Summary of Hearing Examiner Recommendation

OAK VIEW RPD

Request:	Rezone +/- 16.2 acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow development of up to 60 single-family and/or two-family attached residential units
Location:	3600 Buckingham Road Fort Myers Shores Planning Community (District 5)
Size:	16.2± Acres
Recommendation:	Approve
Deviations:	4
Conditions of Note:	Conditions 3, 10, 11
Public Concerns:	Traffic, Density

Hearing Examiner Remarks:

The property meets the description of infill development. It is surrounded by existing and approved residential development.

The proposal for 3.7 units per acre will be compatible with varied density of residential development south of Buckingham Road. The project will serve as a transition from the intense uses at the State Road 80/Buckingham Road intersection to the less intense development of the Rural Community Preserve further south.

Condition 3 should be revised to address an ambiguity as to when a public hearing is warranted to modify the proposed mix of dwelling unit types.

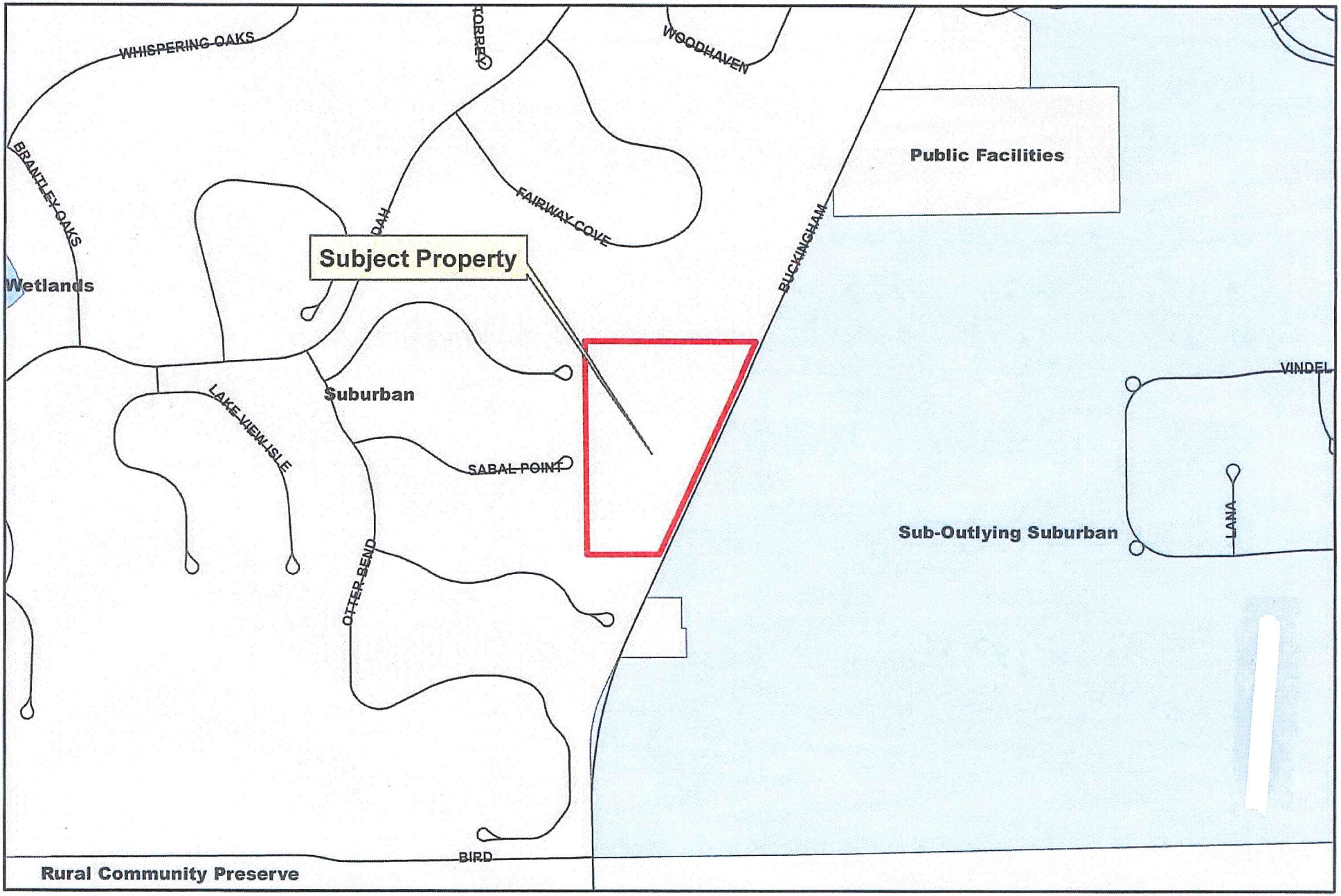
The Hearing Examiner has included two additional conditions for the Board's consideration. Condition 10, offered by the applicant, responds to concerns expressed by residents within the Verandah community. The condition requires the Oak View developer to install small signs along the west property boundary to deter unauthorized use of open space between the Oak View property line and the Verandah project wall.

Condition 11 requires the developer to install a landscape buffer on Buckingham Road that more closely resembles existing development approvals on the corridor. This condition is intended to advance the Board's preferred landscape treatment of the Buckingham Road corridor north of the Rural Community Preserve. The condition requires an enhanced 25 foot wide Type "D" buffer on Buckingham Road including 10 trees per 100 linear feet consisting of live oaks rather than palm trees.

Detailed recommendation follows

DCI2016-00010

Future Land Use



DCI2016-00010 **2016 AERIAL**



DCI2016-00010

2016 AERIAL



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2016-00010
Applicant: Randy Thibault

Regarding: **OAK VIEW RPD**

Location: 3600 Buckingham Road

Fort Myers Shores Planning Community
(District 5)

Hearing Date: February 1, 2017

I. Request:

Request to rezone +/- 16.2 acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow development of up to 60 single-family and/or two-family attached residential units on property legally described in Exhibit A.

Maximum building height will be 35 feet.

II. Hearing Examiner Recommendation:

Approval, *subject to* the conditions and deviations set forth in Exhibit B.

III. Discussion:

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners on applications to rezone property.[1] In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone the property to Residential Planned Development (RPD).

In preparing a recommendation to the Board, the job of the Hearing Examiner is to apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC) and other County regulations to the facts adduced at the hearing. There must be substantial competent evidence in the record to support the Hearing Examiner's recommendation.

Discussion supporting the recommendation of approval of the request follows below.

[1] LDC 34-145(d)(1)b. 1 and 6; LDC 34-145(d)(4)a.

Synopsis of Request

The request is to change the zoning of 16.2 acres from Agricultural (AG-2) to RPD. The property is located on the west side of Buckingham Road, approximately a mile south of State Route 80. The proposed residential subdivision will include up to 60 dwelling units 35 feet in height. Dwellings will consist of single and two-family attached units.[2] The project will have direct access to Buckingham Road.

The Department of Community Development staff recommended approval of the RPD with conditions, finding the requested zoning district satisfied the review criteria in the Lee Plan and LDC.

Several members of the public participated in the hearing.

Site History

The site is zoned for agriculture and has been cleared for agricultural use for many years. Ongoing agricultural uses include cattle grazing and hay production.[3] There is a single-family home and barn in the southeast corner of the site. If approved, the developer will raze the home and barn to pursue the desired plan of development.[4]

Character of Area

The property lies approximately a mile south of the Palm Beach Boulevard/State Route 80 road corridor (S.R. 80). The S.R. 80 road corridor is developed with shopping, recreation and small employment centers. The intersection of Buckingham Road and S.R. 80 serves as a commercial node for the surrounding community. Public transportation is accessible from the intersection with routes to various destinations throughout the County. Given the limitations on commercial development in the Buckingham and Alva communities, the S.R. 80 corridor will likely serve as a commercial/employment center for those areas.[5]

The Buckingham Road corridor is served by a host of public facilities and infrastructure including paved roads, public water, sewer, schools, library, parks, and fire stations.[6] The neighborhood south of the S.R. 80/Buckingham Road intersection is developing with residential development, commercial centers, and schools.[7]

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[2] Two-family attached units are a single, freestanding conventional buildings designed as two dwelling units attached by a common wall or roof, but each unit is located on a separate lot under separate ownership. LDC 34-2.

[3] The Lee County Property Appraiser records reflect the property is subject to an agricultural exemption. *See,* Staff Report Attachment E- Agricultural Use Affidavit

[4] If the planned development zoning request is approved by the Board, the existing grazing and hay production activities may continue until development commences. *See,* Lee Plan Policy 9.2.2.

[5] See Lee Plan Objective 21.2; Lee Plan Vision Statement Paragraph 4 (Fort Myers Shores/Caloosahatchee Shores). The commercial development in Caloosahatchee Shores will accommodate the needs of its residents as well as those from neighboring communities including Alva, Bayshore, and Buckingham.

[6] The availability of urban services and infrastructure is likely the reason the Buckingham Road corridor south of S.R. 80 has emerged as a primary artery for development.

[7] Buckingham Road corridor is developed with Riverdale High School, Buckingham Exceptional Student Center, churches, and existing and approved residential subdivisions. These subdivisions include the Verandah MPD (2005), Buckingham 345 (2005), Portico RPD (2005), Buckingham Chase RPD (2006), and Hemingway Pointe RPD (2007).

Although the property east of Buckingham Road is largely undeveloped, it has been approved for urban land uses for over 10 years. In fact, most of the vacant property south of S.R. 80 intersection has existing development approvals for residential subdivisions with clubhouse and pool amenities.

Less than a quarter mile south of the property, the road takes on a rural character evidenced by scattered homes and open pasture.[8]

Lee Plan

Future land use

The stretch of Buckingham Road fronting the property serves as the boundary between the Suburban and Sub-Outlying Suburban future land use categories. Both categories are considered "Future Urban Areas."[9]

The property is classified as Suburban on the Lee Plan Future Land Use Map.[10] Suburban lands are generally located on the fringe of more intensely developed areas and tend to be developed with residential uses.[11] Density in the Suburban category generally ranges from 1 to 6 dwelling units per acre, but can be as high as 8 dwellings per acre under certain circumstances.[12] The proposed density of 3.7 dwellings per acre is in the middle of the permissible range. Development of a residential subdivision on the property will advance a compact and contiguous development pattern.[13]

The Buckingham Road Corridor is developed with existing and approved residential subdivisions, churches, and schools. There are commercial centers located at the intersection of Buckingham Road and S.R. 80. Additional commercial uses line the State Route 80 corridor.

Most of the property across Buckingham Road is designated Sub-Outlying Suburban.[14] Sub-Outlying Suburban lands are characterized by less intense development. While these areas are not typically served by urban services, the Buckingham Road corridor is served by a full complement of urban services and infrastructure.[15]

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[8] The north boundary of the Buckingham Rural Preserve lies less than a quarter mile to the south. Property in the Buckingham Rural Preserve consists mainly of rural residential development on lots no less than an acre in size, except for projects zoned RPD approved for clustered residential development. *See*, Lee Plan Policy 17.1.5.

[9] Lee Plan Glossary Definition: "Future Urban Areas" includes the Suburban category. *See*, Lee Plan Objective 1.1, Policy 2.1.1 (Most development is expected to occur within Future Urban Areas on the Future Land Use Map).

