

Summary of Hearing Examiner Recommendation

HOMES AT 81 WEST RPD REMAND

Hearing Examiner Remarks on Remand¹

This case came before the Board for approval of a residential community consisting of 90 dwelling units. The Board's review was generally favorable, except for the project's proposed access on Blasingim Road. The Board remanded the case to the Hearing Examiner for further review of site access.

On remand, the revised site design places primary access on Penzance Boulevard with a secondary, emergency-only access on Blasingim Road.

The parties condition approval on converting the emergency access to a full access once Crystal Drive is extended to Blasingim Road. At that point, the RPD will have two full access points to better distribute project traffic.

Detailed recommendation follows

¹ The Board first heard the request on March 8, 2023.



DCI2021-00026

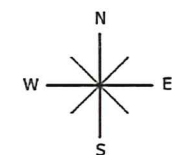
Future Land Use

 Subject Property

 Central Urban

 Wetlands

 City Limits



0 500
Feet

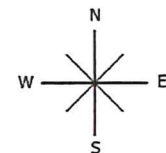




DCI2021-00026

Aerial

 Subject Property



0 250 500
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2021-00026

Regarding: HOMES AT 81 WEST RPD **REMAND**

Location: Southeast Intersection of Penzance Boulevard/Blasingim Road
South Fort Myers Planning Community
(District 2)

Hearing Date: April 26, 2023

I. Request

Rezone 9.97± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to permit development of a maximum of 90 dwelling units.

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

II. Hearing Examiner Recommendation

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

III. Discussion **[Limited on Remand to Site Access]**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property. In exercise of this duty, the Hearing Examiner considered Applicant's request to rezone the property to RPD.² The Hearing Examiner's recommendation found the request consistent with the Lee Plan and LDC.³ At the Board's March 8, 2023 public hearing, the Board remanded the case back to the Hearing Examiner's Office to further review of the project's primary access on Blasingim Road.⁴

² The case was originally scheduled for hearing on November 14, 2022.

³ The Hearing Examiner's Recommendation was issued January 23, 2023.

⁴ See Lee Co. Admin. Code 2-6, §4.1.D.

In preparing a recommendation to the Board, the Hearing Examiner must apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other County regulations to the facts presented in a rezoning request.⁵ In this case, the scope of review for the Hearing Examiner's consideration is limited to determining the appropriate access for the project.⁶ The Hearing Examiner's recommendation must be based on competent substantial evidence.⁷

Synopsis of Request

The request seeks to rezone 9.9± acres to permit a residential development known as Homes at 81 West RPD. The proposed concept is a horizontal rental community comprised of up to 90 dwelling units.

Applicant originally sought project approval with primary access on Penzance Boulevard.⁸ During the application review process, Penzance Boulevard changed classification from a minor to a major collector road. This change prompted staff to request project access move to Blasingim Road to comply with the LDC.⁹

Accordingly, the original request presented to the Hearing Examiner showed project access exclusively on Blasingim Road. Site design included two access points on Blasingim, a private local road.¹⁰

The Board remanded the request to the Hearing Examiner for further review of the project's access on Blasingim Road.

On remand, Applicant modified the request to relocate primary access to Penzance Boulevard. A second, emergency-only access remains on Blasingim Road.

The proposed access to a major collector road may only be accomplished with deviation approval.¹¹ Accordingly, Applicant added a deviation request to permit access on Penzance Boulevard.

⁵ LDC §34-145(d)(1)(a) & (2)(a).

⁶ The record from original proceedings is incorporated into this Recommendation. See Lee Co. Admin. Code 2-6, §4.1.D.

⁷ Lee Co. Admin. Code §2-6, 3.3(A)(2); LDC §34-83(a)(4)(a)(1)(a).

⁸ Testimony at the first hearing reflected Applicant's initial application submittals showing access to Penzance Boulevard, before it was classified as a major collector.

