
INITIAL STRATEGY ANALYSIS

PRESERVATION OF BIRCH LAKE

Prepared on Behalf of
BIRCH LAKE HOA

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STRATEGY RECOMMENDATIONS

Following is a summary of the findings and recommendations presented in this *Initial Strategy Analysis*. This analysis is termed Initial because strategy options frequently change as a case evolves. Please keep in mind that the author of this analysis is not an attorney. Any text regarding to legal matters should be discussed with an attorney.

Winning City Council Denial of Rezoning-Annexation

A review of [decision-making history](#) indicates the City rarely denies an annexation or rezoning application. While CEDS has succeeded in winning a denial where none has occurred before, these successes require a few good issues, a good attorney, and a very aggressive political campaign. You have the first two and the third is described in the portion of this analysis headed [Political Option](#). Research from other states indicates that once the City Council approves the rezoning and annexation it is very unlikely that the decision would be reversed. This should be verified by a Florida attorney. If true, then you should put all your resources into winning the case before the City Council votes. But given the Council's apparent inclination to approve, the Birch Lake HOA should consider the next two options.

Preservation Is a Possibility

The Birch Lake HOA board would prefer to preserve Birch Lake and the entirety of the 24.5-acre tract in a natural, undeveloped state. A case can be made for preservation based on the natural beauty of the Lake together with designation of the tract as a Wildlife Hot Spot. The case for preservation would be strengthened by the impact of site development on severe congestion on ROUTE 20 and Hornsby Road and stormwater pollution impacts to Birch Lake and Heron Creek. The case would be further strengthened if Country Hollow Park or Countryside Community Park are over utilized or Heron Creek Elementary is over capacity. Preservation will likely require making 3474 Birch the poster-child for flawed growth management in a citywide public mobilization campaign. This campaign can be carried out at a far lower cost in dollars and hours when compared to legal challenges alone. However, success is far more likely if a public support and legal strategy are carried out in parallel.

Partial Development Option

It appears that the primary concerns of the Birch Lake HOA board with regard to the 3474 Birch proposal are:

- Impacts to wildlife, habitat and Birch Lake,
- Loss of natural views from Skipper Trail homes, and
- Increased traffic on Birch, other neighborhood streets, Lake Shore Lane, Heron Road, ROUTE 20 and Hornsby Road.

Assuming these are the primary concerns then restricting development to the northeast portion of the site while leaving the southern half and Birch Lake natural would resolve the first two concerns as well as the issue of increased traffic on Birch and other neighborhood streets. As an incentive to win the applicant's agreement to this scenario the HOA may wish to consider an offer to support a

zoning classification for the northeast area allowing more homes than the LMDR zoning proposed. Other recommendations for negotiating with the applicant are suggested in the [Partial Development Option](#) section of this analysis.

Questions & Suggestions for Birch Lake HOA Board Members

1. Do Birch Lake HOA board members recall past proposals to develop the 24.5-acre tract?
2. Are any nearby homes served by wells?
3. Was Birch Lake designed or modified to serve as a stormwater management facility?
4. Has anyone seen species of wildlife in or near Birch Lake in addition to: gulls, many varieties of ibis, red tail hawks, chuck-wills-widow, raccoons, otters, turtles, Florida scrub jay, mourning doves, giant woodpeckers, red headed woodpeckers, and coyotes?
5. With regard to schools:
 - a. Does anyone on the Birch Lake HOA board know if a portable classroom is present at Heron Creek Elementary and, if so, whether it is in use?
 - b. If this is the case then is this an issue of deep concern to parents of students attending Heron Creek Elementary?
 - c. Is overcrowding an issue at Countryside High School?
6. Could Birch Lake HOA board members evaluate sight-distance and other delay at the access point onto Lake Shore Lane and at Heron Road? Evaluation methods are described in the CEDS Traffic Evaluation Procedures posted at: <http://ceds.org/traffic/TrafficEvaluationProcedures.pdf>.
7. The neighborhood streets off Brattle Lane west of Lake Shore Lane could arguably be considered dead-ends. If Brattle Lane was blocked west of Lake Shore then the 85 homes would be isolated from emergency services. There would be value in asking the chief of the local fire station if they feel it would be unwise to add more homes to this area.
8. Does Country Hollow Park or Countryside Community Park ever seem overcrowded? In other words, are there indications of overuse such as a waiting list for use of facilities at either park?
9. During our March 10th conference call mention was made of a nearby rezoning where approval was denied due to viewshed impact concerns like those of Skipper Trail residents. If I heard this correctly, does anyone recall when this denial occurred and the applicant-project name?

PROJECT DETAILS

The owners of a 24.5-acre tract at 3474 Birch, Smithville, FL 33777, have asked the City of Smithville to annex and rezone the property to allow for higher density development. The tract boundary is outlined yellow in the 2017 aerial photo found on the next page of this analysis. Birch Lake can be seen in the center of the tract. The property is located in Smith County. As shown to the right, the tract is split zoned Single Family Residential District (R-3) and Agricultural Estate (A-E).





