

**MEMORANDUM**  
**FROM**  
**THE DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

**TO:** Donna Marie Collins  
Chief Hearing Examiner

**DATE:** December 21, 2023

**FROM:** Adam Mendez  
Senior Planner

**RE: DCI2022-00032 – Bayshore Village**  
**Post Hearing Written Submission**

Attached with this Memorandum is a copy of the finalized Staff Recommended Conditions/Deviations in accordance with the order for Post Hearing Written Submissions, dated December 14, 2023. Staff has discussed these final revisions with the applicant and abutting neighboring property representatives. Mr. and Mrs. Musho and council are appreciative of the effort and communication and do remain concerned and opposed to the conditions contained in this finalized document. Principally, the recommended intensity and the revised language concerning the composition of the proposed wall in conjunction with the possibility of the Wells Road access point relocation further north than currently proposed. Below are the notable changes in the attached document:

- **Condition (1)b.** precludes the use of Transferable Development Units (TDUs) for administrative intensification.
- **Condition 8,** Masonry Wall/Berm Combination, is revised to permit the use of composite or other non-wood materials where specified uses are not within 125 feet of the northern property boundary. The height of the wall and duration otherwise remain unchanged.
- **Condition 14** is included in response to concerns regarding project signage and aims to limit the height and sign copy type in specified areas.
- **Condition 15** is included to address the uncertainty of the Wells Road project access point, considering the anticipated Wells Road and Pritchett Parkway realignment. The condition provides a limited window for a northerly relocation, if necessary, through the administrative approval process.

Respectfully Submitted,

Adam Mendez  
Senior Planner, Zoning Section

*Attachment: Staff Recommended Conditions/Deviations*

## Conditions

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

### **(1) Master Concept Plan and Development Parameters**

- a. Master Concept Plan. Development of the subject property must be substantially consistent with the one-page Master Concept Plan Entitled "Master Concept Plan ALT A" or "Master Concept Plan ALT B", last revised 9/27/2023 and attached hereto as Attachment D.  
Staff Note: Applicant to prepare revised MCPs consistent with recommendations herein, date referenced above to be updated accordingly.
- b. Development Parameters. Development is limited to a maximum of 92,750 square feet of non-residential floor area, including any outdoor restaurant seating. Transferable Development Units (TDUs) may not be utilized in conjunction with this approval.
- c. Compliance with Lee Plan and LDC. Development must comply with all the requirements of the Lee Plan and LDC at the time of local development order approval, except as may be granted by deviation as part of this planned development. Subsequent amendments to the Master Concept Plan or its auxiliary documentation attached thereto are subject to the planned development amendment process established by the Land Development Code.
- d. Superseding Resolution. Resolution Z-06-046 is hereby superseded and replaced with this amended resolution.

### **(2) Schedule of Uses and Property Development Regulations**

#### a. Schedule of Uses

- (\*) Indicates uses restricted to southern 400 feet of the subject property. Locational restrictions no longer apply if the abutting northern property is zoned for uses other than residential or agricultural.

Accessory uses and structures  
Administrative offices  
Animal clinic (no outdoor runs)  
ATM (Automatic Teller Machine)  
Auto parts store (no installation)  
Automobile repair and service, Groups I and II (\*) (subject to Condition 7)  
Automobile service station, with or without gas pumps (\*) (subject to Condition 7)  
Bait and tackle shop  
Banks and financial establishments, Groups I and II  
Boats:

- Boat parts store (limited to one)
- Boat sales (subject to Condition 10)
- Broadcast studio, commercial radio and television
- Building material sales
- Business Services, Groups I and II
- Caretaker's residence
- Car wash, accessory or standalone (\*)
- Cleaning and maintenance services
- Clothes stores, general
- Clubs:
  - Commercial
  - Fraternal
  - Membership organization
  - Private
- Computer and data processing services
- Consumption on premises, indoor only (subject to LDC §34-1264)
- Contractors and builders, Groups I, and II
- Convenience food and beverage store, with or without gas pumps and EV charging stations (\*) (subject to Condition 7)
- Day care center, adult, child
- Department store
- Drive through facility for any permitted use (\*)
- Drug store, pharmacy
- Entrance gates and gatehouses
- Emergency operations center
- EMS, fire or sheriff's station
- Essential services
- Essential service facilities, Group I
- Excavation:
  - Water retention
- Farm equipment, sales, storage, rental or service
- Feed or fertilizer, mixing and sales
- Fences, Walls
- Food stores, Groups I and II
- Food truck park (\*) (subject to Condition 13)
- Gift and souvenir shop
- Hardware store
- Health care facilities, Groups III
- Hobby, toy and game shops
- Hotel (subject to Condition 11)
- Household and office furnishings, Groups I, II and III
- Laundromat
- Lawn and garden supply store
- Library
- Maintenance facility (government)
- Medical office
- Non-store retailer
- Motion picture production studio
- Nonstore retailers, All Groups
- Package store (no related consumption on premises and subject to LDC §34-1263)
- Paint, glass and wallpaper store

Parks, Groups I and II

Parking lot:

Accessory

Park-and-ride

Temporary

Personal services, Groups I, II, III & IV (Excluding Steam or Turkish Baths, Escort Services, Palm Readers, Fortunetellers or Card Readers)

Pet services (No outdoor runs)

Pet shop (No outdoor runs)

Pharmacy

Place of worship

Plant nursery

Post office

Recreation facilities commercial, Group I and IV (limited to gymnasiums and health clubs)

Religious facility

Rental or leasing establishments, Groups I, II, and III

Repair shops, Groups I, II, III, and IV (\*) (subject to Condition 7)

Research and development laboratories, Group II

Restaurants, All Groups

Restaurant, fast food (\*)

Schools, commercial

Self-service fuel pumps (\*) (limited to a maximum of 22 and subject to Condition 7)

Signs (subject to Condition 14)

Social services, Groups I and II

Specialty retail shops, All Groups

Storage:

Indoor

Open (subject to Condition 10)

Studios

Supermarket

Temporary uses

Theater, indoor

Transportation services, Groups II and III (excluding bus stations and depots)

Used merchandise stores, All Groups

Variety store

Vehicle and equipment dealers, Groups I, II, III, and IV (\*) (subject to Conditions 7 and 10)

Warehouse

Mini

Public

**Uses that must be expressly obtained through the special exception or public hearing amendment process:**

Bar or cocktail lounge

Boat storage, dry, not exceeding 18 feet above grade

Boat storage, dry, exceeding 18 feet above grade (limited to wholly within an enclosed building not to exceed 35 feet in building height)

Food and beverage service, limited

Parking lot: Commercial

b. Property Development Regulations

Minimum Lot Area and Dimensions

|            |                    |
|------------|--------------------|
| Lot Area:  | 10,000 square feet |
| Lot Width: | 100 feet           |
| Lot Depth: | 100 feet           |

Minimum Building Setbacks and Maximum Building Heights:

|                                             |                            |
|---------------------------------------------|----------------------------|
| Street, public                              | 30 feet                    |
| Street, private                             | 20 feet                    |
| Side (East):                                | 15 feet                    |
| Rear (North):                               | 25 feet                    |
| Uses with specific development regulations: | See Conditions 10 & 11     |
| Maximum building heights:                   |                            |
| Hotel                                       | 48 feet (see Condition 11) |
| All other buildings and structures          | 35 feet (see Condition 9)  |
| Lot Coverage:                               | 40 percent                 |

**(3) Open Space**

Prior to the issuance of the first development order, the development order plans must depict 30 percent open space (2.63 acres). If subdivided, individual development parcels must include a minimum of 10 percent open space.

**(4) Indigenous Preserve**

Prior to the issuance of the first development order, the development order plans must depict the indigenous preserve area as the 75-foot buffer to along the north perimeter. If exotics are removed, native plantings must be planted to maintain proper screening along the single-family lot abutting the subject property to the north. The development order plans must also depict a total of 1.33 acres of indigenous open space in substantial compliance with Master Concept Plan Alternates A and B, dated September 27, 2023 per the following breakdown:

| Indigenous Credit Chart |                |                |             |                         |
|-------------------------|----------------|----------------|-------------|-------------------------|
| Preserve Area           | Indigenous Ac. | Width of Area  | Credit %    | Indigenous with credits |
| <b>Preserve 1</b>       | <b>1.06</b>    | <b>75-foot</b> | <b>125%</b> | <b>1.33</b>             |

Staff Note: Applicant to prepare revised MCPs consistent with recommendations herein, date referenced above to be updated accordingly.