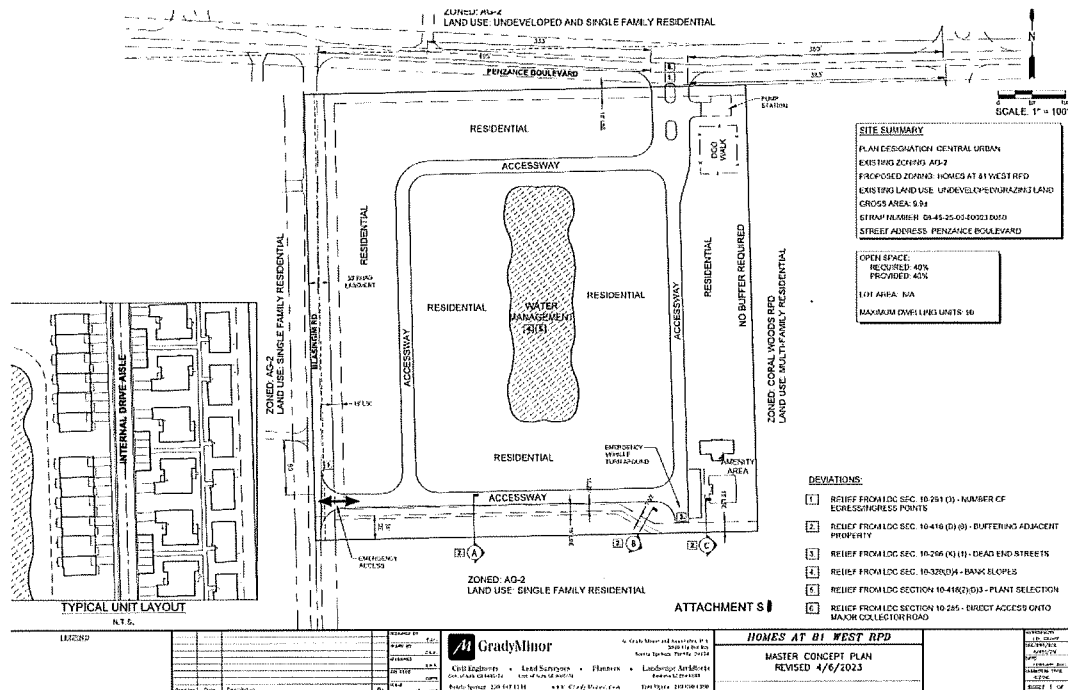
⁹ LDC §10-285 prohibits direct access to a major collector road when alternative access is available.

¹⁰ The record contained no evidence to warrant consideration of alternative access. The record below exclusively supported access on Blasingim Road. Applicant would have needed a deviation from the LDC to provide access on Penzance Boulevard after it was declared a major collector.

¹¹ LDC §10-285.

Staff recommends approval of the request, conditioned on Applicant providing a full access on Blasingim Road after the Crystal Drive extension is completed. DOT staff prefer the project exclusively access Blasingim Road to achieve transportation planning objectives.¹² However, Staff supports opening access to Penzance with the condition that the Blasingim Road access become fully operational once Crystal Drive is extended to Plantation Road.¹³ Staff explained that providing alternative access for project residents improves public safety on the surrounding road network.¹⁴

The Hearing Examiner concurs with Staff's recommendation as detailed below.



Transportation

The Board limited the scope of inquiry on remand to the issue of access.¹⁵

General Road Network

The property sits at the southeast intersection of Penzance Boulevard and Blasingim Road. Penzance Boulevard connects to Plantation Road to the west,

¹² Price Testimony (4/26/23 Transcript pg. 39).

¹³ *Id.*; Supplemental Staff Report (pg. 2).

¹⁴ Price Testimony (4/26/23 Transcript pg. 38-41).

¹⁵ See Lee County Admin. Code 2-6 §4.1.D.

and Six Mile Cypress Parkway to the east.¹⁶ The Penzance Boulevard/Six Mile Cypress Parkway intersection is signalized.

Crystal Drive currently terminates at Plantation Road. Long range transportation planning contemplates extending Crystal Drive to connect Plantation Road to Six Mile Cypress Parkway.¹⁷ The Crystal Drive extension will provide an alternative means of east/west travel to relieve traffic on Penzance Boulevard.¹⁸

The Crystal Drive extension at Six Mile Cypress Parkway is currently under construction. Record evidence indicates the full extension is programmed for funding through 2035.¹⁹



Issue on Remand

Penzance Boulevard changed designation from a minor to a major collector road after Applicant filed its RPD application.²⁰ The LDC prohibits direct access to major collector roads.²¹ Applicant moved access to Blasingim Road following the designation change. Blasingim Road is a non-County maintained local road.

¹⁶ There is a median opening at the intersection of Crystal Drive and Six Mile Cypress Parkway allowing all turning movements.

¹⁷ See Supplemental Staff Report (Attachment S4: Lee County MPO 2045 Long Range Transportation Plan).

¹⁸ Price Testimony (4/26/23 Transcript pg. 38).

¹⁹ See Staff Ex. 2, citing the Lee County MPO 2045 Long Range Transportation Plan.

²⁰ Arnold Testimony (4/26/23 Transcript pg. 9).

²¹ LDC §10-285, All lots in urban areas with access alternatives will not be permitted direct motor vehicle access to an arterial or major collector.

The LDC's prohibition against access to major collector roads is grounded in public health, safety, and welfare concerns.²² Prudent traffic planning limits the number of connections to major collector/arterial roadways.²³ Connections are limited because each one degrades the road's capacity and creates more conflict points.²⁴ Access points are therefore directed to local roads to maximize unimpeded access for the traveling public.