[10] Lee Plan Map 1.

[11] Lee Plan Policy 1.1.5.

[12] Higher densities may be achieved using bonus density and transfer of development rights.

[13] Lee Plan Objective 2.2, Policies 2.1.1 and 2.2.1; The Lee Plan directs that new growth occur in Future Urban Areas served by public facilities. The property borders a county maintained arterial roadway and is surrounded by improved residential development on three sides. Development of the property as a residential subdivision at 3.7 units per acre will advance a compact and contiguous development pattern.

[14] *See*, Lee Plan Map 1.

[15] *See*, commentary under the heading Urban Services. The Buckingham Road corridor north of the Rural Community Preserve is served by a host of urban services.

South of Bird Road, future land use transitions to the Buckingham Rural Community Preserve. The Rural Community Preserve is a non-urban classification, with a distinctly rural character.[16]

Zoning

The property is zoned for agriculture.[17] The purpose of agricultural zoning districts is to provide areas for agricultural operations with ancillary residential uses.[18] Agricultural operations are not consistent with the property's designation as a Future Urban Area.[19]

The applicant seeks to rezone the property to a planned development zoning district.[20] The RPD district consists of permanent year round dwelling units as well as limited non-residential uses for the convenience of residents.[21] Planned development zoning offers flexibility in project design,[22] and presents an opportunity to impose conditions to address potential impacts on adjacent land uses.[23]

Community plan

The property lies within the Caloosahatchee Shores area of the Fort Myers Shores Planning Community.[24] The Caloosahatchee Shores planning community is expected to grow substantially in response to rising population.[25] The project's location south of the S.R. 80 and Buckingham Road intersection places it within the Riverdale neighborhood of the community.[26] Development within the Caloosahatchee Shores Planning Community is subject to additional regulations.[27]

Community Meeting

The applicant's representatives held a community meeting before the Caloosahatchee Shores Community Planning Committee to discuss the zoning proposal.[28] The

[16] With limited exceptions, all lots in the Buckingham Rural Community Preserve must be a minimum of one acre in size. *See*, Lee Plan Policies 1.4.3, 17.1.3 and 17.1.5 (clustering permitted for RPDs with certain restrictions).
[17] LDC 10-1 and 34-2.
[18] LDC 34-651.
[19] Lee Plan Objective 1.1, Policies 1.1.5 and 2.1.1 (residential and limited commercial uses are expected in suburban areas*); See also*, Lee Plan Goal 9, Objectives 9.1 (protect agricultural uses *in areas outside those anticipated for urban use*), 9.2 (*Promote efficient use of urban infrastructure by directing agricultural uses away from Future Urban Areas*), Policies 9.1.4 (*protect agricultural activities on lands designated as agricultural on Lee Plan Map 20 – Agricultural Overlay*), 9.2.2.(*Existing agricultural uses must be discontinued upon local development order approval*).
[20] LDC 34-931(b, 34-932.
[21] LDC 34-931(b)(3).
[22] Lee Plan Glossary; LDC 34-612(2), 34-935.
[23] LDC 34-932(a). The rezoning request will update the zoning to a district consistent with the property's designation as a Future Urban Area, its location on a major arterial roadway, the availability of urban infrastructure/services, and the character of approved development surrounding the site.
[24] The Caloosahatchee Shores area is generally south of the Caloosahatchee River, north of the Orange River, east of I-75, and west of Hickey's Creek. *See*, Lee Plan Vision Statement Paragraph 4 and Map 16 - Planning Communities Map; *See also*, Lee Plan Map 1 Special Treatment Areas and Goal 21.
[25] Lee Plan Vision Statement, Paragraph 4.
[26] Caloosahatchee Shores contains three neighborhoods: Fort Myers Shores, Olga and the Riverdale neighborhoods. (Riverdale neighborhood is in the vicinity of the intersection of Buckingham Road and S.R. 80). *See*, Lee Plan Vision Statement Paragraph 4.
[27] The Caloosahatchee Shores Community Planning regulations are set forth in Lee Plan Goal 21 and LDC 33-1480 *et seq.*
[28] Lee Plan Objective 21.6, Policy 21.6.3 and LDC 33-1482. The meeting was held on January 10, 2017.

Committee recommended a project density of 1-3 units per acre and two fully operational access drives to Buckingham Road.

Compatibility[29]

New development adjacent to areas of established residential neighborhoods must be compatible with or improve the area's existing character.[30] The Buckingham Road corridor is developing with a variety of housing types. The approved residential communities are diverse, and run the spectrum from single-family homes on large lots to communities with clustered density.[31] The introduction of a community that includes single-family attached dwellings will expand the range of housing choices in the community, which is expressly encouraged in the Lee Plan.[32]

Starting at the intersection with S.R. 80, approved residential developments along the Buckingham Road corridor include single and multi-family communities ranging from 1 to 3.5 dwelling units per acre.[33] The proposed density of 3.7 dwellings per acre is consistent with range of densities permitted in Suburban areas and falls in line with residential densities in the neighborhood.[34]

The project site design is compatible with surrounding development.[35] Although the residences within Oak View will be visible from homes on adjacent property, this is not evidence of incompatibility.[36] The proposed building height of 35 feet is comparable to approved building heights on the Buckingham Road corridor.[37] Further, in nearly all instances, lot size and dimensions are equal to, or less intense than those permitted by the development approvals on property in the area.[38] The proposed design meets code required buffers and setbacks from adjacent residential development.[39]

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[29] The Hearing Examiner evaluated compatibility with surrounding development based on the directives set forth in the Lee Plan and the planned development regulations in the LDC. LDC 34-2 *(definition of compatible); See also*, 34-411(a)(*All planned developments must be consistent with the Lee Plan.)*

[30] Lee Plan Policy 135.9.5.

[31] Multi-family dwellings and townhomes are also approved along the corridor. For Example: Hemingway Point RPD - Multi-family and Townhomes; Portico RPD – Single-family and Townhomes; Buckingham 345 – Single-family and Zero Lot Line; Verandah – Single-family, Multi-family, Duplex, Townhouse, Zero Lot Line and Two-family Attached).

[32] Lee Plan Objective 135.1, and Policy 135.1.9. The Lee Plan and the LDC do not require density to match that of adjacent property.

[33] This range includes existing and approved residential development.

[34] Lee Plan Goal 5, Objective 2.1; the aerial of the Caloosahatchee Shores Community shows the property is surrounded by development. Approval of the RPD will contribute to the emerging contiguous development pattern in the area. Although the residential communities across Buckingham Road are approved at lower densities, the future land use designation of those properties is Sub-Outlying Suburban, which is a less intense than the Suburban designation of the subject property. Also, even though the overall density of the Verandah is 1 dwelling per acres, the project is adjacent to clustered residential development pods with homes constructed on lots similar to those proposed by the applicant.

[35] Lee Plan Policies 5.1.5, 5.2.4; LDC 34-411(j); the site is surrounded by properties with existing and approved residential development. The LDC does not require buffering between residential developments. See, LDC 10-416(d)(3).

[36] It is not unusual for development on adjacent property to be visible from properties in urban future land use categories.

[37] Approved building heights: Verandah MPD – 35' Single-family, 45' Multi-family, 45' Clubhouse; Portico RPD – 35' Single-family, 50' Townhouse, 50' Clubhouse; Buckingham 345 RPD – 35' Residential, 45' Clubhouse; Buckingham Chase RPD – 35' Single-family; Hemingway Pointe RPD – 35' Multi-family/Townhouse.

[38] *See*, Applicant's Hearing Exhibit 1: Power Point pages 13-15 and testimony of J. Sapen.

[39] LDC 10-416.

The property is in a Future Urban Area with access to the public facilities and infrastructure expected in areas slated for urban development. The site meets the description of infill development.[40] It is one of very few agriculturally zoned parcels on Buckingham Road north of the Rural Community Preserve.[41] The proposed density contributes to the transition from more intensely developed areas to the north.

The rural appearance along the east side of Buckingham Road belies the urban character of existing development approvals. Nearly all the vacant property has existing zoning approvals for residential subdivisions with onsite recreation facilities.[42] The property further south of the site is developed with single-family homes on large lots with light agricultural use, reflective of its location in the Rural Community Preserve.[43]

Roadside Landscaping

Residential development on the east side of Buckingham Road has been approved with similar landscaping requirements along the road corridor.[44] The width and composition of the required roadside buffer will ultimately result in a uniform landscape treatment along the Buckingham Road corridor. If the project is approved as currently proposed, the landscape buffer on the west side of Buckingham Road will not replicate this theme.[45] For this reason, the Hearing Examiner recommends that the project buffer along Buckingham Road preclude palm trees in favor of oaks planted at 10 trees per 100 linear feet. In addition, the buffer width should be increased to 25 feet. The Hearing Examiner recommends the remaining Type D buffer criteria continue to be applicable.

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[40] See Lee Plan Objective 2.2 and Lee Plan Glossary. Infill is defined as "[t]he use of vacant land within a predominately developed area for further construction or development. These lands already have public services available but may require improvements to meet current development standards".

[41] There are only three AG zoned parcels in the Future Urban Areas on Buckingham Road. (North of the Rural Community Preserve).

[42] The Buckingham Road corridor serves as the boundary between Suburban and Outlying suburban lands. The property on the east side of Buckingham Road is classified Outlying Suburban on the Future Land Use Map. This future land use classification is typically characterized by a "peripheral" location in relation to established urban areas. East of Buckingham Road, the Board has approved residential densities at the mid and upper end of the range permitted in the Outlying Suburban category, likely in recognition of the urban infrastructure and facilities available to serve that property. The density requested in the subject application is appropriate given its placement in a more intense future land use category and availability of urban services to the site.

[43] No row crops or large scale grazing. The Hearing Examiner observed only pastureland during the site visit.

[44] The staff report included the zoning approvals for five residential communities on Buckingham Road. Four communities front on the east side of Buckingham Road: Portico RPD, Buckingham 245 RPD, Buckingham Chase RPD, and Hemingway Pointe RPD. All four prohibit palm trees on Buckingham Road, and require a roadside buffer 25 feet in width with a 3 foot berm. The projects also require the developer to plant 10 oak trees per 100 feet. (Buckingham Chase requires 6 oak trees per 100 feet, but requires a double hedge row 60 inches in height). All projects exceed the Type D buffer requirements of the LDC in both width, composition and inclusion of a berm.

[45] The Oak View RPD proposes a standard Type D buffer 15 feet in width with 5 trees per 100 feet. (Half the number of trees to be provided by approved development across the street) There is no restriction on the use of palm trees in favor of oaks, and there will be no berm. While the Verandah does not reflect the landscape theme of the development approvals across the street, the discrepancy will likely be less noticeable because a golf course and other large areas of open space abut the road corridor.