Google Earth

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Talley Dr

Rodney Ct

Morgan Ct

Scott Ct

David Ct

66th St N

W Rd

69th St N

Brewton Ct

Lake Shore Ln

Brattl

Fairfield Trail

Beech Trail

Aspen Trail

Sweetwater Trail

Smith County zoning regulations allow one house per two acres in the A-E zone and eight units per acre in the R-3 zone.

The applicant has requested that the entire tract be rezoned to Low Medium Density Residential (LDMR) which allows dwellings at a density of 5- to 7.5-units per acre. While both attached and detached housing is allowed in the LDMR zone, the Smithville Land Use Map designates the area for single-family detached homes only. Birch Lake HOA board members have learned that the applicant wishes to develop the site as 30 single-family detached homes.

WHY HASN'T THE SITE DEVELOPED?

As shown in the aerial photo on the preceding page, the tract is surrounded by development. This development has been present for decades. This raises a question as to why the tract has not been developed in the past. The presence of Birch Lake in the center of the tract certainly makes development more complicated compared to other sites. This alone however may not be the entire reason for the tract remaining in a mostly natural state. There would be great value in researching past proposals to develop the site in hopes of learning why they did not proceed. Do any Birch Lake HOA board members recall past development proposals? If yes, then a request should be made of Smithville planning officials for access to files for each proposal. These files may identify constraints that would aid the effort to preserve Birch Lake and the rest of the 24.5-acre tract.

PRESERVING THE SITE

A strong case for preserving the site in a natural condition could be made if:

- Birch Lake and associated wetlands supported threatened, endangered or other highly-regarded species,
- A paucity of park and recreation land exists in the area,
- Development of the tract would threaten a community water supply or other important aquatic resources, or
- Some similar argument could be made for why the site should not be developed.

Threatened, Endangered & Other Highly-Regarded Species

These species are usually aquatic, so if they exist on the tract they would be in the lake or in the associated wetlands. The Habitat Assessment prepared by the applicant's consultant did not document any highly-regarded species on the site. However, CEDS has had other cases where our experts documented threatened-endangered species missed by those employed by an applicant.

It appears though that the Birch Lake is either not natural or it has been modified as evidenced by the constructed spillway shown in the Habitat Assessment memo. If this is correct then it lowers the likelihood that threatened-endangered species are present. Nevertheless, a search was made of online sources for indications that uniquely important species may exist on the site. The search began with the three sources cited in the applicant's habitat assessment. An additional online source, not referenced in the Habitat Assessment, was also queried: [Florida Conservation Lands](#). The [Conservancy of Southwest Florida](#) has been contacted to learn of other information sources that should be checked.

Map A-11, in the City of Smithville Comprehensive Plan, shows that the 24.5-acre tract contains wildlife *Hot Spots* (Multiple Species Habitat). Hot Spots are described as “Representing biological diversity, created by aggregation of predictive habitat maps for wading birds, important natural communities, and 44 focal species. It also includes known species and community locations.” Pictured to the right is one of the Bald Eagles frequenting Birch Lake. This photo was taken by Barbara Rosa who lives within view of Birch Lake. Other wildlife observed on the site includes: gulls, many varieties of ibis, red tail hawks, chuck-wills-widow, raccoons, otters, turtles, Florida scrub jay, mourning doves, giant woodpeckers, red headed woodpeckers, and coyotes.



There is a remote possibility that additional, uniquely important species exist on the site but we would need the owner’s permission to conduct a search. And it is highly unlikely the owner would grant permission.

Need for Additional Park & Recreation Land

In the past, a generally accepted criteria called for ten acres of park and recreation land for every 1,000 residents of a city like Smithville. Today, this has been replaced by more area and use specific criteria.

Page G-1, of the Recreation and Open Space Element of the Smithville Comprehensive Plan, states that there should be a minimum of four acres of parkland per one thousand (1,000) residents. On this same page it is stated that 13% of the City's total land area falls under the existing land use classification of "recreation open space," which includes parkland and recreational facilities.

According to the Parks and Recreation Department there are 1,427 acres of parks within the City of Smithville. This acreage includes very large parks like Sand Key. With a City of Smithville population of 111,747, this works out to 13 acres of parkland for every 1,000 residents, which is well above the old 10 acres/1,000 resident criteria and the City goal of 4 acres/1,000 residents.

Smith County has set the goal of 14 acres of parks and environmental lands for every 1,000 residents. According to Table 18, in Chapter 11 of the Smith County Comprehensive Plan, there were 29 acres of park and environmental lands per 1,000 residents as of 2012. Because the Citywide average may not reflect a deficit in the Birch vicinity, two other criteria were examined. The City of Smithville Parks and Recreation Master Plan Update 2013 calls for a neighborhood park within one mile and a community park within three miles. The City of Smithville Park Locator website shows that Country Hollow (neighborhood) Park is within one mile of the Birch Lake site and Countryside Community Park is within three miles.

If parks both meet the definition of a neighborhood and community park then it would be difficult to make a case that the 24.5-acre site should be preserved as parkland. Furthermore, even if the site were set aside as park, it is unlikely it would be kept in a natural state. A strong case could be made that park development should be limited to a nature trail around Birch Lake with perhaps a playground and a few picnic tables in the northeast portion of the tract. There is a possibility though the tract would be developed with ballparks or other recreation facilities which could be as disruptive as residential uses.