## **(5) Indigenous Habitat Plan**

Prior to the issuance of the first development order, the development order plans must demonstrate the following:

- a. Substantial compliance with the Indigenous Management Plan, attached as Attachment J, Exhibit B.
- b. A schedule for the indigenous preservation and restoration to be completed within five consecutive years.
- c. A map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located. Mechanical clearing must be limited to non-indigenous areas.
- d. An appropriate planting list for the preserve area, approved by Lee County Staff.
- e. Exotic removal and restoration (supplemental plantings) of indigenous habitat to begin concurrently with improvements to land, which must be provided at time of local development order application. The supplemental planting plans must be approved by Lee County Staff.

## **(6) Gopher Tortoise Survey**

Prior to local development order approval, the property must be re-surveyed for the presence of gopher tortoises and their burrows, and, if found, a gopher tortoise management plan must be submitted as part of the indigenous preserve management plan for review and approval. The gopher tortoise management plan must include details on habitat management to provide open herbaceous foraging areas, and how the habitat will be maintained in perpetuity. The management should also include the following details pertaining to site work:

- a. A copy of the Florida Fish and Wildlife Conservation Commission Gopher Tortoise Permit and receipt of payment, if applicable, must be submitted to the staff prior to issuance of a Vegetation Removal Permit.
- b. A Vegetation Removal Permit to install gopher tortoise fencing and burrow excavation must be obtained prior to any site work.
- c. Any gopher tortoises and commensal species located during burrow excavation must be moved to appropriate indigenous preserves or relocated through state and federal permits.

- d. The number of tortoises and any commensal species moved to preserves must be reported to staff or relocated through FWC permitting.
- e. All active and inactive gopher tortoise burrows located outside of the indigenous preserves must be excavated and fully collapsed prior to issuance of a Vegetation Removal Permit for clearing and filling of the development area.

**(7) Lee County Public Water Supply Wells**

- A. Prior to local development order approval, the developer must demonstrate compliance with the Lee County Wellfield Protection Zone Ordinance and identify the proposed use(s). The following uses are not permitted within the 1-year or 5-year Wellfield Protection Zone travel time, as depicted by Lee Plan Map 4-C.
  - Truck stop with or without gas pumps
  - Laundry and dry cleaning, Groups I and II
- B. The following uses have the potential to adversely impact the proximate public water supply wells and are therefore only permitted on the subject property when in compliance with the remainder of this condition.
  - Automobile repair and service, Groups I and II
  - Automobile service station, with or without gas pumps
  - Convenience food and beverage store, with gas pumps
  - Repair Shops, Groups IV
  - Self-service fuel pumps
  - Vehicle and equipment dealers
  - Any use exceeding the regulated substance thresholds in subsections C and D
- C. Prior to local development order approval, the plans must depict the storage location and combined sum of all quantities of regulated hazardous, toxic substances and sanitary hazards as defined by the Wellfield Protection Ordinance. The combined sum of regulated hazardous, toxic substances and sanitary hazards must not exceed 110 gallons if the substance is a liquid or 1,110 pounds if the substance is a solid within the 1-year Wellfield Protection Zone travel time.
- D. Prior to local development order approval, the plans must depict bulk storage of fuel, in excess of 110 gallons, outside of the 1-year Wellfield Protection Zone travel time.
- E. Prior to local development order approval, the developer must provide a Maintenance Plan for review and approval by the Lee County Division of Natural Resources. At a minimum, the Maintenance Plan must establish:

- A quarterly containment and emergency equipment inspection schedule performed by a qualified professional.
  - All maintenance and inspections logs and records must be provided to Lee County Division of Natural Resources annually.
- F. Prior to local development order approval, the plans must note that fuel storage systems must be constructed with secondary containment consisting of double walled tanks and/or lines.
- G. Prior to local development order approval, the plans must note that fuel storage systems equipped with leak detection system, with appropriate alarms and protocol to provide for shutdown of system pending leak investigation will be implemented.
- H. During construction the combined sum of regulated hazardous, toxic substances and sanitary hazards, as defined by the Wellfield Protection Ordinance, must not exceed 110 gallons if the substance is a liquid or 1,110 pounds if the substance is a solid within the 1-year Wellfield Protection Zone travel time.
- I. Prior to local development order approval, the developer must provide a Surface Water Quality Monitoring Plan for review and approval by the Lee County Division of Natural Resources. At a minimum, the Surface Water Monitoring Plan must establish the following:
- The overall Goals and Objectives of the Surface Water Quality Monitoring Plan.
  - An outfall monitoring schedule during "wet" season of June through September and "dry" season of October through May. The monitoring constituents will be determined prior to issuance of local development order by the Lee County Division of Natural Resources based on the final uses proposed.
  - Baseline surface water quality monitoring data will be included in the monitoring plan and must be completed and provided to Lee County Division of Natural Resources prior to commencement of construction.
  - Water quality monitoring data must be provided to the Division of Natural Resources annually and must include a report with a comparison of State surface water quality standards, plots of parameters, and recommendations. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources.
  - A contingency plan in the event an exceedance of State Surface Water Quality Standards is discovered. This plan must include notification to impacted residents and applicable authorities.
- J. Prior to local development order approval, the developer must provide a Groundwater Quality Monitoring Plan for review and approval by the Lee County Division of Natural Resources. At a minimum, the Groundwater Quality Monitoring Plan must establish the following:

- The overall Goals and Objectives of the Groundwater Quality Monitoring Plan.
- A semi-annual monitoring schedule. The monitoring constituents will be determined prior to issuance of local development order by the Lee County Division of Natural Resources based on the final uses proposed.
- Groundwater monitoring wells must be installed prior to commencement of construction, consisting of two monitoring wells upstream and two monitoring wells downstream of the regulated hazardous, toxic substances and sanitary hazard storage area, with locations and depths subject to Lee County Division of Natural Resources approval.
- Baseline groundwater quality monitoring data will be included in the monitoring plan and must be completed and provided to Lee County Division of Natural Resources prior to commencement of construction.
- Groundwater quality monitoring data must be provided to the Lee County Division of Natural Resources annually and must include a report with a comparison of State water quality standards, plots of parameters, and recommendations. Groundwater quality monitoring must continue through the lifetime of the Public Supply Well. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources.
- A contingency plan in the event an exceedance of State Water Quality Standards is discovered. This plan must include an emergency plan and notification to impacted residents, applicable authorities, and the Director of Lee County Natural Resources.

K. Bonding. Prior to local development order approval, the Development Order plans must identify the proposed use and the Wellfield Protection Officer will determine if a surety bond, performance bond, letter of credit, or escrow agreement is required to cover the cost to abandon and replace the public supply well in accordance with the facility's Operating Permit, as outlined in the Wellfield Protection Ordinance.

#### **(8) Masonry Wall/Berm Combination**

Prior to any local development order approval, the following wall requirements must be met:

- A. A completely opaque 8-foot-high masonry wall or 8-foot-high masonry wall and berm combination must be provided within 25 feet of the south side of the indigenous preserve area where roads, drives, parking areas, refuse and recyclable material collection areas, emergency power generators, service areas for delivery of goods or services are located within 125 feet of the north property line. The height of the masonry wall or masonry wall/berm combination must be measured from the top of the nearest internal paved surface.

- B. The 8-foot-high wall/berm combination depicted on the Master Concept Plans adjacent to areas not specified in Condition 8(a) may optionally utilize a completely opaque composite or other non-wood wall material. Any transition between materials must maintain the required height.
- C. The wall or wall/berm combination must commence within 15 feet of the Wells Road right-of-way and extend east continuously until within 15 feet of the eastern MCP boundary line.
- D. Condition 8 is null and void if the northern abutting property is not utilized for single-family residential uses at time of local development order approval. Any modifications to reduce this condition requires public hearing.

