

Merritt Bidco SPV, LLC / RangeWater: 25Z00054

Dated: April 24, 2026

RE: Response to Staff Addendum and submitted public comments

By: Kimberly B. Rezanka, Esq. (Applicant)

Days before the County Commission Meeting of February 5, 2026, Staff published an Addendum to this zoning application. Staff issued a Second Addendum days before the April 2, 2026, County Commission Meeting (dated March 24, 2026, but not provided to Applicant), renewing its spurious “concern” to the rezoning based upon “driveway configuration” and the Project’s use of “greater than 25% of the remaining capacity”. The Addenda include several conclusory statements, without supporting facts or analysis, much like the numerous emails sent to the County in opposition to this rezoning. Additionally, the Addenda and Staff Report – and opposition emails – misinterpret Sec. 62-602, County Code of Ordinances.

I. TRAFFIC.

Per Sec. 62-602(b), only a “preliminary evaluation” is to be completed to show the availability of services and facilities for a zoning application. A full “concurrency evaluation” is only required for a “site plan, subdivision plat or building permit approval”, per Sec. 62-602(c). Under Sec. 62-602(e), if there is a “finding of deficiency”, based upon a full concurrency evaluation, the County and the developer have options to make necessary improvements to provide adequate capacity. If a full evaluation results in “finding of nondeficiency”, Sec. 62-602(f), sets forth the process for vesting of **site plans and subdivisions only** for “Road capacity”. This Ordinance defines a “threshold capacity”, not a deficiency, and defines it as “(t)he affected roads are operating or committed at a level equal to or less than 85 percent of the acceptable level of service.” *Sec. 62-602 (f) a. 1., Brevard County Code of Ordinances.*

This reliance by Staff and opponents as reason for denial is disingenuous because: (A) Staff has **admitted that there is a nondeficiency** and (B) has **utilized a Code provision intended for site plans** and plats, not for zoning applications. The proposed trips generated from the proposed apartment complex does not decrease the level of service of Courtenay Parkway or Pioneer Road. While the Applicant is willing to provide offsite improvements and enter into a proportionate fair share agreement, if deemed necessary, these potential solutions are not at issue as this is not a site plan or a subdivision plat application.

However, because of the County's concerns regarding trip generation and impacts on N. Courtenay Parkway and Pioneer Road, Bowman Engineering was hired by the Applicant to conduct traffic counts and provided several version of a Traffic Study (revisions needed due to Brevard County Traffic Operations' comments and requests for revisions), the last one dated March 5, 2026. The Traffic Study has identified improvements to be constructed by the Applicant/Developer, and the improvements will be a condition of construction.

Additionally, the Applicant has offered to enter into a Proportionate Fair Share Agreement, as contemplated by F.S. 163.3180 (5)(h)1. c. Under this Statute, the County **must** "Allow an applicant for . . . rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system" through a "binding agreement to pay for or construct its proportionate share of required improvements". Denial of 25Z00054 based upon "traffic", when the Applicant has offered to enter into a binding agreement contemplated under F.S. 163.3180 would be a violation of Florida law.

Regardless, the Capital Improvement Element of the Comprehensive Plan clearly allows approval of this rezoning as it does not reduce the adopted Level of Service on N. Courtenay Parkway. Under Policy 5.2, "Brevard County **may approve rezoning** applications, subdivision plats, site plans, and building permits if the potential impact of the proposed development does not decrease the level of service below acceptable standards for any existing public facility or a facility listed in this Element's Schedule of Improvements."

II. EXISTING FUTURE LAND USE DESIGNATIONS.

Seemingly overlooked by everyone is the fact that a portion of the Property has for a long time been designated with the Future Land use of Neighborhood Commercial (NC) and Residential 15 (RES15) in the Future Land Use Map of the Comprehensive Plan. This Property has always been intended to be developed with a commercial use and with multi-family, also a commercial use.