Impacts to Ground & Surface Water Resources

From the messages exchanged by Birch Lake HOA residents, it appears that some homes in the area are served by wells. However, the Smith County Water Service Area map indicates that homes in the area are served by public water, not individual wells on each lot. If each home is served by a separate well then development of the site could pose a threat to the groundwater aquifers underlying the site and tapped by these wells. The potential for groundwater contamination would also be a more significant issue if the site was in the vicinity of a City public water supply well. Comprehensive Plan Map D-2, shows that this is not the case.

Development could also threaten Heron Creek and other downstream waters. Heron Creek water quality is poor due to low dissolved oxygen and high nutrient inputs.¹ Three factors would make it difficult to argue that the site should be preserved in its entirety because of aquatic resource impact concerns, though a strong case can be made that development should be confined to the northeast portion of the site.

First, the USDA Web Soil Survey shows soils throughout much of the 24.5-acre site belong to Hydrologic Soil Group A. These soils are well suited to the use of the [highly-effective measures](#) needed to protect waters from the pollutants washed by stormwater from rooftops, streets and lawns.² The depth to groundwater though could preclude the use of highly-effective measures on all but the northeast portion of the site.

Second, the presence of Birch Lake would be viewed as minimizing impacts to downstream waters if it was designed as a stormwater management facility as stated in the applicant's Habitat Assessment, provided it meets current City of Smithville and Smith County stormwater standards.

Third, groundwater contamination is usually considered a significant concern when land uses are proposed which are known to release pollutants in very high concentrations. These uses are known as stormwater [hotspots](#) and includes uses such as a gas station or vehicle repair facility. The homes proposed by the applicant are not hotspot uses.

¹ See Dissolved Oxygen and Nutrient TMDL for Heron Creek Tidal Segment, WBID 1538, at: <https://floridadep.gov/sites/default/files/Heron-tidal1538-donutr-tmdl.pdf>

² The Web Soil Survey maps posted at the following two sites show the soils all belong to Hydrologic Soil Group A and the Depth to Groundwater is great enough in the northeast portion of the site to support highly-effective measures: http://ceds.org/3474_Aspen_Trail/HSG.pdf and http://ceds.org/3474_Aspen_Trail/Depth_to_Water.pdf

In closing, while a case may not exist for preserving the entire site because of aquatic resource impacts, restricting development to the northeast portion could greatly reduce negative effects. For further background on the topic visit the CEDS [Protecting Wetlands, Streams, Lakes, Tidal Waters & Wells from the Impacts of Land Development](#) webpage.

PARTIAL DEVELOPMENT OPTION

If further research confirms that preservation of the entire 24.5-acre tract is not realistic, then the Birch Lake HOA board may wish to consider proposing partial development to the applicant. One scenario would be to restrict homes to the five acres in the northern portion of the site. This scenario is depicted on the next page and would resolve concerns of Skipper Trail residents with regard to loss of their natural views. This option would also eliminate the concern regarding additional traffic on Birch.

In the [Impacts to Ground & Surface Water Resources](#) section above, it was noted that only the northeast area of the site had soils suited to the use of highly-effective aquatic resource protection measures. Restricting development to this area would also allow for all traffic to use an access constructed directly onto Lake Shore Lane about 200 feet south of Heron Road.

The applicant has requested rezoning sufficient to allow 30 homes on the 24.5-acre site. If achieving this same yield is crucial to winning applicant agreement to partial development then the HOA board may wish to consider supporting a different zoning classification that allows higher density on the five acres in the northeast area of the site. HOA support would be conditioned on the applicant placing the remainder of the 24.5-acre tract in an easement. The HOA should be made a party to the easement giving the HOA veto power over uses of the site outside the northeast corner. The applicant should also request that the City condition approval of rezoning-annexation on preserving the southern portion of the site.

Applicant refusal to work with the community on something like a partial development option could bias the City Council and other decision-makers in your favor. This could make it easier to win the support of these decision-makers with regard to denying or conditioning rezoning-annexation. However, the partial development option proposed by the HOA must be something you can live with. If the applicant agreed to the option and the HOA then opposed the project, this action would bias decision-makers against us.

Should the HOA opt for partial development then I suggest making the following points to the applicant during the upcoming March 19th meeting:

1. You are open to development of the site provided the following conditions are met:
 - a. Natural views from Skipper Trail homes are preserved,
 - b. Development is concentrated in the northeast portion of the site,
 - c. Access would be off of Lake Shore Lane or Heron Road with no connection to Birch,
 - d. Homes, streets and lawns drain to highly-effective stormwater management measures, and
 - e. Trees and other vegetation is preserved around Birch Lake and wetlands.



