

Summary of Hearing Examiner Recommendation

BAYSHORE PINES RPD

The application seeks to develop a 9 acre parcel with up to 180 multifamily dwellings in four, four-story buildings. The total unit count includes up to 89 bonus units.

The suggested density is compatible with nearby land uses, but proposed building heights far exceed that of surrounding development. Initially requesting heights of 60 feet, Applicant later reduced potential building heights to 52 feet at hearing. The stark height differential with surrounding development was of significant concern to nearby residents. The Hearing Examiner shares this concern. A post hearing site check confirms no four story buildings east of US 41.

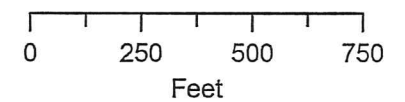
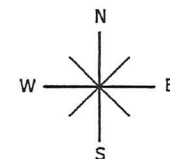
Applicant employs several design measures to ameliorate the proposed building heights. These measures include placement of open space areas and enhanced buffers along the project perimeter. Applicant asserts these design features ensure compatibility with contiguous single family residential land uses.

Detailed recommendation follows

DCI2022-00048

Future Land Use

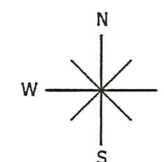
-  Subject Property
-  Central Urban
-  Public Facilities
-  Conservation Lands - Upland



DCI2022-00048

Aerial

 Subject Property



0 250 500 750
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2022-00048

Regarding: BAYSHORE PINE RPD

Location: 5361 Bayshore Road
North Fort Myers Planning Community
(District 4)

Hearing Date: March 30, 2023 (Heard)
Continued Date: May 5, 2023 (Heard)
Record Closed: May 12, 2023

I. **Request**

Rezone 9.13± acres from Commercial (C-1) and Residential Single-Family (RS-1) to Residential Planned Development (RPD) to allow up to 180 multi-family dwelling units, including 89 bonus density units.

The property's legal description is set forth in Exhibit A.

II. **Hearing Examiner Recommendation**

Approve, subject to conditions and deviations set forth in Exhibit B.

III. **Discussion**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property to the planned development zoning district.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 9.13 acres to the Residential Planned Development District (RPD).

In preparing a recommendation to the Board, the Hearing Examiner must apply the Lee County Comprehensive Plan (Lee Plan), Land Development Code (LDC) and other County regulations to facts adduced at hearing. The record must contain substantial competent evidence to support the recommendation.

Discussion supporting the Hearing Examiner's recommendation of approval with conditions follows below.

¹ LDC §34-145(d)(4) a.

Request

The request seeks to rezone 9.13 acres from Commercial (C-1) and Residential Single Family (RS-1) to RPD to allow development of up to 180 multifamily dwellings, including 89 bonus density units.

Bonus density means an increase in density above the standard range permitted by the Lee Plan.² If approved, the density bonus may be obtained through Transfer Development Rights (TDR) credits or through the County's "Bonus Density Housing Program."

The Master Concept Plan (MCP) features four multi-story buildings, parking and two indigenous open space areas. Maximum building height will be 52 feet. The project will have direct access to Bayshore Road via a single driveway.

The request includes four deviations from LDC criteria.

The Department of Community Development staff recommended approval of the RPD zoning district including the request for density bonus, finding both requests satisfied review criteria.

Several members of the public participated in the hearing.

Character of Area

The property is located on Bayshore Road in North Fort Myers. The area is densely settled with residential and commercial land uses. Carriage Village mobile home community borders the site along the north and east boundary. A single-family community borders its west boundary.

Bayshore Road is designated a "Commercial Corridor" by the North Fort Myers Community Plan.³ The corridor hosts small and large scale commercial uses as well as residential development.⁴ Approximately 1.5 miles west is the intersection of Bayshore Road and Business US 41, which is developed with retail and community services.

History

The majority of the property is zoned single family residential (RS-1) with a narrow strip of commercial (C-1) zoning along Bayshore Road. The property is vacant and covered with native and exotic plant species.

² LDC §2-143.

³ LDC §33-1566.

⁴ During her site check, the Hearing Examiner noted auto parts store, accounting offices, pawn shop, convenience stores and a shopping plaza anchored by a grocery store within a half mile of the site.

Lee Plan

Planned developments must be consistent with the Lee Plan.

The property is in the North Fort Myers Planning District and subject to the North Fort Myers Community Plan.⁵ The Lee Plan encourages a diverse mix of housing to serve County residents.⁶ The proposed multi-family apartment buildings expand housing options in the North Fort Myers community.⁷ The future land use designation is Central Urban, which includes the most densely settled areas of the County.⁸

The Lee Plan encourages compact and contiguous development patterns where there are services and infrastructure to support new development.⁹ Surrounding lands feature residential and commercial land uses. The request constitutes infill development, as the site is surrounded by improved properties.¹⁰

Standard density permits up to 91 dwelling units on the site.¹¹ Applicant proposes an additional 89 units via bonus density utilizing Greater Pine Island Transfer of Development Units (TDUs), which allows up to 20 units per acre in the Central Urban category. This brings the permissible unit count to 180.¹² The Board has discretion to approve the subject rezoning request with or without bonus density.¹³ The Board also has discretion to limit the number of units that can be built using bonus density to an intensity lower than the maximum total density allowed, or impose reasonable conditions, if they conclude increased density would be contrary to public health, safety, and welfare.¹⁴

Density bonus is achievable through Transfer of Development Rights or Affordable Housing Programs.¹⁵ Greater Pine Island Transfer of Development Units¹⁶ provide the greatest bonus density, incentivizing growth on inland sites served by public

⁵ Lee Plan Map 1-B, Goal 30.

⁶ Lee Plan Goals 5, 135, 160. Policy 135.1.9.(directive to ensure a mix of residential housing types countywide).

⁷ Lee Plan Policy 30.1.3 (directive to encourage a diversity of housing types in North Fort Myers).

⁸ Lee Plan Map 1-A.

⁹ Lee Plan Objectives 2.1, 2.2, Policies 2.2.1, 5.1.3.

¹⁰ Lee Plan Policy 5.1.3.

¹¹ Central urban areas may develop up to ten units per acre by right.

¹² Applicant's representative testified the intent is to utilize Greater Pine Island Transfer Development Units to achieve desired density. Transcript March 30, 2323: Alexis Crespo, AICP.

¹³ LDC §2-147(b)(4).

¹⁴ LDC §2-147(c).

