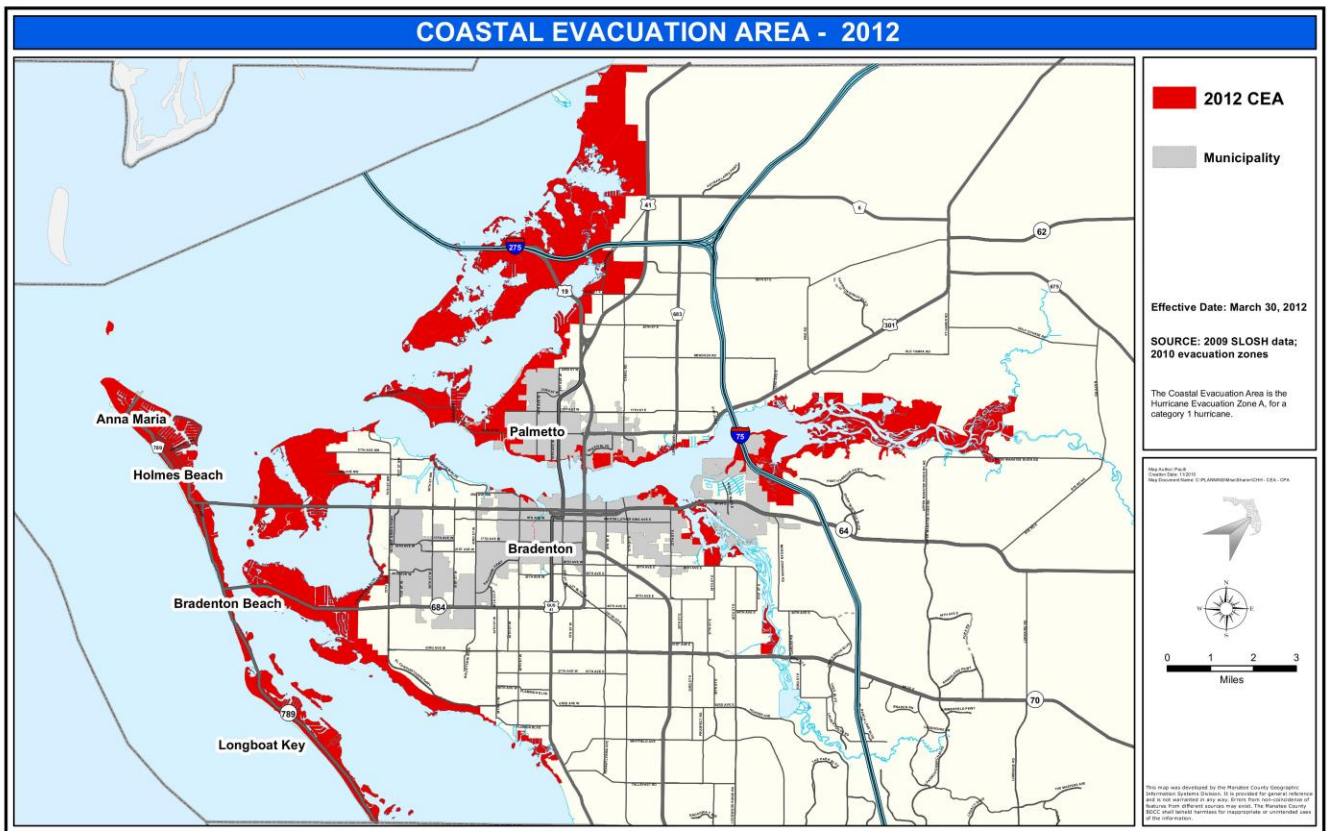
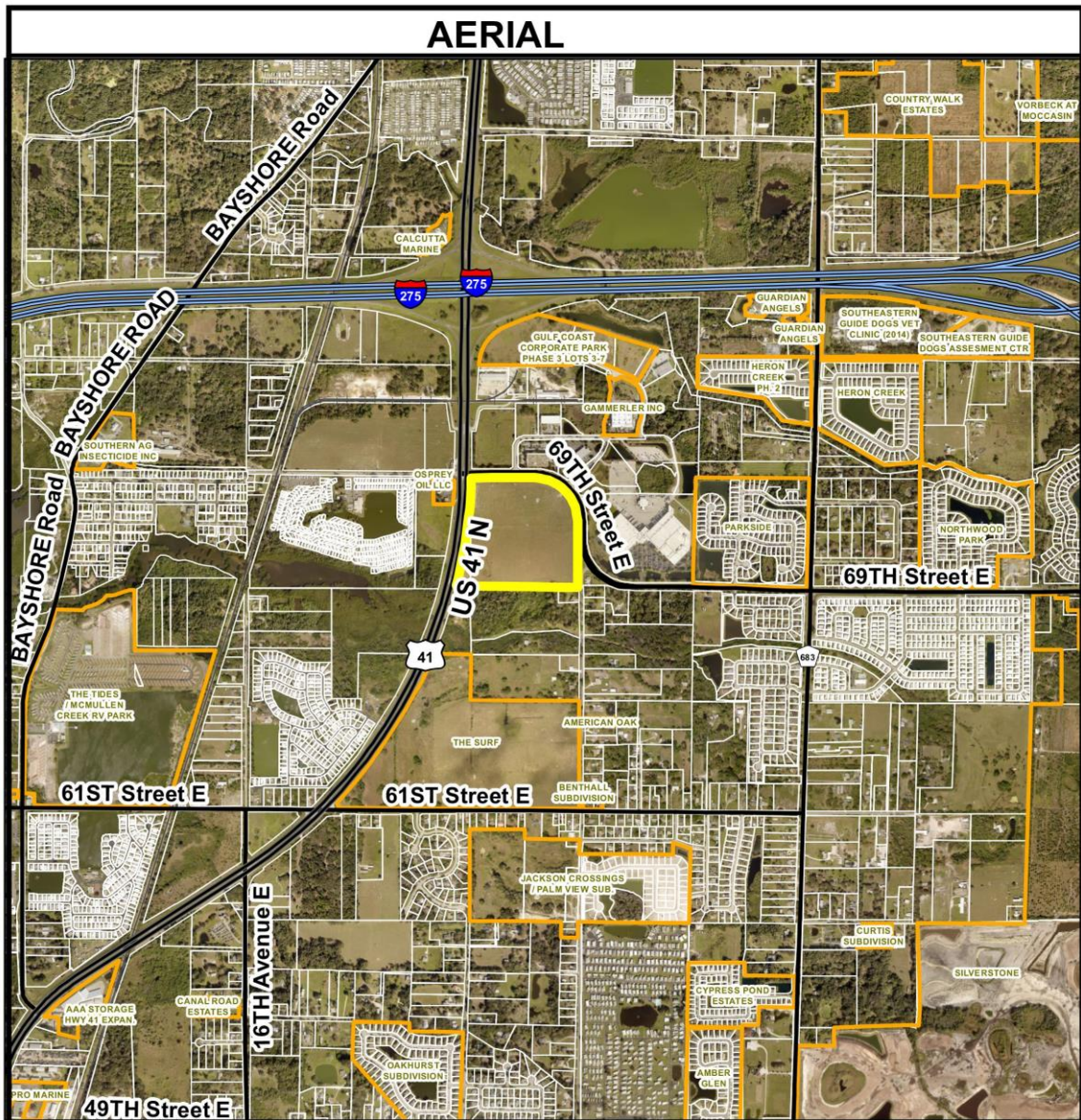


