

December 17, 2013 - Regular Meeting
Agenda Item #25

Subject

44th Avenue East Project (15th Street East to 19th Street Court East), Manasota Industrial Park Owners Association, Inc. - Withdrawal of County-owned Lots 2 and 3 from the Declaration of Covenants, etc.

Briefings

None

Contact and/or Presenter Information

Margaret Daniell, Interim Manager, Property Acquisition Division, Ext. 3009

Paul Johnson, Real Property Specialist, Property Acquisition Division, Ext. 6284

APPROVED in Open Session
**Manatee County Board of County
Commissioners**

Action Requested

Authorization for the payment of \$35,000 to Manasota Industrial Park Owners Association, Inc. (the "Association"), to compensate the Association for the loss in park association assessment income that will result in the permanent withdrawal of Lots 2 and 3 from the terms and conditions of the Association's Declaration of Covenants, Conditions, and Restrictions.

Enabling/Regulating Authority

Chapters 73, 74, and 127, Florida Statutes

Background Discussion

Manatee County previously acquired Lots 2 and 3, Block D, MANASOTA INDUSTRIAL PARK, PHASE A (" the Property"), from El Rancho Partners Ltd., a Florida limited partnership, and Mike Carter I, Inc., a Florida corporation, debtor-in-possession, by negotiated sale and purchase. The Property is located within the Manasota Industrial Park and is subject to the Declaration of Covenants, Conditions, and Restrictions of Manasota Industrial Park. The Property was acquired for floodplain mitigation ponds for the 44th Avenue East Project (15th Street East to 19th Street Court East).

The Association invoiced the County \$3,482.80 for its portion of the Association fees for the Property for fiscal year 2013 - 2014. Since the Property will be used for a public purpose, the County requested that it be withdrawn from the Declaration pursuant to Section 2.2(c) of Article II of the Covenants, and no longer be subject to the terms and conditions of the Declaration, which includes being released from the obligation to pay yearly association fees to the Association.

As a result of negotiations, a settlement was reached with the Association in the amount of \$35,000 to permanently remove the Property from the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for Manasota Industrial Park.

Section 2.2(c) of Article II of the Covenants requires that a vote of the Owners be held by the Association and that the affirmative written consent or vote of the Association's Owners of at least 66% of all of the votes of the Association consent to the withdrawal of the Property. On October 1, 2013, a Special Meeting of the Association's Owners was held to vote on the request of Manatee County to withdraw the Property from the Association's Declaration based on the County's use of the Property for a public purpose and subject to the County paying the Association the sum of \$35,000 to mitigate the Association for the loss in assessment income that will result in the withdrawal of the Property. The County's request was approved by 72.84% of all votes of the Association.

Based on the foregoing, it is requested that a check in the amount of \$35,000 be issued to MANASOTA INDUSTRIAL PARK OWNERS ASSOCIATION, INC., c/o Stephen R. Dye, Esq., Dye, Deitrich, Petruff & St. Paul, P.L, 1111 Third Avenue West, Suite 300, Bradenton, Florida 34205.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

Reviewed by Andrea A. Adibe, Assistant County Attorney.

Reviewing Attorney

N/A

Instructions to Board Records

Forward an approved copy of this Agenda Item to:

- Paul Johnson, Property Management Department, paul.johnson@mymanatee.org
- Sandi Murphy, County Attorney's Office, sandra.murphy@mymanatee.org

12/19/13 QA emailed to Paul and Sandi

Cost and Funds Source Account Number and Name

\$35,000.00 / 323-6045661 (2004 Transportation Bonds)

Amount and Frequency of Recurring Costs

N/A

Attachment: [Amendment to Declaration of Covenants - Manasota Industrial Park.pdf](#)

Attachment: [Map - Lots 2 & 3 - Manasota Industrial Park.pdf](#)

AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MANASOTA INDUSTRIAL PARK

THIS AMENDMENT to the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANASOTA INDUSTRIAL PARK recorded in Official Records Book 1126, Page 912, public records of Manatee County, Florida (hereinafter referred to as the "Declaration"), made this 26 day of November, 2013, by the MANASOTA INDUSTRIAL PARK ASSOCIATION, INC., a Florida Corporation (hereinafter referred to as the "Association").

