

CITY COUNCIL AGENDA ITEM

Quasi-Judicial

TOPIC: Ordinance 2024-725

AN ORDINANCE OF THE CITY OF WILLISTON, FLORIDA, AMENDING THE CITY OF WILLISTON LAND DEVELOPMENT REGULATIONS; AMENDING SECTION 44-12, NON-CONFORMING LOTS, NON- CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING CHARACTERISTICS OF USE, AND NON-CONFORMING USE OF STRUCTURES AND PREMISES; AMENDING SECTION 60-172, PERMITTED PRINCIPLE USES AND STRUCTURES; AMENDING SECTION 60-179, MAXIMUM FLOOR AREA RATIO; AMENDING SECTION 60-180 MAXIMUM LOT COVERAGE BY ALL IMPERVIOUS SURFACES; AMENDING SECTION 60-182 MINIMUM OFF-STREET PARKING REQUIREMENTS DESCRIBED HEREIN , ADDING SEC. 60-183 MARIJUANA CULTIVATION , PROVIDING SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

REQUESTED BY: Laura Jones, City Planner

BACKGROUND / DESCRIPTION:

The proposed text amendment is initiated by an application received by L&B Investments, LLC. to update to the City of Williston's Code of Ordinances. This ordinance is to amend the uses in Agricultural zoning to make is more feasible to conduct business in current times.

This Ordinance specifically amends:

Section 44-12 to include annexed properties.

Section 60-172 agricultural zoning to update buffers.

Section 60-179 agricultural zoning to update maximum floor area ratio.

Section 60-180 agricultural zoning to update maximum lot coverage.

Section 60-182 agricultural zoning to update minimum off-street parking requirements.

Section 60-183 applying to activities involving the cultivation, processing or dispensing of marijuana.

This request makes sense for the entire City as the agricultural zoning requirements is antiquated and appeared to be more tailored for a different municipality. The changes will improve the code for all agricultural properties in the City limits.

July 16, 2024

LEGAL REVIEW: Completed

FISCAL IMPACTS: None

RECOMMENDED ACTION: Planning and Zoning Commission recommended approval of Ordinance 2024-725 to City Council on June 25, 2024.

**ATTACHMENTS: Application with Letter Regarding Processing
Ordinance 2024-725**

ACTION: _____ APPROVED _____ DISAPPROVED



City of Williston

Application for Land Development Regulations Amendment

Please remit to:

Planning and Zoning Department
City of Williston
50NW Main St
Williston, FL 32696

For more information please call 352-528-3060.

PART A. BASIC INFORMATION -PLEASE READ BEFORE COMPLETING

An application for amendment to the Land Development Regulations is a formal request by an applicant for a permanent change to the regulations or rules governing zoning or land development.

An amendment is **not** a variance to the zoning regulations, which is a specific waiver of rules. An amendment is a permanent change.

The basic process of an amendment is as follows:

1. Hearing held by Planning and Zoning Commission
2. Evaluation and recommendation from the Planning and Zoning Commission
3. City Council considers amendment and makes final decision

Once an application for a land development regulation amendment has been submitted and the **application fee of \$1,500.00** (\$2,500 if the amendment is changing permitted uses for a zoning category) has been paid, the Planning and Zoning Staff will begin processing the application. An applicant should expect a hearing to be held to consider their application within four to six weeks.

The applicant will be notified of any public hearings or special meetings held in regards to their application.

The applicant, through this form, should make it clear to the general public the following information:

1. The need and justification for the change
2. The relationship of the proposed amendment to the purposes and objectives of the City of Williston Comprehensive Plan

The City reserves the right to request any other information that may be pertinent to the amendment request.

Staff Use Only

Application Number	LDR__-__
Date Received	

PART B. APPLICANT AND OWNER INFORMATION (please complete legibly)

Date (date application is signed)	November <u>28th</u> , 2023
Applicant Name	L&B Investment Group LLC
Applicant Contact (Phone No./ Email)	508 SE 11 th Ave. Gainesville, FL 32601 Email: kori@floridaicemachines.com
Is this a Zoning Map amendment? (Y/N)	No
Contact Information (Phone No./ Email)	W. James Gooding III Gooding & Batsel, PLLC 1531 SE 36th Ave. Ocala, FL 34471
Brief description of amendment being requested (attach additional sheets if necessary)	See attached Memorandum
Section(s) of City of Williston Land Development Code to be considered	44-12, 60-172, 60-179, 60-180
By signing below, the applicant acknowledges that the information provided to the City on this application is true and correct to the best of their knowledge, and that they have read PART A of this Form.	
Signature of Applicant	L&B Investment Group, a Florida limited liability company By: <u>Jatavia Lamb</u> as <u>Authorized Representative</u>

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PART C. PROPOSED AMENDMENT – (Provide the exact amendment to the Land Development Regulations being proposed. Preferably, use a strike through and underline format of existing code (where strike through represents code being deleted and underline represents language being added). If necessary, attach additional sheets.

Sec. 44-12. Nonconforming lots, nonconforming uses of land, nonconforming structures, nonconforming characteristics of use, nonconforming use of structures and premises.

(a) Generally.