Appeal of Administrative Determination AD-20-19



February 4, 2021

Attachment: 2-CEA Overlay District Aerial Map



Parcel ID #(s) 675840052, 676800006

Project Name: 69th Street Mixed Use Development AA-20-01
 Project #: AD-20-19
 Accela #: PLN2009-0009

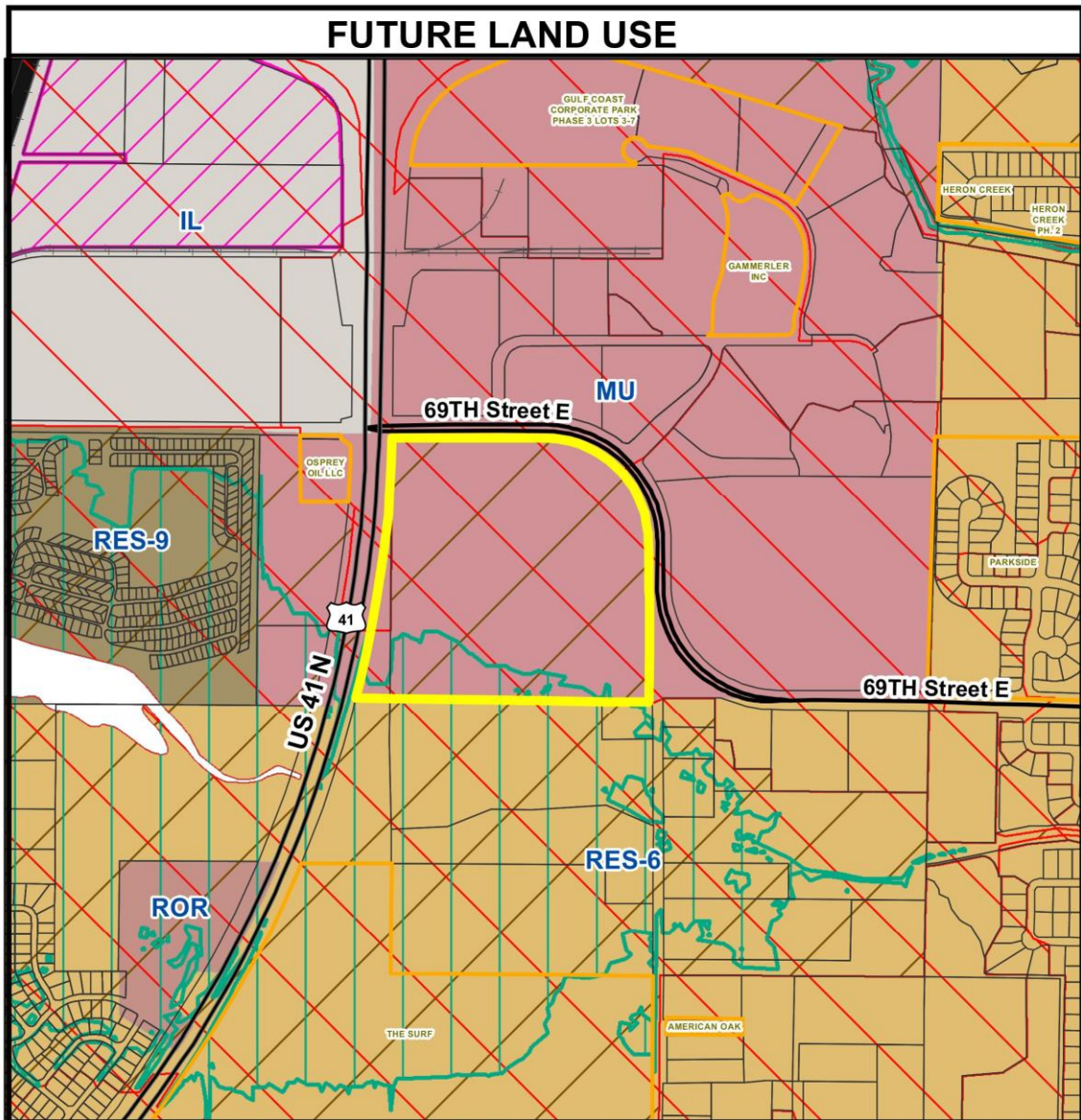
S/T/R: S3 T35 R16
 Acreage: 38.81
 Existing Zoning: PD-C, PD-R
 Existing FLU: MU
 Overlays: CEA, CPA, ENT
 Special Areas: NONE