¹⁵ LDC Chapter 2 Article IV (Bonus Density), Division 2 (Bonus Density Program) and Division 3 (Transferable Development Units). The Affordable Housing Program allows for site built affordable housing or contributions to the County's Affordable Housing Trust Fund. Transferable development units may be achieved from sending parcels that are wetlands, located in the Greater Pine Island Planning Community and from DR/GR designated lands within the Southeast Lee County Planning Community. A transferable development unit is one dwelling unit severed from a sending parcel that can be transferred for use on a receiving parcel. LDC §2-143(a). See also Lee County Administrative Code 13-5.

¹⁶ Hereinafter "TDUs".

services and infrastructure.¹⁷ Properties located outside the Coastal High Hazard Area are expressly preferred receiving areas for TDU credits.

Requests for bonus density must meet the following criteria:

- (1) Additional traffic will not travel through areas with significantly lower densities before reaching the nearest collector or arterial road. Evidence in the record confirms the project traffic directly accesses Bayshore Road, a state maintained arterial roadway.
- (2) Existing /committed public facilities are not so overwhelmed that a density increase would be contrary to the public interest. Evidence in the record confirms there are adequate public services and infrastructure. See discussion under the heading "Public Services and Infrastructure."
- (3) Storm shelters or other mitigation is provided if the development is in a Coastal High Hazard Area. The property is no in the Coastal High Hazard Area.
- (4) The resulting development will be compatible with existing/planned surrounding land uses.¹⁸

Record evidence demonstrates the proposed RPD including bonus density meets the stated criteria.

Compatibility

Compatibility exists when land uses exist in proximity and no one use unduly negatively impacts another use.¹⁹ Planned development zoning is a useful tool when integrating new development with surrounding land uses.²⁰ The planned development zoning district allows flexibility in site design to address potential incompatibilities with neighboring development.²¹

The requested density is consistent with the Central Urban future land use designation and the site's location along a heavily traveled highway. The proposed density is consistent with surrounding development patterns featuring both commercial and residential land uses.²²

There is no question proposed density is compatible with nearby land uses. However, the proposed 52 foot building height far exceeds the height of

¹⁷ LDC §§ 2-151, 2-152. Heightened density encouraged in intense urban categories outside coastal high hazard areas and with access to services and infrastructure.

¹⁸ See discussion on compatibility *infra*.

¹⁹ Florida Statutes s.163.3164(9); The Lee Plan offers benchmarks from which to measure compatibility, particularly in the context of uses adjacent to established residential development. Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

²⁰ LDC §34-612(2).

²¹ *Id.*

²² LDC §34-413.

surrounding development.²³ During the post hearing site check, the Hearing Examiner observed no four+ story buildings east of US 41.²⁴ Applicant employed several design measures to ameliorate the stark height differential. These measures include open space areas and enhanced buffers along the project perimeter.²⁵ Applicant asserts these design features ensure compatibility with single story residential land uses contiguous to the project.²⁶

LDC

A planned development zoning district is appropriate because planned developments offer flexibility in planning and design.²⁷

Development must comply with County land development regulations or seek deviations. A “deviation” is a departure from a land development regulation.²⁸ Applicants requesting relief from code standards must demonstrate the deviation enhances the planned development and will not cause a detriment to the public.²⁹

Applicant seeks four deviations from the LDC to accomplish the site design proposed in the MCP. Deviations pertain to street access, landscape buffer standards,³⁰ excavation setbacks, and preservation of indigenous open space.

Applicant offered testimony and evidence in support of the deviations consistent with the LDC standard of review.³¹ Staff recommends approval of all four deviations.

The LDC requires the Hearing Examiner to recommend approval, approval with modifications or denial of a requested deviation based upon a finding that the deviation (1) enhances the planned development and, (2) preserves/promotes public health, safety, and welfare.³² The Hearing Examiner finds the requested deviations meet the LDC criteria for approval.

²³ The building height of surrounding structures do not exceed 35 feet.

²⁴ Post hearing site check authorized by Administrative Code 2-6, §3.1. There are four story buildings under construction in west of us 41, but none within a two mile radius of the site. At 52 feet, the proposed buildings will be nearly 50% higher than surrounding residences.

²⁵ Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 77.3.1, 77.3.4. There is no LDC buffer requirement between single and multifamily uses. LDC §10-416(d)(3), 34-411(k).

²⁶ Applicant reduced proposed height from 60 to 52 feet in response to residents' compatibility concerns. See Transcript May 5, 2023.

²⁷ LDC §§34-411(a), 34-612(2); Planned developments must be consistent with the Lee Plan. Lee Plan Policy 2.1.2. LDC §34-2: Development of County Impact means development that may have a substantial effect upon the health, safety, and welfare of the citizens of the County or upon its natural resources. See also LDC §34-341(a). Lee Plan Policies 2.1.1, 5.1.1; LDC §34-612(2). The planned development district affords flexibility in site design.

²⁸ LDC §34-2.

²⁹ LDC §34-373(a)(9).

³⁰ Applicable to a single location near the project entrance.

³¹ LDC §34-377(a)(4).

³² LDC §34-377(a)(4).

Development will be subject to impact fees for road, park, fire, and emergency medical services.³³

Environmental/Natural Resources

Requests to rezone property must not adversely affect environmentally critical/sensitive areas or natural resources.

Proposed buffers comply with or exceed code requirements. Buffers and landscaping within common areas must follow Xeriscape principles and consist of native landscape to conserve water.³⁴

Applicant's protected species survey yielded evidence of gopher tortoises. Developer must relocate gopher tortoise burrows consistent Florida Fish and Wildlife Conservation Commission permitting criteria.³⁵

The Hearing Examiner finds the proposed RPD zoning will not harm environmentally critical/sensitive areas or natural resources.³⁶ The proposed plan of development enhances the site's environmental features by removing exotic vegetation, preserving indigenous vegetation, and restoring areas infested with exotics with native plantings.

Transportation/traffic

The site fronts on a state maintained, multi-lane arterial road. The Florida Department of Transportation controls access to the roadway. The MCP reflects a single project entrance from Bayshore Road. Applicant testified the access will be gated and include a right turn lane.

The transportation studies concluded project traffic generated by the RPD will not negatively impact surrounding roadways.³⁷ Accordingly, no road improvements are necessary to accommodate projected trip generation. The Traffic Impact Statement concludes the RPD will pay its fair share of its transportation impacts with road impact fees.³⁸

The site is in an area where a resident may access jobs, recreation, and shopping by walking, cycling or by transit. There is an existing Lee Tran bus stop along the

³³ LDC Chapter 2, Article VI.

