

June 9, 2020 – Presented for 1st Reading
June 23, 2020- Presented for approval.

2020-30 (2ND READING): ORDINANCE TO AUTHORIZE ENCROACHMENTS INTO CITY-OWNED POND P5 (PIN 1650001426) WITH PORTIONS OF LANDSCAPE BEDS, LIGHTING, A WALL, AND A CONCRETE SIDEWALK IN ORDER TO BEAUTIFY A CITY PROPERTY.

Applicant/Purpose: Cape Dutch LLC (DRG LLC, Agents) / to permit the encroachment into a City parcel for beautification purposes.

Brief:

- The Cape is a residential development w/in the Grande Dunes PUD.
- A city-owned parcel adjacent to The Cape, on the corner of Grande Dunes Blvd & Highway 17 Business, includes a pond integral to the local stormwater drainage system.
- The developer intends to install a 'mail pavilion' on Cape Dutch Loop, adjacent to the city pond.
- Planning Commission: recommends approval (7-0).
- No changes since 1st reading.

Issues:

- The mail pavilion includes landscaping, lighting, a wall, & a sidewalk, portions of which will encroach into the public pond parcel.
- Proposed improvement designs are in keeping w/ improvements made throughout the Grande Dunes PUD.
- A maintenance agreement, insurance, & hold harmless agreement have been vetted by the Public Works Department.

Public Notification:

- Legal ad ran 5/15/20.
- Sign posted on property.
- Public Hearing 6/2/20.
- 10 property owners notified by letter.
- No calls for information or comments to date.

Alternatives:

- Modify the request.
- Deny the proposed ordinance.

Financial Impact: N/A

Manager's Recommendation:

- I recommend 1st reading (6/9/2020).
- I recommend 2nd reading & adoption (6/23/2020).

Attachment(s): Proposed ordinance, staff report.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH
CAROLINA

**AN ORDINANCE TO AUTHORIZE ENCROACHMENTS
INTO CITY-OWNED POND P5 (PIN 1650001426) WITH
PORTIONS OF LANDSCAPE BEDS, LIGHTING, A
WALL, AND A CONCRETE SIDEWALK IN ORDER TO
BEAUTIFY A CITY PROPERTY**

WHEREAS Cape Dutch, LLC, the owners of certain properties in The Cape development in the Grande Dunes Planned Unit Development (PUD), desire to provide amenities to their residents keeping visual consistency throughout the development; and

WHEREAS the City Council finds it is appropriate to grant permission to install landscaping, lighting, sidewalk, and a wall to beautify said amenities and an adjacent city-owned pond;

THEREFORE, IT IS HEREBY ORDAINED that Cape Dutch, LLC (hereinafter referred to as "the Applicant") and assignees, with interests located in the Grande Dunes PUD, having shown good cause, be allowed to encroach upon said pond parcel (PIN#1650001426), the locations and encroachment details being specified on the attached exhibits (Exhibits A through E).

IT IS FURTHER ORDAINED that the permission to encroach into this public property is granted on the condition that the Applicant, nor its assigns, shall have no rights or interest in the use of the public property encroached upon superior to any other member of the public.

IT IS FURTHER ORDAINED that in granting this encroachment, the city does not undertake to improve or maintain the improvements at city expense either now or in the future and hereby provides notice of this fact to the Applicant and any subsequent owner of the property to be served.

IT IS FURTHER ORDAINED that the City of Myrtle Beach reserves the right and privilege to discontinue this use at any time and that, as a condition of the permission to make the improvements, the Applicant shall specifically agree that upon notice by the City of Myrtle Beach that the continued use of the public property in such a manner is not in the best interest of the City of Myrtle Beach or that the public property is required for public or municipal use which is inconsistent with continued use by the Applicant, all improvements constructed pursuant to this ordinance will be removed at no cost to the city within thirty (30) days.

IT IS FURTHER ORDAINED that as a condition of the use of the public property, the Applicant shall agree to indemnify and hold harmless the City of Myrtle Beach, its officers, employees and agents from any claims or actions of any nature which may arise as a result of the above mentioned improvements and shall continuously maintain in effect an amount and type of liability insurance as shall be required by the City of Myrtle Beach.

This ordinance shall become effective immediately upon adoption.