- (1) Within the districts established by these land development regulations or amendments that may later be adopted, there may exist (i) lots, (ii) uses of land, (iii) structures, (iv) characteristics of use, and (v) use of structures and premises which were lawful before the adoption or amendment of these land development or, as to annexed property, which were lawful under the county's land development regulations, but which would be prohibited, regulated, or restricted under the terms of these land development regulations or future amendments.
- (2) It is the intent of these land development regulations to permit these nonconformities to continue until they are voluntarily removed or removed as required by these land development regulations, but not to encourage their survival. It is further the intent of these land development regulations that nonconformities shall not be enlarged upon, expanded, intensified, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
- (3) Nonconforming uses are declared by these land development regulations to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after the date of adoption or amendment of these land development regulations, by attachment on a structure or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.
- (4) To avoid undue hardship, nothing in these land development regulations shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the date of adoption or amendment of these land development regulations and upon which actual building construction has been carried on diligently (see section 44-10 for definition of "Construction, actual"). Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation, demolition, or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

- (b) *Nonconforming lots of record.* In any district in which one-family dwellings are permitted, a one-family dwelling and customary accessory buildings may be erected, expanded, or altered on any single lot of record as of the date of adoption or amendment of these land development regulations, or, as to annexed property, which were lawful under the county's land development regulations, notwithstanding limitations imposed by these land development regulations or the comprehensive plan. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be

obtained only through action of the board of adjustment/code enforcement. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record as of the date of adoption or amendment of these land development regulations, and if all or part of the lots do not meet the requirements established for lot width and for area, the lands involved shall be considered to be an undivided parcel for the purposes of these land development regulations, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these land development regulations or the comprehensive plan, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in these land development regulations or the comprehensive plan.

- (c) *Nonconforming uses of land.* Where, on the date of adoption or amendment of these land development regulations, or, as to annexed property, which were lawful under the county's land development regulations, lawful use of land exists which would not be permitted by the comprehensive plan or these land development regulations, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
- (1) *Enlargement, increase, intensification, alteration.* No such nonconforming use shall be enlarged, increased, intensified, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of these land development regulations.
 - (2) *Movement.* No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of these land development regulations.
 - (3) *Discontinuance.* If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by these land development regulations for the district in which such land is located.
 - (4) *Structure additions.* No structures shall be added on such land, except for the purposes and in a manner conforming to the regulations for the district in which such land is located.
- (d) *Nonconforming structures.* Where a structure existed lawfully at the date of adoption or amendment of these land development regulations, or, as to annexed property, which were lawful under the county's land development regulations, that could not be built under these land development regulations by reason of restrictions on area, lot coverage, height, yards, location on the lot, or requirements other than use concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
- (1) *Enlargement or alteration.* No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
 - (2) *Destruction.* Should such nonconforming structure or nonconforming portion of such structure be destroyed by any means to an extent of more than 50 percent of its replacement value at time of destruction, it shall not be reconstructed except in conformity with the provisions of these land development regulations.
 - (3) *Movement.* Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

For information regarding nonconforming mobile homes see also section 60-44.

- (e) *Nonconforming characteristics of use.* If characteristic of use of residential density which lawfully existed on the date of adoption or amendment of these land development regulations, or, as to annexed property, which were lawful under the county's land development regulation are made nonconforming by these land development regulations as adopted or amended, or, as to annexed

property, are made nonconforming by its annexation, no change shall thereafter be made in such characteristic of use which increases nonconformity with these land development regulations; provided, however, that changes may be made which do not increase, or which decrease, such nonconformity. If the characteristics of use such as signs, off-street parking or off-street loading, or other matters pertaining to the use of land, structures, and premises are made nonconforming by these land development regulations as adopted or amended, or, as to annexed property, which were lawful under the county's land development regulations, no change shall thereafter be made in such characteristics of use which increases nonconformity with the regulations set out in these land development regulations; provided, however, that changes may be made which do not increase, or which decrease, such nonconformity.

- (f) *Nonconforming use of structures and premises.* Where a lawful use of a structure, or of a structure and premises in combination, existed at the date of adoption or amendment of these land development regulations, or, as to annexed property, which were lawful under the county's land development regulations, that would not be allowed in the district under the terms of the comprehensive plan or these land development regulations, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
- (1) *Enlargement, extension, alteration, etc.* No existing structure devoted to a use not permitted by these land development regulations in the district in which such use is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
 - (2) *Extension of use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use as of the adoption or amendment of these land development regulations or, as to annexed property, which were lawful under the county's land development regulations. Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building. No nonconforming use shall be extended to occupy any land outside the building, nor any additional building on the same lot or parcel, not used for such nonconforming use at the date of adoption or amendment of these land development regulations.
 - (3) *Change in tenancy or ownership.* There may be a change in tenancy, ownership, or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.
 - (4) *Change in use.* Any nonconforming use of a structure, or of a structure and premises in combination, may be changed to another nonconforming use of the same character, or to a more restricted but nonconforming use, provided that the board of adjustment/code enforcement shall find after due public notice and hearing that the proposed use is equally or more appropriate to the district than the existing nonconforming use and that the relation of the structure to surrounding properties is such that adverse effects on occupants and neighboring properties will not be greater than if the existing nonconforming use is continued. In permitting such change, the board of adjustment/code enforcement may require appropriate conditions and safeguards in accordance with the intent and purpose of these land development regulations.
 - (5) *Change to conforming use requires future conformity with district regulations.* Any structure, or structure and premises in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use shall not thereafter be resumed nor shall any other nonconforming use be permitted.