Development Envelope

SITE ACCESS

Partial Development Option:
Scenario 1

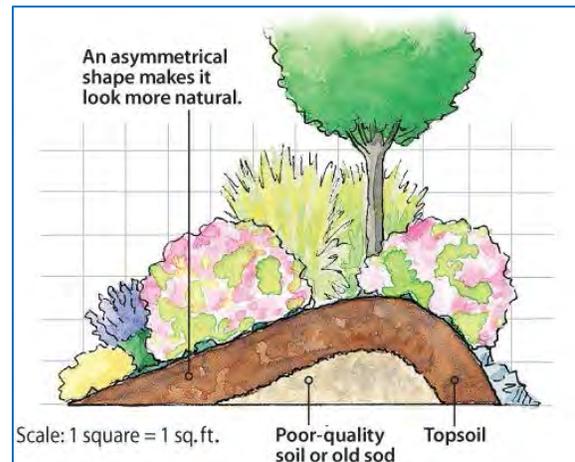
2. You are open to the possibility of supporting a zoning classification allowing higher density than LMDR on a portion of the site if it meets the conditions listed above with the remainder of the tract rezoned to Preservation District (P).
3. While you have retained an attorney with a good record of success in helping neighborhoods win rezoning-annexation cases, you would much rather find a mutually agreeable solution.
4. You are also preparing to launch a campaign throughout the City of Smithville to mobilize public support for ensuring rezoning-annexation decisions do not unduly harm neighborhoods and the environment. The 3474 Birch project will be the focus of this campaign. Again, you'd much rather find a mutually agreeable solution.
5. Should you come to agreement then you want:
 - a. The agreement documented in a contract that binds on current and future property owners,
 - b. The applicant would revise rezoning and annexation requests to ask the City to make the points of agreement condition of permits and other approvals, and
 - c. The southern portion of the property would be placed in an easement that gives the HOA veto power over future uses.
6. You should also consider asking the applicant to reimburse the HOA for expenses such as those paid to CEDS, an attorney, etc.

OTHER ISSUES

Following is a discussion of other issues identified by Birch Lake HOA members or identified by CEDS during this analysis.

Viewshed Impacts

A primary concern of Birch Lake HOA members is the loss of the natural views currently enjoyed by those owning homes that face or back onto the 24.5-acre tract. Those living along the north side of Skipper Trail are probably the most impacted. Preserving the site in a natural state is, of course, the most effective solution. At this point though it appears that preservation of all 24.5 acres may not be within the realm of the possible. The partial development option described above may be a more likely scenario. If development is restricted to the northern portion of the site than views from Skipper Trail homes should be preserved. If both preservation and partial development fail to pan out then the only option might be a very dense landscaped buffer and/or something like a landscaped earth berm such as that pictured to the right. The berm would run along the entire southern boundary of the tract and would be high enough so structures to the north will not be seen. Further background on preserving views can be found on the CEDS [Scenic Views & Land Development](#) webpage.



School Impacts

According to the Smith County Public Schools locator website, the 24.5-acre site is served by:

- Heron Creek Elementary School,
- Palm Harbor Middle School, and
- Countryside High School.

The Smith County Public Schools website was searched for data on overcrowding at these three schools. If any schools are or will be over capacity then this would serve as an argument for at least postponing annexation and rezoning of the 24.5-acre site. However, school capacity issues can usually be resolved in ways that do not forestall development for more than a few years. Also, the City of Smithville concurrency law which could prevent development from causing overcrowding does not apply to schools.

Enrollment-capacity data was not found on the PCPS website. A request was sent to the Smith County School Board for a listing of current and future student enrollment and school capacity data. Unfortunately, school officials say this data is not available.

The PCS School Choice Availability listing shows that Palm Harbor Middle School presently lacks capacity for additional students. The other two schools are not shown on this listing.

A January 2017 aerial photo appears to show a portable classroom at Heron Creek Elementary School. Does anyone on the Birch Lake HOA board know if this is a portable classroom and, if so, whether it is in use? If this is an in-use portable classroom, then is this an issue of deep concern to parents of students attending Heron Creek Elementary? Is overcrowding an issue at Countryside High School?

While school impacts may not prevent rezoning-annexation from being approved, it could be a powerful issue for mobilizing public support for preserving the Birch Lake tract and similar sites throughout the City. This strategy approach is described at the end of this analysis under the [Political Option](#) heading. For further background on schools and growth visit the CEDS [Preventing Overcrowding & Other School Impacts of Development](#) webpage.

Traffic Impacts

The map on page 10, of the 2017 Edition of the Forward Smith Annual Level of Service Report shows that two of the roads receiving traffic from development of the 24.5-acre tract are rated as severely congested. These roads are ROUTE 20 (0.25 miles west) and Hornsby Road (one-mile to the east).

Traffic congestion is rated using a scale known as [Level of Service](#) (LOS) which ranges from A to F. An LOS of A to C equals very little congestion and delay. The City of Smithville calls for an LOS of D or better.

It is assumed most of the traffic from the 24.5-acre site would use Heron Road. ROUTE 20 is rated F north and south of Heron Road. Hornsby Road is rated F south of Heron and B-C to the north. Smith County calls for level of service D or better as does the City of Smithville.

Like the school capacity issue, the current severe congestion on ROUTE 20 and Hornsby Road would be a valid basis for postponing approval of annexation and rezoning though it is unlikely that it would stand up as a reason for an indefinite denial. There may well be public works projects or other transportation improvements in the works that would reduce congestion. However, the City's concurrency law does apply to traffic though I suspect it is being administered in a way that fails to delay growth that would add more vehicles to congested roads. It is possible to improve this situation through the [Political Option](#) described below.