W I T N E S S E T H :

WHEREAS, County of Manatee the, a political subdivision of the State of Florida (hereinafter referred to as "County"), is the owner of the real property in Manatee County, Florida, described as follows:

Lots 2 and 3, Block D, MANASOTA INDUSTRIAL PARK, PHASE "A", as recorded in the Plat thereof in Plat Book 22, Page 119 in the Public Records of Manatee County, Florida.
(hereinafter referred to as the "Property"); and

WHEREAS, County requested that the Property be removed from the terms and conditions of the Declaration due to the public purpose use of the Property as a storm water retention area related to the 44th Avenue East right of way project; and

WHEREAS, County agreed to pay the Association the amount of \$35,000.00 to mitigate Association for the loss in assessment income that will result in the removal of the Property from the Covenants; and

WHEREAS, Section 2.2 (c), under Article II of the Covenants states as follows:

"2.2(c) Withdrawal of Property. Any Property submitted to this Declaration may be later withdrawn therefrom by request of the Owner thereof, provided the withdrawal is for a public purpose and provided that a vote of the Owners is held by the Association and the affirmative written consent or vote of the Owners of not less than 66% of all of the votes of the Association consent to the withdrawal. Upon such withdrawal, such Property shall no longer be subject to the terms and conditions of the Declaration."; and

WHEREAS, pursuant to the County's request the Association conducted a special meeting vote of the Owners pursuant to the Declaration and Bylaws, wherein a quorum was present in person or by proxy, to vote by written ballot whether to approve or disapprove the County's request to withdraw the Property from the Declaration and the County's request passed as stated below.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Pursuant to the vote of the Owners held on October 1, 2013 in accordance with Article II, Section 2.2(c), of the Declaration, wherein a quorum of Owners were present in person or by proxy, the Owners voted to approve the County's request to withdraw the Property from the Declaration, based on the County's use of the Property for a public purpose, and subject to the County paying the Association the sum of \$35,000.00. Upon receipt of said payment the Association shall record this certificate and the Property shall be deemed removed from the terms and conditions of the Declaration.

2. Certification. The undersigned, Rich Higgins, President of the Association, hereby certifies that the above amendment to the Declaration was approved by 72.84% of all votes of the Association at the Special Meeting of the Association held on October 1, 2013, at which meeting a quorum was present.

In all other respects, the Declaration as herein amended is hereby ratified and confirmed.

IN WITNESS WHEREOF, the Association has executed this Amendment to the Declaration on the day and year first above written.

Signed, sealed and delivered
in the presence of:

**MANASOTA INDUSTRIAL PARK ASSOCIATION,
INC.,** a Florida corporation

[Signature]
Witness: Jason M. Smith

By: [Signature]
Rich Higgins, President

[Signature]
Witness: Mary O. Schultz

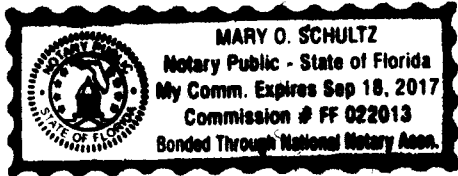
**STATE OF FLORIDA
COUNTY OF MANATEE**

I HEREBY CERTIFY that on this day personally appeared before me Rich Higgins, as President of MANASOTA INDUSTRIAL PARK ASSOCIATION, INC., a Florida corporation, on behalf of the corporation, who is personally known to me; or who has produced _____ as identification, and who acknowledged before me that he executed the same freely and voluntarily for the purpose therein expressed.