- (6) *Discontinuance.* If any nonconforming use of a structure, or structure and premises in combination, ceases for any reason (except where governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use shall conform to the regulations for the district in which the use is located.
- (7) *Structure additions.* No structures shall be added on such premises, except for purposes and in a manner conforming to the regulations for the district in which such premises are located.
- (8) *Destruction.* Should a structure containing a nonconforming use be destroyed by any means to the extent of more than 50 percent of its replacement value at the time of destruction, its status as a nonconforming use is terminated and it shall not be reconstructed except in conformity with all provisions of these land development regulations and unless the use of land and structures thereafter conforms to the regulations for the district in which such land is located.
- (g) *Casual, temporary, or illegal use.* The casual, temporary, or illegal use of land or structures, or land and structures in combination, shall not be sufficient to establish the existence of a nonconforming use or to create rights in the continuance of such use.
- (h) *Uses under special exception provisions not nonconforming uses.* Whereon the date of adoption of these land development regulations, or amendment thereto, or, as to annexed property, which were lawful under the county's land development regulation, the lawful use of land exists which would be permitted as a special exception under the terms of these land development regulations, such use shall not be deemed a nonconforming use in such district, but shall without further action be deemed a conforming use in such district. However, any enlargement or expansion of any such uses shall be subject to the procedures for securing special exceptions (see chapters 46, article V and VI).

PART C. PROPOSED AMENDMENT – (Provide the exact amendment to the Land Development Regulations being proposed. Preferably, use a strike through and underline format of existing code (where strike through represents code being deleted and underline represents language being added). If necessary, attach additional sheets.

Sec. 60-172. Permitted principal uses and structures.

Within an agricultural district shown on the "Zoning Map, City of Williston, Florida," the following use provisions regarding permitted principal uses and structures shall apply:

- (1) [Unchanged]
- (2) The processing, storage, and sale of agricultural products and commodities which are raised on the premises (but not including livestock or poultry slaughterhouses); provided that no building used for these activities shall be located within 300 feet of any side or rear lot line unless the building meets the buffer requirements of Section 60-341(1), in which case the building may comply with the minimum yard requirements of Section 60-177.
- (3) [Unchanged]
- (4) [Unchanged]
- (5) [Unchanged] -
- (6) [Unchanged]
- (7) [Unchanged]

PART C. PROPOSED AMENDMENT – (Provide the exact amendment to the Land Development Regulations being proposed. Preferably, use a strike through and underline format of existing code (where strike through represents code being deleted and underline represents language being added). If necessary, attach additional sheets.

Sec. 60-179. Maximum floor area ratio.

The maximum floor area ratio in the agricultural district shall be 35 percent. However, for parcels that include commercial greenhouses or plant nurseries, or facilities used for the processing, storage and sale of agricultural products and commodities which are raised on the premises (but not including livestock or poultry slaughter houses), the maximum floor area ratio shall be 80%.

PART C. PROPOSED AMENDMENT – (Provide the exact amendment to the Land Development Regulations being proposed. Preferably, use a strike through and underline format of existing code (where strike through represents code being deleted and underline represents language being added). If necessary, attach additional sheets.

Sec. 60-180. Maximum lot coverage by all impervious surfaces.

The maximum lot coverage by all impervious surfaces in the agricultural district shall be ~~20~~50 percent. However, for parcels that include commercial greenhouses or plant nurseries, or facilities used for the processing, storage and sale of agricultural products and commodities which are raised on the premises (but not including livestock or poultry slaughter houses), the maximum lot coverage by all impervious surfaces shall be 80%.

PART C. PROPOSED AMENDMENT – (Provide the exact amendment to the Land Development Regulations being proposed. Preferably, use a strike through and underline format of existing code (where strike through represents code being deleted and underline represents language being added). If necessary, attach additional sheets.

Sec. 60-182. Minimum off-street parking requirements.

The minimum off-street parking requirements in the agricultural district shall be as follows:

- (1) Residential dwelling units: two spaces for each dwelling unit.
- (2) Elementary schools: two spaces for each classroom, plus one space for each staff.
- (3) Middle school: two spaces for each classroom or office room, plus one space for each staff member.
- (4) Senior high school: four spaces for each classroom or office room, plus two spaces for each three seats in any auditorium or gymnasium.
- (5) Churches or other houses of worship: one space for each four permanent seats in the main room.
- (6) Public buildings and facilities (unless otherwise specified): one space for each 300 square feet of floor area.
- (7) Clubs and lodges including fraternal organizations: one space for each 300 square feet of floor area.
- (8) Adult and child care centers, preschools: one space for each 300 square feet of floor area devoted to adult or child care activities and one space for each employee.
- (9) Group living facilities, group housing projects, foster care: one space for each bed.
- (10) Hospitals: one space for each bed, plus one for each employee on the maximum shift.
- (11) Convalescent and nursing homes: one space for each two beds, plus one for each employee on the maximum shift.
- (12) Adult congregate living facilities (ACLF): one space for each bed.
- (13) Commercial and service establishments (unless otherwise specified), agricultural fairs and fairgrounds; livestock auction arena: one space for each 350 square feet of floor area where applicable. One space for each 1,000 square feet of lot or ground area outside buildings used for any type of sale display or activity.
- (14) Livestock or poultry slaughterhouse; sawmills and planing mills; crematories; agricultural feed and grain packaging, blending, storage and sales; agricultural fertilizer storage and sales: one space for each 500 square feet of floor area.
- (15) Livestock auction arenas; agricultural equipment and related machinery sales; agricultural fairs and fairground activities; drive-in theaters; racetracks and speedways; golf and archery ranges; rifle, shotgun, and pistol ranges; commercial kennels; veterinary clinics; and animal shelters: Parking requirements will be approved through site plan approval process on a case-by-case basis.