CHH: Y
 Watershed: NONE
 Drainage Basin: MCMULLIN CREEK
 Commissioner: James Satcher



Manatee County
 Staff Report Map
 Map Prepared 12 / 2020
 1 inch = 1,598 feet

Attachment: 3-CEA Overlay FLU Map





Parcel ID #(s) 675840052, 676800006

Project Name: 69th Street Mixed Use Development AA-20-01
 Project #: AD-20-19
 Accela #: PLN2009-0009

S/T/R: S3 T35 R16
 Acreage: 38.81
 Existing Zoning: PD-C, PD-R
 Existing FLU: MU
 Overlays: CEA, CPA, ENT
 Special Areas: NONE

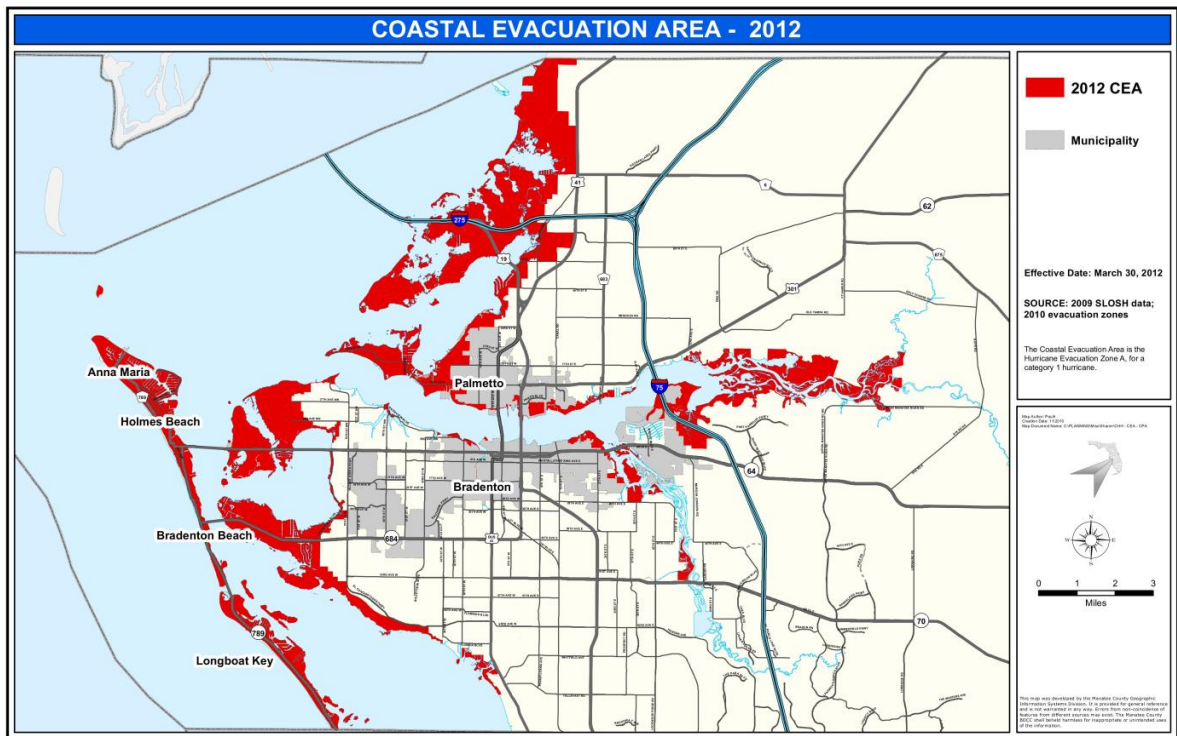
CHH: Y
 Watershed: NONE
 Drainage Basin: MCMULLIN CREEK
 Commissioner: James Satcher