Water Management

Developers must demonstrate that site development will not adversely impact the drainage of adjacent property.[46] The project design provides for the pretreatment of storm water runoff within project lakes. After treatment, the water will discharge into the wetland.[47]

Transportation

The application of the standards and criteria in the County regulations show that the traffic volume anticipated from the RPD will not significantly impact traffic conditions in the area.[48] Specifically, the proposed 60 dwelling units do not trigger developer funded capital improvements to the County road network other than site-related improvements.[49] Site related improvements will be addressed by the developer at the development order stage.[50]

Environment

The site consists of a pasture with scattered small depressional wetlands. There is a wetland area in the southwest corner of the property consisting of Bald Cypress and Sabal palmetto.[51] Site design must protect environmental and natural resources when present.[52] The Oak View MCP preserves the Cypress head, which contributes to meeting the indigenous open space requirements of the code.[53] The preserved wetland will also provide additional water quality treatment for surface water runoff.[54]

The proposed MCP meets the LDC requirements for buffers, open space, indigenous preservation and landscaping without the need for deviations.[55] There are no protected species on the site.[56]

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[46] Lee Plan Policies 61.3.1., 61.3.6.

[47] The wetland in the southwest corner of the site will not be incorporated into the surface water management system of the project. That wetland has a control structure that provides for drainage outfall into the Verandah water management system. The Verandah development was originally permitted to accept drainage from the Oak View property. Accordingly, the project drainage will be accommodated consistent with the ERP approval for the Verandah. (Testimony of T. Gavin)

[48] *See*, Lee County Administrative Code AC 13-17 (*Traffic Study Guidelines for Planned Development Rezonings*); TIS prepared by TR Transportation Consultants, Inc., dated March 2, 2016; and Memorandum from M. Evans, Senior Engineer with the Department of Community Development to A. Palermo dated December 16, 2016. (TIS and Memorandum from M. Evans are found in Staff Report Attachments K and V respectively.)

[49] The TIS concluded the existing road network will accommodate additional vehicles generated by the site without degrading the level of service. The need for site related improvements such as turn lanes will be evaluated during development order review in accordance with the County's adopted turn lane policies. *See*, TIS prepared by TR Transportation Consultants, Inc. and Memorandum from M. Evans to A. Palermo.

[50] Lee Plan Policies 38.1.6, 39.1.1; *See*, Staff Report Attachments K and V.

[51] See, Oak View MCP, Applicant Exhibit 1 (PowerPoint). The onsite wetland preserve will be approximately 1.03 acres in size. It represents only a portion of a larger wetland spanning the project's boundary with the Verandah.

[52] Lee Plan Standard 11.4.

[53] Lee Plan Goal 107 and Objective 77.3.

[54] Lee Plan Objectives 61.2 and 60.5, Policies 60.5.1, 60.5.2, 61.3.11; LDC 34-411(g) and (h). The wetland will supplement the water quality treatment of storm water provided by the onsite water management lake system.

[55] Lee Plan Objectives 77.1 and 77.3; LDC 10-411(g); the single-family lots will meet the 6500 square foot and 45% lot coverage criteria of the code, accordingly no additional open space is required in areas depicted in R-1 on the MCP. The site design provides 40% common open space to meet the code requirements for the proposed two-family attached lots. Since the project will be adjacent to single-family development, the LDC does not require the installation of buffers between the properties. The project will be separated from the property line of the Verandah by

Urban Services

The property is ideally located for residential development because of its proximity to urban services and infrastructure.[57] Future residents will be served by public water and sewer,[58] schools,[59] library,[60] parks,[61] civic[62] and medical facilities.[63] Public safety services are available including police, fire, and emergency services.[64] There are commercial and industrial centers within a reasonable distance, providing opportunities for employment and shopping as well. [65]

Deviations

A "deviation" is a departure from a land development regulation.[66] The applicant must demonstrate the requested deviation will enhance the objectives of the planned development and not cause a detriment to public interests.[67] The Lee Plan discourages deviations that reduce landscaping, buffering, architectural standards and sign guidelines in the Caloosahatchee Shores community.[68] In keeping with this directive, the applicant does not request deviations for these items. The application seeks 4 deviations from other LDC development standards.[69]

The requested deviations pertain to the angle of lot lines,[70] dead-end street configuration,[71] measurement of lot size,[72] and required street access.[73] Three of the

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a 15 foot wide open space tract including a berm. The buffer along the project's frontage on Buckingham Road meets the LDC required of a double staggered hedge and 5 trees per 100 feet. The Hearing Examiner has recommended a modification to the buffer so that it more closely resembles the roadside buffer required of the other residential developments along Buckingham Road.

[56] Inspections performed by the applicant and County staff revealed no evidence of protected species within the pasture or Cypress head. Memorandum from B. Workman, Environmental Planner to A. Palermo dated December 5, 2016. Staff Report Attachment X. See also, Testimony of Jennifer Sapen.

[57] Lee Plan Objectives 2.1, 2.2; *See,* Staff Report Attachment F.

[58] The property lies within the Lee County Utilities Franchise Service Area. Testimony at hearing explained there is a 10 inch water main and also a 10 inch force main (sewer) on Buckingham Road in front of the property. *See*, Lee Plan Maps 6, 7; Goals 11, 53, 56, Standards 11.1 and 11.2. *See*, Applicant's Exhibit 1 (PowerPoint), and staff report Attachment J - correspondence from Lee County Utilities dated August 11, 2015. The existing wells and septic tanks on the property will be plugged and abandoned consistent with governing regulations. Testimony of Tim Gavin, P.E. of Barraco and Associates, Inc.

[59] There are several elementary, middle and high schools within a few miles of the property. These include River Hall Elementary, Oak Hammock Middle School, Riverdale High School, and the Buckingham Exceptional Student Center.

[60] The Riverdale Branch Library is approximately a mile from the property.

[61] Buckingham Community Park, Hickey Creek Mitigation Park, Lee County Manatee Park, Riverdale Community Pool, Riverdale Shores Park, Shores Nature Trail Park.

[62] Buckingham Community Center, Lee Civic Center, Olga Community Center.

[63] Lehigh Regional Medical Center (within 10 miles), Lee Memorial Hospital (within 14 miles).

[64] Fort Myers Shores Fire and Rescue Services District provides both fire and EMS services to the property.

[65] Lee Plan Policies 2.2.1, 5.1.3.

[66] LDC 34-2.

[67] LDC 34-373(a)(9).

[68] Lee Plan Policy 21.1.3.

[69] LDC 33-1484.

[70] LDC 10-254 Deviation 1: The LDC requires side lot lines to be at right angles to straight street lines. The requested deviation would allow an alternative configuration for the lots at the end of two roadways internal to the project.

[71] LDC 10-296(p)(1). Deviation 2: Dead-end streets must be closed at one end by a circular turn-around. The requested deviation would allow an alternative turnaround at the end of two roadways internal to the project.

[72] LDC 10-703. Deviation 3 pertains to the measurement of the lots located at the terminal end of two roadways internal to the project where there are no cul-de-sacs.

four deviations are necessary to accommodate two dead-end roadways interior to the project.

The LDC requires the Hearing Examiner to recommend approval, approval with modifications or denial of requested deviations based upon a finding that the deviation:

(1) Enhances the achievement of the objectives of the planned development; and
(2) Preserves and promotes the general intent of the LDC to protect the public health, safety and welfare.[74]

The applicant provided testimony and evidence to support the requested deviations based on the LDC standard of review.[75] The three deviations to accommodate dead-end roadways without a cul-de-sac have been approved on several occasions in the past subject to approval by the local fire district. [76]

Another deviation seeks to authorize only one access to Buckingham Road.[77] A single project access aligned with the entrance to the Buckingham 345 subdivision will limit the number of driveways onto Buckingham Road and affords the opportunity to create a single enhanced entrance feature.[78] Deviations of this type are oftentimes approved provided a secondary access is available for emergency responders.[79] The applicant proposes a second access onto Buckingham Road limited to emergencies and use by first responders.

Conditions

The RPD will be subject to conditions of approval. The proposed conditions are reasonably related to the impacts anticipated from the development.[80]

The Hearing Examiner recommended minor revisions to staff proposed conditions to improve clarity and to ensure compliance with the Lee Plan.[81] Conditions recommended by the Hearing Examiner are designed to facilitate understanding, implementation, and compliance. The Hearing Examiner has also recommended modification to a condition that restates LDC standards and criteria that are applicable to the project pursuant to Condition 1.[82]

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[73] LDC10-291(3). Deviation 4: The LDC requires residential developments over 5 acres to provide more than one means of ingress and egress, not including access points for emergency use only. The applicant proposes a single primary access to the subdivision from Buckingham Road with a second, stabilized "emergency only" access to Buckingham Road further to the south. The emergency access would have limited use to provide additional means of access for emergency response vehicles.
[74] LDC 34-377(a)(4).
[75] LDC 34-377(a)(4).
[76] *See*, LDC 10-254, 10-296(p)(1), 10-703; Applicant's Exhibit 1 (Power Point) page 30, and testimony of Jennifer Sapen, LEED AP, AICP.
[77] LDC 10-291(3). Deviation 4 Requests a single means of ingress and egress to a development greater than 5 acres in size.
[78] This will improve roadway safety by reducing number/location of turning movements.
[79] The applicant has requested entrance gates as a permitted use for the planned development.
[80] LDC 34-145(d)(4)a.2.
[81] LDC 34-932.
[82] *See*, Hearing Examiner revisions to Condition 9 pertaining to Model Homes/Real Estate Sales

The Hearing Examiner included two additional conditions for the Board's consideration. One was proposed by the applicant in response to concerns expressed by Verandah residents. The condition requires the developer of Oak View to install small signs along the west property boundary to deter unauthorized use of open space between the property line and the Verandah project wall.[83]

The second condition recommended by the Hearing Examiner requires the developer to install a landscape buffer along Buckingham Road that more closely resembles existing development approvals along the corridor. This condition is intended to advance the Board's preferred landscape treatment of the roadway. The condition requires an enhanced 25 foot wide Type "D" buffer on Buckingham Road including 10 trees per 100 linear feet that consists of live oaks rather than palm trees.

Public

Several members of the public attended the hearing. Their concerns centered on traffic, density, and visibility from adjacent residential subdivisions. These concerns have been addressed in this recommendation under the headings "Transportation" and "Compatibility with Surrounding Development."

Residents of the Verandah offered testimony and evidence of a misplaced wall constructed by their developer. The wall was to be constructed within the common open space surrounding the development pod but, instead encroaches on private lots along the eastern perimeter of the Verandah project. The result is more land between the wall and the perimeter boundary of the subject property.

Verandah residents expressed concern that future residents of the RPD might treat the area between the Oak View project boundary and the Verandah wall as part of their own backyard. [84] The applicant volunteered a condition to address these concerns.[85] The condition requires the developer of Oak View to post notification signs along the western perimeter boundary indicating the limits of the property.

Conclusion

In conclusion, the Hearing Examiner recommends approval of the request subject to the conditions set forth in Exhibit B.

IV. Findings and Conclusions:

Based on the testimony and evidence in the record, the Hearing Examiner makes the following findings and conclusions:

A. The request for RPD zoning on the 16.2 acre parcel is consistent with the Lee Plan. *See*, Lee Plan Vision Statement - Paragraph 4 (Fort Myers Shores Planning Community); Goals 2, 5, 11, 21, 53, 56, 77, 107; Objectives 1.1, 2.1, 2.2, 5.1, 21.6;

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[83] See proposed condition 10.
[84] The primary concern appeared to center on the potential for liability on the part of Verandah residents if someone was injured on that property.
[85] See proposed Condition 10.

