OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION:	**SEZ2021-00010**
Regarding:	**FIRE STATION 19-CITY OF FORT MYERS**
Location:	11631 Palomino Lane Daniels Parkway Planning Community (District 2)
Hearing Date:	February 24, 2022

I. Request

Special Exception in the Agricultural (AG-2) zoning district to allow a fire and police substation.

II. Hearing Examiner Decision

Approval, subject to the conditions set forth in Section V.

III. Discussion

The City of Fort Myers seeks approval to rezone property to construct a fire, rescue and sheriff substation on agriculturally zoned property. Special exception approval is necessary to develop a fire/EMS station in an AG-2 zoning district. Special exceptions are departures from the County's Land Development Code (LDC) for uses not permitted generally within a zoning district unless approved with conditions.[1]

The Hearing Examiner must grant a special exception request unless she concludes:

1. The request is contrary to the public's interest and the health, safety, welfare, comfort and convenience of the citizens of the County; or,
2. The requested use conflicts with the findings required by the LDC for a grant of special exception.

---

[1] LDC 34-2.

In reaching this decision, the Hearing Examiner may attach conditions necessary to protect the public health, safety, comfort, convenience and welfare.[2]

Decisions on requests for Special Exceptions are final with the Hearing Examiner.[3]

Synopsis

The City of Fort Myers seeks to repurpose the structures on the site to accommodate a fire and sheriff substation. The Fire District has fire stations throughout the City of Fort Myers, two of which are within a few miles of the site. The goal of the Fort Myers Fire District is to improve response times to the area.[4] The substation will house a limited number of personnel on 12 hour shifts.

EMS, fire or sheriff's stations are permitted in the agricultural zoning district by special exception.[5]

Staff recommends approval subject to three conditions.

Development History

The 2.39 acre property on Palomino Lane is developed with a single family residence, pool, garage constructed in 2000. The former residence is served by well and septic. Although the property is zoned for agriculture, there is no active agricultural use.

The City plans to remove chicken coops and a wooden shed. The 20 foot high metal building located in the southwest corner of the site will remain, but must obtain building permits now that the site is no longer engaged in agricultural endeavors.[6]

Character of Surrounding Development

The property is within the Daniels Road Planning Community and fronts on Palomino Lane. Scattered low density residential development, agriculture and

---

[2] LDC 34-145(c)(4)b.
[3] LDC 34-145(b)(1) and (c)(1).
[4] The City's representative with the Fort Myers Fire District explained the proposed substation would improve the district's ISO rating, which is a measure of a fire department's ability to serve a community. Lee Plan Goal 65, Objective 65.1.
[5] LDC 34-653.
[6] The staff report suggests the building needed no permits at the time of installation because it was a structure serving agricultural uses. However, as the intended use of the property is not related to agriculture, the owner must obtain building permits to retain the structure on site.

wetlands represent uses closest to the site.[7] A short distance to the north lie two large residential subdivisions within the City of Fort Myers.

The Future Land Use Map designates the property within the Rural and Wetland future land use categories. All land use categories permit public uses public facilities.[8] Rural areas consist of low density residential, agricultural uses and minimal non-residential land uses needed to serve the rural community.[9] While it is true the proposed substation will serve nearby urban development, it will also improve response times with the surrounding rural area.[10]

Site Plan and Development Features

The Site Plan reflects code compliant buffers along Palomino Lane and north, east and south property boundary.[11] A 30 foot wide Type F buffer along the north and south property line will protect the character and integrity of adjacent dwellings. The 20 foot high metal building and vegetation meeting Type C buffer standards will adequately buffer the south east corner of site.[12] In the event the City removes the metal building, they must enhance the buffer plantings to Type F standards.[13] The City will remove exotic vegetation from the property.[14] Buffers will consist of native canopy trees and shrubs.[15]

Repurposing the site as a satellite station is not a commercial use. Rather, the proposed substation is public services/infrastructure necessary to improve service

