



TOWN OF HIGHLAND BEACH

MEMORANDUM

MEETING TYPE: Town Commission Meeting

MEETING DATE: October 18, 2022

SUBMITTED BY: Ingrid Allen, Town Planner, Building Department

SUBJECT: Introduction of “zoning district density review”

SUMMARY:

At the October 4, 2022 Town Commission Meeting, under Commission Comments, the issue of zoning district density was discussed. Recognizing the complexity of the topic, the Commission desires to first establish a framework to approach the issue. Initial suggestions for such framework included the following:

- Planning Board initiates review of issue.
- Planning Board forms a committee with residents.

Given the Commission will formally initiate their discussion on such framework at the October 18, 2022 Commission meeting, staff has completed an introductory review of the issue which is provided below.

The Town’s 2022 Strategic Priorities Plan includes a “zoning district density review” as part of its planned priorities. This initiative was a result of a public comment, made at the March 1, 2022 Town Commission meeting, by Matthew Scott of Dunay, Miskel & Backman, LLP regarding the redevelopment of an existing three (3) unit townhouse property located at 1023 Russell Drive. As provided in the table below, the current zoning district and future land use designation for the property allows for (1) dwelling unit to be developed rather than three (3) dwelling units. Note that the RML zoning district permits single-family detached and attached dwellings subject to site plan approval as well as single-family zero lot line dwellings subject to special exception approval.

Property	Zoning District/ maximum density	Future Land Use/ maximum density	Density calculation (lot size/43,560 X density)
1023 Russell Drive	Residential Multiple Family Low Density (RML)/6 units per acre	Multi Family Low Density/6 units per acre	1.37 units (based on 10,000 sq. ft. lot)

This scenario, whereby redevelopment of a nonconforming structure would reduce the number of units currently existing on a parcel of land, is not unique to this property. While staff has not conducted a Town-wide density assessment of each property, this scenario is replicated in other townhouses and other multifamily dwellings (at various densities) Townwide.

Pursuant to Section 30-105(a) of the Town Code, *if a lawful structure exists that could not be built in the zoning district within which it is located by reason of changes or restrictions to minimum lot area, maximum lot coverage, building height, required yards and setbacks, location on the lot or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the provisions listed below:*

(1) *Enlargement or alternation. The nonconforming structure shall not be enlarged or altered in a way which increases or extends its nonconformity, but any structure or portions thereof may be altered to decrease its nonconformity.*

(2) *Damage or destruction. Should such nonconforming structure or nonconforming portion of a structure be destroyed or damaged by any means to an extent of more than fifty (50) percent of the assessed value of the structure at the time of destruction, or damage, it shall not be reconstructed except in conformity with the provisions of this article.*

Section 30-105(c) of the Town Code provides an exception to number (2) above as follows:

*If a residential structure, or approved accessory structures, is **destroyed or damaged by a catastrophic event including hurricane or tropical storm, fire, flood, explosion, collapse, wind, war, or other event**, the structure may be reconstructed or repaired without regard to the extent of destruction or damage. The **reconstruction** or repair **shall not increase the height of the building, number of dwelling units, or total number of square feet** unless the comprehensive plan and the applicable zoning district regulations applicable at such time permit a greater number of dwelling units.*

The table below provides how other municipalities in Palm Beach County address such redevelopment of nonconforming structures.

Municipality	Current Code regulation
Ocean Ridge	Grandfathered structures which includes residential-type units, may be permitted to seek the demolition and redevelopment of the grandfathered structure and, in doing so, exceed the allowable density in the multifamily-zoned areas of the town, but in such circumstances must reduce the number of units which were grandfathered by at least 50 percent (fractional units to be rounded up).
Boca Raton	If any residential building located in a residential district is damaged by catastrophe , the building may be repaired or reconstructed and used to house no greater than the number of dwelling units and no greater square footage or total living area in existence in the building prior to the damage , regardless of the extent of the damage.
Lantana	Should a nonconforming structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter; except in cases of fire or act of God, in which case the structure may be replaced as it was originally constructed.