³⁴ Lee Plan Objective 126.2, Policy 126.2.1 The common elements of the project will have Florida friendly plantings with low irrigation requirements.

³⁵ Lee Plan Policy 123.8.1.

³⁶ Lee Plan 125.1.2.

³⁷ Staff Report Attachment F Memorandum from Md Rakibul Alam, Senior Transportation Planner to Chahram Badamtchian, Senior Planner dated February 20, 2023.

³⁸ Lee Plan Policies 38.1.1, 38.1.5. Staff Report Attachment N Traffic Impact Analysis for Bayshore Pines RPD prepared by TR Transportation Consultants, Inc. dated August 10, 2022.

property frontage on Bayshore Road.³⁹ The project will be especially convenient for prospective residents without cars and therefore consistent with Lee Plan directives encouraging accessibility to transit.⁴⁰

Future development will be subject to road impact fees.⁴¹ Developer must address site related improvements during the development order review process.⁴²

Public Services and Infrastructure

Public services are the services, facilities, capital improvements, and infrastructure necessary to support development.⁴³ The Lee Plan requires an evaluation of the availability of public services during the rezoning process.⁴⁴

The site has access to public services and infrastructure. The property fronts on Bayshore Road/State Route 78, a State maintained arterial roadway with a shared use path.⁴⁵ The MCP depicts a single access drive to Bayshore Road. Lee County Utilities has potable water lines to serve the project. Florida Governmental Utility Authority has infrastructure to provide sanitary sewer service.

The North Fort Myers Fire Control & Rescue Service District and Lee County EMS provide fire and emergency medical services to the area.⁴⁶ The North District Offices of the Lee County Sheriff provides law enforcement services to the community.⁴⁷ Lee Tran bus routes along Bayshore Road provide opportunities for future residents to access the property via mass transit.⁴⁸

Schools, parks, community facilities, shopping and employment centers are located within reasonable distances.⁴⁹

³⁹ Lee Tran Route 590; Lee Plan Map 3-C; Residential developments exceeding 100 units must provide a paved walkway to the nearest bus stop and install signs, a landing pad and bicycle storage rack within the road right of way. LDC §§10-442(a)1, 33-1574.

⁴⁰ Lee Plan Goal 43, Policies 5.1.3, 30.3.3, 30.3.3, 39.1.3.

⁴¹ LDC §2-265.

⁴² Lee Plan Objective 39.1, Policy 39.1.1; LDC §§10-8, 10-287.

⁴³ Public services and infrastructure available to serve the project will include public water (Lee County Utilities), sewer (FGUA), paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools.

⁴⁴ Lee Plan Policy 2.2.1.

⁴⁵ The Lee Plan designates Bayshore Road as a future shared use facility for cyclists and pedestrians and part of the Pine Island Hendry Trail. Lee Plan Maps 3-D, 4-E.

⁴⁶ North Fort Myers Fire Control & Rescue Service District Station 3 (1.5 miles). EMS Station 31 (3 miles).

⁴⁷ Staff Report Attachments L, M. Lee County Sheriff Office within 2 miles.

⁴⁸ Lee Plan Policy 30.3.3; Lee Tran Route 590.

⁴⁹ Staff Report Attachment M: Applicant's Narrative. There are five schools within five miles of the property. There are 2 parks, a recreational facility, and a library within 1.5 miles.

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County's water resources.⁵⁰ Conditions must be plausibly related to the project's anticipated impacts, and pertinent to mitigating impacts to public health, safety, and welfare.⁵¹ The Bayshore Pines RPD will be subject to conditions of approval designed to address impacts reasonably anticipated from development.⁵²

The Hearing Examiner recommends revisions to wording of conditions and deviations to improve clarity.

Public

Applicant hosted a public meeting at the North Fort Myers Recreation Center on Monday, December 19, 2022. Over 30 members of the public attended the meeting.

Several members of the public attended the hearing. Concerns were centered on existing traffic conditions, proposed building heights, drainage, and gopher tortoises.

Conclusion

The Hearing Examiner recommends approval subject to the conditions in Exhibit B.

The Hearing Examiner finds the requested RPD district meets LDC criteria and, as conditioned, is compatible with surrounding development.⁵³

IV. Findings and Conclusions

Based on the testimony and exhibits presented in the record, the Hearing Examiner finds:

- A. The requested Bayshore Pines RPD is consistent with the Lee Plan. Lee Plan Goals 2, 4, 5, 30, 43, 60, 61, 77, 95, 125, 135, 160; Objectives 2.1, 4.1, 5.1, 77.1, 77.3, 123.2, 126.2, 135.1, 160.1, and Policies 1.1.3, 1.6.5, 2.2.1, 5.1.1, 5.1.3, 5.1.5, 5.1.7, 5.1.10, 5.2.4, 30.3.3, 39.1.3, 135.1.9, 135.9.6, 160.1.3; Lee Plan Maps 1-A, 1-B, 3-D, 4-A, 4-E and Table 1(a).

⁵⁰ Lee Plan Policies 5.1.5, 135.9.5, 135.9.6; LDC §§34-145(d)(4) a.2.b), 34-377(a)(3), 34-411, and 34-932(c).

⁵¹ LDC §34-932(b).

⁵² LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Policy 5.1.5.

⁵³ Lee Plan Policy 5.2.4, 6.1.4.

- B. As conditioned, the RPD zoning designation:
1. Is consistent with the Land Development Code or qualifies for deviations. LDC Chapters 2, 10, and 34.
 2. Is compatible with existing or planned uses in the surrounding area. Lee Plan Objective 2.1, and Policies 5.1.2, 5.1.3, 5.1.5, 5.2.4, 135.1.9, 135.9.5, 135.9.6, 160.1.3; LDC 34-411, 34-413.
 3. Provides sufficient road access to support proposed development intensity.
 4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Objective 39.1, Policies 38.1.1, 39.1.1, 39.1.3, 39.2.1, 43.1.1; LDC 2-261 *et seq.*, 34-411(d) and (e).
 5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 60, 61, 77, Objectives 60.4, 77.3, 126.2, Policies 5.1.6, 61.3.8, 61.3.11, 77.3.1, 123.8.1, 125.1.2, 126.2.1, and Standard 4.1.4.
 6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 95, Objectives 2.1, 2.2, 4.1, Policies 2.2.1, 39.1.3, 39.2.1, 95.1.3, Standards 4.1.1, 4.1.2.
- C. The proposed uses are appropriate at the subject location. Lee Plan Goals 2, 5, 30; Objectives 2.1, 2.2, Policies 2.1.1, 2.1.2, 5.1.2, 5.1.3, 5.1.5, 5.2.4, 135.9.5, 135.9.6.
- D. The County regulations and recommended conditions provide sufficient safeguards to protect the public interest and relate to impacts expected from the proposed development. Lee Plan Policies 5.1.2, 5.1.5, 5.2.2, 135.9.6; LDC 34-377(a)(3), 34-411 and 34-932(c).
- E. Deviations recommended for approval enhance the planned development and preserve public health, safety, and welfare. LDC 34-373(a)(9), 34-377(a)(4)

Recommendation dated: June 2, 2023.