-  CHHA
-  Coastal Planning Area
-  Coastal Evacuation Area

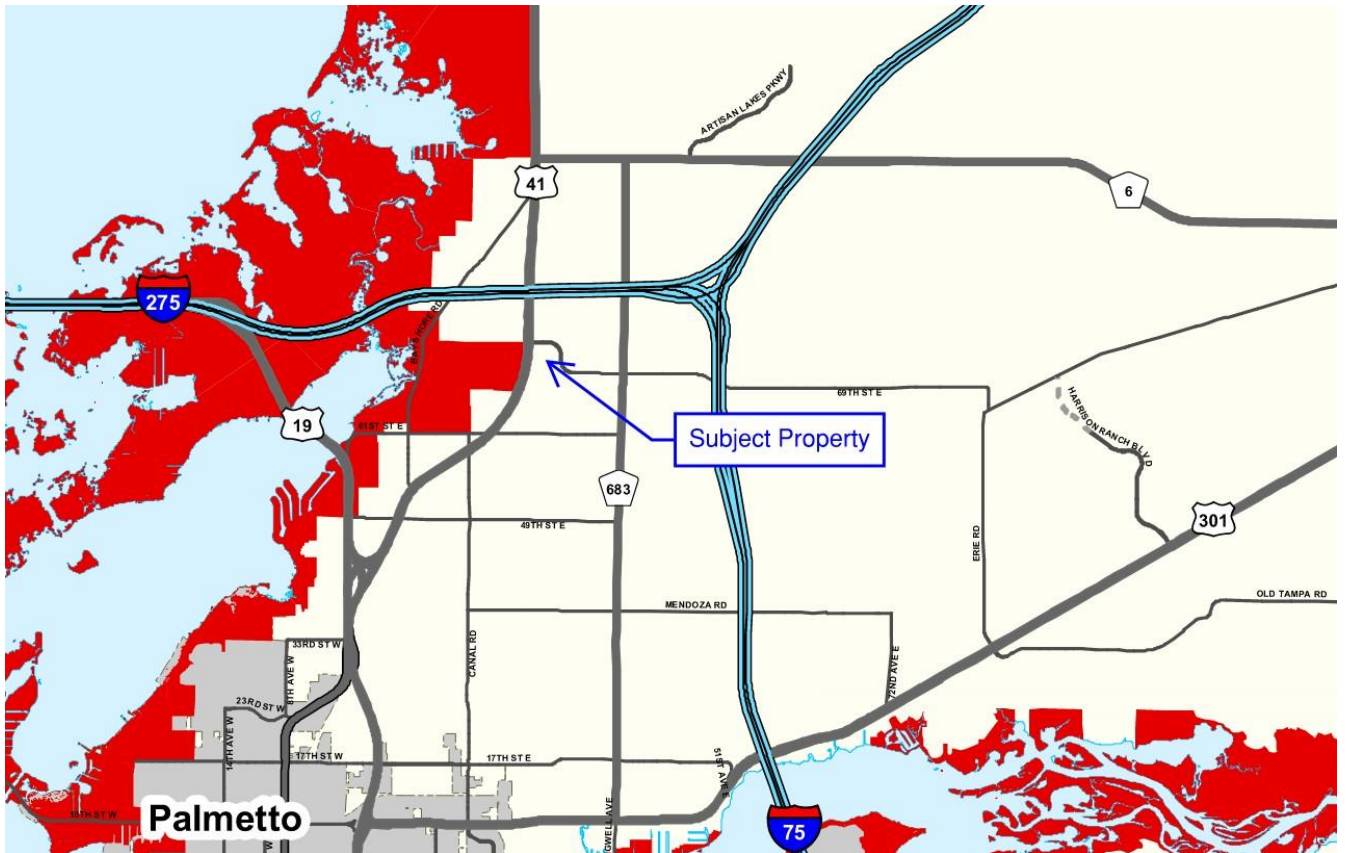


Manatee County
 Staff Report Map
 Map Prepared 12 / 2020
 1 inch = 662 feet

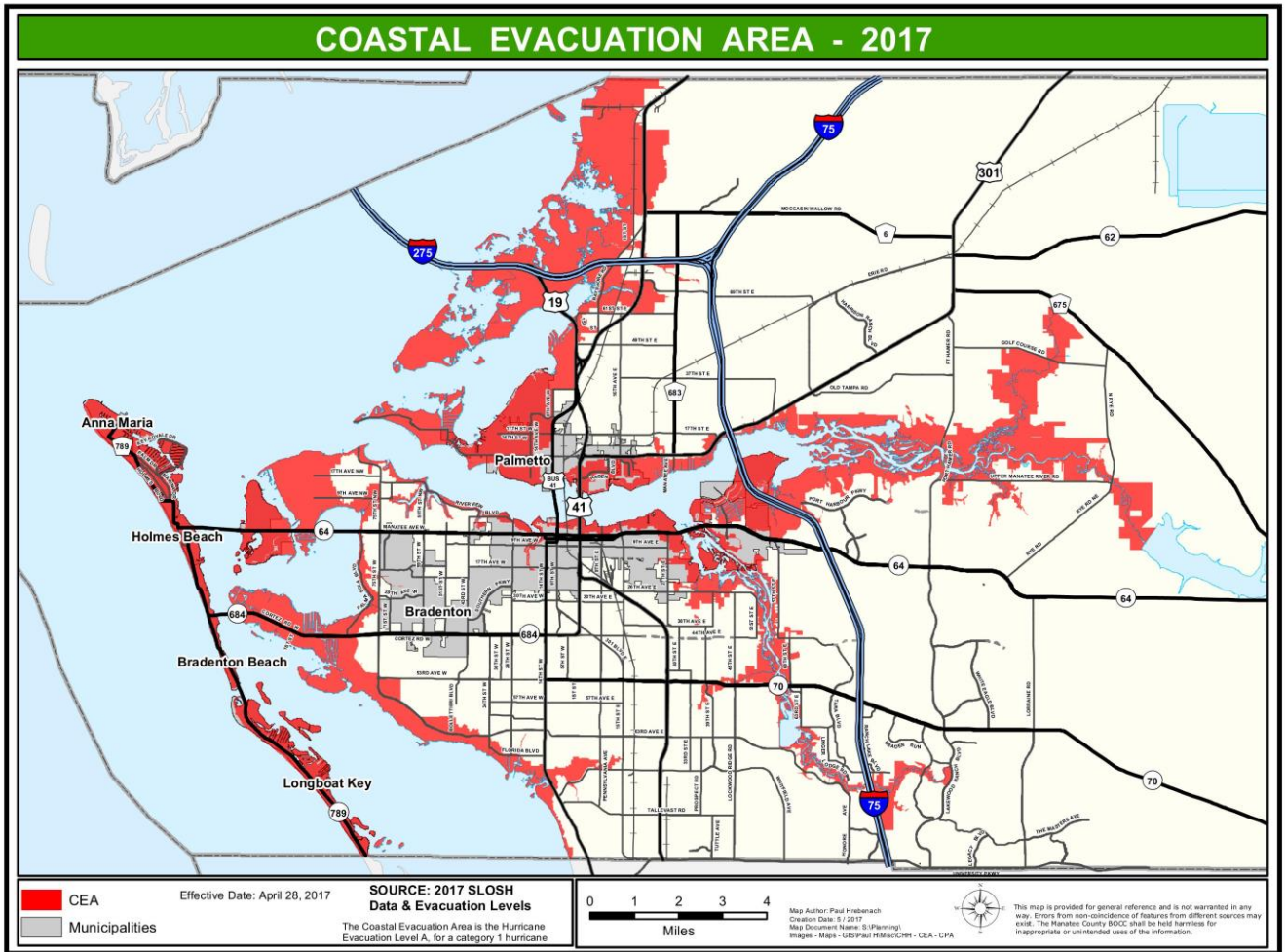
Approved 2012 Coastal Evacuation Area Map