**Staff Note:** Applicant to prepare revised MCPs to include the general location and proposed height of the wall or wall/berm combination, with appropriate annotations, consistent with recommendations herein.

#### **(9) Project Building or Structure Height**

- A. The building and structure heights specified herein may not be exceeded without obtaining approval through the public hearing process. The provisions of LDC Section 34-2174, additional permitted height when increased setbacks provided, may not be utilized within the planned development.
- B. All buildings exceeding two stories must be setback 150 feet from the north property line.

#### **(10) High Intensity Uses**

This condition pertains the following uses:

- a. Convenience Food and Beverage Stores, Fast-Food Restaurants, Car Washes.
  - i. Except for Deviations 5 and 6 contained herein, deviations from LDC Section 34-1353 must be sought through the public hearing process.
  - ii. Convenience food and beverage stores and fast-food restaurants must be set back 50 feet from any public right-of-way; this condition also applies to any restaurant with a drive-through facility.
- b. Display, sale, rental or storage for motor vehicles, boats, recreational vehicles, trailers, mobile homes or equipment.

- i. Deviations from LDC Section 34-1352 must be sought through the public hearing process.
- ii. Automotive dealerships exceeding 4 acres in size or providing multi-story display or storage of vehicles must receive approval through the public hearing amendment process to ensure consistency with the LDC and Lee Plan. All automotive repair and service must be located within the southern 400 feet of the subject property.
- iii. All items and areas used for storage areas, display, or offered for sale or rent must be set back a minimum of minimum of 150 feet from the north property line and 50 feet from Wells Road right-of-way.

#### **(11) Hotel Use**

The development of a hotel on the subject property is subject to the following conditions:

- A. Maximum Units/Conversion. Retail intensity may be converted to a maximum of 125 hotel units at a conversion rate of 1 hotel unit per every 120-square-foot reduction of the 92,750-square-foot intensity allocation. The transfer of retail intensity to hotel units must be reviewed through the administrative amendment process.
- B. Principal Building. The project is limited to one hotel within one principal building. Ancillary and accessory structures may be developed detached from the principal structure.
- C. Room Sizes. Room sizes 725 square feet and less are equivalent to one unit. Room sizes exceeding 725 square feet are equivalent to two units.
- D. Lock-off Accommodations. Where lock-off accommodations are provided, each "keyed room" will be calculated as a separate rental unit.
- E. Maximum Height. The maximum permitted height for a hotel use is 48 feet, accessory structures are limited to a maximum permitted height of 35 feet. If the principal building exceeds 35 feet in height, then it must be located in the southern 300 feet of the subject property, as measured from the Bayshore Road right-of-way. Buildings must be set back a minimum of 50 feet from the Bayshore Road and Wells Road rights-of-way. A hotel use 35 feet in height or less must be set back a minimum of 150 feet from the north property line and 50 feet from the Bayshore Road right-of-way. See Condition 9, general height provision.

- F. Electric Vehicle (EV) Charging. EV Charging stations may be provided as accessory to the hotel use, subject to local development order approval.

**(12) Project Vehicular Trip Generation**

Regardless of any land use density/intensity conversion allowed per the Land Development Code or zoning condition specific to this development, the development is allowed a maximum calculated development intensity with respect to new trip generation utilizing the following development scenario based upon the Institute of Transportation Engineers (ITE) Trip Generation Manual in effect at time of local development order: 92,750 square-feet commercial retail.

**(13) Food Truck Park**

The principal use of a food truck park may be approved through the administrative amendment and local development order process. The application must be accompanied by a conceptual site plan meeting the minimum required details for special exception site plans in LDC Section 34-202. The application must include a project narrative of the intended operation and any other information determined necessary by the Director.

**(14) Project Signage**

- A. Ground-mounted signs on Wells Road, located greater than 300 feet from the Bayshore Road edge of pavement, are limited to monument signs and instructional signage not to exceed 8 feet in sign height.
- B. The Electronic Changing Message Center (EMC) sign type is limited to locations within 50 feet of the Bayshore Road right-of-way.
- C. Interior directional signs will be governed by the Land Development Code.

