

# MEMORANDUM

## Development Services

**ADMINISTRATIVE MEMORANDUM NO. 18-009**

**DATE:** January 10, 2018

**TO:** Planning and Zoning Board

**VIA:** David L. Recor, ICMA - CM, Development Services Director  
Jennifer Gomez, AICP, Assistant Director of Development Services

**FROM:** Jean E. Dolan, AICP, Principal Planner

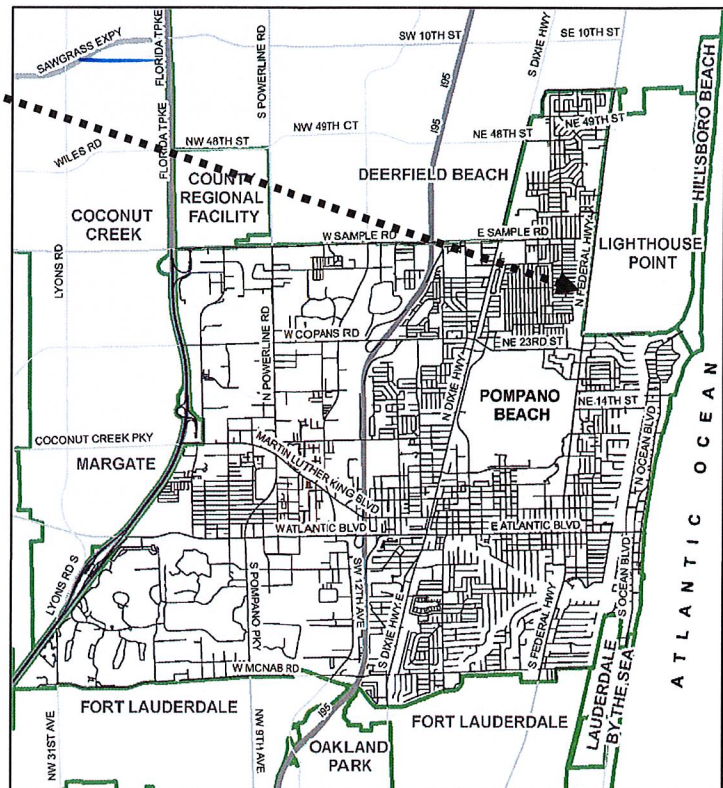
**RE:** NE 28<sup>th</sup> Court Rezoning  
January 24, 2017 Meeting

P&Z #17-13000005

Pompano Ford Lincoln is the Applicant for the rezoning of 6 single family homes on the south side of NE 28<sup>th</sup> Court to facilitate the development of a surface parking lot (Phase 1) and, eventually, a parking structure, to support business activities at the Ford dealership, the adjacent property owner. Pompano Ford Lincoln either owns or has a purchase contract on all of the six single-family homes subject to this rezoning. The project was reviewed by the Development Review Committee (DRC) on October 4, 2017 and the responses to the DRC comments provided at that time are included in the review and summary section of this report. At the time the DRC comments were prepared, Pompano Ford Lincoln did not have purchase contracts on all 6 houses and the City, therefore, was acting as the Applicant.

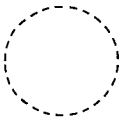
The subject property is located west of Federal Highway and south of NE 28<sup>th</sup> Court in the Cresthaven neighborhood.

1628, 1642, 1656, 1670, 1684, 1698 NE 28 Ct  
Folios: 484224130060,  
484224130070, 484224130080,  
484224130090, 484224130100,  
484224130110.