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'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

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

SURVEY PLAT

OF A PARCEL LYING IN SECTION 36, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA

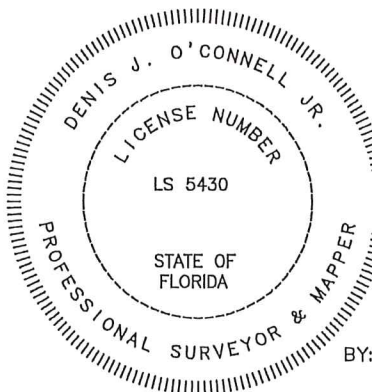
LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PORTION OF SECTION 36, TOWNSHIP 43 SOUTH, RANGE 24 EAST, BEING THE SAME AS THE COMBINED PARCELS DESCRIBED AS EXHIBIT "A" OF INSTRUMENT #2007000313824, PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

COMMENCE AT THE NORTHEAST CORNER OF BAYSHORE PINES ALSO BEING THE NORTHEAST CORNER OF LOT 16, BLOCK A, AS RECORDED AT PLAT BOOK 16, PAGE 73 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.33°40'52"E., FOR A DISTANCE OF 4.77 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DECIBED; THENCE N.56°25'32"E., ALONG THE SOUTH LINE OF BLOCK 8, CARRIAGE VILLAGE UNIT 2, AN UNRECORDED SUBDIVISION AS SHOWN ON OFFICIAL RECORDS BOOK 665, PAGE 644 OF SAID PUBLIC RECORDS, FOR A DISTANCE OF 565.96 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 7, CARRIAGE VILLAGE UNIT 1, AN UNRECORDED SUBDIVISION AS SHOWN ON OFFICIAL RECORDS BOOK 580, PAGE 205 OF SAID PUBLIC RECORDS; THENCE S.33°34'28"E., ALONG THE WEST LINE OF SAID BLOCK 7, FOR A DISTANCE OF 600.00 FEET; THENCE N.56°25'32"E., ALONG THE SOUTH LINE OF SAID BLOCK 7, FOR A DISTANCE OF 600.00 FEET; THENCE S.33°34'28"E. FOR A DISTANCE OF 49.11 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF BAYSHORE ROAD, A 180 FOOT RIGHT OF WAY, AS SHOWN ON A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP FOR STATE ROAD No. 78, SECTION 12060-2521, LATEST REVISION 9/27/85; THENCE S 55°56'40" W, ALONG SAID NORTH RIGHT OF WAY LINE, FOR A DISTANCE OF 642.40 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 5639.58 FEET; THENCE CONTINUE ALONG SAID NORTH RIGHT OF WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°18'48", A CHORD BEARING OF S.58°38'12"W., A CHORD LENGTH OF 522.80 FEET AND AN ARC LENGTH OF 522.98 FEET TO A POINT ON THE EAST LINE OF SAID PLAT OF BAYSHORE PINES; THENCE N.33°40'52"W., ALONG THE EAST LINE OF SAID PLAT, FOR A DISTANCE OF 634.33 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 397,837 SQUARE FEET, OR 9.133 ACRES, MORE OR LESS

REVIEWED
DCI2022-00048
Hunter Searson, GIS
Planner
Lee County Government
9/20/2022



Denis
O'Connell
ell

Digitally signed
by Denis
O'Connell
Date:
2022.08.29
12:14:07 -04'00'

BY: _____
DENIS J. O'CONNELL Jr.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. LS# 5430

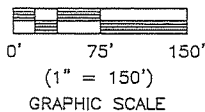
NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF BAYSHORE PINES SUBDIVISION AS RECORDED IN PLAT BOOK 16, PAGE 73 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AS BEING N 33°40'52" W.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
4. RECORDING INFORMATION SHOWN HEREON RELATES TO THE PUBLIC RECORDS OF LEE COUNTY.

* THIS IS NOT A SURVEY *

TITLE: LEGAL DESCRIPTION			
 METRON SURVEYING & MAPPING, LLC LAND SURVEYORS-PLANNERS LB# 7071		10970 S. CLEVELAND AVE. SUITE #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
FILE NAME: 15286SK.DWG	FIELD BOOK/PAGE: 716/26,29,31	PROJECT NO.: 15286	SHEET: 1 OF 2
EXHIBIT DATE: 8/26/2022	DRAWN BY: BUD	SCALE: 1" = 150'	CHECKED BY: DJO
		FILE NO. (S-T-R)	36-43-24

EXHIBIT A



SURVEY PLAT

OF A PARCEL LYING IN SECTION 36,
TOWNSHIP 43 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

LEGEND

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
O.R. = OFFICIAL RECORDS BOOK
P.B. = PLAT BOOK
PG = PAGE
R/W = RIGHT-OF-WAY

P.O.C.
NE CORNER
LOT 16, BLOCK A
P.B. 16, PG 73

P.O.B.

SUBJECT PROPERTY
36-43-24-00-00024.0000
9.133 ACRES, MORE OR LESS
5361 BAYSHORE ROAD

NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF BAYSHORE PINES SUBDIVISION AS RECORDED IN PLAT BOOK 16, PAGE 73 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AS BEING N 33°40'52" W.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
4. RECORDING INFORMATION SHOWN HEREON RELATES TO THE PUBLIC RECORDS OF LEE COUNTY.