Policies 1.1.1, 1.1.5, 1.7.6, 2.1.1, 4.1.1, 9.2.2, 21.6.3, 135.1.9; and Lee Plan Tables 1(b). Lee Plan Maps 1, 6, 7 and 16.

B. As conditioned, the RPD zoning designation:

1. is consistent with County regulations. *See*, LDC 10-416, 33-1482, 34-341(a), 34-411, 34-413, 34-491, 34-612(2), 34-931(b), 34-932, 34-934, 34-935, 34-936, 34-2175(b)(5);

2. is compatible with existing or planned uses in the surrounding area. *See*, Lee Plan Goal 5; Objectives 2.1, 2.2; and Policies 2.1.1, 5.1.5, 5.2.4, 9.2.2;

3. will not adversely affect environmentally sensitive areas or natural resources. *See*, Lee Plan Goal 107; Objectives 77.1, 77.3; and Policies 4.1.1, 61.3.1, 61.3.6, 61.3.11; LDC 34-411(g); *and*

4. will provide access sufficient to support the proposed development intensity. *See*, Lee Plan Policy 39.1.1.

C. The expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. *See,* Lee Plan Goal 11; Standard 11.3; and Policies 4.1.2, 38.1.6.

D. Urban services are available to serve the development. These services include public water and sewer, paved streets, parks and recreational facilities, police, fire, and emergency services, urban surface water management, schools, commercial/employment centers and libraries. *See,* Lee Plan Goal 11; Standards 11.1, 11.2, 11.3; Policies 2.2.1, 2.2.2; and Maps 6 and 7.

E. Residential development is appropriate at the proposed location. *See,* Lee Plan Goals 5; and Policies 1.1.1, 1.1.5, 2.1.1, 2.2.2, 5.1.2, 5.1.5, 135.9.5, and 135.9.6.

F. County regulations and recommended conditions of approval provide sufficient safeguards to protect the public interest. *See*, Lee Plan Policies 5.1.5; and LDC 34-411, and 34-932(c).

G. The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts expected from the proposed development. *See*, Lee Plan Objective 4.1; Policy 5.1.5; and LDC 34-145(d)(4)a.2.b), 34-411

H. The requested deviations enhance the planned development and preserve the intent of the LDC to protect the public health, safety and welfare. *See*, LDC 34-145(d)(4)a.2.c), 34-377(a)(4).

Date of Recommendation: February 28, 2017.

DONNA MARIE COLLINS
Chief Hearing Examiner

Office of the Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description and Vicinity Map
Exhibit B Recommended Conditions and Deviations
Exhibit C Exhibits Presented at Hearing
Exhibit D Hearing Participants
Exhibit E Information

Case: DCI2016-00010

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

EXHIBIT A

Barraco and Associates, Inc.
www.barraco.net
Civil Engineers, Land Surveyors and Planners

DESCRIPTION

Parcel in
Section 32, Township 43 South, Range 26 East
Lee County, Florida

A tract or parcel of land lying in Section 32, Township 43 South, Range 26 East, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE 1/4) of said Section 32 run N89°46'37"W along the North line of said Fraction for 416.53 feet to an intersection with the Northwesterly right of way line of Buckingham Road, (60 feet wide right of way) and the POINT OF BEGINNING.

From said Point of Beginning run S24°22'35"W along said Northwesterly right of way line of Buckingham Road for 1,215.62 feet to an intersection with the North line of the South 230 feet of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of said Section 32; thence run S89°36'26"W along said North line for 378.27 feet to an intersection with the West line of line of said Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4); thence run N00°41'30"W along said West line for 1,113.40 feet to an intersection with the North line of said Southeast Quarter (SE 1/4); thence run S89°46'37"E along said North line for 893.43 feet to the POINT OF BEGINNING.
Containing 16.21 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (1983/NSRS 2007) and are based on the North line of the Southeast Quarter (SE 1/4) of Section 32 to bear N89°46'37"W.

Scott A. Wheeler 10/10/16

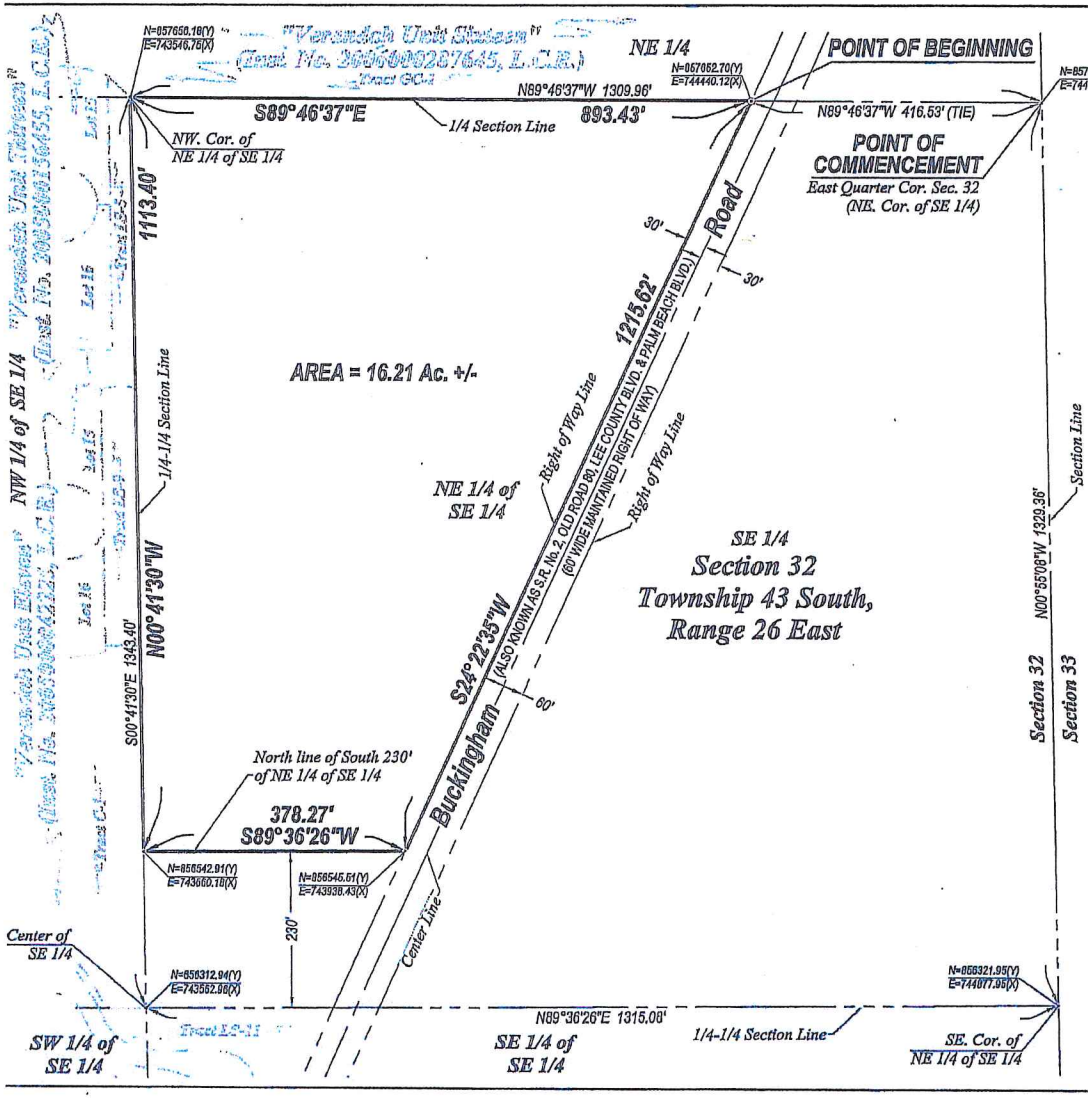
Scott A. Wheeler (For The Firm)
Professional Surveyor and Mapper
Florida Certificate No. 5949

L:\23354 - LSI 3600 Buckingham Road\Survey\Descriptions\Sketch\23354SK01.doc

DCI 2016-00010

RECEIVED
OCT 11 2016
COMMUNITY DEVELOPMENT

Post Office Drawer 2800 • Fort Myers, FL 33902
Phone (239) 461-3170 • Fax (239) 461-3169



RECEIVED
OCT 11 2016
COMMUNITY DEVELOPMENT

DCI 2016-00010

Applicant's Legal Checked by [illegible] 10/12/16

N
W E
S
0 100 200
SCALE IN FEET

NOTES:

1. ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
2. D.B. - DENOTES DEED BOOK.
3. D.E. - DENOTES DRAINAGE EASEMENT.
4. INST. No.- DENOTES INSTRUMENT NUMBER, LEE COUNTY PUBLIC RECORDS.
5. O.R. - DENOTES OFFICIAL RECORD BOOK, LEE COUNTY PUBLIC RECORDS.
6. (P) - DENOTES PLAT.
7. P.B. - DENOTES PLAT BOOK.
8. PG. - DENOTES PAGE.
9. P.U.E. - DENOTES PUBLIC UTILITY EASEMENT.
10. BEARINGS AS SHOWN ARE STATE PLANE FLORIDA WEST ZONE (NAD1983 (NSRS 2007)) ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 32 TO BEAR N89°46'37"W.
11. DESCRIPTION IS ATTACHED.

THIS IS NOT A SURVEY

10/10/16

SCOTT A. WHEELER (FOR THE FIRM - LB-6940)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5949

DATE SIGNED:

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

Barraco and Associates, Inc.
CIVIL ENGINEERING - LAND SURVEYING
LAND PLANNING - LANDSCAPE DESIGN
www.barraco.net
2271 McGREGOR BLVD., SUITE 100
POST OFFICE DRAWER 2800
FORT MYERS, FLORIDA 33902-2800
PHONE (239) 461-3170
FAX (239) 461-3168
FLORIDA CERTIFICATES OF AUTHORIZATION
ENGINEERING 7995 - SURVEYING LB-6940

PREPARED FOR

Land Solutions Inc.
10471 BEN C. PRATT / SIX MILE
CYPRESS PKWY. #402
FORT MYERS, FL 33966
PHONE (239) 482-1600
FAX (239) 481-8477
WWW.LANDSOLUTIONS.NET

PROJECT DESCRIPTION

A Parcel of Land in Section 32, Township 43 South, Range 26 East, Lee County, Florida

PROJECT SURVEYOR

SCOTT A. WHEELER
CERTIFICATE NO. 5949
STATE OF FLORIDA
PROFESSIONAL SURVEYOR AND MAPPER

FILE NAME	2005FBRM.DWG
LAYOUT	2
LOCATION	J:\2005\DWG\SURVEY\DESCRIPTION
PLOT DATE	THU, 3-17-2016 - 9:48 AM
PLOT BY	PETER CURTIN