Municipality	Current Code regulation
Manalapan	Any nonconforming building and/or structure which has less than 50 percent of its previous existing floor area made unsafe or unusable by lack of normal maintenance or by ordinary deterioration may be restored or reconstructed as before , provided that the floor area of such building and/or structure shall not exceed the floor area which existed prior to such damage. All repairs shall be completed within one year after damages occur or such building and/or structure shall not be rebuilt unless rebuilt as a conforming building and/or structure.
Lake Worth Beach	In the event of a natural disaster, explosion, fire, act of God or the public enemy , the development review officer may permit the reconstruction of any nonconforming legally permitted structure to the same or decreased nonconformity as existed immediately prior to the disaster , upon proof satisfactory to the development review officer of the configuration of the prior structure, and only in compliance with the FBC. An application for reconstruction of the structure shall be filed within 12 months of the event of its destruction, unless the city commission authorizes extending the 12-month time period city-wide.

Given the current maximum density regulations of the Town Code, redevelopment of multiple family housing in accordance with current Florida Building Code (FBC) and floodplain management regulations will result in fewer units (in most cases) than originally existed (as noted above, a Town-wide assessment has not been completed). It is worth noting that redevelopment in accordance with current FBC and floodplain management regulations may increase a new structure's resiliency from destruction or damage from a future catastrophic event. The Multi-jurisdictional Climate Change Vulnerability Assessment completed by the Coastal Resilience Partnership, states that the Town has a high vulnerability to storm surge and that residential properties have some vulnerability to current tidal flooding but this could increase significantly in future years.

Typically, for a property to increase its density, a rezoning of the property to a zoning district that allows more density is required. In addition, a change to a property's future land use map designation to one that allows more density would also be required. Any increase in density requires compatibility with adjacent properties as well as an analysis of public facilities and services, traffic, public education, fire and police services, natural resources, hurricane evacuation, etc. That said, Section 30-43(d)(4)e. of the Town Code states the following:

A change in the zoning classification of land shall not be considered which involves less than forty thousand (40,000) square feet of land area and two hundred (200) feet of street frontage. This limitation shall not apply to a request to extend the boundary of an existing zoning district, or unless otherwise provided for herein.

Many RML-zoned properties along Russell Drive, Bel Air Drive, Highland Beach Drive and South Ocean Boulevard are under 40,000 square feet of land area and therefore based on Section 30-43 cannot rezone. Therefore, some options the Town Commission may consider are as follows:

- Consider an option similar to Ocean Ridge whereby nonconforming structures can be redeveloped; however, the number of units must be reduced by at least 50%. In addition, add a density calculation methodology into the Code of Ordinances whereby if the density calculation results in a fraction that is 0.50 or greater, the number is

rounded up (e.g. 1.5 equals 2 units). Fractions lower than 0.50 are rounded down (e.g. 1.4 equals 1 unit).

- Change maximum density requirements for nonconforming structures in both the Town Code and Comprehensive Plan. This may be specific to the RML zoning district or include other zoning districts.
- “No action” whereby the redevelopment of nonconforming structures shall comply with the current property development regulations as provided in the Town Code.