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LINE TABLE

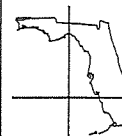
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L1	S 33°40'52" E	4.77'
L2	S 33°34'28" E	49.11'

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
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TITLE:

SKETCH OF DESCRIPTION

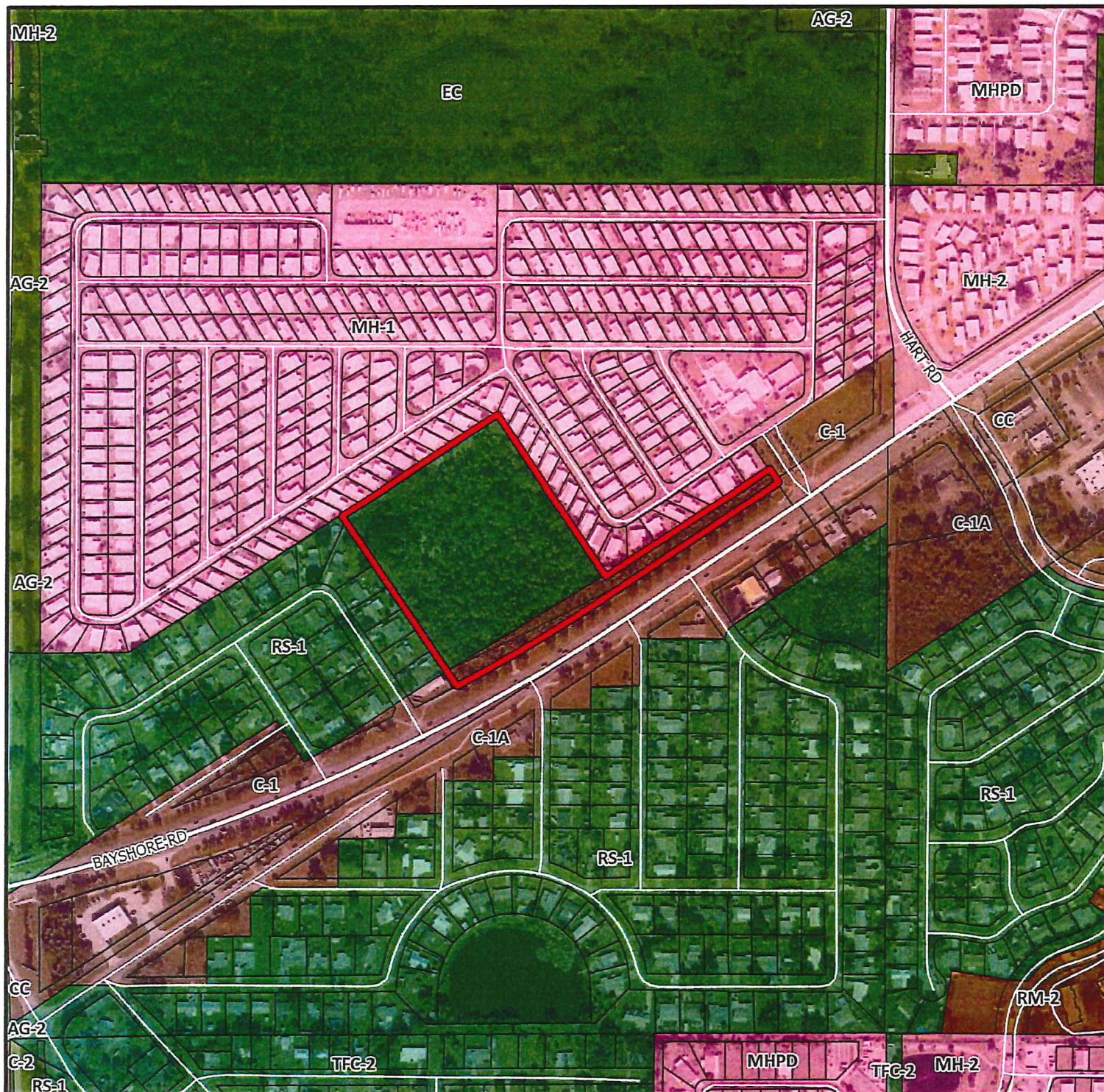


METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS · PLANNERS
LB# 7071

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FORT MYERS, FLORIDA 33907
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FAX: (239) 275-8457

www.metronfl.com

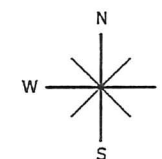
FILE NAME: 15286SK.DWG	FIELD BOOK/PAGE: 716/26,29,31	PROJECT NO.: 15286	SHEET: 2 OF 2
EXHIBIT DATE: 8/26/2022	DRAWN BY: BUD	SCALE: 1" = 150'	CHECKED BY: DJO
		FILE NO. (S-T-R): 36-43-24	



DCI2022-00048

Zoning

 Subject Property



0 250 500 750

Feet

ATTACHMENT B



Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS As revised by Hearing Examiner

Conditions

1. Master Concept Plan/Development Parameters

Master Concept Plan. Development must be consistent with the one-page Master Concept Plan (MCP) entitled “Bayshore Pines RPD” last revised April 28, 2023, except as modified by conditions below.

Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC, except where deviations are approved herein. Changes to approved development parameters, conditions, or MCP may require further development approvals.

Approved Development Parameters. The Bayshore Pines RPD is approved to develop up to 180 multiple family dwelling units, including 89 bonus density units.

2. Permitted Uses and Site Development Regulations

a. Schedule of Permitted Uses

Residential Tracts

Accessory Uses and Structures
Administrative offices
Club: Private
Dwelling Units: Multiple-Family
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention
Fences and Walls
Models: Model Units
Parking Lot, Accessory
Real Estate Sales Office
Recreational Facilities
 Personal
 Private-On-Site
Residential Accessory Uses
Signs

Temporary Uses, limited to construction trailers at the time of
Development, Real Estate Sales Office and Temporary Amenity
Structures/Equipment

b. Site Development Regulations

Minimum Lot Area and Dimensions:

Area:	9 Acres
Width:	560 feet
Depth:	600 feet

Minimum Building Setbacks:

Development Perimeter:	60 feet
Street:	60 feet
Side:	60 feet
Rear:	60 feet
Waterbody	25 feet

Accessory Structure:

Rear:	30 feet
Side:	30 feet

Maximum Lot Coverage:	40%
Maximum Building Height:	52 feet
Minimum Building Separation:	30 feet

3. **Model Units and Real Estate Sales**

- a. Units Approved. The project may operate up to nine model units at a time. Models may not duplicate floor plans. Each model unit must have a different design.
- b. Development Order Plans. Development order plans must identify the location of model homes/units and real estate sales offices.
- c. Real Estate Sales Limited. Real estate sales are limited to sale of lots and units within the Bayshore Pines RPD.