DRAWING DATA

SURVEY DATE	08-12-2016
DRAWN BY	P. CLEAST
CHECKED BY	SAW
SCALE	1"=200'
FIELD BOOK	

PLAN REVISIONS

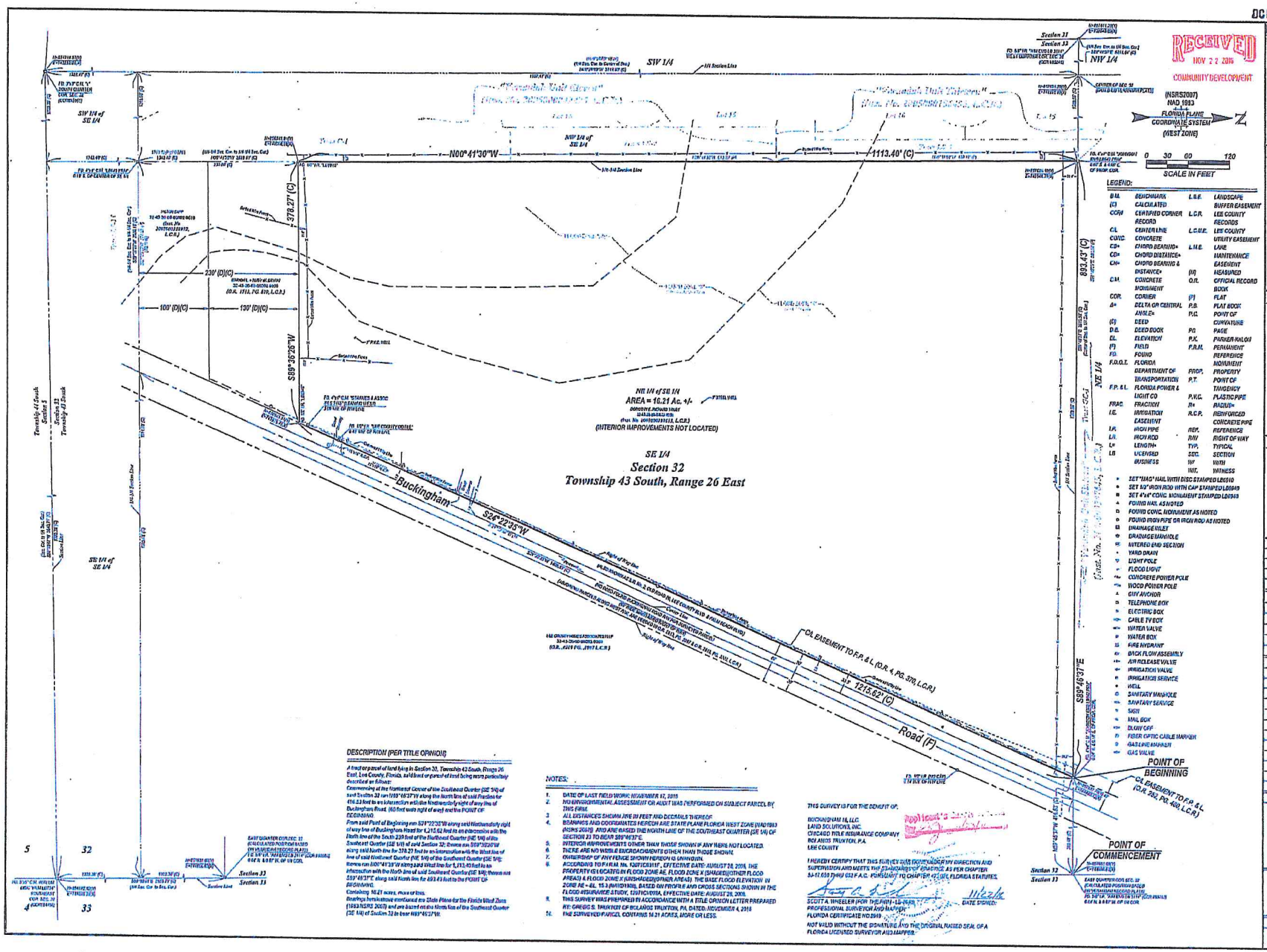
STRAP NUMBERS

32-43-26-00-00002.0000

SKETCH TO ACCOMPANY DESCRIPTION

PROJECT/FILENO	SHEET NUMBER
23354 32-43-26	2 OF 2

DCI2016-00010



LEGEND:

B.M.	BENCHMARK	L.S.E.	LANDSCAPE BUFFER EASEMENT
(C)	CALCULATED	L.C.R.	LEE COUNTY RECORDS
CCR	CERTIFIED CORNER RECORD	L.C.U.E.	LEE COUNTY UTILITY EASEMENT
C.L.	CENTERLINE	L.M.E.	LAKE MAINTENANCE EASEMENT
CONC.	CONCRETE	(M)	MEASURED
CB=	CHORD BEARING=	O.R.	OFFICIAL RECORD BOOK
CH=	CHORD DISTANCE=	P.B.	PLAT BOOK
C.M.	CONCRETE MONUMENT	P.C.	POINT OF CURVATURE
COR.	CORNER	PG.	PAGE
Δ=	DELTA OR CENTRAL ANGLE=	P.K.	PARKER-KALON
(D)	DEED	P.R.M.	PERMANENT REFERENCE MONUMENT
D.B.	DEED BOOK	PROP.	PROPERTY
EL.	ELEVATION	P.T.	POINT OF TANGENCY
(F)	FIELD	P.V.C.	PLASTIC PIPE
FD.	FOUND	R=	RADIUS=
F.D.O.T.	FLORIDA DEPARTMENT OF TRANSPORTATION	R.C.P.	REINFORCED CONCRETE PIPE
F.P. & L.	FLORIDA POWER & LIGHT CO	REF.	REFERENCE
FRAC.	FRACTION	R/W	RIGHT OF WAY
I.E.	IRRIGATION EASEMENT	TYP.	TYPICAL
I.P.	IRON PIPE	SEC.	SECTION
I.R.	IRON ROD	W/	WITH
L=	LENGTH=	WIT.	WITNESS
LB	LICENSED BUSINESS		

- ⊕ SET "MAG" NAIL WITH DISC STAMPED LB3910
- ● SET 1/2" IRON ROD WITH CAP STAMPED LB3910
- ■ SET 4"x4" CONC. MONUMENT STAMPED LB3910
- ▲ FOUND NAIL AS NOTED
- □ FOUND CONC. MONUMENT AS NOTED
- ○ FOUND IRON PIPE OR IRON ROD AS NOTED
- DRAINAGE INLET
- DRAINAGE MANHOLE
- MITERED END SECTION
- YARD DRAIN
- LIGHT POLE
- FLOOD LIGHT
- CONCRETE POWER POLE
- WOOD POWER POLE
- GUY ANCHOR
- TELEPHONE BOX
- ELECTRIC BOX
- CABLE TV BOX
- WATER VALVE
- WATER BOX
- FIRE HYDRANT
- BACK FLOW ASSEMBLY
- AIR RELEASE VALVE
- IRRIGATION VALVE
- IRRIGATION SERVICE
- WELL
- SANITARY MANHOLE
- SANITARY SERVICE
- SIGN
- MAIL BOX
- BLOW OFF
- FIBER OPTIC CABLE MARKER
- GAS LINE MARKER
- GAS VALVE

DESCRIPTION (PER TITLE OPINION):

A tract or parcel of land lying in Section 32, Township 43 South, Range 26 East, Lee County, Florida, said land or parcel of land being more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE 1/4) of said Section 32 run N89°46'37"W along the North line of said Fraction for 416.53 feet to an intersection with the Northeasterly right of way line of Buckingham Road, 60 feet wide right of way) and the POINT OF BEGINNING.

From said Point of Beginning run S26°22'35"W along said Northeasterly right of way line of Buckingham Road for 1,215.62 feet to an intersection with the North line of the South 239 feet of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of said Section 32; thence run S89°36'26"W along said North line for 378.27 feet to an intersection with the West line of line of said Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4); thence run N00°41'30"W along said West line for 1,113.40 feet to an intersection with the North line of said Southeast Quarter (SE 1/4); thence run S89°46'37"E along said North line for 890.43 feet to the POINT OF BEGINNING.

Containing 16.21 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (1983 NSRS 2007) and are based on the North line of the Southeast Quarter (SE 1/4) of Section 32 to bear N89°46'37"W.

NOTES:

1. DATE OF LAST FIELD WORK: NOVEMBER 17, 2016
2. NO ENVIRONMENTAL ASSESSMENT OR AUDIT WAS PERFORMED ON SUBJECT PARCEL BY THIS FIRM.
3. ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.
4. BEARINGS AND COORDINATES HEREON ARE STATE PLANE FLORIDA WEST ZONE (NAD1983 (NSRS 2007)) AND ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 32 TO BEAR S89°46'37"E.
5. INTERIOR IMPROVEMENTS OTHER THAN THOSE SHOWN IF ANY WERE NOT LOCATED.
6. THERE ARE NO VISIBLE ENCROACHMENTS OTHER THAN THOSE SHOWN.
7. OWNERSHIP OF ANY FENCE SHOWN HEREON IS UNKNOWN.
8. ACCORDING TO F.I.R.M. No. 12071C0511F, EFFECTIVE DATE: AUGUST 28, 2008, THE PROPERTY IS LOCATED IN FLOOD ZONE AE, FLOOD ZONE X (SHADED)(OTHER FLOOD AREAS) & FLOOD ZONE X (UNSHADED)(OTHER AREAS). THE BASE FLOOD ELEVATION IN ZONE AE = EL 15.3 (NAVD1988), BASED ON PROFILE AND CROSS SECTIONS SHOWN IN THE FLOOD INSURANCE STUDY, COMMUNITY NO. 125124(VOL), EFFECTIVE DATE: AUGUST 28, 2008.
9. THIS SURVEY WAS PREPARED IN ACCORDANCE WITH A TITLE OPINION LETTER PREPARED BY: GREGG S. THURTON OF ROLANDS THURTON, PA. DATED: NOVEMBER 4, 2016
10. THE SURVEYED PARCEL CONTAINS 16.21 ACRES, MORE OR LESS.