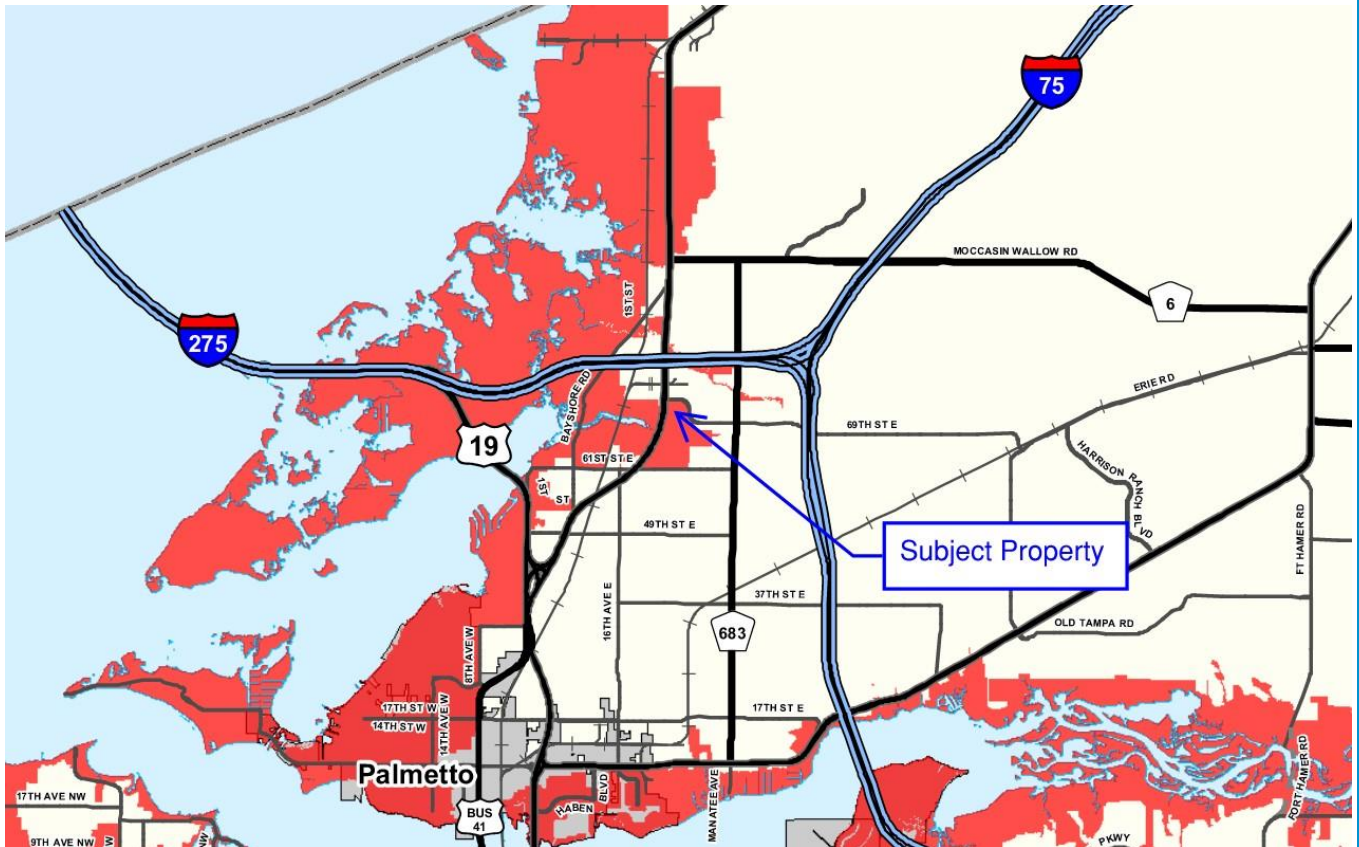
Approved 2012 Coastal Evacuation Area Map Zoom In