The Florida Growth Management Act requires Brevard County to create and implement a Comprehensive Plan to guide future development. *F.S. 163.3167 (2025)*. The Future Land Use Element of the County's Comprehensive Plan establishes a range of allowable uses and densities and intensities over large areas. The Comprehensive Plan must provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of

the area that reflects community commitments to implement the Plan and its elements. *F.S. 163.3177(1) (2025).*

The Plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations. *Id.* The amount of land designated for future planned uses shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and may not be limited solely by the projected population. *F.S. 163.3177(6)(a)4 (2025).*

III. ADMINISTRATIVE POLICIES.

The Comprehensive Plan Administrative Polices have been cited by opponents as reasons for denying this rezoning, but the opponent to not provide hard facts to support the recitation of the Policies. The Addenda (and MIRA and opposition emails) do exactly this – mere recitation of Policies – only by number or letter - without competent or substantial factual support.

Administrative Policy 3 Criteria A. *Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.*

While the focus of the mention of this Policy seems tied to “traffic”, the concept plan and proposed Binding Development Plan (“BDP”) reveal greater buffers from residential neighbors than would be required under the existing BSP. But, as related to traffic, the proposed use will generate substantially less trips than a potential hospital or emergency clinic on the Property, which is allowed on the Property by the existing CUP and BSP. According to the January 20, 2026, Rezoning Traffic Analysis prepared by Bowman Traffic Engineer Jurado, the Property could generate 5,535 daily trips, 369 morning peak hour trips, and 370 evening peak hour trips if developed as a hospital.

Looking simply at the trips generated from the proposed Project, per the Bowman TIA, the AM peak hour traffic leaving the site is slightly more than one (1) per minute – one every 60 seconds. The peak PM school dismissal trips leaving the site are slightly more than (1) per every two (2) minutes. The PM peak trips into the site are also slightly more than (1) per minute, and trips out of the site are one (1) per every 83 seconds.

These ratios are low and will not impact those in the residential neighborhoods to the east.

Administrative Policy 4 *Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:*

***Criteria:** A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the **identified boundaries** of the neighborhood.*

The Project will not introduce traffic into the **INDENTIFIED BOUNDARIES** of the residential neighborhoods of Raintree-By-The Lake (to the east) or Villa De Palmas (to the north), and any statements that the character of these two neighborhoods will be materially or adversely affected is pure speculation. The access to the Project will primarily be from SR3, with some accessing from Pioneer Road, but the residents and guests of the apartment complex would have no reason to travel into Raintree-By-The-Lake or Villa De Palms.

B. 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Based upon the recent development of the ten (10) acres of commercial land to the south of this Property – Starbucks, Hampton Manor ALF, Space Coast Credit Union and Twins car wash – the area of this Property **is “transitional”** and not primarily residential.

In fact, Hampton Manor ¹ is a multi-family residential rental proper ², a commercial use property, AHCA Facility ID 11970185, located directly south of the Property at 2250 N. Courtenay Parkway. At 140 beds situated on 6.62 acres of land, the density of Hampton Manor is 21.15 units/acre. This density is higher than that sought by Applicant and defeats any hint of spot zoning.

¹ Owned by ZAMZAM FLORIDA III LLC.

² Fannie Mae, *Multifamily Selling and Servicing Guide*, Sec. 5.01, dated February 2, 2026.

Administrative Policy 5 *In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following: **Criteria:***

- A. *Whether adopted levels of services will be compromised;*
- B. *Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;*
- C. *Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;*
- D. *Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;*
- E. *Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;*
- F. *Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;*
- G. *Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.*

This Policy has been referenced by Staff in the February Addendum, but the Addendum was prior to the Bowman Traffic Study/ies. The Bowman Study found no reduction in adopted levels of service, or any safety issues that could not be mitigated by offsite and onsite improvements. There has been no evidence that the qualities of Pioneer Road or N. Courtenay Parkway are inadequate or that *“the proposed use would realistically pose a potential for material danger to public safety in the surrounding area”*. Any position that this proposed rezoning violates Administrative Policy 5 is, again, purely speculative.