## LEGEND

### FOR LAND USE PLAN

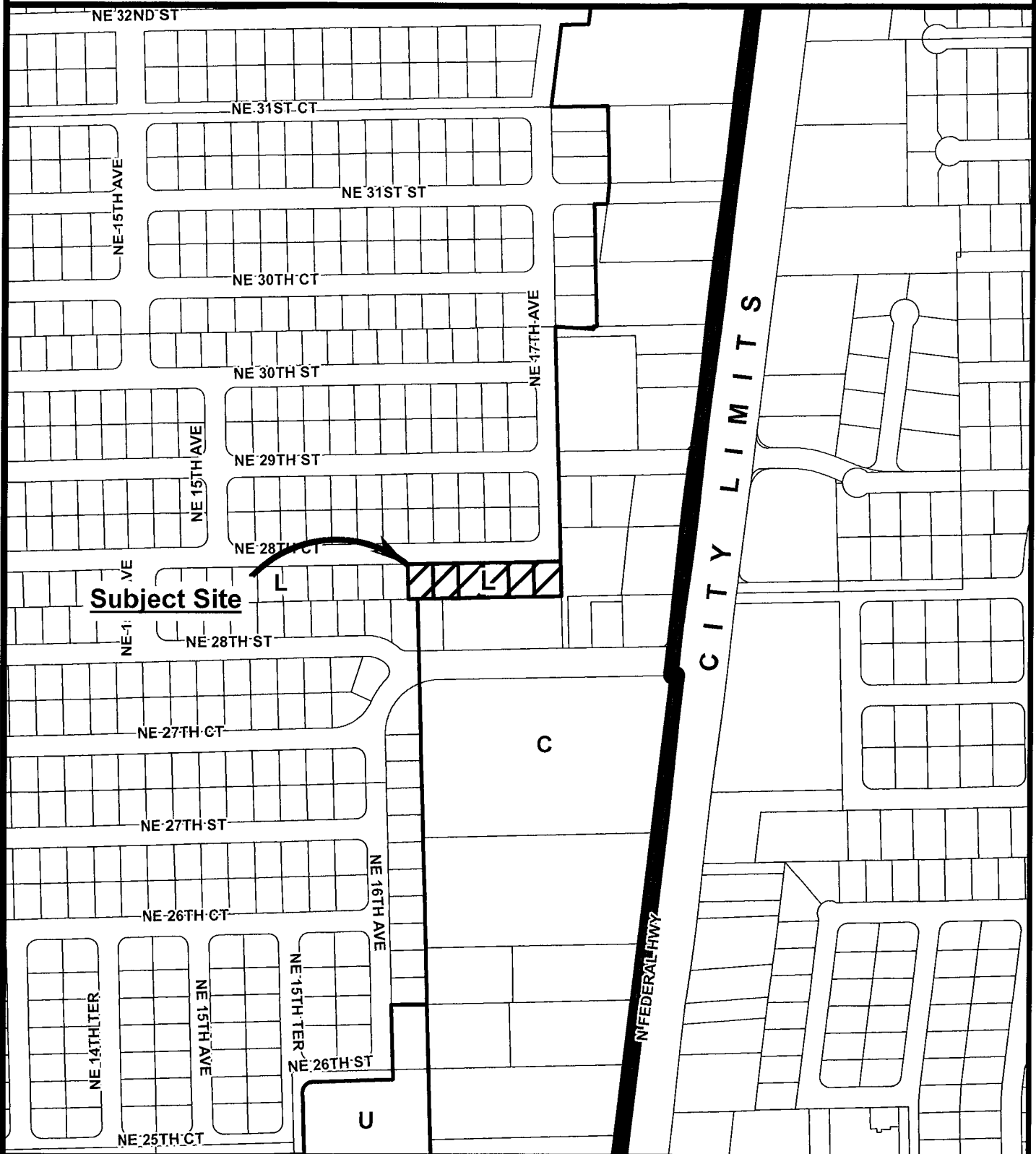
<u>Symbol</u>	<u>Classification</u>	<u>Units/ Acre</u>
	Residential	
* L	Low (1-5 DU/AC)	
LM	Low- Medium (5-10 DU/AC)	
M	Medium (10-16 DU/AC)	
MH	Medium-High 16-25 DU/AC)	
H	High (25-46 DU/AC)	
12	Irregular Density	
36	Irregular Density	
>	Commercial	
CR	Commercial Recreation	
I	Industrial	
T	Transportation	
U	Utilities	
CF	Community Facilities	
OR	Recreation & Open Space	
W	Water	
RAC	Regional Activity Center	
LAC	Local Activity Center	
DPTOC	Downtown Pompano Transit Oriented Corridor	
	Number	
	Reflects the maximum total number of units permitted within the dashed line of Palm Aire & Cypress Bend being 9,724 and 1,998	

* Existing
> Proposed

### FOR ZONING MAP

<u>Symbol</u>	<u>District</u>
RS-1	Single-Family Residence 1
RS-2	Single-Family Residence 2
RS-3	Single-Family Residence 3
* RS-4	Single-Family Residence 4
RS-L	Single-Family Residence Leisureville
RD-1	Two- Family Residence
RM-7	Multiple-Family Residence 7
RM-12	Multiple-Family Residence 12
RM-20	Multiple-Family Residence 20
RM-30	Multiple-Family Residence 30
RM-45	Multiple-Family Residence 45
MH-12	Mobile Home Park
B-1	Limited Business
B-2	Neighborhood Business
> B-3	General Business
B-4	Heavy Business
M-1	Marina Business
CR	Commerical Recreation
I-1	General Industrial
I-1X	Special Industrial
O-IP	Office Industrial Park
M-2	Marina Industrial
TO	Transit Oriented
PR	Parks & Recreation
CF	Community Facilities
PU	Public Utility
T	Transportation
BP	Business Parking
LAC	Local Activity Center
RPUD	Residential Planned Unit Dev.
PCD	Planned Commercial Development
PD-TO	Planned Development - Transit Oriented
PD-I	Planned Development - Infill
RM-45 HR	Multiple-Family Residence 45 High-Rise Overlay
AOD	Atlantic Boulevard Overlay District
CRAO	Community Redevelopment Area Overlay
NCO	Neighborhood Conservation Overlay
APO	Air Park Overlay
DP	Downtown Pompano Beach Overlay