(16) Commercial greenhouse or plant nursery: one space for each group of 20 employees (or portion thereof) plus one ~~one and 5/100 (1.05)~~ space for each employee per sq. ft. of nonstorage floor area.

(17) For other special exceptions as specified herein: To be determined by findings in the particular case.

See also article II of this chapter.

W. JAMES GOODING III
ROBERT W. BATSEL, JR.
ROBERT W. BATSEL
JAMES T. HARTLEY
KENNETH H. MACKAY IV



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Ocala, Florida 34471
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jgooding@lawyersocala.com

April 29, 2024

By Email Only

Ms. Laura Jones, City Planner
City of Williston
50 NW Main Street
Williston, Florida 32696

RE: Fluent Servicing, LLC – Cultivation of Medical Cannabis at Former Middle School – Revisions
Dealing with Processing

Dear Laura:

This will follow up on our recent conversations after the April 26, 2024, meeting, at which the applications for the above project were continued based upon incorrect notices.

As we have discussed, I believe, based upon the conversations that I had with some of the neighbors after they spoke at the meeting, arise from their belief that, under the Florida Right to Farm Act, my client could merely cultivate cannabis on the property for a year and then engage in other activities which they deem to be more objectionable. Specifically, they objected to my client “processing” the cannabis on this property because it was that activity that would likely to generate offensive odors. (I have sent a separate letter dealing with the Florida Right to Farm Act and thus this letter concerns only the “processing” of marijuana.)

The information that they were basing their statements on could have come from my client. Specifically, Mr. Robert Beasley, the President of Fluent, explained to the neighbors at a neighborhood meeting that Fluent merely desired to cultivate marijuana on the premises. In response to a question as to whether offensive odors could be generated, Mr. Beasley pointed out that the cultivation of cannabis does not generate such odors (in part because of the fact that the building is essentially sealed to preclude outside contamination), but that certain processing of the marijuana – specifically, the removal of oil and other active ingredients to produce the final product that is sold to the public – could generate odors. Apparently, that is what caused the concern of the residents.

My client has told the residents and we have told the City that we do not intend to process marijuana in that fashion. Because, however, there is continued concern about it, we are proposing to revise the proposed ordinance in two ways:

1. Section 60-172(2). The prior ordinance modified this subsection to deal with the setback requirements for any buildings used in connection with the “processing, storage and sale of agricultural products and commodities which are raised on the premises.” We have added a new

provision that specifically states that “the processing and sale¹ or other dispensing of marijuana is prohibited as set forth in Section 60-183.”

2. Section 60-183. We are proposing to add this Section to the LDRs.
 - 2.1. This is the Section that is cited in our new language under Section 60-172(2).
 - 2.2. This Section permits only the cultivation of marijuana (and even that must be as “permitted by Florida law”) in the Agricultural zoning district.
 - 2.3. The provision also specifically prohibits the processing or dispensing of marijuana products, even if the marijuana plants process or dispensed are raised on the premises.
 - 2.4. The Section contains definitions, many of which are found in Florida Statutes, defining the various terms. For purposes of this discussion, I call your attention to Subsection (3)(e). It specifically states that the activities that my client advised the neighbors could generate odors – the extraction of oil and other active ingredients from the plants to create products – is prohibited processing. It also states that other activities which do not generate odors – such as preparing and packaging the plants for shipment elsewhere – do not constitute processing; the latter was added as a precaution just to make sure that such packaging is not prohibited since that is how we intend to get the marijuana plants off of the property.

We believe that these two changes should address any concern that my client intends, or would be permitted, to process marijuana on the property. Again, my client has never intended to do so (except to the extent that packaging for shipment could be considered to be processing) but we want to make it clear that, under the proposed LDR provision, we could not do so in any event.

I have attached a copy of the revised ordinance, as well as a redline comparing it to the prior draft.

I would appreciate your consideration of the attached and its review by City Attorney Kiersten Ballou, to whom I am providing a copy of this letter.

¹ We have also told the City that we will not be dispensing marijuana from this facility. In the event that anybody has any concerns about my client’s intent in this regard, we are proposing to change the LDRs to prohibit that so that the City will not be merely relying on my client’s commitment.

Letter to Ms. Laura Jones, City Planner
April 29, 2024
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Please let me know if you have any questions.