2017 Coastal Evacuation Area Map



2017 Coastal Evacuation Area Map Zoom In



Vogler Ashton Objection Letter January 5, 2021



Edward Vogler II
edvogler@voglerashton.com

ATTORNEYS AT LAW
Vogler Ashton, PLLC
705 10th Avenue West, Suite 103
Palmetto, Florida 34221
www.voglerashton.com

Telephone: 941.304.3400 Facsimile: 941.866.7648

January 5, 2021

Manatee County
Board of County Commissioners
1112 Manatee Avenue West
Bradenton, Florida 34205

In Re: PA-20-03/Ordinance 21-02; LDCT-20-07/Ordinance 21-03 (collectively the "Ordinances")
January 7, 2020 Public Hearing

Dear Commissioners,

We write this letter in connection with the above captioned matters to provide public comment on behalf of Canal Road Investments, LLC, RFT Holdings, LLC, Wilmington Land Company, Tampa Acquisitions, Inc., JBS Commercial, LLC, and Neal Communities of Southwest Florida, LLC, and their affiliated and related entities. We respectfully request that the matter be deferred for further study and analysis. Alternatively, we request revisions to the Ordinances to reflect substantive responses to the concerns expressed in this letter below.

But first, please allow us to communicate that we support the efforts for evacuation planning and recognize that life safety concerns are paramount and must be addressed for evacuation planning. Unfortunately, the approach proposed by these Ordinances and the mapping methodology presented affect land use planning and property rights in a negative manner. This effect was considered in the proceeding that led to the Board's unanimous adoption of Resolution R-19-112, on September 9, 2019. That Resolution recognized that evacuation planning maps and goals should not impair property rights and the rights to utilize land use authorizations and strategies that are prioritized in our land development code and comprehensive plan.

An additional appeal is pending before the Board on these same issues [69th Street Mixed Use Development (Matter No. 2020-0440)] and its consideration should not be truncated by this proceeding. At a minimum, any adopted ordinance should recognize the property rights and interpretations made by the Board in Resolution R-19-112 as it applies to the real property owned by Canal Road Investments, LLC and RFT Holdings, LLC, and as it should apply to Matter No. 2020-0440 and the real property owned by Tampa Acquisitions, Inc. and JBS Commercial, LLC. And, additionally perhaps, the

Vogler Ashton Objection Letter January 5, 2021

Ordinances might simply provide that evacuation planning shall not affect land use planning and property rights as regulated by the comprehensive plan and land development code.

The mapping methodology applicable to the proposed Coastal Evacuation Area (“CEA”) interjects subjective determinations regarding the parcels that should be included in the CEA, and those which should not be so included. This subjective approach is not supported by data and analysis, and any comprehensive plan amendment should fail on this basis alone. But, importantly, if the mapping is done incorrectly, no avenue is proposed for appeal or administrative revisions, as exists when the Coastal High Hazard Area (“CHHA”) is mapped incorrectly. These areas of concern were noted in our public comment to your staff sent on December 10, 2020, and are renewed with this letter. We see no basis which supports a distinction between errors discovered in the CHHA mapping and the CEA mapping, and this should be further considered.

The CEA provisions are very important as they override any inconsistent provisions. See Comprehensive Plan Policy 2.2.2.4.4. These provisions and the adopted map must be supported by data and analysis. In this matter, however, the maps are prepared based upon partially subjective criteria and then this criteria is proposed for inclusion in a procedures manual to also be adopted by ordinance. Specifically, the proposed language includes the following methodology:

“Any property where the Category 1 storm surge crosses the property line, which results in storm surge inundation inward of the property lines, the entire property shall be mapped as Evacuation Level A.”

What if the property in question is not subject to a storm surge inundation, or there is a difference of opinion between the experts? How is this to be remedied? Does a singular private land owner need to apply for amendment to a countywide map when there is an alleged error in mapping?

The important understanding is the linkage between the CEA and the land use provisions of the comprehensive plan and the land development code. These are complicated inter-relationships and achieve review and application on a parcel by parcel basis. But, simply stated, wrongful inclusion of real property in the CEA maps will have unintended consequences [at least we hope they are unintended] on the use of those properties. Such wrongful inclusion would impact affordable housing density, urban corridors density bonuses, achievement of more intense development in lands designated ROR and within mixed use activity nodes, open space requirements, and the location of acute care medical facilities. These impact should be considered as part of any action by the Board and should be carefully studied with data and analysis to support such impacts and exactions, if at all.

Thank you for your consideration of these matters. We look forward to participating in the public hearings that consider these matters and further revisions which might result from this dialogue.

Sincerely,
Edward Vogler II
Edward Vogler II

EV/mas

C Client and Affected Parties

Presentation Summary

PRESENTATION SUMMARY APPEAL OF ADMINISTRATIVE DETERMINATION AD-20-19

I. EVACUATION PLANNING

Not Challenged with this Appeal
Not Part of this Appeal
Supported by Landowner

II. LAND USE REGULATION

Inclusion in CEA affects rights. Including residential density bonuses, policies associated with affordable housing, urban corridors, ROR intensity, mixed use activity nodes, open space, acute care facilities.
Broad Map changes with county-wide published notice are not the proper way to regulate property. This should be done on a case by case basis.
Unintended Consequences.
Immediate Harm to Landowner with a pending application.
Subjective mapping methodology does not provide adequate data and analysis.
No appeal of mapping errors – exists in CHHA, but not CEA.