# CITY OF POMPANO BEACH OFFICIAL LAND USE MAP

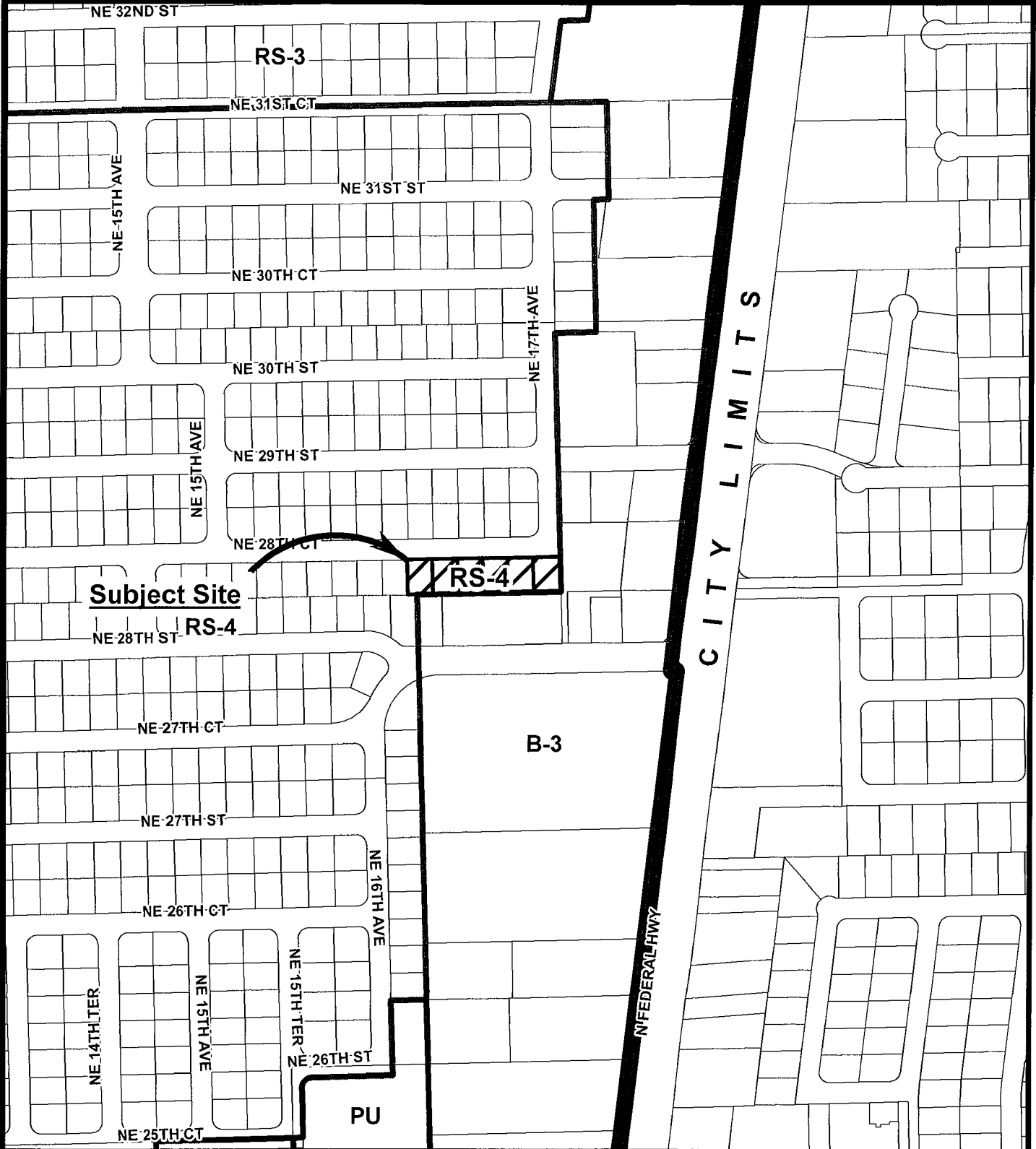


1 in = 333 ft

3

PREPARED BY:  
DEPARTMENT OF  
DEVELOPMENT SERVICES

# CITY OF POMPANO BEACH OFFICIAL ZONING MAP



1 in = 333 ft

4

PREPARED BY:  
DEPARTMENT OF  
DEVELOPMENT SERVICES

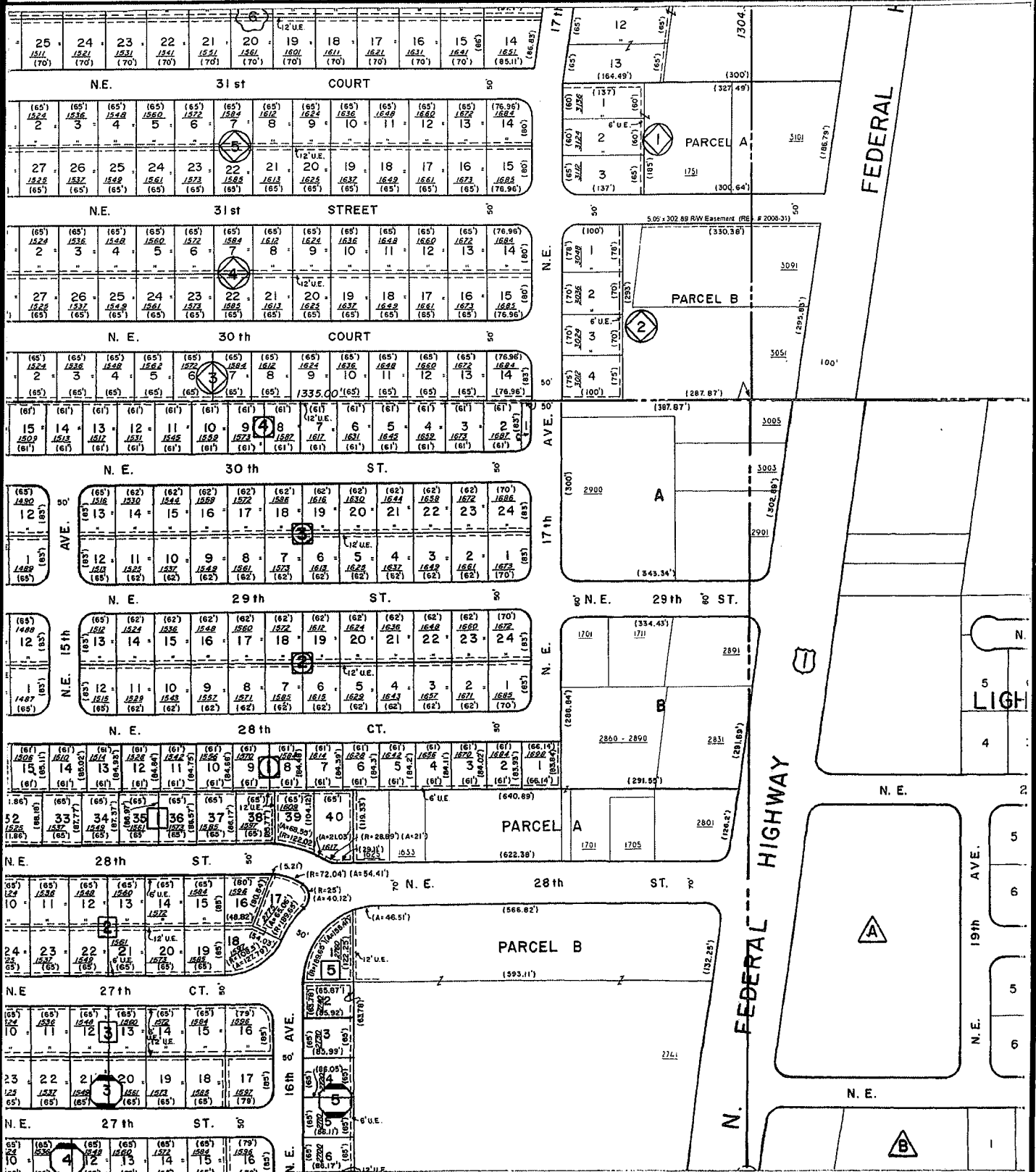
# CITY OF POMPANO BEACH AERIAL MAP



1 in = 333 ft

PREPARED BY:  
DEPARTMENT OF  
DEVELOPMENT SERVICES

# EXCERPT FROM THE CITY OF POMPANO BEACH PLAT MAP



SCALE: NTS

NORTH

## REVIEW & SUMMARY

- A. Pursuant to Section 155.2207(B) [Development Review Committee Report and Notice to Applicant], the Development Services Director has compiled the department comments from the Development Review (DRC) meeting held on October 4, 2017 which are provided below with the Design Team's response to those comments:

### PLANNING

Plan Reviewer: Jean E. Dolan, AICP

Status: Review Complete Pending Development Order

#### Comment:

1. Future Land Use Designation: As noted in the letter from Greenspoon Marder dated September 14, 2017, the 5% Residential to Commercial flexibility provision will have to be applied to the requested rezoning to enable the project to move forward without a City and County Future Land Use Map amendment. The City will have to sponsor the nonresidential flexibility application unless Holman Automotive Group is able to achieve ownership or become contract purchaser of all the property subject to the flexibility application.

To date, the City has 277.83 acres of Residential to Commercial flexibility available and thus the allocation of flex is not an issue in regard to availability. The City requests submittal of a conceptual site plan with elevations of the proposed parking structure to support the request for residential to commercial flexibility to demonstrate the specifics on how the proposed parking structure will be designed and located on the site to be compatible with the adjacent single family homes. The application should include the commercial use restrictions that will ensure compatibility with the adjacent residential development. The application for the flexibility allocation can be processed concurrent with the application for rezoning.