---

[7] While the property is designated as Rural and Wetlands under the Lee Plan Future Land Use Map, it is proximate to urban land uses.
[8] Lee Plan Policy 2.1.3.
[9] Lee Plan Policy 1.4.1.
[10] Lee Plan Policy 1.4.1, which permits uses non-residential land uses serving the rural community. *See* Lee Plan Goal 151 Intergovernmental Coordination Element. The City's station will serve properties within both incorporated and unincorporated Lee County. *See also* Lee Plan Goal 65 and Objectives 65.1, 66.1 *(County will cooperate with and assist the independent fire districts and other units of government who operate first-provider rescue services to maintain those services in the face of new population growth and technological advancements.)* and Policy 158.1.4 (*Lee County will work with sheriff, fire districts, municipalities to provide a strong public safety program capable of protecting the citizens of Lee County and their property.)*
[11] The site plan meets open space and buffering requirements LDC 10-415; Staff Report Attachment E.
[12] LDC Type C buffer is 15 feet in width with five 5 trees and 18 shrubs per linear feet along with a wall. The metal building serves as the wall.
[13] Staff recommends a 30 foot wide buffer planted with 10 trees per 100 lineal feet and a double hedge 48 inches in height to screen onsite activities from adjacent residential development if the metal building is removed.
[14] Lee Plan Policy 123.2.5.
[15] Lee Plan Objective 126.2, Policies 54.1.3, 126.2.1.

to the surrounding community.[16] The Fire District will park a small pumper truck under a carport, but proposes no outdoor storage of equipment.

Transportation

The property is located north of Daniels Parkway, on Palomino Lane. Palomino Lane is a two-lane county maintained collector roadway.[17] One driveway will serve the substation.

The code does not require a level of service analysis for surrounding roadway segments because the projected trip generation during the PM peak hour is less than 100 trips. Staff concluded the proposed substation will not have a detrimental impact on the surrounding road network.[18]

Conditions

Staff recommends approval subject to three conditions. The first condition ties development to a site plan dated July 29, 2021. The second requires permitting of the metal garage structure if it is to remain on the property. The third condition requires the City to install a Type "F" buffer along the southeast corner of the site if the metal building is removed.[19]

The Hearing Examiner finds the recommended conditions appropriate.

Public Participation

Several members of the surrounding community attended the hearing. Many shared concerns of noise and increased traffic. Others wondered if the site would serve as a training facility.[20]

Fire District representatives testified the district sets operational guidelines specific to neighborhoods to avoid unnecessary noise and bright lights. Further, the site will not be a training center. Future expansion to the scope of operations requires further public hearing.

---

[16] Lee Plan Glossary definition of Public Services: Requisite services, facilities, capital improvements and infrastructure necessary to support development. Public services included police, fire and emergency services.
[17] AC 11-1 (Functional Classification of Roadways).
[18] Staff Report Attachment F: Memo from Lili Wu, Senior Planner, Department of Community Development.
[19] A Type F buffer includes 30 foot wide buffer planted with 10 trees per 100 lineal feet and a double hedge 48 inches in height.
[20] Some members of the public raised questions regarding the plans to retain the pool. Use of a single family sized pool on a two acre+ site will not create offsite impacts at a scale "injurious to the neighborhood or detrimental to the public welfare."

Conclusion

Repurposing a single family residence as a satellite station allows the structure to blend with the surrounding landscape of low density residential development.[21] A public safety facility serving nearby development in unincorporated Lee County and the City is in the public interest and will benefit the health, safety, and welfare of Lee County citizens. The proposed conditions are reasonably related to the proposed development and its reasonably expected impacts on the public.

IV. Findings and Conclusions

Based upon the testimony and exhibits presented during the hearing, the Hearing Examiner finds and concludes:

A. The requested special exception for a fire, rescue and sheriff substation is consistent with the Lee Plan. Lee Plan Goals 2, 4, 5, 65, and 151; Objectives 1.5, 2.1, 2.2, 4.1, 65.1, 66.1, 126.2; Policies 1.4.1, 1.5.1, 2.1.2, 2.1.3, 2.2.1, 65.1.6, 158.1.4, 126.2.1;

B. Will be compatible with existing or planned uses. Lee Plan Objectives 2.1, 2.2, Policies 2.1.3, 2.2.1, 5.1.5, 135.9.5;

C. Will not be injurious to the neighborhood or detrimental to the public welfare. Lee Plan Goal 65, Objectives 65.1, 66.1, Policies 5.1.5, 135.9.5, 158.1.4; and