III. HISTORY AND PROCESS

11-08-2019 - Application for Zoning and Plan Approval on 39.69 acres
12-26-2019 - DRC Comments – In CEA. Recognize similar situation as R-19-112.
02-10-2020 - Density Justification Letter
06-08-2020 - Request To Resolve Interpretation In Zoning Public Hearing
06-10-2020 - DRC Comments – need to ask for Administrative Interpretation
07-15-2020 - Request For Administrative Interpretation
08-04-2020 - Administrative Interpretation
09-01-2020 - Notice of Appeal

IV. CEA MAPS NOT ADOPTED

2012 Map Applies.
Subject Property Not in CEA in 2012 Map.
Should not have been subject to the process described above.

V. SAME AS RESOLUTION 19-112.

BOCC Finding of Fact and Conclusions of Law – mapping error; CEA policies should not limit land use rights and entitlements.
Inconsistent Treatment Denies Clear Rights

VI. MERIT

14% in CHHA
Grade Changes - in Evacuation Zones A, B, C, and D.
Evacuation Routes – major roadway network
Evacuation Planning Remains Unchanged

Page 2 Vogler Ashton Notice of Appeal Letter Sept. 1, 2020

2. **Deficiencies in the Interpretation.** The Interpretation is deficient in that it fails to address the specific factual circumstances of the Owners Property and the points of law that apply to the requested interpretation. Rather, the Interpretation is a treatise on CEA policies and the importance of evacuation planning. Owner challenges neither of these important matters. This appeal presents a question of allowable density on specific real property located on an urban corridor³ and the appropriate remedy for a mapping error. Yet, the Interpretation fails to consider or address the following:

- a. Was there a mapping error? If yes, why?
- b. What were the circumstances that resulted in the mapping error?
- c. Why does the Interpretation fail to address the historical maps applicable to the Property?
- d. What County ordinance provided for the mapping strategies employed by county staff that resulted in the error, and what justification exists to apply this strategy to the Owner's Property?
- e. Why was the entire property included in the Coastal Evacuation Area ("CEA") when only 14% or less was included in the Coast High Hazard Area ("CHHA")?⁴
- f. How is the Owner's Property different from the property considered in Resolution 19-112?
- g. Why is the Owner's Property treated differently than the property considered in Resolution 19-112?⁵
- h. Should an error in CEA mapping establish a basis for limitation on allowable residential density [i.e. 30 to 9 dwelling units per acre] when other important policies of the Comprehensive Plan support the increased density?
- i. Why does the Interpretation fail to consider the (i) location of the Property on a major evacuation route and (ii) unique and significant site elevation and grade changes on the Property which are relevant to the proper application of policy?

3. **Owners Property.** The Owners Property consists of approximately 39.69 acres located on US 41 at the intersection of 69th Street East, and known as PIDs 675840052 (2845 69th St. E.) and 676800006 (6900

³ Policy 2.2.1.21.3 of the Comprehensive Plan allows for up to 30 dwelling units per acre in a mixed use development and in other identified circumstances. However, that same policy limits density to 9 dwelling units per acre for properties located within the CHHA or CEA. A portion of the Project is located in the CHHA and that fact is not in question, and is not the subject of this Notice and appeal.

⁴ As a policy matter, the CEA and CHHA maps should be essentially the same to avoid inconsistencies. As succinctly stated by the former Director of the Division of Emergency Management: "Other Florida counties accept the SLOSH map without any redrawing to avoid human error, extrapolation complications, and outliers with particular cases like the one you're facing... To the extent of my knowledge, the hurricane evacuation level map drawing methodology and subsequent changes undergo no legal or external review before being used for the CEA/CHHA. Requests to change the parcels' hurricane evacuation level could, in theory, be accommodated in certain cases where common sense prevailed."

⁵ Virtually identical facts were considered by the Board at the time it adopted Resolution R-19-112. In that Resolution, the Board made specific findings of fact and **conclusions of law**. It is reasonable for the Owner to request consistent treatment during staff review and, ultimately, consideration by the Board.

Resolution R19-112 Adopted September 5, 2019

RESOLUTION R-19-112

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING AN APPEAL OF ADMINISTRATIVE DETERMINATION AD-19-04; GRANTING THE APPEAL AND MODIFYING ADMINISTRATIVE DETERMINATION AD-19-04 SUBJECT TO THE CONDITIONS SPECIFIED HEREIN; SAID ADMINISTRATIVE DETERMINATION PERTAINING TO APPROXIMATELY 9.98 ACRES OF PROPERTY LOCATED AT 6701 AND 6711 US HIGHWAY 301 NORTH, ELLENTON, FLORIDA, SETTING FORTH FINDINGS INCLUDING SETTING FORTH CONCLUSIONS OF LAW; PROVIDING FOR A LEGAL DESCRIPTION; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, RFT Holdings, LLC and Canal Road Investments, LLC as the owners of the real property described herein, through Edward Vogler, II, Esq. as their agent (collectively referred to as "Applicant") has filed an appeal to the Board of County Commissioners for the administrative determination of the Director of Public Safety (Administrative Determination No. 19-04 or AD-19-04) to deny Applicant's request to have certain real property removed from the boundaries of the Coastal Evacuation Area - Level A (CEA-Level A) as described in the Comprehensive Plan; and

WHEREAS, on March 7, 2019, Frank Maloney electronically filed a Request for a letter of interpretation to the Director of the Building and Development Services Department asking that the real property located at 6701, 6711 and 6755 US Highway 301 North, Ellenton, Florida, be removed from the boundary of the Coastal Evacuation Area (CEA-Level A); and