On remand, the parties re-examined project access. The resulting site plan reflects primary access on Penzance Boulevard and retains a secondary access on Blasingim Road. The Blasingim Road access will serve as emergency only until the Crystal Drive extension is operational. At that time, the Blasingim Road access will become another full access serving the project.²⁵

The parties evidenced this compromise strikes a balance between recognizing current conditions until Crystal Drive is extended to the site. The area is in a state of transition as development infills on surrounding Central Urban lands undergoing infrastructure upgrades.²⁶ DOT staff testified the Crystal Drive extension will relieve traffic congestion on Penzance Boulevard and improve public safety.²⁷

Applicant provided an updated traffic analysis confirming Penzance Boulevard will continue to operate at appropriate levels of service after relocating access.²⁸

Deviations

Applicant seeks six deviations.²⁹ A "deviation" is a departure from the land development regulations.³⁰ The LDC requires an applicant to demonstrate a requested deviation: (1) will enhance objectives of the planned development; and (2) will not cause a detriment to public interests.³¹

²² Price Testimony (4/26/23 Transcript pg. 41).

²³ Price Testimony (4/26/23 Transcript pg. 39).

²⁴ *Id.* (pg. 39-41).

²⁵ Mr. Price explained the Blasingim Road access opening when Crystal Drive is connected to Plantation Road will provide a viable alternative for project residents to travel south to Crystal Drive/Plantation. *Id.*

²⁶ The record of the hearing below included reference to various high density projects approved south of Penzance Boulevard.

²⁷ Price Testimony (4/26/23 Transcript pg. 38-41).

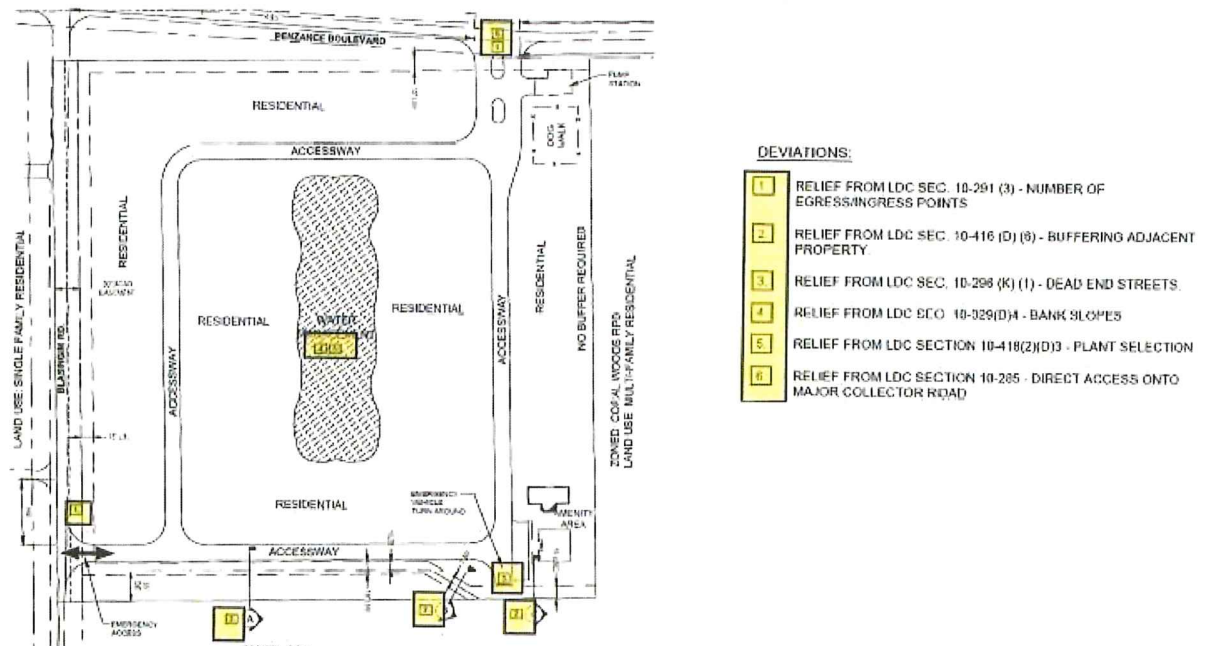
²⁸ Arnold Testimony (April 26, 2023 Transcript pg. 37); Applicant's Ex. A: 48 Hour Letter with Memorandum from James M. Banks, P.E. dated April 19, 2023.

²⁹ Applicant seeks an additional deviation in the revised request.

³⁰ LDC §34-2.

³¹ LDC §34-373(a)(9), §34-145(d)(4)(a)(2)(c).

PROPOSED DEVIATION LOCATIONS



The original request included five deviations. The only deviation at issue relates to providing access on Penzance Boulevard.

Department of Transportation staff detailed the policy concerns behind the county's prohibition against direct access to a major collector road.³² In this case, DOT staff support the deviation on the condition that the emergency access on Blasingim Road springs into a full access after Crystal Drive is extended.³³

Applying the LDC standard of review for deviations, the Hearing Examiner recommends approval of the requested deviation.

Public

Several members of the public spoke at hearing. Some preferred access remain on Blasingim Road while others supported access on Penzance Boulevard. Many speakers live in the Windsong community and oppose additional traffic on Penzance Boulevard. Nearly all speakers expressed concern of increased traffic and safety on either road.

Several members questioned whether sidewalks would be installed on Penzance Boulevard. Although outside the scope of a zoning hearing, staff confirmed that Applicant will be required to provide an eight-foot-wide sidewalk with shared bike

³² Price Testimony (4/26/23 Transcript pg. 38-41).