ATTACHMENTS

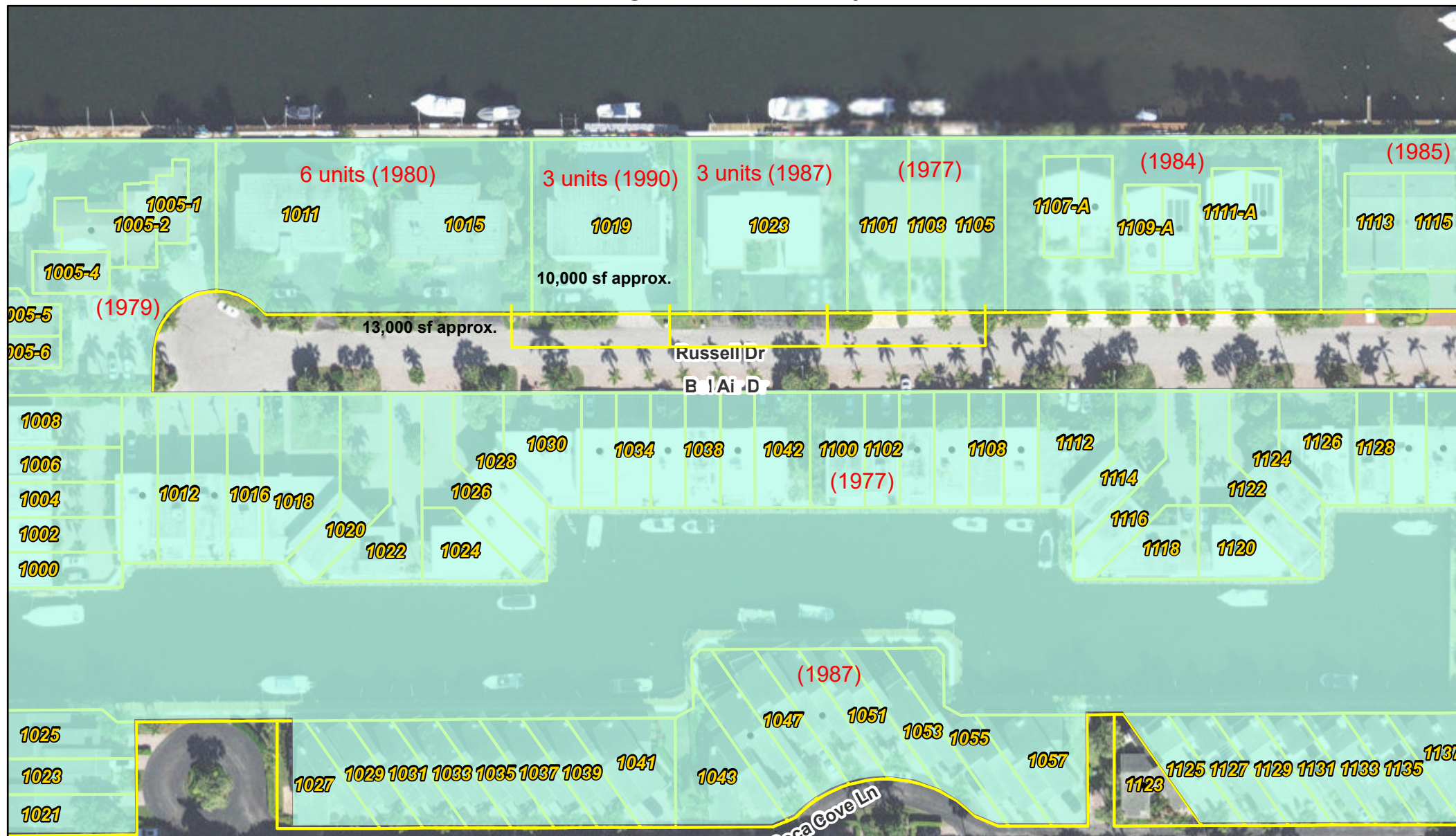
Maps: RML zoned properties along the westside of State Road A1A, Russell Dr., Bel Air Dr. and Highland Beach Drive (*Note these maps represent a sample of existing low density structures in the RML zoning district*).

Letter from Matthew Scott (provided to Town Commission on March 1, 2022).

RECOMMENDATION

At the discretion of the Town Commission.

RML zoning - No. of units/year built



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Zoning

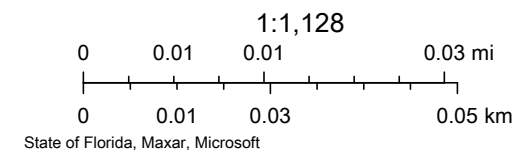
RML Residential Multiple Family Low Density