#### Response:

**Acknowledged. Examples of structured parking that include residential façade treatments that will inspire the Applicant's ultimate designs have been discussed with staff (these are attached to the nonresidential flex application) and will include substantial landscaping between the building and adjacent residential uses.**

**Please see attached draft of declaration of restrictive covenants that would restrict the types of commercial uses that would be allowed to occur in the property rezoning area.**

#### Comment:

2. Compatibility, setbacks, buffers and landscaping: As noted in the letter from Greenspoon Marder dated September 14, 2017, the intent of rezoning the 6 single-family homes is to "optimize compatibility for the neighborhood", provide a parking structure that is "reduced in height and to have adequate land area to provide an enhanced buffer to not only the benefit of the single family homes on the north side of the street but also the two immediately adjacent to the west..."

(a) Setbacks and Buffer Enhancements: The conceptual site plan and elevations requested to support the allocation of residential to commercial flex should quantify the intended enhancements to setbacks and buffers. All B-3 setbacks are zero feet except for the 30-foot rear setback (assuming the structure is less than 40-feet in height). The code section referenced in the above noted letter, Residential Compatibility Standards (155.5604), requires a Type C buffer between a surface parking lot and adjacent single-family residential development. There are two options associated with a Type C buffer, the most generous requires a 25 foot buffer with a 4-foot berm (which can be within the 25 foot buffer) with a 4 foot wall or opaque fence atop the berm and with trees planted on both sides of the fence or wall.. This buffer will have to be 30 feet in width at the rear property line as the B-3 rear setback requires a minimum 30-foot setback. Please show on the requested site plan and elevations how these code

requirements are anticipated to be enhanced, wherever the parking structure will be adjacent to, or across the street from, an existing single-family home to remain.