³³ *Id.*

lane along the property's frontage.³⁴ These are considered site-related improvements addressed at the time of development order review.

Conclusion

Applicant revised its request on remand to address the Board's access concern. The effect of the revision improves compatibility with the surrounding area by directing access away from Blasingim Road. The parties agree permitting full access on Blasingim Road after Crystal Drive is extended improves public safety and advances Lee Plan directives.

IV. Findings and Conclusions

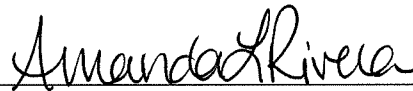
Based on the testimony and evidence presented, the Hearing Examiner recommends approval of the RPD zoning district, with conditions, and makes the following findings and conclusions:

- A. The requested rezoning to Residential Planned Development complies with the Lee Plan. Lee Plan Goals 2, 4, 5, 61, 77, 135; Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 77.1, 77.3, 126.2; Policies 2.1.2, 2.2.1, 5.1.1, 5.1.2, 5.1.7, 135.1.9, 135.9.5, 135.9.6; Lee Plan Maps 1-A, 1-B.
- B. *As conditioned*, the Homes at 81 West Residential Planned Development:
 - 1. Meets the Land Development Code and other County regulations or qualifies for deviations. LDC 34-145(d), 34-341, 34-378, 34-411, 34-413, 34-491, 34-612(2), 34-932;
 - 2. Is compatible with existing and planned uses. Lee Plan Objectives 2.1, 2.2, Policies 5.1.5, 135.9.5, 135.9.6; LDC 34-411;
 - 3. Provides access sufficient to support the proposed development intensity. Expected impacts to transportation facilities will be addressed by the conditions of approval and County regulations. Lee Plan Policies 39.1.1; LDC 2-261 *et seq.*, 10-287, 34-411(d);
 - 4. Will not adversely affect environmentally critical/sensitive areas and natural resources. Lee Plan Goals 77, 125; Objectives 77.1, 77.3, 126.2; Policies 61.3.1, 61.3.6, 61.3.11, 126.2.1, Standard 4.1.4; and LDC 34-411(h).
 - 5. Will be served by urban services adequate to serve the proposed land use. Lee Plan Glossary, Lee Plan Goals 2, 4, Objectives 2.1, 2.2, 4.1, and Standards 4.1.1 and 4.1.2; LDC 34-411(d).

³⁴ Rodriguez Testimony (4/26/23 Transcript pg. 37).

- C. The proposed mix of uses is appropriate at the proposed location. Lee Plan Goals 2, 5; Policies 2.1.1, 2.2.2, 5.1.2, 5.1.3, 5.1.5, 135.1.9.
- D. The recommended conditions and applicable regulations provide sufficient safeguards to protect the public interest. Lee Plan Policies: 5.1.5, 5.1.6, 126.2.1 and 135.9.6; LDC 34-411.
- E. The recommended conditions are reasonably related to the impacts expected from the proposed development. Lee Plan Policies 5.1.5, 135.9.6; LDC 34-932.
- F. The requested deviations, as conditioned:
 - 1. Enhance the objectives of the planned development; and
 - 2. Preserve and promote protection of public health, safety, and welfare.

Date of Recommendation: June 8, 2023



Amanda L. Rivera
Deputy 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

Exhibit A

PROPERTY DESCRIPTION

THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 8, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTH QUARTER CORNER OF SECTION 8, TOWNSHIP 45 SOUTH RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, SOUTH 88°54'17" WEST, A DISTANCE OF 1,316.24 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED;

THENCE CONTINUE ALONG SAID SOUTH LINE, SOUTH 88°54'17" WEST, A DISTANCE OF 658.60 FEET; THENCE NORTH 01°19'45" WEST, A DISTANCE OF 659.94 FEET; THENCE NORTH 88°51'34" EAST, A DISTANCE OF 656.81 FEET; THENCE SOUTH 01°29'04" EAST, A DISTANCE OF 660.47 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.97 ACRES, MORE OR LESS.

NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL GEODETIC SURVEY FOR FLORIDA WEST ZONE, 1983 DATUM WITH 2011 ADJUSTMENT OBTAINED UTILIZING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND REFER TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA AS BEING S 88°54'17" W.

2. DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.

3. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR THE DIGITAL SIGNATURE AND DIGITAL SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER. NO ADDITIONS OR DELETIONS TO THIS SKETCH AND DESCRIPTION ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY.