THIS SURVEY IS FOR THE BENEFIT OF:

BUCKINGHAM 16, LLC
LAND SOLUTIONS, INC.
CHICAGO TITLE INSURANCE COMPANY
ROLANDS THURTON, P.A.
LEE COUNTY

I HEREBY CERTIFY THAT THIS SURVEY WAS PREPARED BY DIRECTION AND SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS PER CHAPTER 5J-17.050 THRU 052 F.A.C. PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

DATE SIGNED: 11/21/16

SCOTT A. WHEELER (FOR THE FIRM) - LS 6349
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO.6349

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

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FLORIDA CERTIFICATES OF AUTHORIZATION
ENGINEERING 7995 - SURVEYING LB6340

PREPARED FOR:
Land Solutions inc.
10471 BEN C. PRATT / SIX MILE CYPRESS PKWY., B402
FORT MYERS, FL 33966
PHONE (239) 482-1600
FAX (239) 481-8477
WWW.LANDSOLUTIONS.NET

PROJECT DESCRIPTION:

A Parcel of Land in Section 32, Township 43 South, Range 26 East, Lee County, Florida

PROJECT SURVEYOR

SCOTT A. WHEELER — PROFESSIONAL SURVEYOR AND MAPPER — 6349 — STATE OF FLORIDA

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

FILE NAME	23354SB2.DWG
LAYOUT	1
LOCATION	J:\23354\DWG\SURVEY\DWG
PLOT DATE	FRI 11-18-2016 - 2:41 PM
PLOT BY	BRANDON HARDY
DRAWING DATA	
SURVEY DATE	11-17-2016
DRAWN BY	P. OLSEN/B. HARDY
CHECKED BY	SAW
SCALE	1"=60'
FIELD BOOK	343/59, 343/73, 370/3
PLAN REVISIONS	
04-05-2016	ADD TITLE OPINION LETTER
05-10-2016	ADD METES + BOUNDS LEGAL
07-25-2016	ADD POC/POB + TIE
11-10-2016	REVISED METE & BND DESC
11-17-2016	UPDATE SURVEY

STRAP NUMBERS:
32-43-26-00-00002.0000

BOUNDARY SURVEY

PROJECT FILE NO.	SHEET/PAGE
23354	1 OF 1
32-43-26	

DCI2016-00010

ZONING

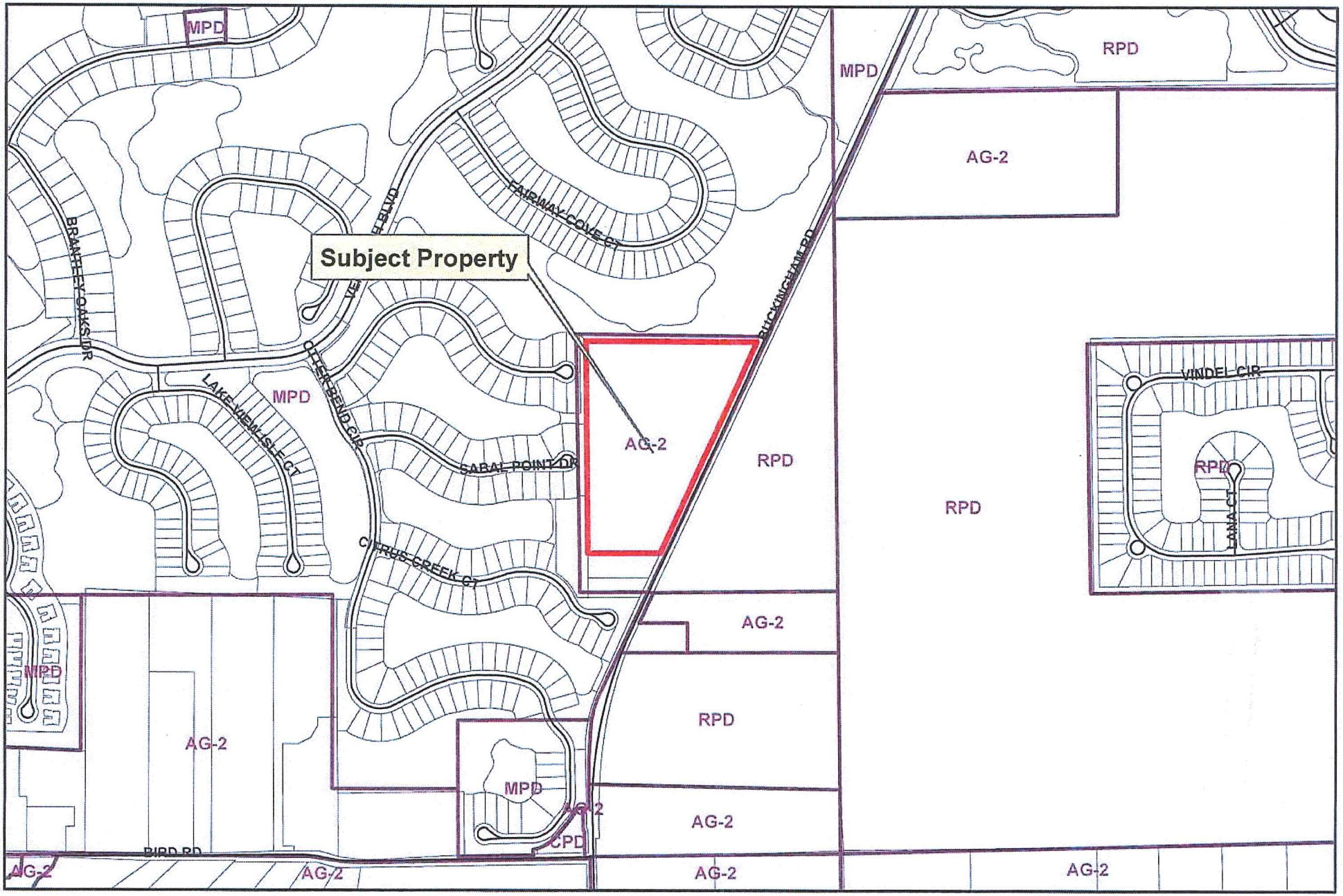

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

The Hearing Examiner has recommended modifications to conditions that restate LDC standards and criteria that are applicable to the project pursuant to Condition 1.

CONDITIONS:

1. **Master Concept Plan/Development Parameters**

Development must be substantially consistent with the 3-page Master Concept Plan (MCP) entitled Master Concept Plan dated February 1, 2017 except where modified by these conditions of approval. (Exhibit "B1")

Development must comply with the Land Development Code (LDC) at the time of local development order approval, except where deviations have been granted in this zoning resolution.

This zoning approval allows a maximum of 60 dwelling units.

2. **Uses and Site Development Regulations**

a. Schedule of Uses

Accessory Uses and Structures
Administrative Office
Agricultural Uses (*subject to* Condition 8)

Dwelling Units – Single-family, two-family attached (Maximum 60 units)

Entrance Gates and Gatehouses
Essential Services
Essential Services Facilities, Group I
Excavation, Water Detention and Retention

Fences, Walls

Home Occupation

Models: (S*ubject to* Condition 9)
Model Homes with Real Estate Sales

Parking Lot, Accessory, Temporary

Recreational Facilities, Private On-Site (Recreation Area only) –
may include clubhouse and residential amenities.
Maximum building area: 10,000 square feet.
No consumption on premises.

Signs

Temporary Uses

b. Site Development Regulations

DEVELOPMENT REGULATIONS	SINGLE-FAMILY R-1	TWO-FAMILY ATTACHED R-2	RECREATIONAL AMENITIES
Minimum Lot Width	50 Feet	30 Feet Per Unit	100 Feet
Minimum Lot Depth	130 Feet	120 Feet	100 Feet
Minimum Lot Area	6,500 S/F	3,600 S/F	10,000 S/F
Maximum Height	35 Feet	35 Feet	35 Feet
Maximum Lot Coverage	45%	60%	30%
Minimum Setbacks			
Buckingham Road	25 Feet	25 Feet	25 Feet
Private Roads	20 Feet *	20 Feet *	20 Feet *
Side	5 Feet	5 Feet/0 Feet **	10 Feet
Rear	10 Feet	10 Feet	10 Feet
Accessory	Per LDC	Per LDC	Per LDC
Preserve	20 Feet	20 Feet	20 Feet
Waterbody	25 Feet	25 Feet	25 Feet

* 15 feet for side entry garages
** 0 feet applies to internal lot line only

3. **Single-Family/Two-Family**

Single-family dwelling units may be developed on the R-1 and/or R-2 areas noted on the MCP. Two-family attached dwelling units are permitted in areas labeled R-2. Amendments to the MCP *significantly altering or expanding* R-2 areas must be approved through the planned development amendment process (public hearing).

Hearing Examiner Note: The term "*significantly altering or expanding*" is not defined and therefore creates ambiguity in the context of this condition. Recommendation: 1) remove third sentence of the condition or 2) tie the requirement for a public hearing to a specific increase in area or ratio of attached verses detached dwellings.

4. **No Blasting**

Blasting is prohibited.

5. **Vehicular/Pedestrian Impacts**

Zoning approval does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.

6. **Lee Plan Consistency**

Zoning approval does not guarantee local development order approval. Future development order must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1 (b), as well as the remainder of the Lee Plan.

7. **State/Federal Permits**

Issuance of a county development permit does not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the County if the Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies or (b) undertakes actions that result in a violation of state or federal law.

8. **Agricultural Uses**

The continuation of existing bona fide agricultural uses on the property in the form of cattle grazing and hay production is permitted in compliance with the following:

a. Bona fide agricultural uses in existence at the time this zoning application was filed, and described in Exhibit B2 to this resolution, may continue until approval of a local development order for the area containing those uses.

b. Additional clearing of trees or other vegetation in agricultural areas is prohibited. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approved requests for the removal of invasive exotic vegetation.

c. Prior to issuance of a local development order, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

1) Termination of all agricultural use on the portions of property included in the development order application/approval. Proof must include a sworn affidavit from the titleholder of the property that includes:

a) the date the agricultural uses ceased;

b) the legal description of the property subject to the development order;

c) an affirmative statement that the owner acknowledges and agrees that agricultural uses are illegal and prohibited on the property and a covenant

that the owner will not allow further agricultural use of the property until the property is rezoned to permit agricultural use;

d) a statement that the affidavit constitutes a covenant with the County intended to be binding on the owner and its assignees and successors in interest; and

e) The covenant must be recorded in the public records of Lee County at the owner's expense.

2) Proof of termination of the agricultural tax exemption for the portion of the property included in the development order application/approval. Proof of termination must include a copy of the request to terminate the tax exemption provided to the Property Appraiser.

9. **Model Homes/Real Estate Sales**

Hearing Examiner Note: *The LDC criterion applies to all uses and development activity by virtue of Condition 1 and LDC 10-103(b). Accordingly, the Hearing Examiner recommends the following text revision and removal of conditions that repeat the content of the LDC.*

~~Model homes and real estate sales are permitted in compliance with the following conditions and per LDC Sec. 34-1951 through 34-1956.~~

In addition to the requirements set forth in the LDC, model homes and real estate sales activity must comply with the following:

~~a. Each model home must be a unique example. Multiple examples of the same model home are not permitted~~. (**NOTE**: Already required by LDC34-1954(b)(4))

~~b.~~ a Model home sites must be designated on the development order plans.

~~c.~~ b The number of model homes may not exceed 8 at one time.

~~d.~~ c Model home temporary parking areas, model units, model display groups, model display centers, and speculative homes are not permitted.

~~e. Dry models are prohibited.~~ (**NOTE**: Already required by LDC 34-1954(b)(2))

~~f. Real estate sales are limited to the sale of lots/homes within the development~~. (**NOTE**: Already required by LDC 34-937(7) and 34-1954(c)(2))

~~g.~~ d Real estate sales are limited to the model homes, and within recreational area buildings and/or clubhouse.

~~h.~~ e Hours of operation for models and real estate sales: Monday through Sunday, from 8:00 a.m. to 8:00 p.m.

10. **Signs Along Western Property Boundary** *(Offered by Applicant)*

The developer will install notification signs every 200 feet along the western property boundary to advise Oak View residents of the boundary between Oak View and the Verandah. These signs may not exceed one and one-half square feet in area per sign.

11. **Landscaping on Buckingham Road** *(Recommended by Hearing Examiner)*

The development order must require an enhanced 25 foot Type "D" buffer along Buckingham Road including 10 trees per 100 linear feet (which must include live oaks and no palms).