(b) **Parking Structure Articulation:** In regard to parking structures, the same Code section (155.5604) states that the walls of parking structures adjacent to existing single-family development will be "designed to appear as an articulated building wall to soften its visual impact." Please ensure the building elevations provided to support the allocation of residential to commercial flexibility and the rezoning demonstrate how the walls of the parking structure will be articulated on every wall that will be adjacent to an existing single-family home to remain.

(c) **Reduced Height -** In regard to height limitations, the same code section (155.5604) allows a parking structure adjacent to existing single-family residential development to be up to 40 feet in height before additional setbacks of 1-foot for each 1-foot in height is required up to half the height of the building. Please provide elevations to show the proposed height of the parking structure and how it will be reduced compared to this Code requirement.

**Response:**

- (a) **Acknowledged. Examples of structured parking that include residential façade treatments have been discussed with staff and will inspire the Applicant's ultimate designs. Site features will include substantial landscaping between the building and adjacent residential uses to the maximum extent possible while ensuring the parking structure depth will allow for functional design. Specifically, see the conceptual site plans provided for the surface lot (Phase 1) and the parking structure (Phase 2) scenarios which show the intended buffers.**
- (b) **The walls of the parking structure are proposed to promote residential compatibility by inclusion of residential elements to the façade that soften the visual impact of the garage and create the impression that the structure is a multi-family building that could be built in an RM 20 or RM 45 zone where a 10 foot setback is required by Code and considered compatible with single-family development.**
- (c) **The parking structure building height will be less than 55-feet (4-stories). It must be noted that the proposed setback area shown on the conceptual site plan would allow for a much higher structure per the Residential Compatibility Standards in the City's Code Section 155.5604.C.2 which allows up to 40 feet with no additional setback and then an additional 1-foot of setback for each foot of height above 40 feet.**

**Comment:**

3. The letter dated September 14, 2017 in support of the allocation of residential to commercial flexibility and the B-3 rezoning states "The expanded development area's street access, buffer, and setbacks, including landscaping, will make a better transition to the single-family neighborhood than can possibly exist were the south half of the block alone to be developed with a similar use."

Street Access: Please specify the intent associated with "expanded development area's street access.". The parking structure should have no access to NE 28th Court. The only access to the parking structure should be from NE 28th Street which will be the case whether the property associated with the 6 single family homes is part of or adjacent to the parking structure. As noted in the letter the intent is to create "a low intensity use that neither generates trash nor additional traffic to the neighborhood", therefore, street access to the expanded development area should not be affected by the rezoning.

**Response:**

**The current design being considered for the site does include a connection between NE 28<sup>th</sup> Street through the garage to NE 17<sup>th</sup> Avenue. This is considered the best option because this connection directly to NE 17<sup>th</sup> Avenue will eliminate the existing cut-through car carrier truck traffic. No left turn will be permitted from this access drive which will keep car carrier trucks and other traffic from the garage off of NE 28<sup>th</sup> Court and from cutting through Cresthaven, which is currently be the case.**

Additionally, it must be noted that as part of the rezoning to B-3, the proposed low-intensity vehicle inventory storage and parking use will be guaranteed as a restricted use on the property in perpetuity by virtue of a declaration of restricted covenants between the property owner and the City that will be binding on all future owners of the property and that cannot be amended without the City's approval.

Comment:

4. The letter dated September 14, 2017 states "...assemblage of the entirety of properties within the suggested rezoning area is not feasible..." and "Holman does not own nor will it own all of the properties within the suggested rezoning area..."
5. Outparcels: The design of the parking structure shown in the conceptual site plan and elevations requested in comment #1 should specify the treatment of any outparcels being rezoned but not included in the parking structure footprint.

**Response:**

The properties being rezoned and included in the site plan area are now entirely under either ownership or purchase contract by Pompano Ford Lincoln and will be used predominantly for buffering purposes and drainage detention areas that also contribute to and enhance overall buffering for the site. See the attached conceptual site plans for the Phase 1 surface parking lot and the Phase 2 Parking Garage for the anticipated details on the perimeter buffers to be provided.

Comment:

6. Conforming Single Family Homes – It is not the intent of the City to render any existing single-family homes remaining in the area being rezoned to B-3 as nonconforming. Staff will continue to investigate how this can be accomplished. It may need to be part of the flex application and approval process and be stated as one of the use restrictions on the conceptual site plan.

**Response:**

Now that Pompano Ford Lincoln have all six properties either under contract or ownership, no existing single-family homes are in jeopardy of remaining within the area being rezoned.

Comment:

7. Neighborhood Meeting Requirement - Prior to being placed on a Planning and Zoning Board Agenda please conduct a neighborhood meeting in accordance with Code requirements for Rezoning (155.2403) that meets the standards established for such meetings in Code section 155.2302. Please be prepared to document and address the issues raised at the neighborhood meeting prior to attending the P&Z Board hearing.

**Response:**

Acknowledged. Several neighborhood meetings have been conducted. Dates of those meetings are as follows: October 12<sup>th</sup>, 2017, December 12<sup>th</sup>, 2017 and the most recent on January 8, 2018. Issues raised and addressed will be presented at the P&Z hearing.