Sincerely,

GOODING & BATSEL, PLLC

/s/ Jimmy Gooding /s/

W. James Gooding III

WJG/ban

Attachments: as stated

cc: Ms. Kiersten Ballou, City Attorney
Mr. Robert Beasley
Ms. Samantha Hymes
Mr. Mike Spellman
(All by email only with attachments)

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W. JAMES GOODING III
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ATTORNEYS AT LAW

July 11, 2024

By Email Only

Ms. Laura Jones, City Planner
City of Williston
50 NW Main Street
Williston, Florida 32696

RE: Fluent Servicing, LLC – Cultivation of Medical Cannabis at Former Middle School – Developer's Agreement

Dear Laura:

At the July 2, 2024 City Council meeting, you suggested the possibility of a developer's agreement pursuant to which my client would agree not to process marijuana at, or dispense marijuana products from, the subject property. I believe that City Councilperson Debra Jones may have also mentioned the possibility of such an agreement as well.

At the time it was mentioned, I was a little concerned about the contract zoning issue discussed below but did not want to interrupt the discussion at that time. I have further researched it and discussed it with my client, and am advising you that my client does not propose to enter into such an agreement for the following reasons.

1. Such an agreement is unnecessary.

- 1.1. We have suggested a new section to be added to the City's LDRs that expressly prohibits dispensing and processing marijuana in the Agricultural zoning district. We presented this ordinance at our own initiative to further confirm that my client does not intend to dispense marijuana from, or process marijuana on, the subject property.
- 1.2. Zoning restrictions are typically imposed through local codes, not contracts, and we believe that the ordinance that we have proposed is sufficient.
- 1.3. And entering into an unnecessary agreement in light of the following issue can really be problematic.

2. This developer's agreement is prohibited contract zoning.

- 2.1. As you are aware, Florida law prohibits "contract zoning," i.e., an agreement between a property owner and a local government where the owner agrees to certain conditions in return for the rezoning of the property. See Hartnett v. Austin, 93 So.2d 86, 89 (Fla. 1956) and its progeny. Courts have relied upon a number of justifications for that rule including:

- 2.1.1. A local government may not contract away the exercise of its police power.
- 2.1.2. Zoning involves well-defined classes of uses and if each parcel of property was zoned on the basis of variables based upon private contracts, the whole scheme and objective of community planning and zoning would collapse.
- 2.1.3. Adoption of an ordinance is the exercise of municipal legislative power and in exercising such power, a local government cannot legislate by contract.

Id.

- 2.2. Such agreements are not enforceable (unlike the LDRs).¹
- 2.3. The agreement in this case would not only regulate the use of property, but essentially duplicate an ordinance being adopted by the City Council at the same time. The two would be inextricably linked thus making a “contract zoning” argument more easy to make.
- 2.4. While one could suggest that we go ahead and enter into the contract, we do not want to do something that could be construed as misleading the City or the neighbors. We have been transparent throughout this entire process. Entering into an agreement that we knew (or definitely thought) was invalid, and encouraging the City to approve the rezoning based on that agreement, would be wrong. Imagine a scenario under which a developer convinced the City to approve a rezoning based upon a similar contract and then, having got what it wanted, sued the City to have the contract declared invalid. While my client would not do that, we also do not want to be accused of setting up a situation where that could happen.
- 2.5. Thus, we believe our rezoning is justified on its own merits and do not want to muddy the waters with an agreement of doubtful validity.

Laura, this does not change my client’s position. Again, it has no plans to dispense or process marijuana on the property and supports the ordinance that we proposed expressly prohibiting it from doing so. It just does not want to enter into a contract that has the potential to be so problematic.

I would appreciate your putting this in the City Council packet so they will understand why we have not submitted a proposed developer’s agreement.

Sincerely,

GOODING & BATSEL, PLLC

/s/ Jimmy Gooding /s/

W. James Gooding III

WJG/ban

¹ Please note that this discussion is in the context of an agreement directly related to the use of the property entered into in the context of a rezoning. It is different from developer’s agreements entered into outside of the zoning process where, for example, a developer agrees to construct subdivision improvements. The latter are obviously permitted.

Letter to Ms. Laura Jones, City Planner
July 11, 2024
Page 3

cc: Ms. Kiersten Ballou, City Attorney
Mr. Robert Beasley
Ms. Samantha Hymes
Mr. Mike Spellman
Mr. Tyler Overstreet
(All by email only)

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ORDINANCE NO. 2024-725

AN ORDINANCE OF THE CITY OF WILLISTON, FLORIDA, AMENDING THE CITY OF WILLISTON LAND DEVELOPMENT REGULATIONS; AMENDING SECTION 44-12, NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING CHARACTERISTICS OF USE, AND NON-CONFORMING USE OF STRUCTURES AND PREMISES; AMENDING SECTION 60-172, PERMITTED PRINCIPLE USES AND STRUCTURES; AMENDING SECTION 60-179, MAXIMUM FLOOR AREA RATIO; AMENDING SECTION 60-180 MAXIMUM LOT COVERAGE BY ALL IMPERVIOUS SURFACES; AMENDING SECTION 60-182 MINIMUM OFF-STREET PARKING REQUIREMENTS DESCRIBED HEREIN; ADDING SEC. 60-183 MARIJUANA CULTIVATION; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 166.021, Florida Statutes, as amended, empowers the City Council of the City of Williston, Florida, hereinafter referred to as the City Council, to prepare, adopt and enforce land development regulations; AND