D. Will comply with the zoning regulations set forth in the LDC. LDC 10-415, 10-416(d), 34-145(c), 34-653.

V. Conditions of Approval

1. Development must be consistent with the site plan entitled "City of Fort Myers Fire Department" dated July 28, 2021. (Exhibit B)

2. The property owner must obtain an "after the fact" building permit for the 20-foot tall metal garage structure if the structure is retained on the site. Property owner must permit the structure prior to County issuance of a

[21] Lee Plan Policy 5.1.5. The property is surrounded by large lot residential development and vacant tracts zoned for agriculture. Applicant intends to maintain the existing exterior façade of a residence, consistent with surrounding residential development. The project will enhance public welfare by providing fire, rescue, and police presence proximate to two large residential communities as well the rural inhabitants in the area.

development order certificate of compliance. If no development order is necessary, the property owner must obtain a building permit for the metal structure prior to utilizing the site as a fire, rescue, and sheriff station.

3. If the property owner removes the metal building, property owner must install a buffer, 30 feet in width and planted with 10 trees per 100 linear feet and a double hedge row. Shrubs in the hedge row must be installed at 48 inches in height. (LDC Type F Buffer)

VI. Participants

Staff

1. Patrick Doty
2. Elizabeth Workman

Applicant Representatives

1. James Hayden
2. Tracy McMillion
3. Tony Palermo, AICP, MPA
4. Tyler Sharpe, P.E.

Public Participants

1. Howard Freidin, Esq.
2. Tammie Howerton
3. Mike Konkus
4. Carlos Schol

VII. Legal Description

See Exhibit A (scanned legal description with vicinity map).

The Strap # as furnished by the Applicant is: 10-45-25-00-00006.0060

VIII. Exhibits Submitted at Hearing

Staff Exhibits

1. *DCD Staff Report with attachments for DCI:* Prepared by Patrick Doty, Principal Planner, date stamped received February 17, 2022 (multiple pages – 8.5"x11" and 11"x14") [black & white, color]

2. *PowerPoint Presentation:* Prepared by Patrick Doty, AICP, Principal Planner with Department of Community Development, for Fort Myers Fire Station 19, SEZ2021-00010, dated February 24, 2022 (multiple pages – 8.5"x11")[color]

Applicant Exhibits

a. *48-Hour Notice:* Email from Anthony Palermo, to Maria Perez, Patrick Doty, Tracy Toussaint, Jamie Princing, with copies to James Hayden, Amanda Martin, Tyler M. Sharpe, Greg Diserio, dated Tuesday, February 22, 2022 11:23 AM (4 pages – 8.5"x11")

b. *Expert Witnesses:* Email from Anthony Palermo, to Maria Perez, Patrick Doty, James Hayden, Tyler M. Sharpe, submitting résumés for Tyler Sharpe, P.E., James Hayden, Tony Palermo, AICP, MPA, dated Tuesday, February 22, 2022, 11:27 AM (multiple pages – 8.5"x11")

c. *Exhibits:* Email from Anthony Palermo, to Maria Perez, Patrick Doty, with copies to Tracy Toussaint, Jamie Princing, Elizabeth Workman, James Hayden, Tyler M. Sharpe, Amanda Martin, Greg Diserio, dated Tuesday, February 22, 2022 11:23 AM, submitting Palomino Fire Station Preliminary Landscape Plan, Site Aerial, Site Plan, Station 19 Attributes (multiple pages – 8.5"x11")

d. *Exhibit:* Email from Anthony Palermo, to Maria Perez, Patrick Doty, with copies to James Hayden, Tyler M. Sharpe, Amanda Martin, Greg Diserio, dated Tuesday, February 22, 2022 11:26 AM, submitting Applicant's PowerPoint Presentation (multiple pages – 8.5"x11")[color]

e. *Exhibit:* Email from Anthony Palermo, to Maria Perez, Patrick Doty, with copies to Tracy Toussaint, dated Tuesday, February 22, 2022 4:05 PM, submitting Station 19 Map (4 pages – 8.5"x11")[color]

1. *Résumé:* Tony Palermo, AICP, MPA, Assistant Director with the City of Fort Myers (1 page – 8.5"x11")

