canopy over 7 Fuel Pumps (14 positions)**

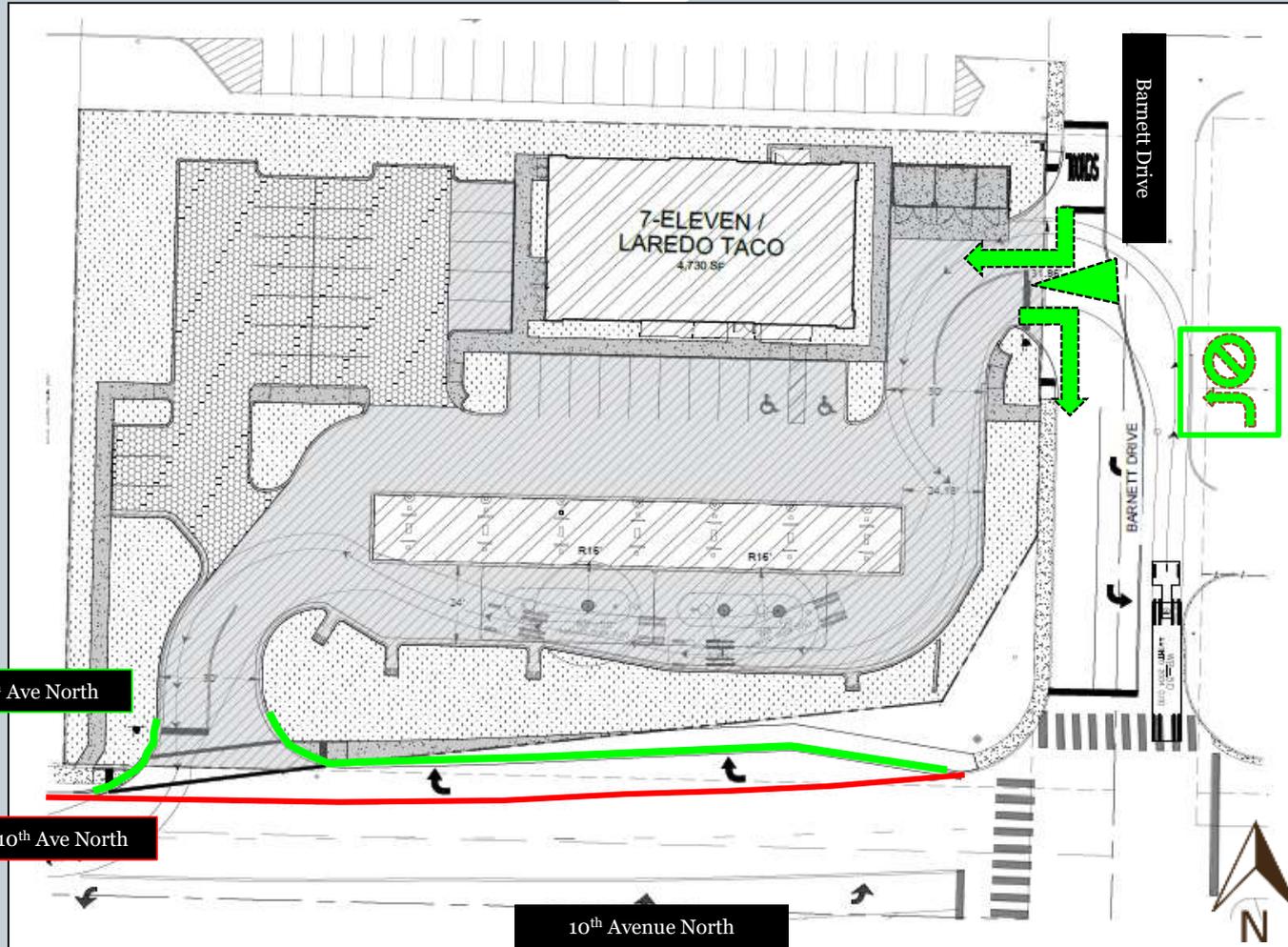
THE PREVIOUSLY APPROVED VARIANCE IS NOT BEFORE YOU

Approval Process



- November 21, 2019 – Initial Pre-Application Discussion with Staff
- March 31, 2020 – Submit Application
- April 16, 2020 – STRP Comment Letter from Staff
- May 14, 2020 – Application Resubmitted to address STRP Comments
- July 15, 2020 – P&Z Board Approves Application
- July 22, 2020 – Palm Beach County Approves Traffic Analysis
- December 15, 2020 – City Commission hears First Appeal
- January 27, 2021 – P&Z Board Approves Application (again)
- May 20, 2021 – City Commission hears appeal of Second Approval