WHEREAS, Sections 163.3161 through 163.3248, Florida Statutes, as amended, the Community Planning Act, requires the City Council to prepare and adopt regulations concerning the use of land and water to implement a comprehensive plan; AND

WHEREAS, the City Council of the City of Williston, Florida, did on May 7, 2002, validly approve and adopt the City of Williston Land Development Regulations; AND

WHEREAS, L&B Investment Group LLC, a Florida limited liability company, has applied to amend various provisions of the Land Development Regulations; AND

WHEREAS, the Planning and Zoning Commission of the City of Williston, designated as the Local Planning Agency, did hold the required public hearing, with public notice having been provided, on said application for amendments, as described below; AND

WHEREAS, the Planning and Zoning Commission of the City of Williston reviewed and considered all comments received during said public hearings as described below and recommended approval of the above referenced text amendment to the City Council; AND

WHEREAS, the City Council did hold the required public hearings, under the provisions of the amendment procedures established in Chapters 163 and 166, Florida Statutes, on said application for amendments, as described below, and at said public hearing, the City Council reviewed and considered all comments received during the public hearing, including the recommendation of the Planning and Zoning Commission, serving also as the Local Planning Agency; AND

WHEREAS, the City Council has determined and found said amendments, as described below, to be consistent with the Future Land Use Element objectives and policies, and those of other affected elements of the City's Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLISTON, FLORIDA, AS FOLLOWS:

Section 1. That Section 44-12 of the Land Development Regulations of the City of Williston, is hereby amended to read as follows:

Sec. 44-12. Nonconforming lots, nonconforming uses of land, nonconforming structures, nonconforming characteristics of use, nonconforming use of structures and premises.

(a) Generally.

- (1) Within the districts established by these land development regulations or amendments that may later be adopted, there may exist (i) lots, (ii) uses of land, (iii) structures, (iv) characteristics of use, and (v) use of structures and premises which were lawful before the adoption or amendment of these land development regulations, *or, as to annexed property, which are lawful under the county's land development regulations* but which would be prohibited, regulated, or restricted under the terms of these land development regulations or future amendments.
- (2) It is the intent of these land development regulations to permit these nonconformities to continue until they are voluntarily removed or removed as required by these land development regulations, but not to encourage their survival. It is further the intent of these land development regulations that nonconformities shall not be enlarged upon, expanded, intensified, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.
- (3) Nonconforming uses are declared by these land development regulations to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after the date of adoption or amendment of these land development regulations, by attachment on a structure or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.
- (4) To avoid undue hardship, nothing in these land development regulations shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the date of adoption or amendment of these land development regulations and upon which actual building construction has been carried on diligently (see section 44-10 for definition of "Construction, actual"). Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation, demolition, or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

- (b) *Nonconforming lots of record.*** In any district in which one-family dwellings are permitted, a one-family dwelling and customary accessory buildings may be erected, expanded, or altered on any single lot of record as of the date of adoption or amendment of these land development regulations, *or, as to annexed property, which were lawful under the county's land development regulations* notwithstanding limitations imposed by these land development regulations or the comprehensive plan. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the board of adjustment/code enforcement. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record as of the date of adoption or amendment of these land development regulations, and if all or part of the lots do not meet the requirements established for lot width and for area, the lands involved shall be considered to be an undivided parcel for the purposes of these land development regulations, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by these land development regulations or the comprehensive plan, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in these land development regulations or the comprehensive plan.

- (c) *Nonconforming uses of land.* Where, on the date of adoption or amendment of these land development regulations, *or, as to annexed property, which were lawful under the county's land development regulations* lawful use of land exists which would not be permitted by the comprehensive plan or these land development regulations, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
- (1) *Enlargement, increase, intensification, alteration.* No such nonconforming use shall be enlarged, increased, intensified, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of these land development regulations.
 - (2) *Movement.* No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of these land development regulations.
 - (3) *Discontinuance.* If any such nonconforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by these land development regulations for the district in which such land is located.
 - (4) *Structure additions.* No structures shall be added on such land, except for the purposes and in a manner conforming to the regulations for the district in which such land is located.
- (d) *Nonconforming structures.* Where a structure existed lawfully at the date of adoption or amendment of these land development regulations *or, as to annexed property, which were lawful under the county's land development regulations* that could not be built under these land development regulations by reason of restrictions on area, lot coverage, height, yards, location on the lot, or requirements other than use concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
- (1) *Enlargement or alteration.* No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
 - (2) *Destruction.* Should such nonconforming structure or nonconforming portion of such structure be destroyed by any means to an extent of more than 50 percent of its replacement value at time of destruction, it shall not be reconstructed except in conformity with the provisions of these land development regulations.
 - (3) *Movement.* Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

For information regarding nonconforming mobile homes see also section 60-44.