IV. **COMPATIBILITY & SCALE**

Neighbors have complained that the proposed apartments are out of scale with the residential neighborhoods to the north and east. However, the Project is clearly an infill project, adjacent to a major Florida highway (principal arterial with MAV of 38,430), in an area designed generally for commercial use. See Area FLU Map. While the Property is suitable for commercial development based upon its location, the residential use (multi-family) is a proper transition from single-family residential use to commercial use. Also, the Hampton Manor ALF is a higher density than that proposed by the Applicant. This is

an urbanized area, and this Property likely meets the definition of “urban infill” of F.S. 163.3164 (51): “Urban infill” means the development of vacant parcels in otherwise built-up areas where public facilities such as sewer systems, roads, schools, and recreation areas are already in place and the average residential density is at least five dwelling units per acre, the average nonresidential intensity is at least a floor area ratio of 1.0 and vacant, developable land does not constitute more than 10 percent of the area.

Also of importance are the policy considerations related to the Future Land Use Designation of the eastern portion of this Property as RES15, adjacent to RES6 (Raintree By-The-Lake and Villa De Palmas). The commercial FLU designation of NC on the western portion of the Property, as well as commercial FLUs to the north, south and east indicate that this area is intended to be for higher residential use or high intensity commercial – like a hospital or medical clinic – allowed pursuant to the 1983 Conditional Use Permits for a Clinic and for a Hospital (Resolution No. Z-6584), which are commercial uses.³

Moreover, RU-2-30 zoning exists only 1025 feet to the west and south of the Property, for Island Village Condominiums. RU-2-30 also exists approximately 2700 feet to the south of Island Village Condominiums, south of the Merritt Island Post Office, on property owned by the Brevard County Housing Authority.

Finally, this rezoning and Apartment Complex is supported by the December 11, 2025, Merritt Island Redevelopment Agency (MIRA)⁴ Staff Report:

The requested rezoning is consistent with the County Comprehensive Plan and the MIRA Redevelopment Plan, as both the existing and proposed future land use designations are NC (neighborhood commercial) and Res15 (residential, up to 15 units per acre). . . .

³ Also subject to Resolution No. Z-6584 are three (3) parcels known as Merritt Medical Center, Parcel ID 24-36-14-00-290, 24-36-14-1A-1-.XA and 24-36-14-00-290.1-.XA, which include several commercial units and a common area parking lot.

⁴ The Merritt Island Community Redevelopment Agency (MIRA) was established in 1988 by the Brevard County Board of County Commissioners as a dependent special district pursuant to Chapters 163 and 189, Florida Statutes. The purpose of MIRA is to eliminate conditions of slum and blight within designated areas of Merritt Island through strategic redevelopment initiatives, infrastructure improvements, and coordination with public and private partners. <https://mymerrittislandfl.com/wp-content/uploads/2026/04/MIRA-FY-2025-Annual-Report-and-Independent-Audit-COMPRESSED-1.pdf>

This portion of Courtenay Parkway exhibits a robust mixture of commercial businesses and single-family residential properties, as well as an elementary school. In Merritt Island, there exists a deficiency of newly constructed multi-family rental units. Aside from the Woodfield Development multi-family apartment project on Fortenberry Road, the development of rental properties has been scarce in Merritt Island. However, because of increased employment opportunities in the space industry, as well as the tourism industries and other industries at Port Canaveral, individuals seeking to fill those vacancies require housing that is proximate to their work. Apartments appeal to younger individuals because of decreased maintenance, enhanced security features, amenities such as onsite fitness centers and common gathering areas, and a sense of community.

In fact, the MIRA Mission Statement⁵ advocates for this rezoning, to fill the stated need of “workforce housing, senior housing, luxury condos and apartments . . . The need is felt by current residents, those attracted to the island’s unique lifestyle, and those working in the area.” An issue identified in the MIRA Mission Statement is the “need for housing to accommodate the space center, hospital, medical and hospitality industry.”

**V. LIVE LOCAL ACT POTENTIAL PER BREVARD COUNTY
POLICY NO. BCC-100**

The Live Local Act preempts certain county and municipal zoning and land use decisions to encourage development of affordable multifamily rental housing in targeted land use areas. ⁶ Local governments are prohibited from restricting the density of a proposed development below the highest density currently allowed (or the highest allowed on July 1, 2023) on land within its jurisdiction where residential development is allowed³⁷ and may not restrict the floor area ratio of a proposed development below 150 percent of the highest floor area ratio currently allowed (or the highest allowed on July 1, 2023) on land within its jurisdiction where residential development is allowed.