REVIEWED
DCI2021-00026
Rick Burris, Principal
Planner
Lee County DCD/Planning
7/11/2022

DRAWN BY:	KJG
CHECKED BY:	DLS
JOB CODE:	CMPB
SCALE:	1" = 120'
DATE:	5/18/2021
FILE:	20-218-S&L
SHEET:	1 of 2

NOT COMPLETE WITHOUT SHEETS 1 AND 2 OF 2

NOT A SURVEY



GradyMinor

Q. Grady Minor and Associates, P.A.
3800 Via Del Rey
Bonita Springs, Florida 34134

Civil Engineers • Land Surveyors • Planners • Landscape Architects
Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266
Bonita Springs: 239.947.1144 www.GradyMinor.com Fort Myers: 239.690.4380

SKETCH AND DESCRIPTION

PARCEL OF LAND

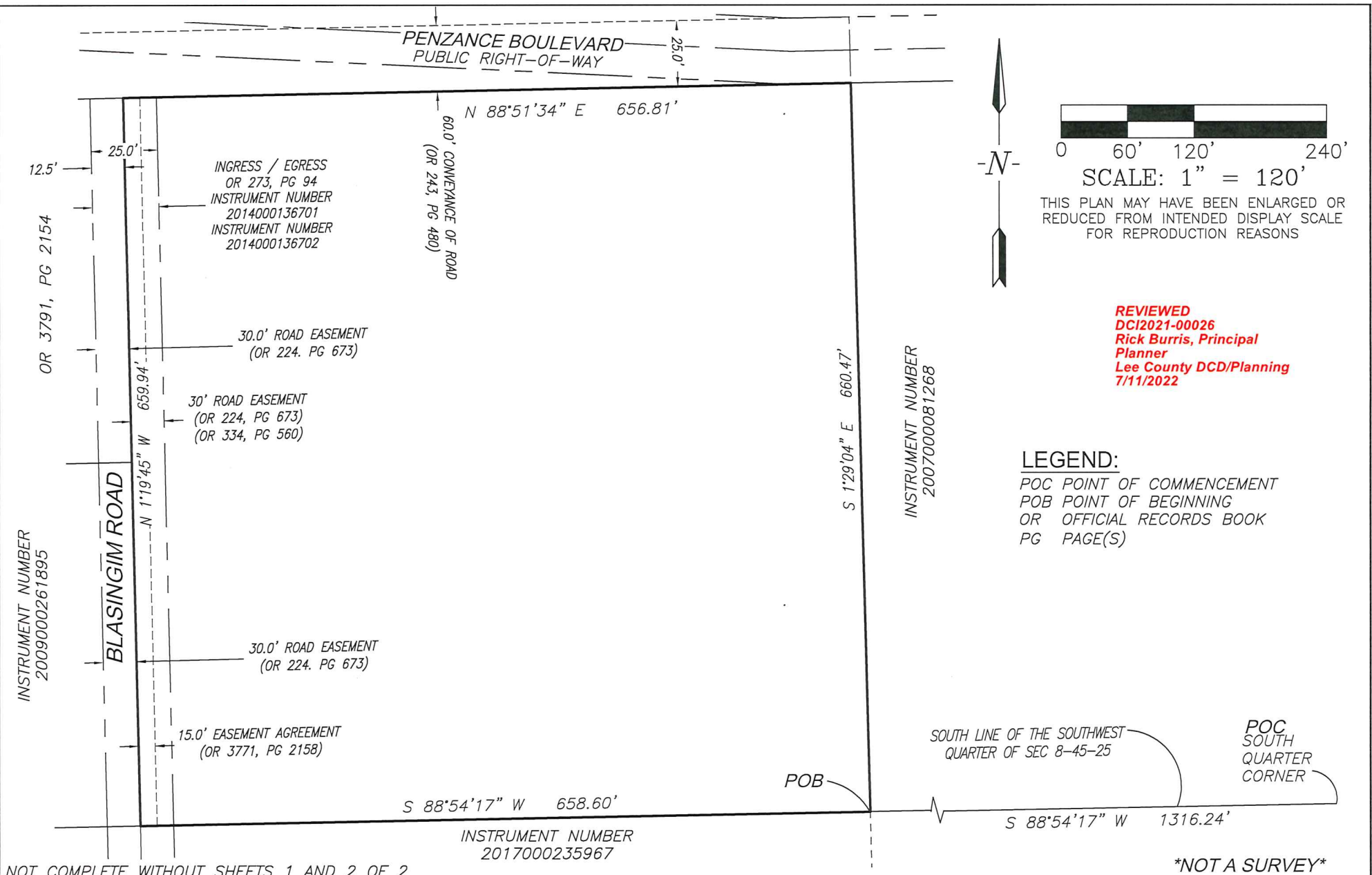
LYING IN
SECTION 8, TOWNSHIP 45 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