- (e) *Nonconforming characteristics of use.* If characteristic of use of residential density which lawfully existed on the date of adoption or amendment of these land development regulations *or, as to annexed property, which were lawful under the county's land development regulations* are made nonconforming by these land development regulations as adopted or amended, no change shall thereafter be made in such characteristic of use which increases nonconformity with these land development regulations; provided, however, that changes may be made which do not increase, or which decrease, such nonconformity. If the characteristics of use such as signs, off-street parking or off-street loading, or other matters pertaining to the use of land, structures, and premises are made nonconforming by these land development regulations as adopted or amended, *or, as to annexed property, which were lawful under the county's land development regulations*, no change shall thereafter be made in such characteristics of use which increases nonconformity with the regulations set out in these land development regulations; provided, however, that changes may be made which do not increase, or which decrease, such nonconformity.
- (f) *Nonconforming use of structures and premises.* Where a lawful use of a structure, or of a structure and premises in combination, existed at the date of adoption or amendment of these land development

regulations, *or, as to annexed property, which were lawful under the county's land development regulations* that would not be allowed in the district under the terms of the comprehensive plan or these land development regulations, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) *Enlargement, extension, alteration, etc.* No existing structure devoted to a use not permitted by these land development regulations in the district in which such use is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- (2) *Extension of use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use as of the adoption or amendment of these land development regulations, *or, as to annexed property, which were lawful under the county's land development regulations* Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building. No nonconforming use shall be extended to occupy any land outside the building, nor any additional building on the same lot or parcel, not used for such nonconforming use at the date of adoption or amendment of these land development regulations.
- (3) *Change in tenancy or ownership.* There may be a change in tenancy, ownership, or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.
- (4) *Change in use.* Any nonconforming use of a structure, or of a structure and premises in combination, may be changed to another nonconforming use of the same character, or to a more restricted but nonconforming use, provided that the board of adjustment/code enforcement shall find after due public notice and hearing that the proposed use is equally or more appropriate to the district than the existing nonconforming use and that the relation of the structure to surrounding properties is such that adverse effects on occupants and neighboring properties will not be greater than if the existing nonconforming use is continued. In permitting such change, the board of adjustment/code enforcement may require appropriate conditions and safeguards in accordance with the intent and purpose of these land development regulations.
- (5) *Change to conforming use requires future conformity with district regulations.* Any structure, or structure and premises in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use shall not thereafter be resumed nor shall any other nonconforming use be permitted.
- (6) *Discontinuance.* If any nonconforming use of a structure, or structure and premises in combination, ceases for any reason (except where governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use shall conform to the regulations for the district in which the use is located.
- (7) *Structure additions.* No structures shall be added on such premises, except for purposes and in a manner conforming to the regulations for the district in which such premises are located.
- (8) *Destruction.* Should a structure containing a nonconforming use be destroyed by any means to the extent of more than 50 percent of its replacement value at the time of destruction, its status as a nonconforming use is terminated and it shall not be reconstructed except in conformity with all provisions of these land development regulations and unless the use of land and structures thereafter conforms to the regulations for the district in which such land is located.
- (g) *Casual, temporary, or illegal use.* The casual, temporary, or illegal use of land or structures, or land and structures in combination, shall not be sufficient to establish the existence of a nonconforming use or to create rights in the continuance of such use.
- (h) *Uses under special exception provisions not nonconforming uses.* Whereon the date of adoption of these land development regulations, or amendment thereto, *or, as to annexed property, which were lawful under the*

county's land development regulations the lawful use of land exists which would be permitted as a special exception under the terms of these land development regulations, such use shall not be deemed a nonconforming use in such district, but shall without further action be deemed a conforming use in such district. However, any enlargement or expansion of any such uses shall be subject to the procedures for securing special exceptions (see chapters 46, article V and VI).

Section 2. That Section 60-172 of the Land Development Regulations of the City of Williston, is hereby amended to read as follows:

Sec. 60-172. Permitted principal uses and structures.

Within an agricultural district shown on the "Zoning Map, City of Williston, Florida," the following use provisions regarding permitted principal uses and structures shall apply:

- (1) All agricultural activities (excepting intensive agriculture uses as defined in section 44-10 and not including livestock or poultry slaughterhouses), including the raising of livestock and poultry, the production of dairy and poultry products, the cultivation of field crops and fruits and berries, forestry conducted in accordance with the comprehensive plan, apiculture, and similar uses; provided that no structure used for housing of animals or any commercial feed lot operation shall be located within 300 feet of any lot line, and no structure used for housing domestic animals shall be located within 100 feet of any lot line.
- (2) The processing, storage, and sale of agricultural products and commodities which are raised on the premises (but not including livestock or poultry slaughterhouses); provided that: *(a) no building used for these activities shall be located within 300 feet of any side or rear lot line unless the building is on a parcel at least 15 acres in size and meets the buffer requirements of Section 60-341(1), in which case the building may comply with the minimum yard requirements of Section 60-177; and (b) the processing and sale or other dispensing of marijuana is prohibited as set forth in Section 60-183.*
- (3) Single-family dwellings.
- (4) Mobile homes.
- (5) Plant nurseries and greenhouses.
- (6) Homes of six or fewer residents which otherwise meet the definition of a "community residential home" (see article II of this chapter).
- (7) All permitted uses in the R-1 zoning district.

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Section 3. That Section 60-179 of the Land Development Regulations of the City of Williston, is hereby amended to read as follows:

Sec. 60-179. Maximum floor area ratio.