Because of the Conditional Use Permits, the Property is zoned for commercial use. “Commercial use”, defined in F.S. 125.01055 (7)(n), is “activities associated with the sale, rental, or distribution of products or the performance of services related thereto.

⁵ Operating and Capital Budget Proposed FY 2025-2026 | BREVARD COUNTY, p. 94-96.

⁶ Live Local Act (2025) CS/CS/SB 1730, Bill Analysis And Fiscal Impact Statement, April 9, 2025.

The term includes, but is not limited to, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; public lodging establishments as described in s. 509.242(1)(a); food service vendors; sports arenas; theaters; tourist attractions; and other for-profit business activities.” The existing CUPs are still valid,⁷ provide for commercial uses, thereby allowing utilization of the Live Local Act.

The Applicant believes – **and is prepared to argue to the Brevard County Circuit Court if necessary** – that it could build a four-story, (45’) multi-family apartment complex, with 337 units, reduced parking and minimal setbacks. This would eliminate the Applicant’s offer to create larger buffers, to extend the northbound turn lane from Pioneer Road to N. Courtenay Parkway, and the increased vegetative buffer currently offered.

As stated in the Florida House of Representatives Final Bill Analysis for CS/CS/HB 1389 (LLA 2026), dated March 27, 2026: *In practice, an increase in density for a proposed development offers an economic incentive for developers to produce affordable housing. The allowance of full density allowed by local land use and zoning regulations, as well as additional approved units allowed by density bonuses, creates the opportunity for an affordable housing development to be financially feasible. The allowance of more density also incentivizes market-rate developers to produce affordable units. The sale of more units or the leasing of more apartments offsets the lower sales price or rent payments for each affordable unit.*

VI. **CURRENT ALLOWABLE USE OF PROPERTY.**

As indicated above, the Property can be developed with a hospital or medical clinics. Opponents have argued that it should be developed under the current AU zoning, most asking for single family homes or four (4) homes on 2.5 acre lots. This size of a residential lot does not exist any anywhere east of N. Courtenay Parkway between SR520 and SR528, and would be out of place if developed in this manner. Nor would agricultural pursuits of raising and grazing animals, fowl and beekeeping, or housing of livestock and animals be appropriate on this Property, If this Property is limited to AU uses, it has little value.

⁷ See Ordinance 99-43, Brevard County, adopted August 3, 1999.

However, if developed with current allowable conditional uses – a subset of permitted uses⁸ - a hospital, freestanding ER or medical office clinics could be constructed and operated on the Property. A hospital or ER could have adverse impacts upon the transportation facilities and nearby homeowners due to noise, lighting, hours of operation and traffic. According to the January 20, 2026, Rezoning Traffic Analysis, the Property could generate 5,535 daily trips, 369 morning peak hour trips, and 370 evening peak hour trips if developed as a hospital.

VII. SUMMARY.

In summary, there is no expert or fact-based evidence, no competent and substantial evidence, to deny the rezoning request. The FLU of the Property intended the use to be commercial, as shown by the CUP for hospital and medical clinic and the adjacent medical clinic use. The Property has never developed, is of odd configuration, and has wetlands to preserve. The Applicant has provided a BDP to mitigate any potential adverse impacts to neighboring properties, and the agreement to provide a northbound turn lane from Pioneer Road to N. Courteny Parkway will assist with traffic congestion during school drop off hours and peak hour travel times. The BDP will also increase the compatibility of residential multi-family to residential single-family due to larger than required buffers. The development of the Property will be consistent with the Comprehensive Plan and the Land Development Code and will not be a detriment to the immediate neighborhoods or commercial uses.

⁸ Sec. 62-1901. - Generally. (a) *Permitted uses*. In addition to the permitted uses specified in each zoning classification, there are also **additional uses** specified in each zoning classification which may be considered subject to the specific restrictions and conditions specified in this subdivision. These conditional uses shall be reviewed pursuant to the general standards specified in subsection (c) of this section.