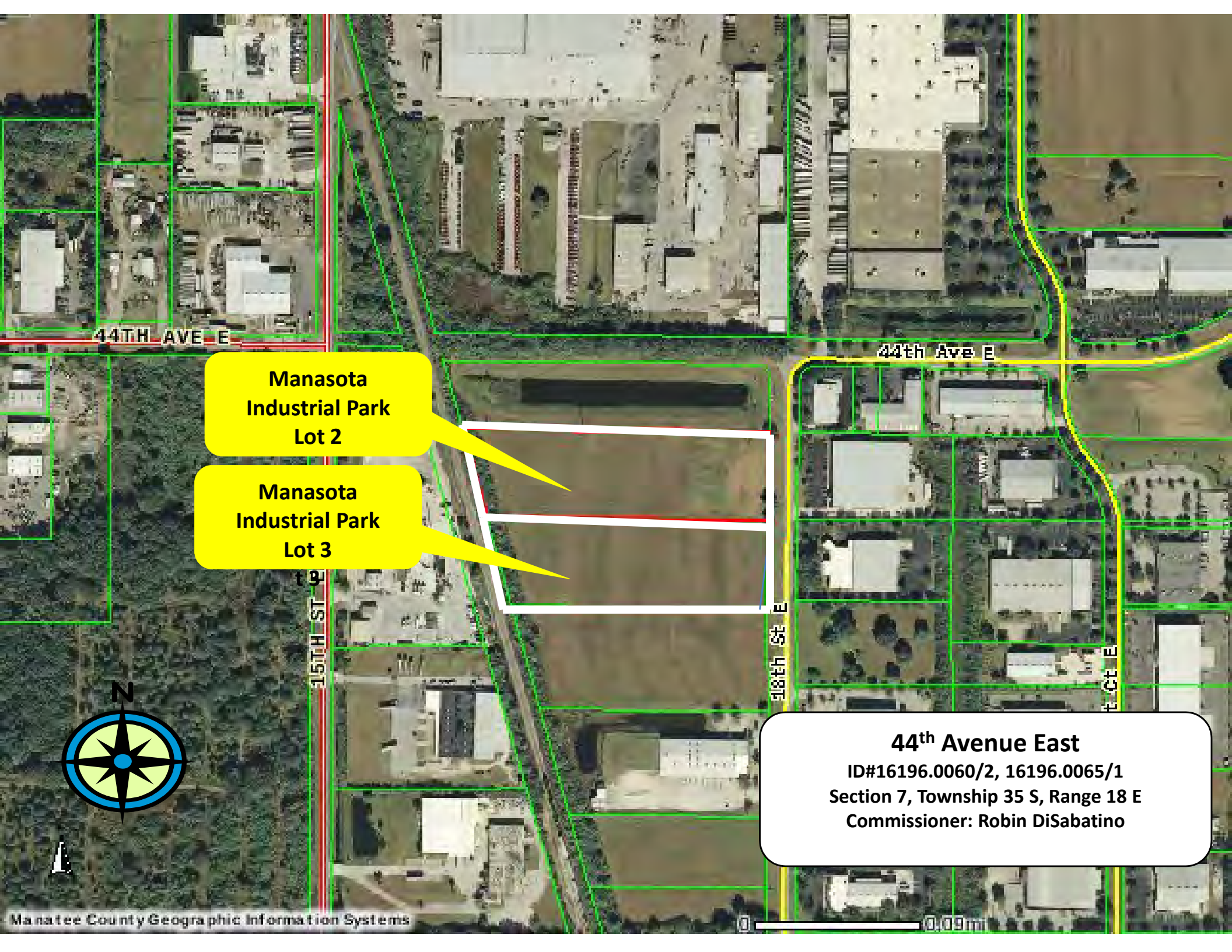
WITNESS my hand and official seal in the county and state aforesaid this 26th day of November, 2013.

[Signature]
Signature of Notary Public - State of Florida
Print Name: Mary O. Schultz

THIS INSTRUMENT PREPARED BY:
STEPHEN R. DYE, ESQ.
Dye, Deitrich, Petruff & St. Paul, P.L.
1111 Third Avenue West, Suite 300
Bradenton, FL 34205
Phone: (941) 748-4411



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44TH AVE E

44th Ave E

**Manasota
Industrial Park
Lot 2**

**Manasota
Industrial Park
Lot 3**

15TH ST E

18th St E

19th St E



44th Avenue East
ID#16196.0060/2, 16196.0065/1
Section 7, Township 35 S, Range 18 E
Commissioner: Robin DiSabatino