**(15) Project Access to Wells Road**

The project access to Wells Road is depicted in excess of 250 feet from the north property line on the approved Master Concept Plans and is subject to final design of the anticipated Wells Road reconfiguration. In the event the project access must be shifted north due to reasons beyond the control of the developer, an administrative amendment to relocate this access point may be considered if the relocated access point is no closer than 200 feet from the north property line.

## **Deviations**

### Deviation #1:

Seeks relief from LDC §10-329, which requires an excavation setback of 50 feet from any private property line under separate ownership, to allow a 30-foot excavation setback from the eastern perimeter.

This deviation is **APPROVED**, subject to the condition that the reduction applies to easterly commercially-zoned property, and the easterly abutting AG-2-zoned parcel fronting Bayshore Road, if the parcel is not developed with single-family residential uses at time of local development order approval.

### Deviation #2:

Seeks relief from LDC §10-610(e), which requires adjacent commercial uses to provide parking lot interconnections for automobile, bicycle and pedestrian traffic, to allow no interconnection with the abutting northeastern CPD approved by Resolution Z-10-036 (Maximus Self-Storage, f.k.a W & W Service Park).

This deviation is **APPROVED**, subject to the following conditions:

- i. The easterly parking lot interconnection annotated on the Master Concept Plans must be made at time of local development order if the easterly abutting property is zoned and developed commercial.
- ii. If the eastern abutting property is zoned for commercial uses, but is not developed at time of local development order approval for the subject property, a parking lot interconnection stub must be made to the property line and depicted on the approved development order plans.
- iii. If the property is not zoned for commercial uses, a 24-foot-wide cross-access easement must be provided for future parking lot interconnection. The easement language must be acceptable to the County Attorney's Office and executed and recorded in the Public Records prior to approval of any building permit for commercial uses on the property.

### Deviation #3:

Seeks relief from LDC §10-415(b)(1)b.4. which requires developments greater than five acres in size that abut an arterial or collector road and that have existing native trees within 50 feet of the right-of-way to be designed to provide a 50-foot right-of-way buffer for tree preservation, to instead allow buffer requirements of Chapters 10 and 34 to override. The project is meeting it's preservation requirements in accordance with 10-415(b)(1)a.; therefore, subsection (LDC §10-415(b)(1)b.) is not applicable.

This Deviation is **WITHDRAWN**.

Deviation #4:

Seeks relief from LDC §34-1353(c)(1), which requires a minimum lot width of 150 feet for fast food restaurants and car washes to allow a 100-foot lot width.

This Deviation is **APPROVED**, subject to Condition 10.

Deviation #5:

Seeks relief from LDC §34-1353(c)(3), which requires a minimum lot area of 25,000 square feet for fast food restaurants and car washes to allow a minimum lot area of 15,000 square feet.

This Deviation is **APPROVED**, subject to Condition 10.

Deviation #6:

Seeks relief from LDC §10-416(d)(3), which requires a Type "C" or Type "F" Buffer when a commercial land use abuts a residential land use, to allow the indigenous preserve to function as a planted buffer along the north property.

This Deviation is **APPROVED**, subject to the following condition:

- a. In the event the proposed preserve does not create a continuous visual screen equivalent to a Type C or F buffer, then prior to the issuance of the first development order, the development order plans must provide a list of supplemental plantings and a replanting plan, subject to approval by Lee County staff.

Deviation #7:

Seeks relief from LDC §10-296(k), which requires all roadways to be terminated with a cul-de-sac, to allow no cul-de-sac if an adequate turn-around is provided within the commercial outparcels in conjunction with MCP Alternate A only.

This deviation is **APPROVED**, subject to the following condition:

- a. Prior to local development order approval, a letter of no objection must be provided from the fire district having jurisdiction.

Deviation #8:

Seeks relief from LDC §10-296(e)(1)i.1.ii, which requires a 12-foot-wide wide pedestrian facility and a 5-foot-wide bike lane, to allow no sidewalk or bike lane on Bayshore Road.

This deviation is **WITHDRAWN**.