

# PAVESE LAW FIRM

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January 15, 2018

*Via Hand Delivery and Email Transmittal*

Ms. Laura B. Belflower  
Lee County Hearing Examiner  
1500 Monroe Street – Suite 218  
Fort Myers, FL 33901

**RE: Gully Creek RPD  
DCI2016-00024  
Applicant's 48-Hour Letter**

Dear Madam Hearing Examiner:

Please accept this as the Applicant's 48 hour letter.

The Applicant proposes the following changes to the conditions and uses in the staff report:

**Condition 4: Development within Floodway**

The only development within the Floodway is the road, which is located at the narrowest portion of the floodway. The applicant is aware of the fact that the development order that includes the crossing must comply with what is now Chapter 6, Article IV. The applicant is concerned about including portions of existing LDC provisions, especially since the County is conducting numerous studies which can result in LDC changes which could cause the language in the zoning to be in conflict with the LDC. The applicant would submit that Condition 4 should be eliminated and the staff and the applicant should rely on Condition 1 that provides that the development must comply with all LDC provisions unless a deviation is obtained.

**Condition 5: Turn Lanes**

Administrative Code 11-4 has been in place since 1998. The traffic consultants are well aware of the meaning and application of AC 11-4. The applicant submits that the County and the applicant should be able to rely on AC 11-4. The staff report doesn't identify anything unique about the subject property that would warrant the inclusion of a condition that is different from the Administrative Code. If there are concerns about the adequacy of the Administrative Code the solution is to amend the code through the public hearing process so it is properly vetted and so it applies equally to all property owners rather than single out some property owners in the zoning process.

**Condition 10.a.:**

Prior to the issuance of a development order, an off-site management plan will be prepared which will address all gopher tortoises that will be relocated from within the development footprint to an off-site FWC approved mitigation bank. Also prior to the development order, an on-site the protected species management plan will be prepared which addresses the must include on-site gopher tortoise that are currently located and will remain preservation within the indigenous and non-indigenous preserve areas.

**Condition 10.b.:**

~~Prior to the issuance of a clearing pursuant to the vegetation removal permit a point map must be submitted showing the location of the~~ a gopher tortoise ~~fence-fencing shall be installed~~ around the limits of the preserves to ensure that no impacts will occur ~~within 25 feet from to~~ any gopher tortoise burrow located in the preserve. Gopher tortoises located in the 25 foot buffer area to the preserves shall either be relocated to the preserve or relocated off-site in accordance with FWC criteria. No machinery or mechanical excavation of gopher tortoise burrows can occur within the indigenous preserve or onsite preserve area(s).

**Agriculture Uses: Existing**

The applicant requested the inclusion of Agriculture: Existing in the list of permitted uses. The staff submitted that it is no longer necessary to include this as a use because of Note 48 that was added to Section 34-934, Ordinance 17-11. The new language provides:

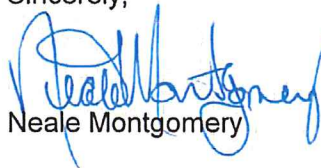
"Planned development rezonings within the future urban areas may not establish new, or expand existing agricultural uses. Bona fide agricultural uses that exist at the time of rezoning may continue until development commences. The approved existing agricultural uses must not expand beyond the boundaries that existed at the time of the rezoning. Existing agricultural uses within any tract or phase must be discontinued upon local development order approval for that tract or phase."

The applicant would like to have the term Agriculture Use, Existing included in the list of uses so there isn't a future debate about whether or not the use really was existing.

The Applicant's Witness List and the Applicant's Exhibit List are attached hereto.

Your consideration of this matter is greatly appreciated.

Sincerely,



Neale Montgomery

NM/kc

Attachments: Applicant's Witness List  
Applicant's Exhibit List

cc: Mr. John Fredyma  
Ms. Audra Ennis  
Mr. Chip Block  
Ms. Elizabeth Workman  
Ms. Sharail Cluck  
Mr. Ron Inge  
Ms. Jennifer Sopen  
Mr. Ted Treesh  
Mr. Wesley Kayne  
Mr. Barrett Stejskal

**GULLY CREEK RPD  
DCI2016-00024**

**HEX Hearing January 18, 2018**

**Applicant's Witness List**

1. Jennifer Sopen
2. Barrett Stejskal
3. Wesley Kayne
4. Ted Treesh
5. Ron Inge

**GULLY CREEK RPD  
DCI2016-00024**

**HEX Hearing January 18, 2018**

**Applicant's Exhibit List**

1. Applicant's PowerPoint Presentation
2. Ron Inge Letter to Richard Shine dated 11/15/17

Copies of these exhibits will be provided at the Hearing pre-labeled as Applicant's Exhibits 1 and 2.