4. **Crime Prevention Through Environmental Design (CPTED)**

Developer must submit a Crime Prevention Through Environmental Design report to the Lee County Sheriff's Office prior to development order approval.

5. Environmental Conditions

- a. Open Space. Development order plans must depict 45% or 4.09 acres of open space.
- b. Indigenous Vegetation. Development order plans must depict 1.76 acres of indigenous open space allocated among the preserve areas depicted on the MCP as follows:

Indigenous Credit Chart				
Preserve Area	Indigenous Ac.	Width of Area	Credit %	Indigenous with credits
<i>Preserve 1</i>	<i>0.108</i>	<i>20-foot</i>	<i>0%</i>	<i>0.108</i>
<i>Preserve 2</i>	<i>0.691</i>	<i>50-foot</i>	<i>110%</i>	<i>0.76</i>
<i>Preserve 3</i>	<i>0.156</i>	<i>20-foot</i>	<i>0%</i>	<i>0.156</i>
<i>Preserve 4</i>	<i>0.67</i>	<i>92-foot</i>	<i>110%</i>	<i>0.737</i>
TOTAL	1.63			1.76

- c. Development Order Plans. Development order plans must:
1. Substantially comply with the Indigenous Restoration and Management Plan. (Exhibit B2)
 2. Include a schedule to complete indigenous preservation and restoration within five consecutive years.
 3. Include a map depicting areas of mechanical and hand-removal methods of exotic vegetation removal. Developer must limit mechanical clearing to restoration areas and protect native vegetation with tree barricades.
 4. Include a management/preservation plan for Florida Coontie.
 5. Comply with a Lee County staff approved planting list for restoration areas.
- d. Protection of Existing Native Vegetation During Construction. Prior to County issuance of a vegetation removal permit, developer must submit survey point maps depicting preservation and restoration areas and mechanical clearing limits, including the location of barricades to preserve native vegetation within mechanical exotic removal areas.
- e. Bayshore Road Buffer. The first development order plans must demonstrate a 20-foot Type D buffer along Bayshore Road.

6. FDOT Median Project Effect on Access Location

If FDOT completes construction of its Median Project on Bayshore Road prior to submission of a development order application for the Bayshore Pines RPD, the developer of Bayshore Pines must shift the access on the MCP to the west a sufficient distance to negate the need for Deviation 2.

7. State and Federal Permits

County development permits do not create rights to obtain permits from state or federal agencies and do not create liability on the part of the County if applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

Deviations

1. Required Street Access. Deviation 1 seeks to deviate from LDC 10-291(3) which requires developments greater than 5 acres to provide two means of access to allow a single access to the project.

Hearing Examiner Recommendation: Approved, subject to the following condition:

Developer must record a notice to all future property owners, in the public record, prior to issuance of a local development order allowing construction of the access to the development. The notice must detail the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.

2. Buffer Landscape Standards. Deviation 2 seeks to deviate from LDC 10-416(d)(6), which requires a 30-foot-wide Type F buffer or an 8-foot-high wall or wall and berm combination no less than 25 feet from abutting property when pavement for multi-family residential development is closer than 125 feet to single family homes, to allow an 8-foot wall along the driveway entering the site to be at a minimum setback distance of 12 feet for a linear distance of 54 feet along the property line in the area depicted on the MCP.

Hearing Examiner Recommendation: Approved, subject to the following condition:

The first development order plans must depict an 8-foot solid wall, with a setback of 5 to 10 feet, with Type E buffer plantings. Shrubs must be installed at 48-inches and maintained at 72-inches tall.

3. Excavation Setbacks. Deviation 3 seeks to deviate from LDC 10-329(d)(1) a.3, which requires a minimum excavation setback of 50 feet from the property line, to allow a minimum 30 foot setback from side and rear property lines.

Hearing Examiner Recommendation: Approved, subject to the following condition:

Development order plans must depict a fence or other structural barrier surrounding the proposed storm water detention pond shown on the MCP. The fence/structural barrier must be a minimum of 5 feet in height.

4. Deviation 4 was withdrawn.

5. Open Space. Deviation 5 seeks to deviate from LDC 10-415(b), which requires large developments to provide 50 percent of required open space through onsite preservation of existing indigenous vegetation (which equals 20 percent of the site) to allow for a minimum of 19 percent of indigenous preservation.

Hearing Examiner Recommendation: Approved, subject to the following condition:

The first development order plans must depict 1.76 acres indigenous preserve area utilizing preserve credits.

Exhibits to Conditions

B1 Master Concept Plan entitled "Bayshore Pines RPD" last revised April 28, 2023

B2 Indigenous Restoration and Management Plan dated December 2022.

Bayshore Pines RPD

Indigenous Preserve Restoration, Management and Monitoring Plan

Project Description

This project involves a 9.13 acres site. Site is currently vacant but is proposed for development of 180 units of multifamily residential spread across four buildings. In order to meet the requirements of the Land Development Code (LDC) 10-415, 4.09 acres (45%) of the site is set aside as open space, surpassing the 40% minimum required for large development multifamily residential. In addition, LDC 415(b) requires that 50% of the required open space be provided through indigenous reservation on site. Deviation 5 is being requested to reduce the minimum indigenous preserve area to 19%. To meet indigenous this requirement, there are four preserve areas that total 1.62 acres, 1.77 acres with bonuses per LDC 10-415(b)(3), including 0.43 acres of indigenous restoration area. See Exhibit 1 for locations of Indigenous open space preserves.

The restoration area is located on the east of the project adjacent to Bayshore Road. Currently, the area is overgrown with Brazilian peppers, an invasive exotic species that will need to be removed to meet compliance with the Land Development Code. The area will be restored as shown in Exhibit 2 with the plants shown in Exhibit 3. The replanted indigenous area will also serve to continue buffering Carriage Village from Bayshore Road after the removal of exotics.

Management Plan

All exotics within the preserve areas will be hand removed or killed in place. Exotic vegetation within the restoration area may be mechanically removed as needed; however, any native vegetation discovered within this area shall be protected with appropriate barricades and only hand removal within the barricaded areas is allowed. Exotic vegetation will be treated with an approved herbicide (poison) and a tracer dye. Following the initial exotic removal within the preserve and restoration areas, a maintenance program will be implemented to prevent reinvasion of the site by prohibited exotic species.

Maintenance for exotics will be implemented on a yearly basis, or more frequently if needed, and will be conducted in perpetuity and as required by the LDC.