Development of the 24.5-acre tract could be indefinitely constrained if there are issues like inadequate *sight distance*. This phrase refers to how far ahead a driver can see a stopped or approached vehicle. For example, while sitting at a stop sign you should be able to see a car approaching from the left or right about ten seconds before the vehicle arrives at your location.

Likely access points for the 24.5-acre tract are located on Heron Road, Lake Shore Lane, and Birch. Sight distance should be assessed at each of these likely access points. An initial check can be done by board members using the methods described in the CEDS Traffic Evaluation Procedures posted at: <http://ceds.org/traffic/TrafficEvaluationProcedures.pdf>. These procedures also explain how to assess the need for traffic signals and other measures. If these procedures show a significant issue then we may need to engage a traffic professional to press the issue with the City.

Access via Birch may be problematic due to the fact that the connecting road all have a single point of exit-entry: Brattle Lane. A number of localities restrict single-access (cul-de-sac) streets to no more than one hundred homes. There are presently 85 homes served by Brattle Lane west of Lake Shore Lane.

While the Community Development Code does not appear to contain a limit on the number of homes, it does restrict dead-end streets to a maximum length of 600 feet (§3-1906). The street network off Brattle Lane west of Lake Shore Lane is far in excess of 600 feet. Though few traffic professionals would agree that these neighborhood streets west of Lake Shore Lane are dead-ends, from a public safety perspective they could be viewed as such.

Usually dead-end length limits are set to prevent a large number of homes from becoming isolated when accidents or natural disasters block emergency services access. If the 600-foot length limit was adopted after the area west of Lake Shore Lane was developed, then one might make a case that no more homes should be allowed. Alternatively, if the chief of the local fire station feels it would be unwise to add more homes then this might prompt the City Council to add a restriction to this effect. A word of caution though: There's a possibility the City may call for extending Birch to Lake Shore Lane or Heron Road through the 24.5-acre site to provide a second means of access.

An intersection spacing issue may affect the possible Lake Shore Lane access point. The distance from Heron Road to the likely access point is 187 feet. However, City of Smithville Community Development Code Access Standards (§3-102) only appear to require 125 feet.

While the traffic issues cited above may not prevent development of the site, the widespread congestion throughout Smithville would likely be a strong issue for mobilizing public support for more responsible growth management. Further detail on this approach is described later under the [Political Option](#) heading. For additional background on growth and traffic visit the CEDS [Traffic, Development & Neighborhood Quality of Life](#) webpage.

REZONING & ANNEXATION PROCESS & STANDARDS

Section 4-602, of the City of Smithville Community Development Code sets forth the process and standards for rezoning. The annexation process and standards are in Section 4-604. Both sections appear at the end of this analysis.

As of this date, the project is still in the Staff Review & Coordination stage described in Section 4-602(C) and 4-604(C). Recent communications with City of Smithville Long Range Planning Manager Lauren Matzke indicate staff will recommend approval for the annexation and rezoning. The next step in the process is the Community Development Board (CDB) public hearing scheduled for Tuesday, April 17th, at 1:00 pm in the City Council Chambers. The CDB will make a recommendation to the City Council. The City Council will then hold their own hearing which was set for Thursday, April 19, 2018 but probably won't take place until May or June, 2018.

Success in resolving Birch Lake HOA concerns will most likely come before the City Council hearing is held. As will be shown in the section on [Decision-Making](#) history below, it appears the City Council approves most, if not all, rezoning-annexation applications. Once approval is granted the HOA will lose most of its leverage with the applicant and the City. While you would have the option of appealing the approval to the courts I suspect most attorneys would say that it's rare that a rezoning-annexation decision is reversed on appeal. And even if you do win the applicant may redraw their application to resolve the issue which caused the reversal then resubmit, get approved again, and proceed to develop the site. Keep in mind though that I am not an attorney and you should verify my layman's assumption with an attorney.

Impacts & Standards

Following are the potential impacts identified in the preceding sections of this analysis:

1. The natural views enjoyed by Skipper Trail property owners will be replaced with views of the rear of homes developed on the site, which will likely result in loss of home resale value.
2. Traffic from developing the 24.5-acre site will add to the already severe congestion on ROUTE 20 and Hornsby Road.
3. Adding more homes to the dead-end neighborhood street network west of Lake Shore Lane will increase the risk to these residents if Brattle Lane becomes blocked in a way that prevents access by emergency services.

4. The 24.5-acre tract is listed as a wildlife Hot Spot in the Smithville Comprehensive Plan. The loss of trees and other vegetation along with the excessive stormwater pollution from developing the southern half of the site would degrade wildlife habitat.
5. Soils in the southern half of the site are poorly suited to the highly-effective measures needed to protect Birch Lake and Heron Creek from the stormwater pollution washed from homes, streets and lawns developed on the tract.
6. If nearby homes are served by wells then a weak case might be made for possible contamination.
7. The project may add to school overcrowding because:
 - a. Palm Harbor Middle School appears to presently lack capacity for more students.
 - b. If portable classrooms are in use at Heron Creek Elementary then this school is also at capacity.