Highland Beach Boundary

Highland Beach Address Points

Highland Beach Parcels

Streets Centerline



RML zoning - No. of units/year built



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Zoning

RML Residential Multiple Family Low Density

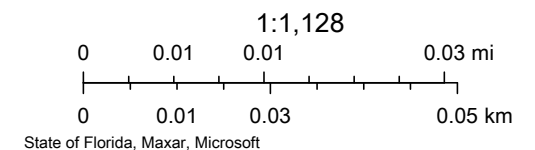
RS Residential Single Family

Highland Beach Boundary

• Highland Beach Address Points

Highland Beach Parcels

Streets Centerline



RML zoning - No. of units/year built



RML zoning - No. of units/year built



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Zoning

RML Residential Multiple Family Low Density

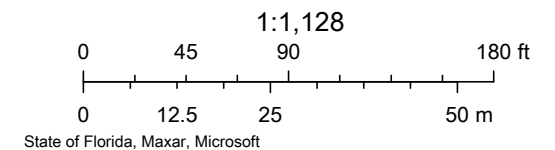
RS Residential Single Family

Highland Beach Boundary

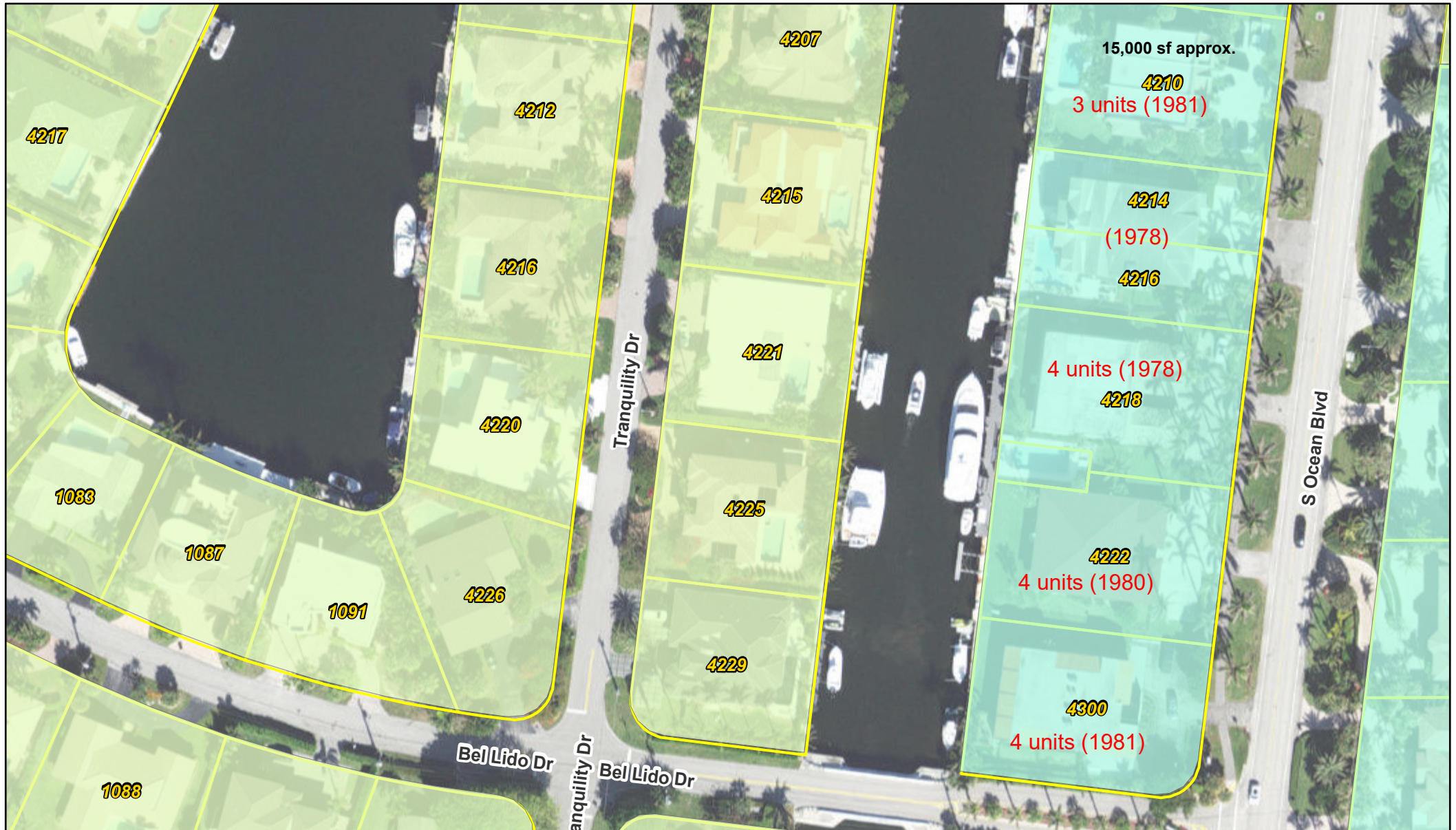
Highland Beach Address Points

Highland Beach Parcels

Streets Centerline



RML zoning - No. of units/year built



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Zoning

RML Residential Multiple Family Low Density

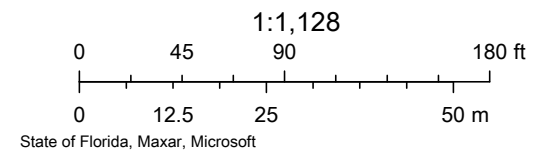
RS Residential Single Family

Highland Beach Boundary

Highland Beach Address Points

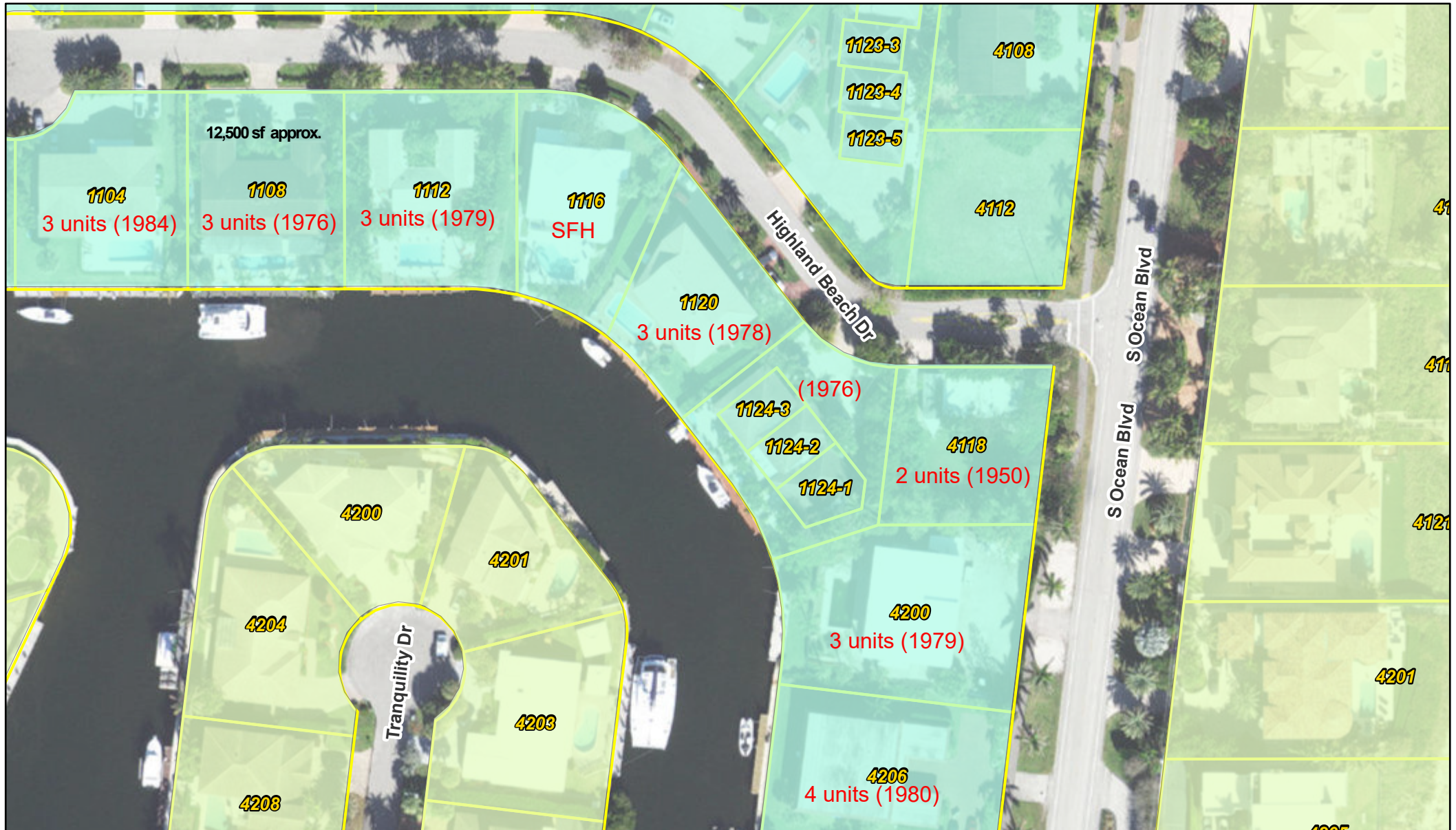
Highland Beach Parcels

Streets Centerline



State of Florida, Maxar, Microsoft

RML zoning - No. of units/year built



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Zoning

RML Residential Multiple Family Low Density

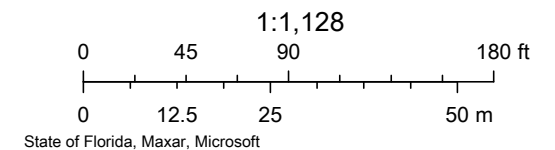
RS Residential Single Family

Highland Beach Boundary

• Highland Beach Address Points

Highland Beach Parcels

Streets Centerline



RML zoning - No. of units/year built



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Zoning

RML Residential Multiple Family Low Density

RS Residential Single Family

Highland Beach Boundary

Highland Beach Address Points

Highland Beach Parcels

Streets Centerline

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0 45 90 180 ft
0 12.5 25 50 m
State of Florida, Maxar, Microsoft



**DUNAY
MISKEL
BACKMAN** LLP