Planning & Zoning Board Approved Plan



New curb line on 10th Ave North

Existing curb line on 10th Ave North

10th Avenue North

Barnett Drive

er



Issues on Appeal



- **Proper Standard of Review**
 - No New Evidence
 - Did Planning & Zoning Board have evidence to support the approval
- **Consistency with Comprehensive Plan**
 - The Project is Consistent with Policy 1.1.1.6
 - The Project is Consistent with Policies 2.1.4.7 & 2.1.4.3
- **Consistency with Traffic Requirements**
 - The Project is Consistent with Code Sections 23.2-29 & 23.2-31
 - The Project meets required Palm Beach County Regulations
- **Consistency With Mixed Use West Zoning**
 - The Project is Consistent with Code Section 23.3-18

Standard of Review



1. Appeal based on the evidence in the record before the Planning & Zoning Board.
2. Question is whether Competent Substantial Evidence in the record to APPROVE the Project
3. Contrary Evidence is Irrelevant

THERE IS MORE THAN ENOUGH EVIDENCE TO SUPPORT THE PLANNING & ZONING BOARD APPROVAL

Consistent with Policy 1.1.1.6



The Mixed Use West category is intended to provide for a mixture of residential, office, service and commercial retail uses within specific areas west of I-95. The distinguishing characteristic of the Mixed Use West land use area is that it allows higher-intensity uses as well as higher height limits along the City's western thoroughfares. The maximum density of permitted residential development is 30 dwelling units per acre. The preferred mix of uses area-wide is 75% residential and 25% non-residential. While mixed-use projects are allowed on a single site, it is not a requirement that each site within the category incorporate multiple uses. Zoning regulations implementing the Mixed Use West category shall permit the establishment and expansion of residential (including single family, two-family and multi-family), office, service and commercial retail uses either as uses permitted by right or through conditional use permit provisions. All buildings are required to provide transitional buffering and design features to mitigate impact of the MU-W sites adjacent to residential zoning districts. The implementing zoning district is MU-W.

Consistent with Traffic Requirements



- **Policy 2.1.4.7**
 - “The City shall *encourage* the development of mixed-use development to reduce the need for vehicular trips.”
 - Evidence
 - ✦ Three Separate Uses
 - ✦ 61% (or more) pass by trips
 - ✦ Maximum 22 peak hour trips
 - ✦ ONLY 4% OF MAXIMUM ALLOWED DEVELOPMENT
- **Policy 2.1.4.3**
 - “Heavy traffic generating land uses (as defined in the City’s LDRs) shall be *carefully considered* before permitting along Tenth Avenue North immediately west of I-95.”
 - Evidence
 - ✦ More than 1.5 years of review
 - ✦ Multiple Staff Comments
 - ✦ Palm Beach County Approval
 - ✦ Four public hearings

Consistent with Mixed Use West Zoning



- **Section 23.3-18, Mixed Use West Zoning District**

The ‘MU-W mixed use district’ is intended to provide for the establishment and expansion of a broad range of office and commercial uses, **including moderate intensity and higher intensity commercial**, hotel/motel and medium density multiple-family residential development along the city’s western thoroughfares. The establishment of certain uses is subject to conditional use review to ensure they will not create excessive problems for through traffic, or have a negative impact on nearby residential areas or the commercial viability of their neighbors. **The district implements in part the mixed use land use category of the Lake Worth Comprehensive Plan.”**

- **Evidence: Three Uses Separately defined in Code**

- (1) Vehicle Fueling/Charging Station (vehicular)
- (2) Single-Destination Retail (retail)
- (3) Restaurant (commercial)



QUESTIONS