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## ENGINEERING DEPARTMENT

Plan Reviewer: David McGurr

Status: Review Complete. No Comments

Comment: No comments.

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## FIRE DEPARTMENT

Plan Reviewer Jim Galloway

Status Review Complete Pending Development Order

**Comment:**

This P&Z application is able to meet all of the Fire Department requirements at this time for REZONING ONLY. Site plan approval will be required, maintaining all proper fire department access and water supply requirements as per chapter 18 of NFPA 1 as amended from time to time.

\*Additional comments may follow throughout the remainder of the permitting process. The buildings shall be in compliance with All NFPA Standards prior to receiving Fire Department approval.

**Response: Acknowledged.**

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**BUILDING DIVISION**

Plan Reviewer Sal Pravata

Status Review Complete No Comments

Comment: No comments.

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**BSO**

Plan Reviewer Patrick Noble

Status Review Complete. No Comments

**Comment:**

Disclaimer: The services of an experienced, qualified and certified Security Crime Prevention/ CPTED Consultant are highly recommended. This review does not guarantee a crime will never occur; it is an effort to mitigate opportunities for crime and to help avoid any present and future security deficiencies, conflicts, or liabilities that might occur without any review.

Note: DRC submissions require a CPTED/ Security Strengthening Narrative Folder and a separate Drawing Folder for review. All mandatory compliance condition requirements MUST BE LISTED AND SPECIFICALLY ADDRESSED WITH DETAILS on Narrative and Drawing plans.

No Narrative/ or Drawings to review so NO COMMENTS OR CONDITIONS other than to plan in advance that since parking garages historically have higher incidents of criminal activity enhanced security measures will be expected.

**Response: Acknowledged.**

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**CRA**

Plan Reviewer Max Wemyss

Status Review Complete No Comments

**Comment:**

This rezoning is not within the CRA and does not impact the CRAs goals and objectives. Therefore, the CRA offers no comments or objections at this time.

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**UTILITIES**

Plan Reviewer Nathaniel Watson

Status Review Complete Pending Development Order

**Comment:**

1. Please note that additional comments may be forthcoming contingent upon future submittals and the development review process.

**Response: Acknowledged.**

Comment:

2. Given the submittal, the City of Pompano Beach Utilities Department has no comment with regard to the requested Rezoning from RS-4 to B-3 for the subject properties.

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## **LANDSCAPE REVIEW**

Plan Reviewer Mark Brumet

Status Review Complete. Pending Development Order

Comment:

Comments will be forthcoming pending site plan approval.

**Response: Acknowledged.**

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## **ZONING**

Plan Reviewer: Pamela Stanton

Status Review Complete. Pending Development Order

Comment:

1. Provide conceptual plans that demonstrate how the proposed parking structure project is consistent with the Goals, Objectives and Policies of the Comprehensive Plan Land Use element.

**Response:**

**Acknowledged. Examples of structured parking that include residential façade treatments that demonstrate the consistency with the Goals, Objectives, and Policies of the Comprehensive Plan Land Use element have been discussed with staff.**

**Rezoning will create a commercial node at the east end of the block and will allow for sufficient space to properly buffer and transition from the neighborhood to the commercial plaza at the terminus of NE 28th Court, consistent with policy 01.03.07 of the Future Land Use Element of the Comprehensive Plan:**

**01.03.07 Require the provision of decorative structural or vegetative buffers between different density residential land uses, and residential and non-residential land uses unless the applicant can demonstrate by evidence that the proper buffer is provided.**

**Providing the best possible buffers and developing a low-rise parking structure that appears like a multi-family building is compatible with adjacent residential uses. This is consistent with policy 01.03.11 of the Future Land Use Element of the Comprehensive Plan:**

**01.03.11 Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.**

Comment:

2. Provide conceptual project plans that indicate the proposed project is in general compliance with the applicable standards of the Zoning Code, specifically Article 3 Zoning Districts and Article 5 Development Standards.

**Response:**

**Acknowledged. The ultimate plans will demonstrate the compliance with the applicable standards of the Zoning Code, specifically Article 3 Zoning Districts and Article 5 Development Standards.**

**Compliance of the site plan with the Zoning Code standards will be evaluated and reviewed at the time of site plan submittal.**

Comment:

3. Provide additional information indicating how the proposed development will comply with the Residential Compatibility Standards found in code section 155.5604, which were referenced in the project narrative.

**Response:**

**Acknowledged. Please see response to Planning Comment #2 above.**

Comment:

4. Additional comments will be rendered upon submittal of the above requested documentation and/or when the project submits for site plan review.

**Response: Acknowledged.**

Comment:

5. The remaining single family residence will be rendered nonconforming to the proposed commercial zoning district. Indicate if the residence will be treated as legally nonconforming for any future improvements or if a different stipulation will be included for the remaining residence.

**Response:**

**Now that all 6 homes are under either purchased or under contract for purchase, there is no potential for any single-family residence to remain after rezoning.**

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## **SOLID WASTE AND RECYCLING**

Plan Reviewer Beth Dubow

Status Review Complete. No Comments

Comment:

1. Solid Waste and Recycling has no objections to the proposed rezoning.

NOTE: Additional comments may be necessary based upon revisions, additional plans and/or documents. Contact Beth Dubow at 954-545-7047 or beth.dubow@copbfl.com should you have any questions or concerns regarding this review.