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Memorandum Regarding Redevelopment Issue in Town of Highland Beach

Statement of the Issue

The Town of Highland Beach Zoning Code inadvertently has downzoned properties in the Multiple-Family Zoning Districts such that they cannot be redeveloped without losing currently existing density, thereby disincentivizing modernization and flood proofing of aging structures in these areas.

Executive Summary

The Town is a highly desirable place to live with its strong residential focus and location on the barrier island in south Palm Beach County. The Town's Zoning Code, as it should, seeks to preserve the Town's character with regulations aimed at discouraging large commercial and high-density residential development. However, the Code's density regulations unintentionally have created a situation where properties in Multiple-Family Zoning Districts cannot be redeveloped without reducing the number of units currently existing on the properties.

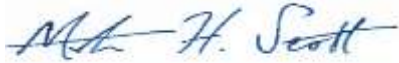
For example, condominium buildings along Ocean Boulevard and townhomes on Russell Drive, Bel Air Drive, and Highland Beach Drive could not be rebuilt without reducing the number of units permitted on the properties. 1023 Russell Drive demonstrates the problem. It is currently improved with 3 townhomes, which were built around 50 years ago. The townhomes, which could benefit from rehabilitation, are below current FEMA elevation requirements and at risk of flooding during a storm event. However, raising the elevation of the structure would require tearing it down. If the structure was demolished, the Town's Code would dictate only 1 residence could be built on site where 3 currently exist. In effect, the Town's Code discourages redevelopment of properties at a time when most southeast Florida municipalities are actively promoting climate change resiliency efforts.