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BRENDA BETHUNE, MAYOR

ATTEST:

LINDSEY HARING, ACTING CITY CLERK

1st Reading: 6-9-2020

2nd Reading: 6-23-2020

Exhibit A
Property Map



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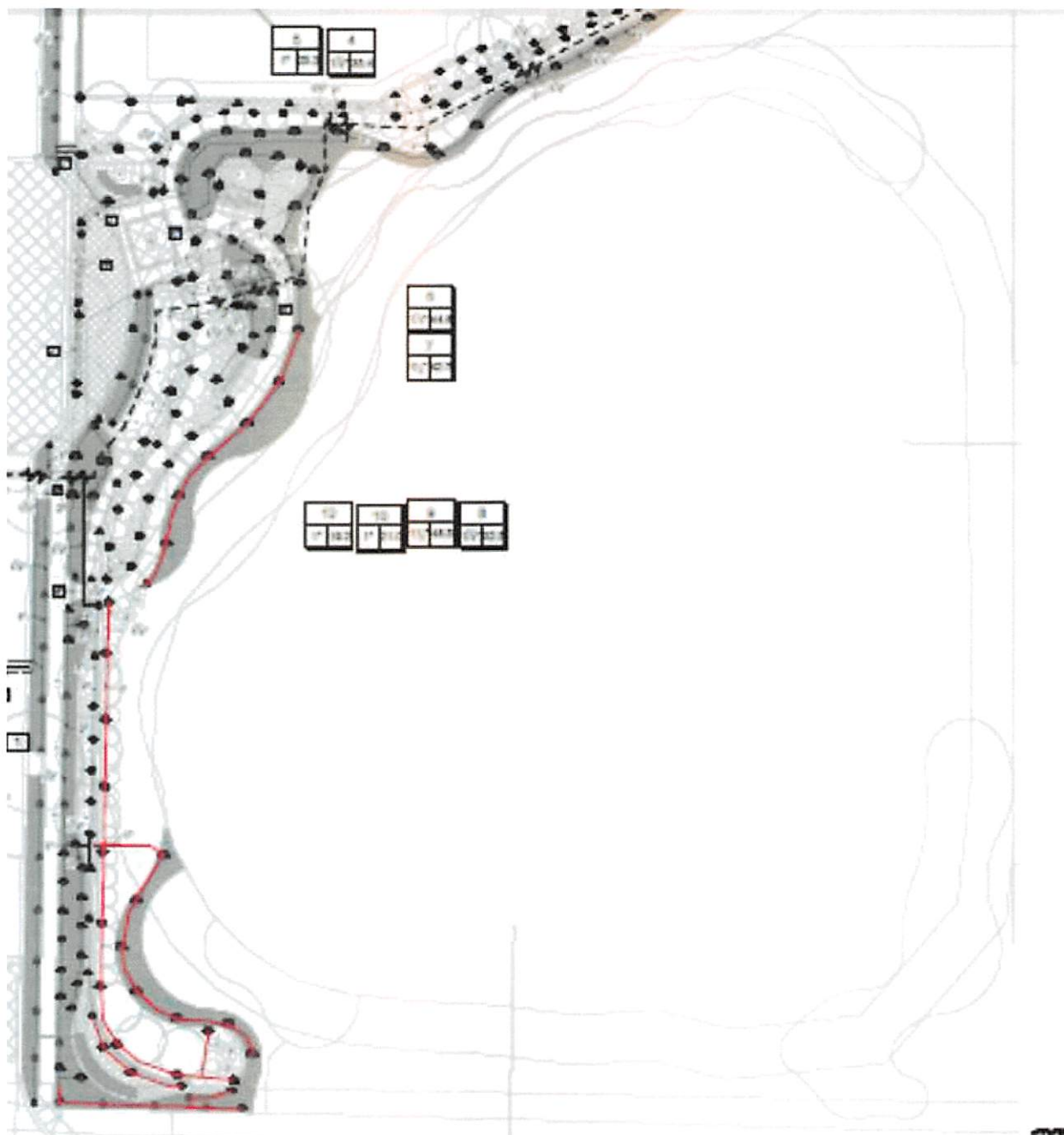