DEVIATIONS:

1. **Lots**. Deviation #1 seeks relief from LDC 10-254(c), which requires side lot lines to be, as nearly as practical, at right angles to straight street lines and radial to curve street lines, to allow the lot design shown on the MCP in the areas where Deviation 1 is to be applied.

Hearing Examiner Recommendation: **Approve**.

2. **Cul-de-sac.** Deviation #2 seeks relief from LDC 10-296(p)(1), which requires a dead-end street to be closed at one end by a circular turnaround, to allow an alternative turnaround.

Hearing Examiner Recommendation: **Approve,** *subject to* the following condition:

Prior to development order approval, the developer must submit documentation from the Fort Myers Shore Fire Department chief confirming the alternate turn-around design is sufficient for emergency-response equipment and vehicle access.

3. **Lot Depth**. Deviation #3 seeks relief from LDC 10-703, to allow lot size to be measured in the manner shown on the MCP for the last lot at the terminal end of small dead end roadways without cul-de-sacs.

Hearing Examiner Recommendation: **Approve**.

4. **Required Street Access**. Deviation #4 seeks relief from LDC 10-291(3), which requires developments of more than five acres to provide more than one means of ingress or egress, to allow one primary access and one emergency stabilized access.

Hearing Examiner Recommendation: **Approve,** *subject to* the following conditions:

a. The development order must include a project access to Buckingham Road and a secondary, emergency stabilized access consistent with MCP.
b. Prior to development order approval, the developer must provide written documentation from the Fort Myers Shores Fire Protection and Rescue District confirming the access points are acceptable and will provide adequate access for emergency vehicles.

Exhibits to Conditions:
B1 Master Concept Plan
B2 Agricultural Use Affidavit

EXHIBIT B1

MASTER CONCEPT PLAN

FOR

OAK VIEW

RESIDENTIAL PLANNED DEVELOPMENT

PART OF SECTION 32, TOWNSHIP 43 SOUTH, RANGE 26 EAST
FORT MYERS, LEE COUNTY, FLORIDA

PROJECT DATA

SITE ADDRESS
3600 BUCKINGHAM ROAD
FORT MYERS, FLORIDA 33905

PROJECT DATUM
FLORIDA STATE PLANE WEST ZONE (NAD1983/90)
NATIONAL GEODETIC VERTICAL DATUM (NGVD) 1929

ZONING
CURRENT: AG-2
PROPOSED: RPD

RECORD PLAT
-

FLOOD ZONE
ACCORDING TO F.I.R.M. NO. 12071C0311F, MAP REVISED: AUGUST 28, 2008, THE PROPERTY IS LOCATED IN ZONE "AE" & "X"

STRAP NUMBERS
32-43-26-00-00002.0000

PERMIT REQUIREMENTS

AGENCY	STATUS	NOTES
S. FLORIDA WATER MANAGEMENT DISTRICT	PENDING	-
LEE COUNTY DEVELOPMENT ORDER	PENDING	-
FLORIDA DEPARTMENT OF HEALTH	PENDING	-
FLORIDA DEPT. OF ENVIRONMENTAL PROTECTION	PENDING	-
F.D.O.T. CONNECTION PERMIT	PENDING	-
F.D.O.T. DRAINAGE CONNECTION PERMIT	PENDING	-
F.D.O.T. UTILITY PERMIT	PENDING	-
ARMY CORPS OF ENGINEERS	PENDING	-
F.D.E.P. NOTICE OF INTENT	PENDING	-

NOTE: CONTRACTOR MUST OBTAIN AND KEEP ON FILE A COPY OF ALL PERMITS REQUIRED PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION ACTIVITY

DESIGN TEAM

PROJECT ENGINEER
CARL A BARRACO

PROJECT MANAGEMENT
STEVE COLEMAN

DESIGN ENGINEER
TIM GAVIN

PROJECT SURVEYOR
SCOTT A. WHEELER, PSM

LEAD DESIGN TECHNICIAN
WES KAYNE

SITE PLANNING
ANGELICA CARLEY

DESIGN STAFF
JAN BILDZUKEWICZ

LANDSCAPE DESIGN
BY OTHERS

QUALITY CONTROL
CHRIS VAN BUSKIRK

LAND PLANNER
JENNIFER SAPEN

THESE PLANS MAY HAVE BEEN MODIFIED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.

ALL DIMENSIONS ARE IN FEET.



PROJECT LOCATION

N
W E
S

LOCATION MAP
0 750 1500 3000
SCALE IN FEET

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INDEX OF DRAWINGS

SHEET	DESCRIPTION	XREF	DRAWING NAME
1	COVER SHEET AND LOCATION MAP	A	23354Z01.DWG
2	MASTER CONCEPT PLAN	B	23354Z02.DWG
3	DETAILS AND DEVIATIONS	-	23354Z03.DWG

CROSS-REFERENCED DRAWINGS:

XREF	DESCRIPTION	DRAWING NAME
A	AERIAL PHOTOGRAPH	LOC2015.JPG
B	BASE PLAN	23354Z00.DWG

PLAN STATUS

NOT FOR CONSTRUCTION

Barraco and Associates, Inc.
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LAND PLANNING - LANDSCAPE DESIGN
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POST OFFICE DRAWER 2800
FORT MYERS, FLORIDA 33902-2800
PHONE (239) 461-3170
FAX (239) 461-3169
FLORIDA CERTIFICATES OF AUTHORIZATION
ENGINEERING 7995 - SURVEYING LB-6940

PREPARED FOR

Land Solutions inc.
10471 BEN C. PRATT / SIX MILE
CYPRESS PKWY. #402
FORT MYERS, FL 33966
PHONE (239) 482-1500
FAX (239) 481-8477
WWW.LANDSOLUTIONS.NET

PROJECT DESCRIPTION

OAK VIEW

LEE COUNTY, FLORIDA

LEE COUNTY HEARING EXAMINER
2017 FEB -1 PM 2:4

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FILE NAME	23354-Z01.DWG
LOCATION	J:\23354\DWG\ZONING\
PLOT DATE	TUE. 1-24-2017 - 1:29 PM
PLOT BY	JENNIFER SAPEN

CROSS REFERENCED DRAWINGS

MASTER = BAI-COVER-1.DWG

PLAN REVISIONS

7-25-18	PER LEE COUNTY COMMENTS
10-26-18	PER LEE COUNTY
1-18-17	PER LEE COUNTY
1-24-17	FOR 48 HOUR LETTER

PLAN STATUS

NOT FOR CONSTRUCTION

COVER SHEET AND LOCATION MAP

PROJECT / FILE NO.	SHEET NUMBER
23354	1

LEGEND

LAKE | OPEN SPACE | INDIGENOUS PRESERVE | DEVIATION REQUEST (#)

LAND USE: SINGLE FAMILY RESIDENTIAL
ZONING: MPD
FLU: SUBURBAN

0 30 60 120
SCALE IN FEET

W S N E

NO BUFFER REQUIRED

EXISTING OFFSITE WALL

INDIGENOUS PRESERVE 1.03 AC

R-1 RESIDENTIAL

R-1 OR R-2 RESIDENTIAL

1 2 3

45' RIGHT OF WAY

LAND USE: SINGLE FAMILY RESIDENTIAL
ZONING: AG-2
FLU: SUBURBAN

NO BUFFER REQUIRED

BUCKINGHAM ROAD (60' WIDE 2 LANE ARTERIAL)

EMERGENCY STABILIZED ACCESS

R-1 RESIDENTIAL

20' LME

LAKE 2 AC

MODEL HOMES

R-1 OR R-2 RESIDENTIAL

LAKE EDGES WILL BE SINUOUS IN ACCORDANCE WITH LEE COUNTY LAND DEVELOPMENT CODE REGULATIONS

EXISTING OFFSITE WALL

RESIDENTIAL

R-1 OR R-2

RESIDENTIAL

NO BUFFER REQUIRED

LAND USE: RECREATION / GOLF
ZONING: MPD
FLU: SUBURBAN

± 223' TO NEAREST DRIVEWAY

± 1,800' TO NEAREST INTERSECTION

LITTORAL SHELF TO BE LOCATED ON THE EAST SIDE OF LAKE. IF A DEEP LAKE IS CONSTRUCTED, DEEP LAKE TREES TO BE LOCATED ON THE EAST SIDE OF THE LAKE.

50.2'

15' WIDE TYPE "D" LANDSCAPE BUFFER

± 780'

C/L EASEMENT TO FP&L (O.R. 4, PAGE 370, L.C.R.) (3.5' WEST OF BUCKINGHAM R/W)

RECREATION AREA

OPTIONAL GATED ENTRY

4

±5,104' TO NEAREST INTERSECTION

LAND USE: VACANT
ZONING: RPD
FLU: SUB OUTLYING SUBURBAN

REQUIRED INDIGENOUS PRESERVE

4.78 @ 50% = 2.39 AC

PROVIDED INDIGENOUS PRESERVE

EXISTING / PROVIDED = 1.03 AC*

*NOTE: PER LDC SECTION 10-415 (b) EXISTING INDIGENOUS VEGETATION HAS BEEN PRESERVED.

REQUIRED OPEN SPACE

PROJECT SIZE:	16.21 AC
R-1	- 4.25 AC
	11.96 AC
11.96 @ 40% =	4.78 AC
REQUIRED OPEN SPACE =	4.78 AC

PROVIDED OPEN SPACE

PRESERVE	1.03 AC
LAKE (4.78 X .25%)	1.20 AC
LAKE SLOPE	.50 AC
RECREATION AREA	.30 AC
BUCKINGHAM BUFFER	.48 AC
REAR YARD DRAINAGE & PERIMETER BERM	1.27 AC
TOTAL	4.78 AC

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PREPARED FOR

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PROJECT DESCRIPTION

OAK VIEW

LEE COUNTY, FLORIDA

RECEIVED
LEE COUNTY
PLANNING EXAMINER
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FILE NAME	23354-Z02.DWG
LOCATION	J:\23354\DWG\ZONING\
PLOT DATE	TUE. 1-24-2017 - 1:30 PM
PLOT BY	JENNIFER SAPEN

CROSS REFERENCED DRAWINGS

BASEPLAN = 23354-Z00.DWG

PLAN REVISIONS

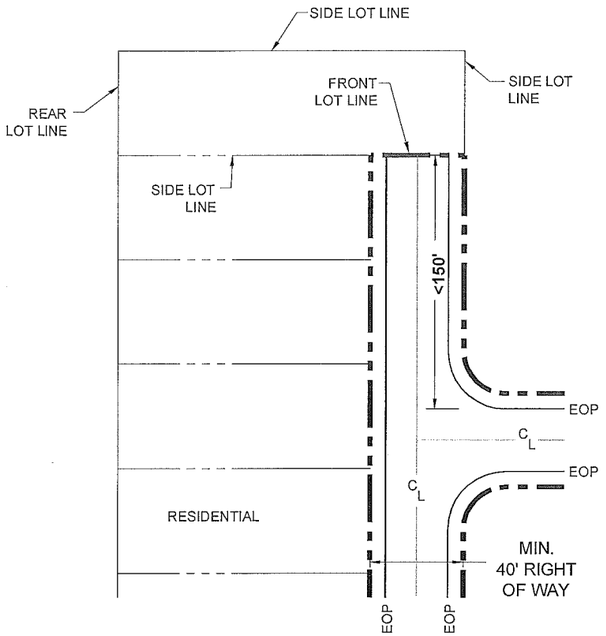
7-25-16	PER LEE COUNTY COMMENTS
10-26-16	PER LEE COUNTY
1-18-17	PER LEE COUNTY
1-24-17	FOR 48 HOUR LETTER