This issue does not appear to be intentional. Russell Drive, Bel Air Drive, and Highland Beach Drive are all zoned "RML," Residential Multiple-Family Low Density. The Code states, "It is the purpose of this residential zoning district to encourage alternative housing styles, such as townhouses and patio house(s)" Most, if not all, of the properties on these streets could not be developed today with townhomes due to the Code's density regulations, and the problem is more extreme in the RMM and RMH districts.

Potential Solutions

The Town does not want to encourage an increase in density in these areas. Rather, the Town should amend the Code to create a path for property owners to modernize their properties without losing existing density. One simple solution would be to amend Article VI of the Code, relative to Nonconformities, to allow for maintenance of existing density on sites which are being reconstructed to raise the elevation of the structures for flood proofing purposes, provided the new construction meets all other Code requirements. Another option is amending the Comprehensive Plan and Code to marginally increase the allowed density in these areas so the properties can keep their existing density. However, this latter option is more complicated, expensive, and time

consuming. There are a variety of ways to solve this problem. The undersigned attorney has been retained by Ellemar Luxury Construction, which is actively looking to redevelop 1023 Russell Drive and potentially other properties in the Town. In the event the Commission is amenable to pursuing solutions to the issue, Ellemar through undersigned counsel would be happy to spearhead this effort in collaboration with Town Staff.

A handwritten signature in blue ink that reads "Matthew H. Scott". The signature is fluid and cursive, with the first name "Matthew" and last name "Scott" being clearly legible, and the middle initial "H." in between.

Dated: March 1, 2022

Matthew H. Scott, Esq.
Dunay, Miskel & Backman, LLP