The maximum floor area ratio in the agricultural district shall be 35 percent. *However, for parcels at least 15 acres in size that include commercial greenhouses or plant nurseries or facilities used for the growing, processing, storage or sale of agricultural products and commodities which are raised on the premises (but not including livestock or poultry slaughter houses), maximum floor area ration shall be 80%*

Section 4. That Section 60-180 of the Land Development Regulations of the City of Williston, is hereby amended to read as follows:

Sec. 60-180. Maximum lot coverage by all impervious surfaces.

The maximum lot coverage by all impervious surfaces in the agricultural district shall be ~~20~~ 50 percent. *However, for parcels at least 15 acres in size that include commercial greenhouses or plant nurseries or facilities used for the growing, processing, storage or sale of agricultural products and commodities which are raised on the*

premises (but not including livestock or poultry slaughter houses), maximum lot coverage by all impervious surfaces shall be 80% (EXCEPT AS NOTED IN SEC. 60-183).

Section 5. That Section 60-182 of the Land Development Regulations of the City of Williston, is hereby amended to read as follows:

Sec. 60-182. Minimum off-street parking requirements.

The minimum off-street parking requirements in the agricultural district shall be as follows:

- (1) Residential dwelling units: two spaces for each dwelling unit.
- (2) Elementary schools: two spaces for each classroom, plus one space for each staff.
- (3) Middle school: two spaces for each classroom or office room, plus one space for each staff member.
- (4) Senior high school: four spaces for each classroom or office room, plus two spaces for each three seats in any auditorium or gymnasium.
- (5) Churches or other houses of worship: one space for each four permanent seats in the main room.
- (6) Public buildings and facilities (unless otherwise specified): one space for each 300 square feet of floor area.
- (7) Clubs and lodges including fraternal organizations: one space for each 300 square feet of floor area.
- (8) Adult and child care centers, preschools: one space for each 300 square feet of floor area devoted to adult or child care activities and one space for each employee.
- (9) Group living facilities, group housing projects, foster care: one space for each bed.
- (10) Hospitals: one space for each bed, plus one for each employee on the maximum shift.
- (11) Convalescent and nursing homes: one space for each two beds, plus one for each employee on the maximum shift.
- (12) Adult congregate living facilities (ACLF): one space for each bed.
- (13) Commercial and service establishments (unless otherwise specified), agricultural fairs and fairgrounds; livestock auction arena: one space for each 350 square feet of floor area where applicable. One space for each 1,000 square feet of lot or ground area outside buildings used for any type of sale display or activity.
- (14) Livestock or poultry slaughterhouse; sawmills and planing mills; crematories; agricultural feed and grain packaging, blending, storage and sales; agricultural fertilizer storage and sales: one space for each 500 square feet of floor area.
- (15) Livestock auction arenas; agricultural equipment and related machinery sales; agricultural fairs and fairground activities; drive-in theaters; racetracks and speedways; golf and archery ranges; rifle, shotgun, and pistol ranges; commercial kennels; veterinary clinics; and animal shelters: Parking requirements will be approved through site plan approval process on a case-by-case basis.
- (16) Commercial greenhouse or plant nursery: one space for *each group of 20 employees (or portion thereof) plus one per sq. ft. of nonstorage floor area.* ~~space for each employee~~
- (17) For other special exceptions as specified herein: To be determined by findings in the particular case.

See also article II of this chapter.

Section 6. That a new Section 60-182 of the Land Development Regulations of the City of Williston, is hereby adopted to read as follows:

The sole permitted activity in the zoning district related to marijuana is the cultivation of marijuana as permitted by Florida law.

Sec. 60-183. Marijuana cultivation.

The provisions of this Section 60-183 apply to any activities involving the cultivation, processing or dispensing of marijuana.

- (1) ~~The permitted activities in the zoning district are the cultivation of marijuana as permitted by Florida law.~~
- (2) The processing or dispensing of marijuana products are prohibited, even if the marijuana plants processed or dispensed are raised on the premises.
- (3) For purposes of this Section:
 - (a) "Dispensing" means the selling, or otherwise delivering of, marijuana plants or marijuana products to the public.
 - (b) "Marijuana" means all parts of any marijuana plant; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.
 - (c) "Marijuana plant" means all parts of any plant of the genus *Cannabis*, whether growing or not.
 - (d) "Marijuana products" are products used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing marijuana into the human body. Such products are defined as "marijuana delivery devices" under Section 381.986 (1)(g), Florida Statutes (2024). Such phrase does not include marijuana plants that have not been processed.
 - (e) "Processing" means the processing of marijuana plants into marijuana products and:
 - 1). Includes the extraction of oil and other active ingredients from the marijuana plants to create marijuana products, and the packaging of such manufactured products.
 - 2). Does not include harvesting marijuana plants grown on the premises, or preparing or packaging such marijuana plants for shipment elsewhere to be processed. from the premises to be processed off of the premises

Section 7. Conflict. All ordinances or portions of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 8. Authority. This ordinance is adopted pursuant to the authority granted by Section 166.021, Florida Statutes, as amended, and Sections 163.3161 through 163.3248, Florida Statutes, as amended.

Section 9. Effective Date. This Ordinance shall become effective immediately Passed on second reading, this ____ day of ____, 2024.

(4) The prohibitions on processing and dispensing of marijuana products set forth in this Section 60-183 shall prevail over any other provision of this Article V of Chapter 60 that would otherwise allow such uses in the Agricultural (A) District.