WHEREAS, the Director of the Building and Development Services Department referred this request for an interpretation to the Director of Public Safety for a response; and

WHEREAS, on March 20, 2019, the Director of Public Safety, Division of Emergency Management issued an Administrative Determination (AD-19-04) denying the request to remove certain real property from the boundaries of the Coastal Evacuation Map (CEA-Level A); and

WHEREAS, Applicant timely filed an appeal of Administrative Determination (AD-19-04) ("Notice of Appeal") to the Board of County Commissioners appealing the denial of the removal of certain real property comprised of approximately 9.98 acres located at 6701 and 6711 US Highway 301 North, Ellenton Florida 34222 from the boundaries of the Coastal Evacuation Map (CEA-Level A); and

WHEREAS, Section 370, Land Development Code provides that when an administrative determination of the Department Director has been timely appealed, the Board of County Commissioners shall conduct a public hearing which shall be advertised and conducted in accordance with Section 312, Land Development Code; and

Resolution R19-112 Adopted September 5, 2019

WHEREAS, the Board of County Commissioners, after holding a duly noticed public hearing on September 5, 2019, granted Applicant's appeal of Administrative Determination 19-04 (AD-19-04) and modified the decision of the Department Director regarding the subject real property within the Coastal Evacuation Area - Level A (CEA-Level A) subject to the conditions specified herein; and

WHEREAS, Section 125.022(2), Florida Statutes, provides that a county's action on the approval or denial of a development permit must be reduced to writing and given to the applicant as written notice of denial, citing the reasons therefor and although this Resolution is not a development permit, it relates to pending development applications.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida, that:

Section 1. Findings of Fact. The recitals set forth above are true and correct and are hereby adopted as findings by the Board. The Board after considering the testimony, evidence, documentation, the recommendation of the Department of Public Safety staff, as well as all other matters presented to the Board at the public hearing date hereinafter referenced, hereby makes the following findings of fact:

- A. This Resolution pertains to the Property described in Exhibit A, a copy of which is attached hereto and made a part hereof by reference.
- B. The term "Comprehensive Plan" shall mean the version of the Manatee County Comprehensive Plan in effect as of March 20, 2019.
- C. The term "Land Development Code" or "LDC" shall mean the version of the Manatee County Land Development Code in effect as of March 20, 2019.
- D. The term "Comprehensive Emergency Management Plan 2018" shall mean the version of the Manatee County Emergency Management Plan 2018 adopted by the Board of County Commissioners by Resolution R-18-118 on August 21, 2018.
- E. The term "2018 Statewide Emergency Shelter Plan" shall mean the 2018 Statewide Emergency Shelter Plan dated January 31, 2018.
- F. The "Property" comprised of approximately 9.98 acres is located at 6701 and 6711 US Highway 301 North, Ellenton, Florida 34222 and is identified as DP#'s 835600059 and 836100008. (Although the real property located at 6755 US Highway 301 North, Ellenton, Florida was referenced in the Request for a letter of interpretation filed by Applicant, it was not addressed in the Notice of Appeal.)
- G. The Property is in the Coastal Evacuation Area - Level A (CEA-Level A) of the Comprehensive Plan.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and

Resolution R19-112 Adopted September 5, 2019

considering the testimony, evidence, documentation, the staff report presented and a review of the applicable provisions of the Comprehensive Plan and the LDC, the Board hereby makes the following Conclusions of Law:

- A. The Applicants have met their burden of proof to demonstrate that granting the appeal and adopting an interpretation having the effect of removing the Property from the Coastal Evacuation Area – Level A (CEA-Level A) is consistent with the Comprehensive Plan and complies with the standards for approval in the applicable provisions of the LDC.
- B. The Applicants have demonstrated that the placement of the Property within the Coastal Evacuation Area - Level A (CEA-Level A) in the Comprehensive Plan was due to a mapping error as alleged in the Notice of Appeal.
- C. The Applicants have demonstrated that the Property has unique characteristics and thus should be exempt from the goals, objectives and policies of the Comprehensive Plan applicable to all other properties within the Coastal Evacuation Area – Level A (CEA-Level A) as alleged in the Notice of Appeal.
- D. The Board specifically grants the Appeal of Administration Determination No. 19-04 based upon the specific factual and legal conclusions set forth in this Resolution and the public hearing record. Consequently the Board hereby modifies the decision of the Department Director regarding Applicant's request for an interpretation having the effect of excluding the Property from the goals, objectives, policies and mapping of the boundaries of the Coastal Evacuation Area - Level A (CEA- Level A) of the Comprehensive Plan.

Section 3. Description of the Property. This Resolution applies to that certain real property owned by Applicants and referred to by the Manatee County Property Appraiser's Office as DP#'s 835600059 and 836100008 comprised of approximately 9.98 acres located at 6701 and 6711 US Highway 301 North, Ellenton, Florida 34222 and described in Exhibit A.

Section 4. Severability. It is hereby declared to be the intention of the Board that the phrases, clauses, sentences, paragraphs, and sections in this Resolution be deemed severable, and if any phrase, clause, sentence, paragraph or section hereof is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Resolution.

Section 5. Effective Date. The effective date of this Resolution shall be the date of adoption of this Resolution.

Resolution R19-112 Adopted September 5, 2019

DULY ADOPTED with a quorum present and voting this 5th day of September 2019.



**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: Stephen R. Johnson
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: Angelina Colonneso
Deputy Clerk