2. *Résumé:* James Hayden, Deputy Chief of Administration with the city of Fort Myers Fire Department (1 double-sided page – 8.5"x11")

3. *Résumé:* Tyler Sharpe, Professional Engineer with Johnson Engineering (1 page – 8.5"x11")

4. *PowerPoint Presentation:* Prepared by the City of Fort Myers, for Lee County Hearing Examiner, Public Hearing, Special Exception – Fire Station, dated February 24, 2022 (multiple double-sided pages – 8.5"x11")[color]

5. *Letter:* From James L. Hayden, with the Fort Myers Fire Department, to Tony Palermo, dated June 10, 2021, regarding Fire Station 19 Attributes (1 page – 8.5"x11")

6 *Site Plan:* Prepared by Johnson Engineering for the City of Fort Myers Fire Department, dated July 2021 (2 pages – 24"x36")

7. *Preliminary Landscape Plan:* Prepared by David M. Jones, Jr. and Associates, Inc., for the Palomino Lane Fire Station, in North Fort Myers, issued date Jan X, 2022 (2 pages – 24"x36")

8. *Map:* Station 19 Map (1 page – 8.5"x11")[color]

Other Exhibits

Howard Freidin, Esq.

1. *Email:* From Janice and Michael Fiedler, to Howard Freidin, Esq., dated Wednesday, February 23, 2022 8:42 PM (1 page – 8.5"x11")

IX. 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.

X. Appeals

This Hearing Examiner Decision is final on the date rendered. The Decision may be appealed to the Circuit Court in Lee County within 30 days of the date rendered. Appeal is by Petition for *Writ of Certiorari* in accordance with LDC 34-146.

XI. 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 public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. A verbatim transcript may also be available for purchase from the court reporting service.

This Decision is rendered March 4, 2022.

Donna Marie Collins
Chief Hearing Examiner

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

Exhibits to Hearing Examiner Decision
A: Legal Description and Vicinity Map
B: Site Plan

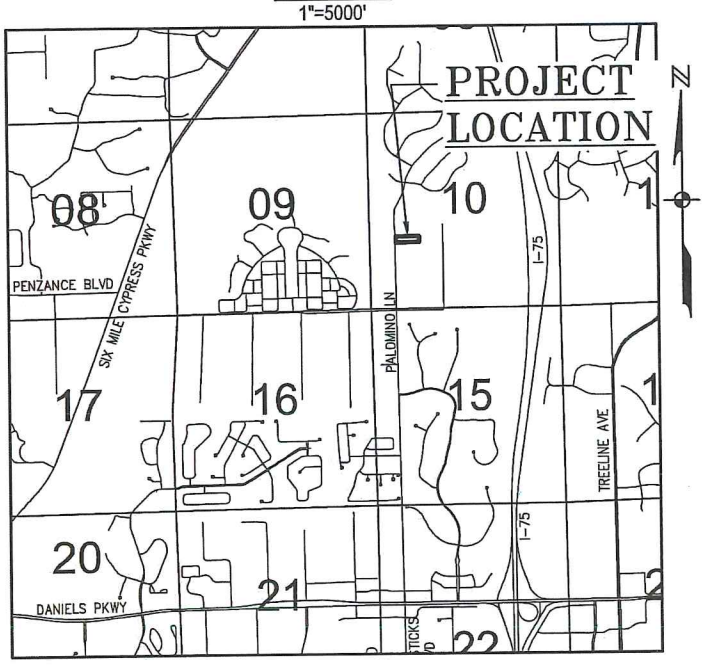
EXHIBIT A

SKETCH AND DESCRIPTION

11631 PALOMINO LANE
STRAP: 10-45-25-00-00006.0060

A PARCEL OF LAND LYING IN
SECTION 10, TOWNSHIP 45 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

VICINITY MAP
1"=5000'



0 1250 2500 5000
(INTENDED DISPLAY SCALE: 1"=5000')

NOTES:

1. THIS IS NOT A BOUNDARY SURVEY, NOR IS IT INTENDED TO BE USED AS ONE.
2. HORIZONTAL DATA AND COORDINATES SHOWN HEREON ARE IN FEET AND ARE PROJECTED ONTO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983 (NAD83), 2011 ADJUSTMENT.
3. BEARINGS SHOWN HEREON ARE BASED ON THE THE NORTH LINE OF THE SE 1/4 OF THE NW 1/4 OF THE SW 1/4 OF SECTION 10, WHICH BEARS N89°30'55"E.
4. PARCEL CONTAINS 102,741 SQUARE FEET OR 2.36 ACRES, MORE OR LESS.
5. P.O.C. = POINT OF COMMENCEMENT
6. P.O.B. = POINT OF BEGINNING
7. UE = UTILITY EASEMENT
8. DE = DRAINAGE EASEMENT
9. N = NORTHING
10. E = EASTING
11. ORB = OFFICIAL RECORDS BOOK
12. ORI = OFFICIAL RECORDS INSTRUMENT
13. ROW, R/W = RIGHT-OF-WAY
14. SQ. FT. = SQUARE FEET
15. NOT VALID WITHOUT SHEETS 1 THROUGH 2 OF 2.

THIS IS NOT A SURVEY.

I HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS SKETCH WAS PREPARED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472, FLORIDA STATUTES.

REVIEWED
SEZ2021-00010
Hunter Searson, GIS Planner
Lee County Government
1/20/2022

THIS SKETCH HAS BEEN DIGITALLY SIGNED BY:
RICHARD G. DANIELS (FOR THE FIRM L.B. 642)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 7229
ON THE DATE ADJACENT TO THE SEAL.

THIS CERTIFICATION IS TO THE DATE OF THE ELECTRONIC SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED, AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

JOHNSON ENGINEERING

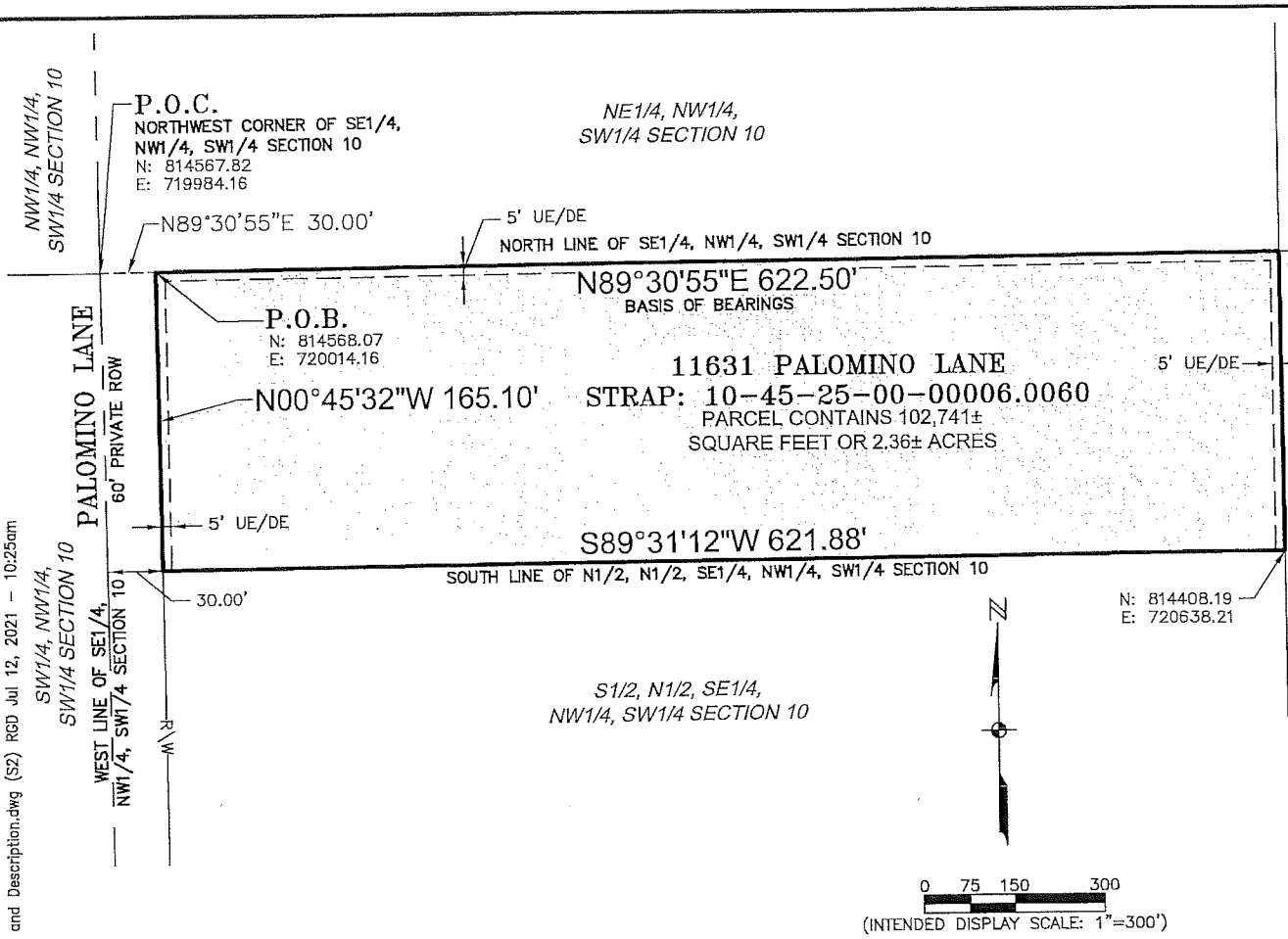
JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE: (239) 334-0046
FAX: (239) 334-3661
E.B. #642 & L.B. #642