DATE SIGNED



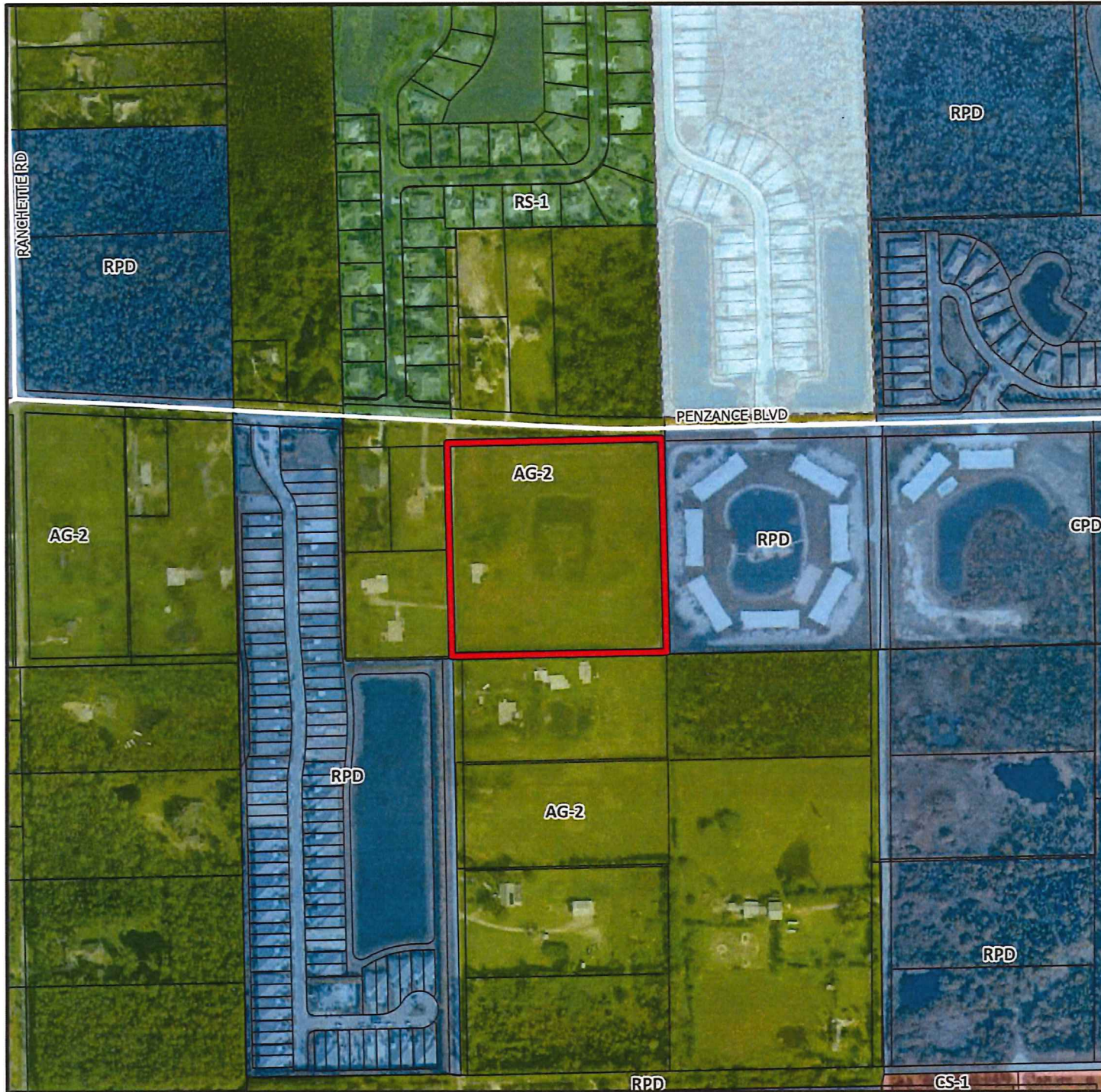
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III, PSM
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DONALD L. SAINTENOY III, P.S.M.
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FOR THE FIRM



 GradyMinor Q. Grady Minor and Associates, P.A. 3800 Via Del Rey Bonita Springs, Florida 34134 Civil Engineers • Land Surveyors • Planners • Landscape Architects Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266 Bonita Springs: 239.947.1144 <i>www.GradyMinor.com</i> Fort Myers: 239.690.4380	SKETCH AND DESCRIPTION		DRAWN BY:	KJG
	PARCEL OF LAND LYING IN SECTION 8, TOWNSHIP 45 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA		CHECKED BY:	DLS
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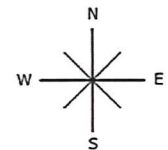


DCI2021-00026

Zoning

 Subject Property

 City Limits



0 500
Feet



Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

CONDITIONS

(1) Master Concept Plan and Development Parameters

Master Concept Plan. Development must be consistent with the two-page Master Concept Plan (MCP) entitled “Homes at 81 West RPD Master Concept Plan” prepared by Grady Minor, revised 4/6/2023, except as modified by the conditions below.

Compliance with Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC, except where deviations have been approved. Subsequent amendments to the Master Concept Plan, conditions, or deviations may be subject to additional development approvals.

Approved Development Parameters. Development is limited to a maximum of 90 dwelling units, with a maximum permitted building height of 35 feet.