Though other issues were identified by Birch Lake HOA board members, preliminary analysis indicates it is unlikely these issues would withstand intense scrutiny or that they would not measurably contribute to HOA goals. When it comes to issues, it's better to focus on a few solid impacts that directly relate to review standards or that are likely to generate widespread public support. The next section contains an analysis of the degree to which these impacts violate the standards the City must consider in the review of the rezoning and annexation request.

Rezoning Standards

Following are the standards from Section 4-602 that the City is required to consider with regard to rezoning requests. The standards appear in bold text follow by the CEDS analysis in plain text.

1. The proposed amendment is consistent with and furthers the goals, policies and objectives of the comprehensive plan and furthers the purposes of this Development Code and other city ordinances and actions designed to implement the plan.

City of Smithville Comprehensive Plan Policy A.1.1.5 states “Stormwater shall be controlled through consistent application of local, state, and federal regulations, mitigation and management plans, and permitting procedures for both site-specific and basin-level development plans.”

Policy D.4.1.2 states “The use of natural alternatives, the conservation of natural stormwater management systems, and the protection and improvement of the quality of receiving waters shall be a goal of the City’s stormwater management plans.”

Policy D.3.2.3 states “All stormwater management improvements should seek to meet applicable goals, guidelines, and regulations established to provide flood protection and pollution abatement.”

The following statement appears on page 5, of the City of Smithville Storm Drainage Design Criteria “It is also intended to protect the quality of receiving waters in the City from additional pollution resulting from new development.” Allowing development on the portions of the 24.5-acre site with soils unsuited to highly-effective stormwater would violate these criteria and therefore Policy A.1.1.5, D.3.2.3 and D.4.1.2.

Furthermore, Policy D.3.5.4 states “Maximize water recharge potential in designing stormwater management improvements by utilizing natural wetland areas for stormwater storage.”

Recharge will be more difficult to achieve on the southern portion of the site where the depth to groundwater is too shallow for the most effective recharge measures.

City of Smithville Comprehensive Plan Policy A.4.1.3 states “The City, when making decisions on requests to amend the Future Land Use Map or the Zoning Atlas (other than decisions on appropriate locations for mixed-use or transit oriented development), shall review the potential impact on the transportation system by considering the following:

- a. Ability of the surrounding existing and planned transportation network to meet the mobility objectives of the Comprehensive Plan;
- b. Capacity of the surrounding existing and planned transportation network to accommodate any protected [projected] additional demand; and
- c. Extent to which the proposed Future Land Use Map amendment or rezoning furthers the intent of the Comprehensive Plan to improve mobility.”

Traffic from development of the 24.5-acre site would add to the existing severe congestion on ROUTE 20 and Hornsby Road which violates Policy A.4.1.3(a) and (c). The addition of homes to Birch would add to the number of residents that would be isolated from emergency services should Brattle Lane become blocked west of Lake Shore Lane, which violates Policy A.4.1.3(b).

City of Smithville Comprehensive Plan Policy A.5.5.1 states “Development should be designed to maintain and support the existing or envisioned character of the neighborhood.” Replacing the natural views enjoyed by Skipper Trail residents with views of the rear of homes would severely degrade the existing character of this neighborhood. Skipper Trail residents no doubt paid a premium for homes with natural views. Allowing this impact would violate Policy A.5.5.1.

City of Smithville Comprehensive Plan Policy F.1.3.2 states “Limit alteration of all urban forests utilizing the Community Development Code; protect natural and mitigated wetlands, marine life, shoreline vegetation, and wildlife habitat in the City from disturbance and destruction.” The loss of trees and other vegetation throughout a site designated a wildlife Hot Spot along with the excessive stormwater pollution resulting from development in the southern half of the site would violate Policy F.1.3.2.

City of Smithville Comprehensive Plan Policy G.1.3.2 states “Continue to acquire parkland for new supplemental parks to meet district deficiencies.” If Country Hollow Park or Countryside Community Park is overused then this policy would support a call to preserve Birch Lake and the rest of the 24.5-acre tract as parkland.

City of Smithville Comprehensive Plan Policy G.1.4.4 states “Preserve coastal and interior wetlands, floodways, floodplains, and other environmentally significant areas to protect their aesthetic and environmental qualities which benefit the City.” Policy G.1.5.3 states “The City should utilize and

preserve areas of ecological, historical, or archaeological value for parks and recreation when possible.” Since the 24.5-acre tract contains wetlands, Birch Lake, and is a designated wildlife Hot Spot, both policies should be a strong incentive for the City to preserve the tract.

City of Smithville Comprehensive Plan Policy J.1.1.5 states “The City and the School District shall utilize student generation rates developed by the School District for purposes of calculating the anticipated number of public school students that would be generated when evaluating proposed land use plan amendments, rezoning, and/or residential site plans and final residential subdivision approvals.” If student enrollment at Heron Creek Elementary or Palm Harbor Middle exceeds school capacity then approving the rezoning-annexation would violate the spirit of this policy.

2. The available uses to which the property may be put are appropriate to the property which is subject to the proposed amendment and compatible with existing and planned uses in the area.