SKETCH AND DESCRIPTION
STRAP: 10-45-25-00-00006.0060
SECTION 10, TOWNSHIP 45 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
07/09/2021	20214098-000	10-45-25	AS SHOWN	1 OF 2

\\FTMS01\Drawings\2021\20214098-000\Surveying\Sketches\20214098-000 11631 Palomino Ln Sketch and Description.dwg (S1) RGD Jul 12, 2021 - 10:25am

NOTICE: THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 5J-17.062, F.A.C.



DESCRIPTION

THE NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA.

LESS: THE WESTERLY 30 FEET THEREOF AS RECORDED IN OFFICIAL RECORDS BOOK 4170, PAGE 3961.

A PARCEL OF LAND LYING THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10; THENCE ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4, N89°30'55"E, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ON SAID NORTH LINE, N89°30'55"E, A DISTANCE OF 622.50 FEET TO THE EAST LINE OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10; THENCE ALONG SAID EAST LINE, S00°32'39"E, A DISTANCE OF 165.16 FEET TO THE SOUTH LINE OF THE AFOREMENTIONED NORTH 1/2 OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10; THENCE ALONG SAID SOUTH LINE, S89°31'12"W, A DISTANCE OF 621.88 FEET TO A LINE LYING 30.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10; THENCE ALONG SAID PARALLEL LINE, N00°45'32"W, A DISTANCE OF 165.10 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 102,741 SQUARE FEET OR 2.36 ACRES, MORE OR LESS.

THIS IS NOT A SURVEY.

\\FTM501\Drawings\2021\20214098-000\Surveying\Sketches\20214098-000 11631 Palomino Ln Sketch and Description.dwg (S2) RGD Jul 12, 2021 - 10:25am

JOHNSON ENGINEERING

JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE: (239) 334-0046
FAX: (239) 334-3661
E.B. #642 & L.B. #642

SKETCH AND DESCRIPTION
STRAP: 10-45-25-00-00006.0060
SECTION 10, TOWNSHIP 45 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
07/09/2021	20214098-000	10-45-25	AS SHOWN	2 OF 2