(2) Schedule of Uses and Property Development Regulations

(a) Schedule of Uses

- Accessory Uses, Buildings and Structures
- Administrative Offices
- Dwelling Unit
 - Single-Family Detached
 - Duplex
 - Multiple-Family
- Essential Services
- Essential Service Facilities – Group I
- Excavation, Water Retention
- Fences, Walls
- Recreation Facilities
 - Personal
 - Private–On-site
- Signs

(b) Property Development Regulations

Minimum Lot Area and Dimensions

Lot Width	N/A
Lot Depth	N/A
Lot Area	N/A

Minimum Setbacks

Internal Drive Aisle*	20 feet
PD Boundary	25 feet
Waterbody	20 feet
Attached Accessory Structure	15 feet

Minimum Building Separation 10 feet

Maximum Building Height 35 feet

Minimum Open Space 40% (10 ac x 0.40 = 4.0±
acres)

*As measured from edge of pavement

(3) Compliance with Multifamily Development Standards

Development order plans must demonstrate compliance with applicable regulations for multifamily development.

(4) Blasingim Road Access

- (a) Developer must construct one access onto Blasingim Road consistent with LDC §10-296. The Blasingim Road access must be restricted to emergency use only until Blasingim Road is interconnected with the Crystal Drive extension to Plantation Road. At that time, the emergency access must be converted to a standard access. This condition does not prevent a residents/guests only access gate in compliance with LDC §34-1748 upon the termination of the emergency only status.
- (b) Prior to development order approval, Developer must:
 - (i) Submit a copy of legal documents creating the legal mechanism to ensure continuous maintenance of Blasingim Road along the property frontage;
 - (ii) Record a notice in the public records to future property owners allowing construction of the project's access. The notice must detail the emergency access plan and provide information as to where a copy of the plan may be obtained from the developer or developer's successor ; and
 - (iii) Demonstrate that the emergency only access is equipped with an Emergency Vehicle Access Control (EVAC).

(5) Development 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. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

- (1) Access. Deviation 1** seeks relief from LDC §10-291(3), which requires residential projects of five acres or more to provide more than one means of ingress or egress, to allow one full access via Penzance Boulevard and to allow a second access on Blasingim Road to function as “emergency only.”

HEX Recommendation: Approve, subject to Condition 4

- (2) Buffer. Deviation 2** seeks relief from LDC §10-416(d)(6), which requires roads, drives, or parking areas associated with a multifamily residential use located less than 125 feet from existing single-family residential lots to be buffered by either:

- a. A solid wall or combination berm and solid wall not less than eight feet in height constructed no more than 25 feet from the abutting property with landscaping between the wall and the abutting property containing a minimum of five trees and 18 shrubs per 100 lineal feet; or
- b. A 30-foot wide Type F buffer with the hedge planted a minimum of 20 feet from the abutting property; to allow a 48-inch-high hedge, to be maintained at a height of 60 inches, to be installed within a 15-foot-wide buffer easement along the southern boundary of the subject property, except where a proposed street stub out terminates near the southern property boundary. The proposed street stub out area will be buffered with an eight-foot-high solid wall with plantings consisting of hedges and trees located between the proposed wall and south property line as depicted on the master concept plan.

HEX Recommendation: Approve, subject to the following condition:

Development order plans must depict a 15-foot-wide buffer up to the terminal access stub, which may have a 7.5-foot-wide buffer. Landscape plans must depict ten trees per 100 linear feet and a double hedge row with hedges specified at 48-inches in height to be maintained at 60-inches in height.

- (3) **Turnaround. Deviation 3** seeks relief from LDC §10-296(k)(1), which requires permanent dead-end streets to be closed at one end by a circular turnaround for vehicles and be constructed in compliance with the LDC, to allow the use of hammerhead turnarounds at the terminal roads depicted on the master concept plan.

HEX Recommendation: Approve

- (4) **Lake Banks. Deviation 4** seeks relief from LDC §10-329(d)(4), which requires lake banks to be sloped at a ratio not greater than six horizontal to one vertical (6:1) from the top of bank to a water depth of two feet below the dry season water table, to allow slopes to be designed at a ratio of four horizontal to one vertical (4:1) with enhanced slope protection measures and design techniques determined by the project engineer at time of development order.

HEX Recommendation: Approve

- (5) **Littoral Plantings. Deviation 5** seeks relief from LDC §10-418(2)(d)3, which allows native wetland trees to be substituted for up to 25 percent of the total number of herbaceous plants required within planted littoral shelves, at a rate of one tree (minimum ten-foot height; 2 inch caliper, with a four-foot spread) per 100 herbaceous plants, to allow wetland trees to be substituted for 100 percent of the total required number of herbaceous plants.

HEX Recommendation: Approve, subject to the following condition:

Landscape plants must be in compliance with the Lee County Port Authority Non-Compatible and Compatible Plant List.

- (6) **Penzance Boulevard Access. Deviation 6** seeks relief from LDC §10-285, which prohibits lots in urban areas with access alternatives from having direct motor vehicle access to an arterial or major collector road, to allow a full access point on Penzance Boulevard as shown on the master concept plan.

HEX Recommendation: Approve, subject to Condition 4.