PLAN STATUS

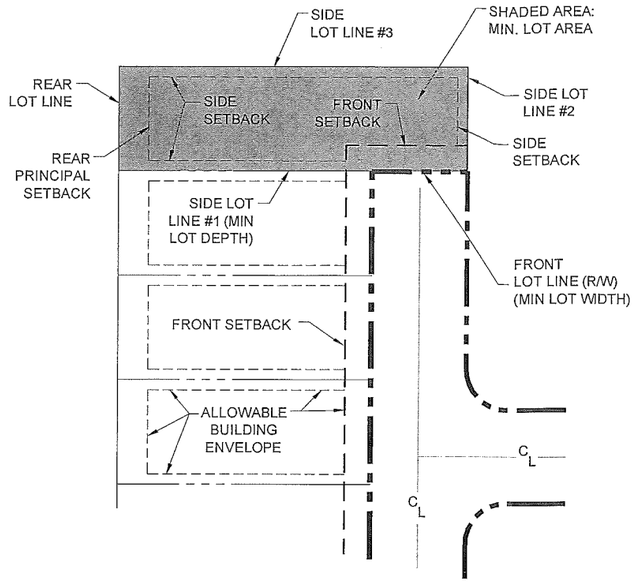
MASTER CONCEPT PLAN

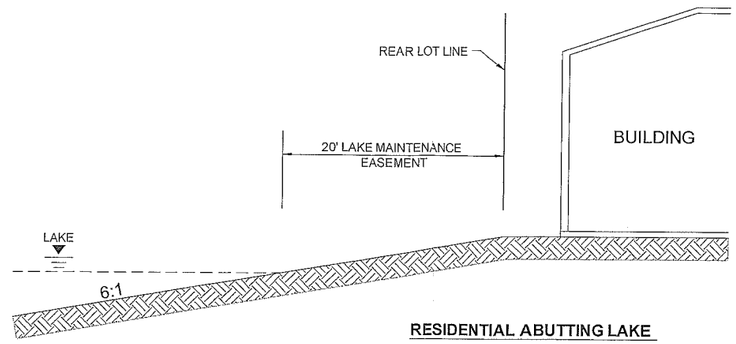
PROJECT / FILE NO.	SHEET NUMBER
23354	2

DEVIATION 1 RIGHT ANGLE SIDE LOT LINE
DEVIATION 2 DEAD-END DETAIL

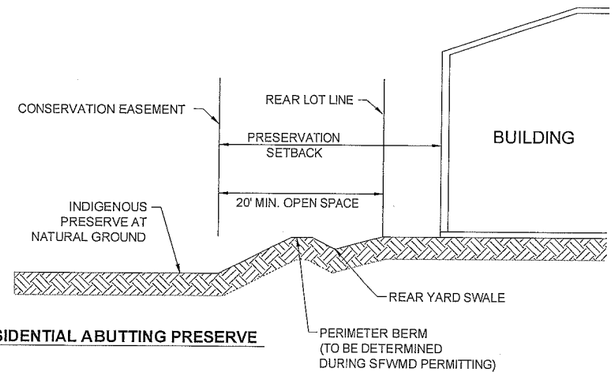


DEVIATION 3 LOT SIZE DETAIL

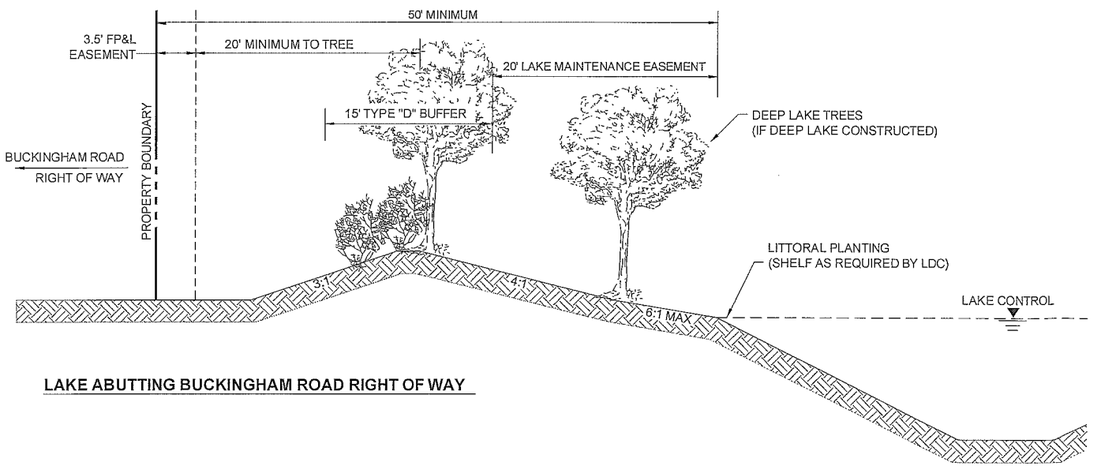




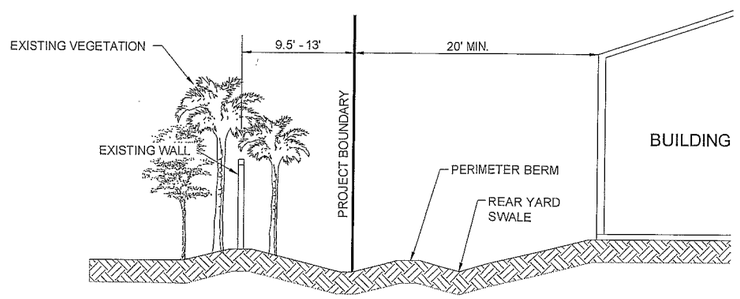
RESIDENTIAL ABUTTING LAKE



RESIDENTIAL ABUTTING PRESERVE



LAKE ABUTTING BUCKINGHAM ROAD RIGHT OF WAY



RESIDENTIAL ABUTTING VERANDAH

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PREPARED FOR

Land Solutions inc.
10471 BEN C. PRATT / SIX MILE
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PROJECT DESCRIPTION

OAK VIEW

LEE COUNTY, FLORIDA

LEE COUNTY ZONING EXAMINER
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LOCATION	J:\23354\DWG\ZONING\
PLOT DATE	TUE. 1-24-2017 - 1:30 PM
PLOT BY	JENNIFER SAPEN

CROSS REFERENCED DRAWINGS

PLAN REVISIONS	
7-25-16	PER LEE COUNTY COMMENTS
10-28-16	PER LEE COUNTY
1-18-17	PER LEE COUNTY
1-24-17	FOR 48 HOUR LETTER

PLAN STATUS

DEVIATIONS AND DETAILS

PROJECT / FILE NO.	SHEET NUMBER
23354	3



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CYPRESS PKWY. #402
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PROJECT DESCRIPTION

OAK VIEW

LEE COUNTY, FLORIDA

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SEP 30 2016
COMMUNITY DEVELOPMENT
DCI2016-00010

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FILE NAME	23354-EXHIBITB.DWG
LOCATION	J:\23354\DWG\ZONING\
PLOT DATE	FRI, 9-30-2016 - 2:18 PM
PLOT BY	ANGELICA HARDY

CROSS REFERENCED DRAWINGS

BASEPLAN = 23354-Z2D.DWG

PLAN REVISIONS

PLAN STATUS

EXHIBIT B

AGRICULTURAL USES AT TIME OF ZONING APPLICATION MAP

PROJECT / FILE NO.	SHEET NUMBER
23354	1

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF'S EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Tony Palermo, Senior Planner, dated January 17, 2017 (multiple pages – 8.5"x11" & 11"x14")[black & white, color]

APPLICANT'S EXHIBITS

a. *Applicant's 48 Hour Notice:* Email from Kirsten Shultz, with Henderson, Franklin, Starnes & Holt, P.A., to Maria Perez, with the Hearing Examiner's Office, with copies to Amanda Brock, dated Monday, January 30, 2017 9:02 AM (5 pages – 8.5"x11")

1. *PowerPoint Presentation:* Prepared by Barraco & Associates, BearPaws Environmental, Henderson, Franklin Law Firm, Inge & Associates, & TR Transportation Consultants, Inc. (multiple pages – 8.5"x11")[color]

2. *Revised Schedule of Deviations:* Prepared by Barraco & Associates (3 pages – 8.5"x11")

3. *Revised Master Concept Plan:* Email from Jennifer Sapen, with Barraco & Associates, to Maria Perez & Anthony Palermo, with copies to Amanda Brock, dated Wednesday, February 1, 2017 1:34 PM (2 pages – 8.5"x11" & 3 pages – 11"x17")

4. *Surface Water Management Plan:* Prepared by Barraco & Associates (2 pages – 8.5"x11")

5. *Proposed Condition 10:* Submitted by Applicant (1 page – 8.5"x11")

6. *Line of Sight:* Prepared by Barraco & Associates (1 page – 8.5"x11")[color]

OTHER EXHIBITS

William Baumeister

1. Letter dated February 1, 2017: From Linda Lach, President of Sabal Point Homeowners Association, to Tony Palermo, Lee County Community Development Department, (1 page – 8.5"x11")

Debra Deegan

1. Verandah Unit Thirteen Easements, Jay Couglin's contact information, & Wall Easement Agreement (multiple pages – 8.5"x11")

Ron Eggers

1. Wall Easement Agreement between Neal Communities of Southwest Florida, LLC, & Verandah Community Association, Inc., notarized December 17, 2014 & Grantee's Signature

page to Lot 15 Wall Easement Agreement, notarized December 18, 2014 (multiple pages – 8.5"x11")

Linda Lach

1. Email dated February 1, 2017: From Anthony Palermo to Maria attaching a letter from Linda Lach, President of Sabal Point Homeowners Association, to Tony Palermo, Lee County Community Development Department. (1 page – 8.5"x11")

Case: DCI2016-00010

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Marcus Evans
2. Tony Palermo

Applicant's Representatives:

1. Amanda Brock
2. Reid Fellows
3. Tim Gavin
4. Jennifer Sapen

Public Participants:

1. William Baumeister
2. Rose Caskey
3. Marla Clawson
4. Debra Deegan
5. Ron Eggers
6. Robert Kosak
7. Carroll Harris
8. Dolores Harris
9. Thomas Sudol
10. Carol Vandervliet

Exhibit E

INFORMATION

UNAUTHORIZED COMMUNICATIONS:

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. This recommendation will be provided to the Lee County Board of County Commissioners.

B. The Board will hold a final hearing to consider this recommendation and the record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the Board hearing date. Only Parties and participants may address the Board at the final hearing. Statements to the Board will be limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of the discovery of relevant new evidence not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner.

COPIES OF TESTIMONY AND TRANSCRIPTS:

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for examination and reproduction by interested persons Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. If a court reporter is present, a verbatim transcript may be available for purchase from the court reporting service.