SEZ2021-00010

Zoning

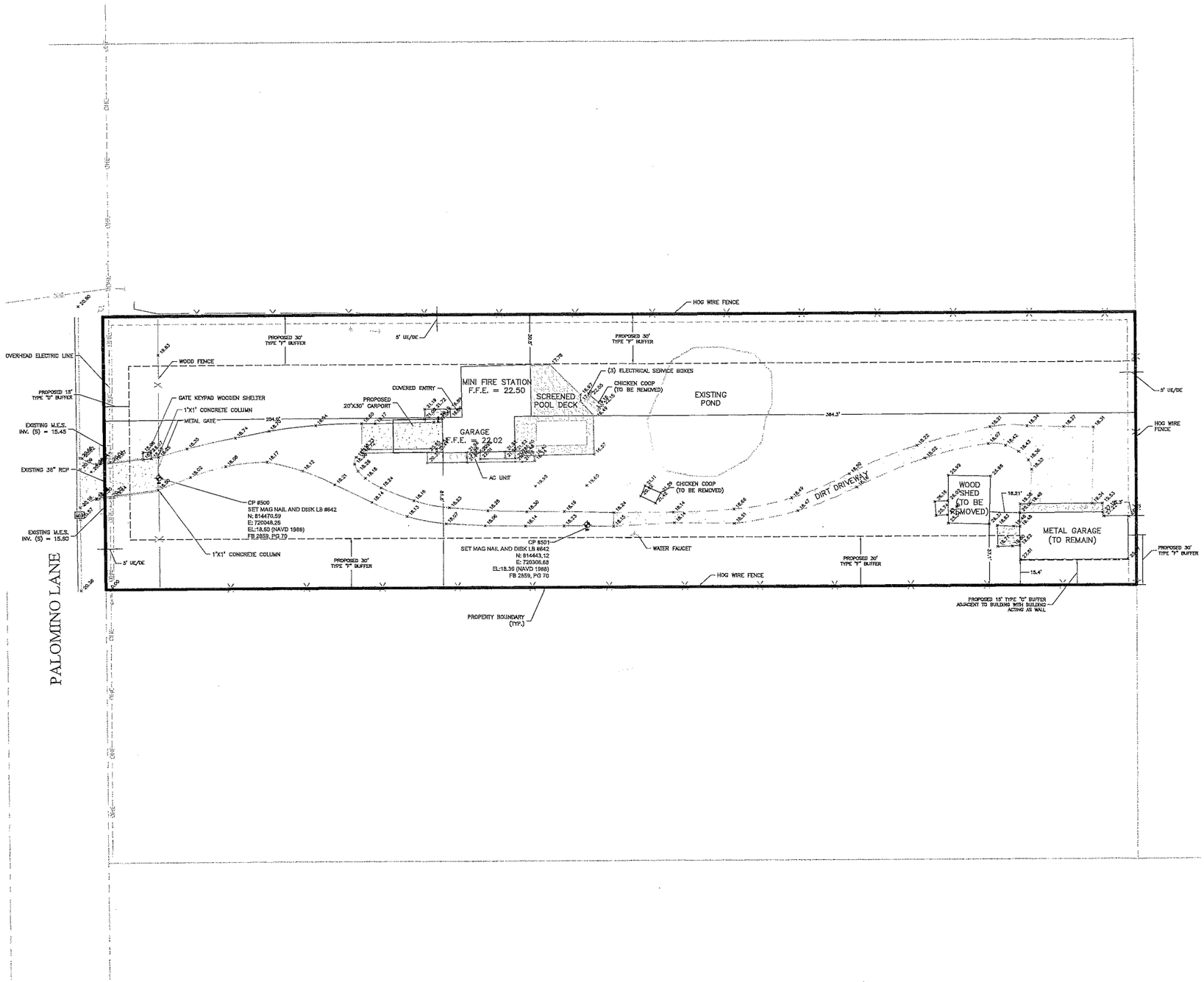
Subject Property

N
W
E
S

0
250
Feet

Lee County
Southwest Florida

EXHIBIT B



LEGEND

- EXISTING CONCRETE
- EXISTING ASPHALT PAVEMENT
- EXISTING BRICK WALKWAY

JOHNSON ENGINEERING

JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE: (239) 334-0046
FAX: (239) 334-3661
E.B. #642 & L.B. #642

CITY OF FORT MYERS
FIRE DEPARTMENT

CITY OF FORT MYERS
LEE COUNTY, FLORIDA

REVISIONS

DESCRIPTION	DATE

DATE:	JULY 2021
PROJECT NO.	20214098-000
FILE NO.	10-45-25
SCALE:	1"=30'

SITE PLAN

SHEET NUMBER

C01

\\fmsa01\Drawings\2021\20214098-000\Engineering\Drawings\EXHIBITS\11631 Palomino Lane Site Plan.dwg (2x3-Right-Landscape) amm Jul 16, 2021 - 8:31am