Given the importance of the 24.5-acre tract as a wildlife Hot Spot, the stormwater pollution impacts to Birch Lake and Heron Creek, the addition of homes to an area where emergency services may be blocked at the single access road, the loss of natural views, and other impacts the uses proposed for the property would be inappropriate.

3. The amendment does not conflict with the needs and character of the neighborhood and the city.

Due to the addition of homes to an area where emergency services may be blocked at the single access road and the loss of natural views, the amendment would conflict with the needs and character of the neighborhood.

4. The amendment will not adversely or unreasonably affect the use of other property in the area.

Again, due to the addition of homes to an area where emergency services may be blocked at the single access road and the loss of natural views, the amendment would adversely affect the use of other property in the area.

5. The amendment will not adversely burden public facilities in an unreasonably or disproportionate manner.

If schools are nearing or over capacity then public facilities would be adversely overburdened. Clearly, ROUTE 20 and Hornsby Road are overburdened due to severe traffic congestion and the amendment would add to that burden by generating more traffic onto both roads.

6. The district boundaries are appropriately drawn with due regard to locations and classifications of streets, ownership lines, existing improvements and the natural environment.

Impacts to the natural environment include loss of habitat within a wildlife Hot Spot and the stormwater pollution impacts to Birch Lake and Heron Creek, and the loss of natural views from homes.

Annexation Standards

Following are the standards from Section 4-604 that the City is required to consider with regard to annexation requests. The standards appear in bold text follow by the CEDS analysis in plain text regarding the degree to which each is met:

1. The proposed annexation will impact city services.

City services should include both roads and schools even though either may be a County or State service. ROUTE 20 and Hornsby Road will both be impacted negatively due to the addition of traffic to severely congested roads. Heron Creek Elementary and Palm Harbor Middle will be impacted negatively if both schools will be over capacity when the proposed 30 homes developed on the tract begin generating students.

2. The proposed annexation is consistent with the comprehensive plan.

City of Smithville Comprehensive Plan Policy A.1.1.5 states “Stormwater shall be controlled through consistent application of local, state, and federal regulations, mitigation and management plans, and permitting procedures for both site-specific and basin-level development plans.”

Policy D.4.1.2 states “The use of natural alternatives, the conservation of natural stormwater management systems, and the protection and improvement of the quality of receiving waters shall be a goal of the City’s stormwater management plans.”

Policy D.3.2.3 states “All stormwater management improvements should seek to meet applicable goals, guidelines, and regulations established to provide flood protection and pollution abatement.”

The following statement appears on page 5, of the City of Smithville Storm Drainage Design Criteria “It is also intended to protect the quality of receiving waters in the City from additional pollution resulting from new development.” Allowing development on the portions of the 24.5-acre site with soils unsuited to highly-effective stormwater would violate these criteria and therefore Policy A.1.1.5, D.3.2.3 and D.4.1.2.

Furthermore, Policy D.3.5.4 states “Maximize water recharge potential in designing stormwater management improvements by utilizing natural wetland areas for stormwater storage.”

Recharge will be more difficult to achieve on the southern portion of the site where the depth to groundwater is too shallow for the most effective recharge measures.

City of Smithville Comprehensive Plan Policy A.4.1.3 states “The City, when making decisions on requests to amend the Future Land Use Map or the Zoning Atlas (other than decisions on appropriate locations for mixed-use or transit oriented development), shall review the potential impact on the transportation system by considering the following:

- a. Ability of the surrounding existing and planned transportation network to meet the mobility objectives of the Comprehensive Plan;
- b. Capacity of the surrounding existing and planned transportation network to accommodate any protected [projected] additional demand; and
- c. Extent to which the proposed Future Land Use Map amendment or rezoning furthers the intent of the Comprehensive Plan to improve mobility.”

Traffic from development of the 24.5-acre site would add to the existing severe congestion on ROUTE 20 and Hornsby Road which violates Policy A.4.1.3(a) and (c). The addition of homes to Birch would add to the number of residents that would be isolated from emergency services should Brattle Lane become blocked west of Lake Shore Lane, which violates Policy A.4.1.3(b).

City of Smithville Comprehensive Plan Policy A.5.5.1 states “Development should be designed to maintain and support the existing or envisioned character of the neighborhood.” Replacing the natural views enjoyed by Skipper Trail residents with views of the rear of homes would severely degrade the existing character of this neighborhood. Skipper Trail residents no doubt paid a premium for homes with natural views. Allowing this impact would violate Policy A.5.5.1.

City of Smithville Comprehensive Plan Policy F.1.3.2 states “Limit alteration of all urban forests utilizing the Community Development Code; protect natural and mitigated wetlands, marine life, shoreline vegetation, and wildlife habitat in the City from disturbance and destruction.” The loss of trees and other vegetation throughout a site designated a wildlife Hot Spot along with the excessive stormwater pollution resulting from development in the southern half of the site would violate Policy F.1.3.2.

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land use plan amendments, rezoning, and/or residential site plans and final residential subdivision approvals.” If student enrollment at Heron Creek Elementary or Palm Harbor Middle exceeds school capacity then approving the rezoning-annexation would violate the spirit of this policy.