Monitoring Report

As specified in LDC 10-474(h), a report detailing the condition of the indigenous preserve and restoration areas is to be submitted annually to the Director of Lee County Development Services after the project has been constructed and the Certificate of Completion has been issued by Lee County. This report shall include status of the preserve with a minimum of two photo stations for each area from opposite viewing perspectives, management techniques being employed (trimming, weeding, fertilizer, replanting, exotic removal, etc.), and is the sole responsibility of the property owner. A baseline report shall be prepared by a biologist and shall be submitted upon completion of construction, with annual reports for five years showing compliance with the approved Development Order.

Exhibit 1

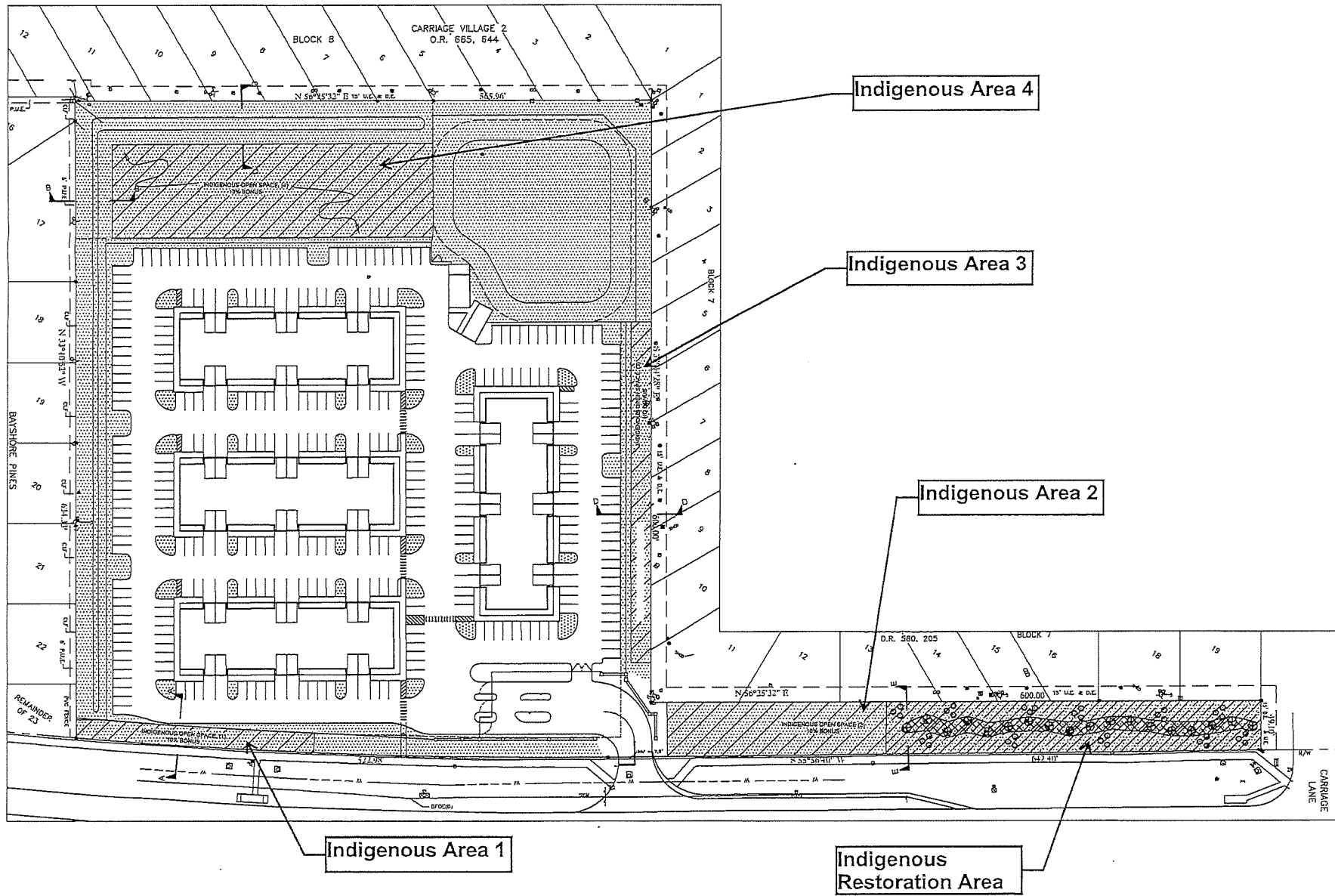
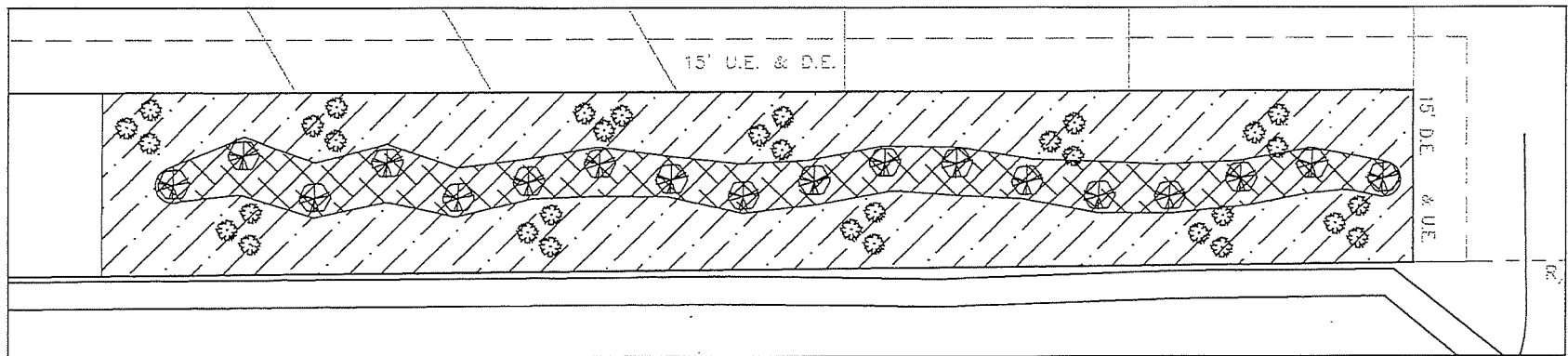