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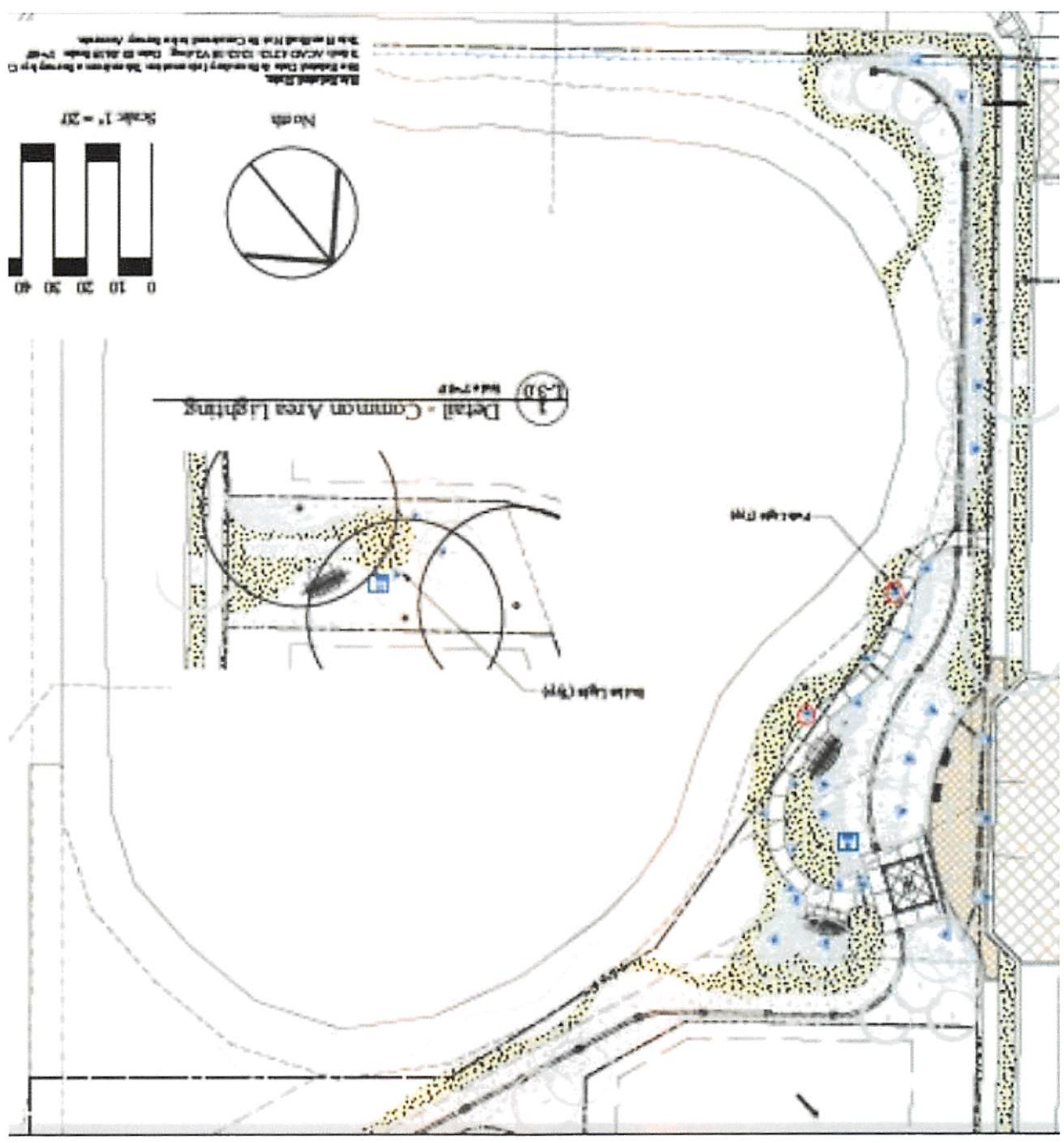
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Exhibit D Irrigation Encroachment



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Exhibit E
Lighting Encroachment



1 **SUPPORTING MATERIALS**

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3 **HOLD HARMLESS SIGNED** Included with application.

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5 **PERMIT REQUIREMENT, BASED ON CHAPTER 19-3:**

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7 **Question 1: Is the encroachment exempt?**

- 8 • **No.** Only "grass" is allowed to be planted in the right-of-way without a permit. This
9 encroachment includes landscaping other than grass, sidewalk, wall, and lighting.

10 **Question 2: Does the encroachment meet the guidelines where the Planning**
11 **Commission could issue an encroachment permit?**

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13 • **No.** The requested encroachment includes materials other than landscaping.

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15 **FINDINGS OF FACT**

16 Sec. 19-3(i) To recommend approval, Planning Commission must find all of the following:

- 17 1. The proposed encroachment, by layout or materials choice, presents no physical threat of
18 safety to pedestrians, or others in lawful use of the public space, or to their property.
19 2. The proposed encroachment is compatible in use and design with the public space.
20 3. The constructed encroachment will increase the assessed value of the property to which
21 it is attached and will not decrease the value of any property in the immediate vicinity.

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23 **STAFF COMMENTS**

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25 **Fire, Zoning:** No concerns.
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