3. The proposed annexation requires a change in the land use classification and zoning category assigned to the property and the justification for such change.

A change is required which cannot be justified due to the excessive impacts to the environment and quality of life in adjoining neighborhoods.

4. The proposed or existing development, if any, is consistent with city regulations.

The proposed development would be inconsistent with City stormwater and traffic regulations.

5. The terms of a proposed annexation agreement, if any, promotes the city's comprehensive plan.

Because of the numerous policies conflicts cited above, the proposed annexation fails to promote the City of Smithville Comprehensive Plan.

DECISION-MAKING HISTORY

The Smithville City Council is the final decision-maker with regard to annexation and rezoning applications. Understanding past City Council decision-making history is essential to developing strategy options. Identifying factors which prompted denials in similar past cases allows one to increase the likelihood of success by focusing on those same issues when developing case strategy. The same is true if the goal is not to block rezoning or annexation but to win conditions that resolve impacts.

Two approaches were used for identifying instances where the Smithville City Council denied rezoning-annexation requests.

First, news sources were searched online but failed to identify any relevant articles.

Second, all of the City Council minutes posted on the RSS Feed website were searched for rezoning and annexation decisions. These minutes covered the 18-month period of March 2016 through September 2017.

During this period the following rezoning ordinances were considered and approved: Ordinance 8959-16, Ordinance 8987-17, Ordinance 8981-17, Ordinance 8878-16 and Ordinance 8958-16.

During our March 10th conference call mention was made of a nearby rezoning where approval was denied due to viewshed impacts concerns like those of Skipper Trail residents. If I heard this correctly, does anyone recall when this denial occurred and the applicant-project name?

A large number of annexations were approved during the 18-month period. Most appear to have been for individual lots. None of the annexation applications were denied.

In summary, it appears that very few, if any, rezoning or annexation requests have been denied by the City Council. However, it is unknown how many applications were withdrawn or how many approvals were granted with conditions that resolved neighborhood concerns.

The applicant has made several attempts to negotiate with Birch Lake HOA board members. This indicates that the applicant is concerned about community opposition. This concern would only exist if community opposition had delayed or negated other attempts to rezone or annex land. Obviously, further research is needed. This research could begin with a discussion with any current or former City Council members known to be supportive of community concerns. Other sources could include staff, long time community advocates, planning consultants, etc.

POLITICAL OPTION

A quick scan of Smithville aerial photos shows a number of tracts throughout the City which are undeveloped. It is likely those living near these tracts would be just as anxious to preserve their natural areas as Birch Lake residents are with regard to the Birch Lake setting. If this is true then these voters and taxpayers may support changes that preserve important tracts in a natural state and minimize impacts to neighborhoods near other vacant properties.

Smithville residents who do not live near vacant parcels may support the effort if it turns out that the City has been approving rezonings and annexations in ways that:

- Increases taxes (residential development usually causes tax increases),
- Reduces property value,
- Adds to school overcrowding,
- Exacerbates traffic congestion, neighborhood cut-through traffic, or has made roads more unsafe for walking and biking,
- Created park-recreation facility overuse,
- Damaged aquatic resources, or
- Caused other impacts.

I suggest launching a campaign to demonstrate widespread support for more responsible growth management if all of the following conditions are met:

1. It looks like preservation of the 24.5-acre tract is not realistic, and
2. You decide to ask the applicant to restrict development to the northeast portion of the site, ***but the application refuse or drags their feet***, and
3. It appears likely the City Council will approve development of the entire site.

If these three conditions are met then this political option would be initiated with a test mailing to a hundred or so Smithville residents who live next to vacant properties. The mailing would consist of

a letter and a self-addressed, stamped reply postcard. An example of this mailing is at: http://ceds.org/lyhus/Organizing_Letter.pdf.

This example showed that 13% of the homeowners who received the letter supported changes to growth management policies to prevent excessive neighborhood cut-through traffic. A normal response rate to direct-mail surveys is 1% or less. The 13% response showed a very high degree of support. And this level of response is typical in areas where poorly managed growth has degraded neighborhood quality of life.

The 13% response rate was communicated to Howard County, MD (population 313,000) County Executive Kittleman in a [letter signed by a number of organizations](#). This campaign convinced the County to adopt a more responsible policy regarding neighborhood street traffic management. Similar efforts managed by CEDS have raised environmental compliance levels from 27% to 80%.

A project known as the Lyhus Property was used as the poster-child for flawed growth management in the Howard County campaign. This resulted in tremendous pressure on the developer to find a way to resolve community concerns.

The 3474 Birch project would be used as the flawed growth management poster-child in the proposed letter. This approach would focus a great deal of attention on the 3474 Birch proposal. As public support increases, so would pressure on the applicant and the City Council to resolve your concerns. The net effect would be to substantially increase the likelihood of success.

For this approach to work it must be initiated at least a month before the City Council hearing, which I assume will not take place until May or June, 2018. Therefore, should the Birch Lake HOA board opt for partial development of the site, this must be proposed to the applicant at the March 19th meeting or shortly thereafter.

This political option can be carried out for a fraction of the cost of a protracted legal battle. At this point it appears the political approach has a much higher likelihood of success.