**Response: Acknowledged.**

**C. The following goals, objectives and policies of the City's Comprehensive Plan have been identified as pertinent to this rezoning:**

### **Policy**

01.02.01 Require new commercial and residential (of more than 10 dwelling units) development to provide their primary access to the abutting arterial roadway system with only secondary access points to local streets so that traffic impacts to single family neighborhoods are minimized.

**Compatibility Statement:** Primary access to the site will continue to be from Federal Highway and NE 28<sup>th</sup> Street. The proposed rezoning to B-3 will be conditioned to not allow any cut through commercial traffic access onto NE 28<sup>th</sup> Court from the proposed connection between NE 28<sup>th</sup> Street and NE 17<sup>th</sup> Avenue. The car carriers that are currently cutting through Cresthaven will be directed to exclusively use the connection being considered onto NE 17<sup>th</sup> Avenue thus alleviating the existing cut-through condition.

## Policy

- 01.02.02 Consider the preservation of established single-family and low-density neighborhoods in all re-zonings, land use plan amendments, and site approvals.

**Compatibility Statement:** The land use and zoning change will:

- (1) create a deeper commercial lot which allows for development of a reasonably efficient parking structure.
- (2) create a street-edge as the separation between the commercial and residential districts rather than rear property lines (single-family backyards) thus increasing the separation between commercial and single-family residential uses.
- (3) enhance public safety by removing the requirement for the perimeter buffer between the backyards of the single-family homes and the commercial parking lot (current condition). The 10-foot strip between the backyard fences and the commercial parking lot buffer wall can create a hiding place that could be used for criminal activity, trash accumulation and have maintenance issues.
- (4) provide an opportunity for a linear park-like setting facing the single-family homes on the north side of NE 28<sup>th</sup> Court and, along with the required articulated parking structure walls with residential façade elements, the larger commercial area can create a pleasant streetscape that enhances the single-family neighborhood.
- (5) reduce vehicles on NE 28<sup>th</sup> Court as the 6 SF homes can be removed and the commercial parking structure will have no access (no left turn) onto NE 28<sup>th</sup> Court from the proposed connection from NE 28<sup>th</sup> Street to NE 17<sup>th</sup> Avenue. The proposed connection will also eliminate the need for car carriers to cut through Cresthaven to return to Federal Highway without turning around.
- (6) reduce the need for commercial parking on the swale along NE 28<sup>th</sup> Street for vehicles associated with the existing commercial use and will remove any loading and unloading of car-carrier trucks in the right-of-way of NE 28<sup>th</sup> Street.

## Policy

- 01.03.06 Consider density and intensity revisions with an emphasis on minimal negative impacts to existing residential areas, particularly single family areas.

**Compatibility Statement:** See response to Policy 1.02.02 above.

## Policy

- 01.03.07 Require the provision of decorative structural or vegetative buffers between different density residential land uses, and residential and non-residential land uses unless the applicant can demonstrate by evidence that the proper buffer is provided.

**Compatibility Statement:** The buffers between the proposed parking structure and the single-family homes to the south and west will be heavily landscaped and provided at the maximum width that will still allow for a relatively efficient footprint for the proposed parking structure. See conceptual site plans provided.

## Policy

- 01.03.11 Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.

**Compatibility Statement:** See response to Policy 1.02.02 above.

## Policy

- 01.03.12 The following criteria may be used in evaluating rezoning requests:
1. Density;
  2. Design;
  3. Distance to similar development;
  4. Existing adjoining uses;
  5. Proposed adjoining uses;
  6. Readiness for redevelopment of surrounding uses; and.
  7. Proximity to mass transit.

**Compatibility Statement:** The proposed rezoning will reduce density by removing the 6 single-family homes on the south side of NE 28<sup>th</sup> Court. This will allow the adjacent B-3 property the depth to design a reasonably efficient parking structure footprint while still providing more than a Type C perimeter buffer between the single-family homes north of NE 28<sup>th</sup> Court and west of the subject property and the parking structure (defined in 155.5203.F as a minimum of 10-feet with an 8-foot wall). The B-3 zoning district is immediately adjacent to the RS-4 zoning district being proposed for change. Pompano Ford Lincoln has been in this location in the Cresthaven Neighborhood since 1964 so the B-3 and RS-4 uses have been existing and adjoining for the past 53 years. Both the Cresthaven residential neighborhood and Pompano Ford Lincoln are not expected to be redeveloped. Pompano Ford Lincoln is seeking to expand their inventory and reduce their business-related overflow parking along NE 28<sup>th</sup> Street by providing this much needed additional parking.

## E. Recommendation:

Given the information provided to the Board, as the finder of fact, staff provides the following recommendation and alternative motions, which may be revised or modified at the Board's discretion.

### Alternative Motion I

Recommend approval of the rezoning request from RS-4 to B-3.