Exhibit 2



INDIGENOUS RESTORATION AREA CONCEPTUAL PLANTING PLAN

Exhibit 3

INDIGENOUS RESTORATION PLANT LIST*				
	33	SABAL PALMS**	SABAL PALMETTO	8' CLEAR TRUNK MIN.; 12' MIN. HT.
	18	LIVE OAK LAURELOAK DAHON HOLLY SLASH PINE	QUERCUS VIRGINIANA QUERCUS LAUTIFOLIA ILEX CASSINE PINUS ELLIOTTII	10' HT.; 3" CAL.; 5' SPREAD
	525	SAND CORDGRASS MUHLY GRASS	SPARTINA BAKERII MUHLENBERGIA CAPILLARIS	1 GAL., FL. #1 QUAL., 3' O.C.
	1,200	GROUND COVER, MIN. 3 VARIETIES GOLDEN CREEPER BEAUTYBERRY COONTIE GOPHER-APPLE WILD PLUMBAGA WILD LANTANA	ERNODEA LITTORALIS CALICARPA AMERICANA ZAMIA INTERGRIFOLIA GEOBALANUS OBLONGIFOLIUS PLUMBAGA ZEYLANICA LANTANA INVOLUCRATA	1 GAL., FL. #1 QUAL., 3' O.C.
	220	SHRUBS***, MIN. 3 VARIETIES: SAW PALMETTO COCOPLUM WAX MYRTLE SIMPSON'S STOPPER WILD COFFEE FIREBUSH WALTER'S VIBURNUM	SERENOA REPENS CHRYSOBALANUS ICACO MYRICA CERIFERA MYRCIANTHES FRAGRANS PSYCHOTRIA NERVOSA HANELIA PATENS VIBURNUM OBOVATUM	24" HT., FL. #1 QUAL., 8' O.C.

NOTE:

*ALL PLANTED AREAS TO RECEIVE MIN. 2" LAYER OF PINE STRAW MULCH.

**SABAL PALMS TO BE RELOCATED FROM ELSEWHERE ON SITE WHERE POSSIBLE.

***SHRUBS MAY BE PLANTED IN GROUPS OF THREE.

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Chahram Badamtchian, Senior Planner, date received March 15, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Environmental Staff, for DCI2022-00048, Bayshore Pines, dated March 30, 2023 (multiple pages – 8.5"x11") [color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Alexis Crespo to Maria Perez, with copies to Chahram Badamtchian, Neale Montgomery, Esq., Tim Keene, Roberts Church, Ted Treesh, Olga Ramos, Josh Kelley, and R. Davis (3 pages 8.5"x11")
1. *PowerPoint Presentation:* Prepared by RVI Planning & Landscaping Architecture, for DCI2022-00048, Bayshore Pines, dated March 30, 2023 (multiple pages – 8.5"x11") [color]
2. *Master Concept Plan:* Prepared by Keene Development, Inc., last revised January 24, 2023 (1 page – 11"x17" & 1 page – 24"x36") [color]
3. *Résumé:* For Joseph Hendry Kelley II, RLA, Landscape Architect and Land Planner (2 pages – 8.5"x11")
4. *Schedule of Deviations:* Prepared by Keene Development, LLC., for Bayshore Pines RPD (4 pages – 8.5"x11")
5. *Résumé:* For Church Roberts (3 pages – 8.5"x11")
6. *Open Space and Master Concept Plan:* Prepared by Keene Development, Inc., last revised January 24, 2023 (1 page – 8.5"x11")
7. *PowerPoint Presentation:* Prepared by RVI Planning & Landscaping Architecture, for DCI2022-00048, Bayshore Pines, dated May 5, 2023 (multiple pages – 8.5"x11") [color]
8. *Revised Master Concept Plan:* Prepared by Keene Development, Inc., last revised April 28, 2023 (1 page – 8.5"x11")

9. *Master Concept Plan Over Aerial*: Prepared by Keene Development, Inc., last revised April 28, 2023 (1 page – 11"x17" & 1 page – 24"x36") [color]
10. *Revised Schedule of Deviations*: Prepared by Keene Development, LLC., for Bayshore Pines RPD, revised April 28, 2023 (4 pages – 8.5"x11")
11. *Property Development Regulations*: Prepared by Keene Development, LLC., for Bayshore Pines RPD, dated April 28, 2023 (4 pages – 8.5"x11")
12. *PowerPoint Presentation*: Prepared by RVI Planning & Landscaping Architecture, for DCI2022-00048, Bayshore Pines, dated May 5, 2023 (multiple pages – 8.5"x11") [color]
13. *Written Submission*: Email from Alexis Crespo with RVI Planning, to Maria Perez, Tim Keene II, and G. Fluharty, with copies to Neale Montgomery, Esq., Patrick Murray, Ted Treesh, Josh Kelley, C. Roberts, Chahram Badamtchian, Rebecca Sweigert, Tracy Toussaint, Jamie Prancing, Elizabeth Workman, Audra Ennis, Shawn McNulty, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee Werst, Warren Baucom, Mikki Rozdolski, Jessica Rodriguez, Anthony Rodriguez, Dirk Danley, Jr., and Phil Gillophy, dated Friday, May 12, 2023 8:16 AM (7 pages – 8.5"x11")

OTHER EXHIBITS

Russell Lachman

1. *Photographs*: (multiple pages – 5.5"x8") [color]
2. *Photographs*: (multiple pages – 8.5"x11") [color]

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Chahram Badamtchian
2. Camryn Siverson

Applicant Representatives:

1. Alexia Crespo
2. Tim Keene
3. Josh Kelley
4. Neale Montgomery, Esq.
5. Church Roberts
6. Ted Treesh

Public Participants:

1. Dr. Sidney E. Adams
2. Victoria Adams
3. Cheryl Buss
4. Shana Cain
5. Vicki L. Davis-Adams
6. Barbara Deboer
7. Robert Edmunds
8. Steve Foster
9. Pam Griffin
10. Richard Hampton

11. Morgan Hess
12. Daniel Inabnitt
13. Teresa Inabnitt
14. Linda Jarrell
15. Russell Lachman
16. Betty Lam
17. Michele Latorre
18. Tim Latorre
19. Frank Mendoza
20. Dan Pence
21. Gary Peterson
22. Judith A. Peterson
23. Birdie Jane Rich
24. Angela Smith
25. John Tope
26. Randall White

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. The Hearing Examiner will provide this recommendation to the Board of County Commissioners.
- B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants is 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 relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.
- C. Participants may not submit documents to the Board of County Commissioners unless marked as exhibits by the Hearing Examiner. Documents include the exhibit number assigned at hearing.

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.