Exhibits to Conditions:

B1 Master Concept Plan entitled "Homes at 81 West RPD" last revised 4/6/23

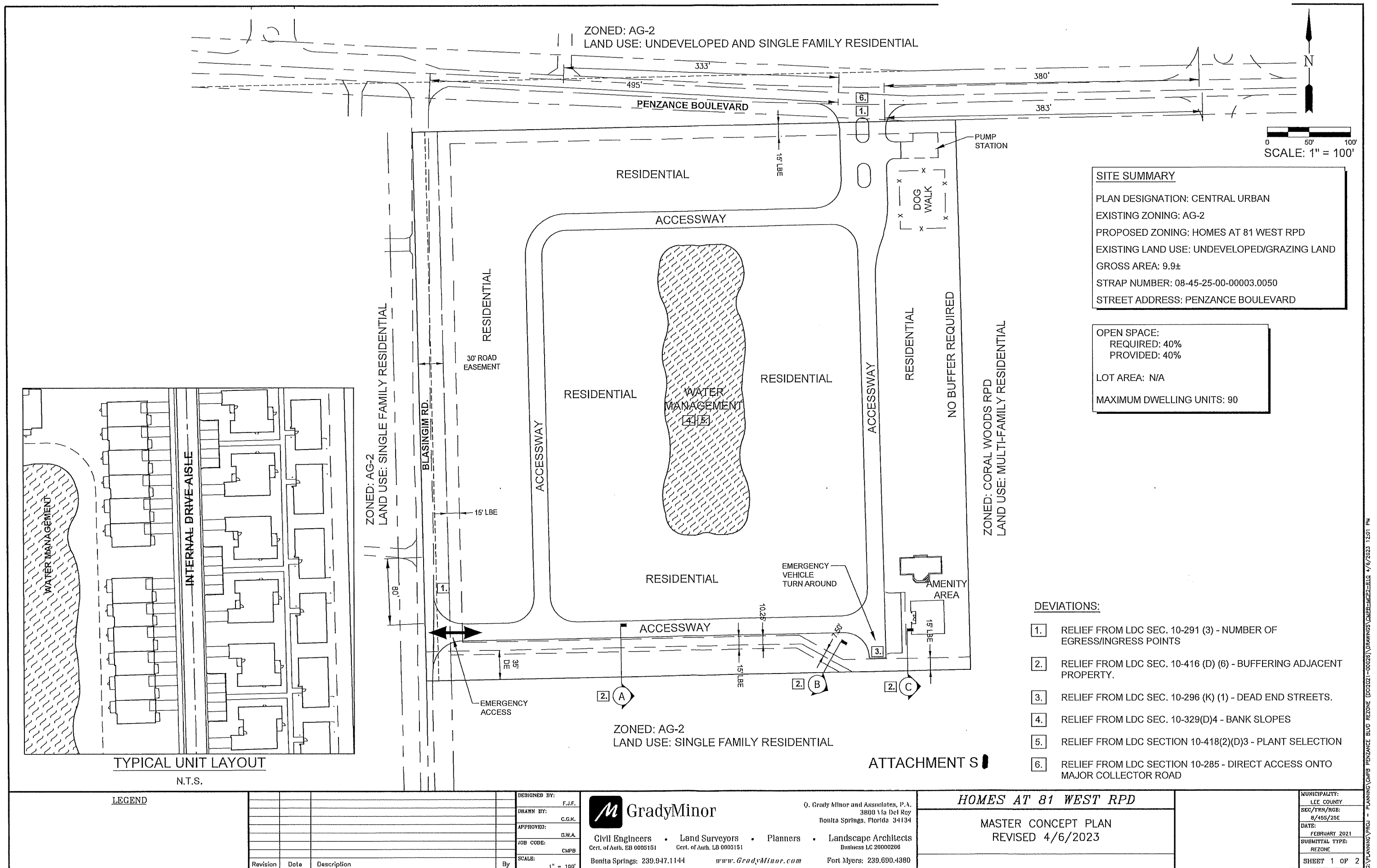


Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Anthony Rodriguez, Manager Community Development, date received March 11, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for Staff Presentation, for DCI2021-00026, Homes at 81 West RPD (Remand), dated April 26, 2023 (multiple pages – 8.5"x11") [color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Sharon Umpenhour, to Maria Perez and Anthony Rodriguez, with copies to Charles Marshall, Neale Montgomery, Esq., and Wayne Arnold, dated Friday, April 21, 2023 4:31 PM (5 pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Grady Minor, for DCI2021-00026, Homes at 81 West RPD (Remand), dated April 26, 2023 (multiple pages – 8.5"x11") [color]

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Robert Price
2. Anthony Rodriguez, AICP

Applicant Representatives:

1. Wayne Arnold
2. Neale Montgomery, Esq.

Public Participants:

1. Alex Alexandro
2. Richard Beach
3. Samantha DuPont
4. Victor DuPont
5. Thomas Everaert
6. Susan Fansler
7. Steve Franta
8. Victor Gulley
9. Mark Hulsmann
10. David Richards

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 a copy of 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 are 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 they were marked as Exhibits by the Hearing Examiner. Documents must have 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.