The rezoning is recommended for approval with the following conditions:

- (1) Subject to approval of the nonresidential flexibility application to allow commercial development in a residential land use category without a City and County Land Use Plan amendment;
- (2) Subject to the recordation of a Declaration of Restrictive Covenants limiting the permitted B-3 uses on the area to be rezoned to:
  - Dwelling, live/work\* *\*Subject to the allocation of flexibility units*
  - Dwelling, multi-family\*
  - Arboretum or botanical garden
  - Community garden

- Parking deck or garage
- Parking lot

- (3) Subject to the site plan showing no left turn from the proposed access drive connection to NE 17<sup>th</sup> Avenue.
- (4) Subject to the commitment that no loading or unloading of car carrier trucks will occur in the right-of-way of NE 28<sup>th</sup> Street or any other public right-of-way and car carrier trucks will be required to exit the site through the parking structure travelling north on NE 17<sup>th</sup> Avenue to eliminate cut through car carrier trucks deeper into the Cresthaven neighborhood. This condition must be specified on the site plan ultimately approved for the garage.

### **Alternative Motion II**

Table this application for additional information as requested by the Board.

### **Alternative Motion III**

Recommend denial as the Board finds that the request is not consistent with the following goals, objectives and policies of the Comprehensive Plan, specifically:

- |          |  |
|----------|--|
| 01.02.02 | Consider the preservation of established single-family and low-density neighborhoods in all re-zonings, land use plan amendments, and site approvals.  |
| 01.03.06 | Consider density and intensity revisions with an emphasis on minimal negative impacts to existing residential areas, particularly single family areas. |
| 01.03.11 | Consider the compatibility of adjacent land uses in all Land Use Plan amendments and rezonings.  |

## **ATTACHMENT 1**

### **PROPOSED DECLARATION OF RESTRICTIVE COVENANTS LIMITING B-3 PERMITTED USES**

Return to: (enclose self-addressed stamped envelope)

**Name:** John Shiekman, Esq.

**Address:**

Greenspoon Marder, P.A.  
200 E. Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 33301

**This Instrument Prepared by:**

John Shiekman, Esq.  
Greenspoon Marder, P.A.  
200 E. Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

## **DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DECLARATION OF RESTRICTIVE COVENANTS** ("Covenant") made this \_\_\_\_\_ of \_\_\_\_\_, 2018, by **Pompano Ford Lincoln, Inc.**, a Florida corporation having an address of 2741 North Federal Highway, Pompano Beach, FL 33064 (hereinafter "Owner"), which shall be for the benefit of **THE CITY OF POMPANO BEACH, a municipal corporation** ("City"), with a post office address at 100 West Atlantic Boulevard, Pompano Beach, FL 33060.

### **WITNESSETH:**

WHEREAS, Owner is the fee simple owner of land known located in the City, more particularly described in **Exhibit "A"** ("Property"); and

WHEREAS, Owner made an application to the City to amend the City's zoning map and rezone the Property to General Business (B-3) (the "Application"); and

WHEREAS, in connection with the Application, Owner has voluntarily offered to place certain restrictions on the development of the Property as set forth below in favor of the City; and

WHEREAS, Owner agrees to grant this Covenant to the City, and the City agrees to accept this Covenant in order to place certain restrictions on the development of the Property upon final approval of the Application.

NOW, THEREFORE, in consideration of the foregoing premises and the promises and covenants herein contained, the Owner hereby declares that the Property shall be subject to the covenants, restrictions, and regulations hereinafter set forth, all of which shall run with the land and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Covenant by this reference.

2. Limited B-3 Permitted Uses. The uses on the Property shall be limited to the following (subject to conditions, limitations and restrictions on such uses as set forth in the City's Zoning Code):

- A. Dwelling, live/work\*
- B. Dwelling, multifamily\*
- C. Arboretum or botanical garden
- D. Community garden
- E. Park deck or garage (as principal use)
- F. Parking lot (as principal use)

\*Subject to the future allocation of flexibility units

3. Amendments. Except as otherwise provided herein, this Covenant shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners(s) of the portion of the Property affected by such modification, amendment, or release and approved in writing by the City through the rezoning process with all required public hearings and public notice. The City Commission shall execute an ordinance effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Covenant shall be recorded in the Public Records of Broward County, Florida.

4. Recordation and Effective Date. This Covenant shall not become effective and shall not be recorded in the Public Records of Broward County, Florida, until after approval by the City of the requested Application and the expiration of all appeal periods or, if an appeal is filed, the conclusion of such appeal in a manner that does not affect the City's approval of the Application. Once recorded, this Covenant shall run with the land for the sole benefit of the City and shall bind all successors-in-interest with respect to the Property. This Covenant shall not give rise to any other cause of action by any parties other than the City, and no parties other than the City shall be entitled to enforce this Covenant. Any failure by the City to enforce this Covenant shall not be deemed a waiver of the right to do so thereafter.

5. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part of this Covenant invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect. The agreed upon venue shall be Broward County, Florida.

6. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Covenant are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Covenant.

7. Context. Whenever the context requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Signed, sealed and delivered

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

He or she is:

(Seal)

Print Name: \_\_\_\_\_

My commission expires:

**EXHIBIT A  
LEGAL DESCRIPTION  
PROPERTY**

**Property of Owner:**

LOTS 1, 2, 3, 4, 5, AND 6 OF BLOCK 1 OF THE PLAT OF "CRESTHAVEN NO. 3" AS RECORDED IN PLAT BOOK 37 AT PAGE 11 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS SITUATE IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA.