

Summary of Hearing Examiner Recommendation

LEHIGH ACRES WTP NO2

Applicant seeks to rezone property from RM-2 to CFPD to authorize development of a water treatment facility capable of producing up to 10 million gallons of water per day, including storage tanks, administrative offices, and buildings for storage of mechanical equipment.

The property location is in Lehigh Acres. No members of the public attended the hearing. The Hearing Examiner recommends approval with conditions.

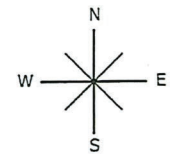
Detailed recommendation follows



DCI2024-00003

Future Land Use

-  Subject Property
-  Central Urban
-  Urban Community



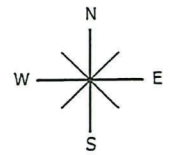
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Feet



DCI2024-00003

Aerial

 Subject Property



0 300 600 900
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2024-00003

Regarding: LEHIGH ACRES WTP NO2

Location: 913 Bolivia Drive
Lehigh Acres Planning Community
(District 5)

Hearing Date: October 3, 2024

I. Request

Rezone a 9.97-acre from Residential Multiple-Family District to Community Facilities Planned Development to permit Essential Service Facility, Group II to facilitate development of water treatment plant infrastructure necessary to produce up to 10 million gallons of water per day. Improvements will also include storage tanks, administrative offices, and buildings for mechanical equipment.

Property legal description in Exhibit A.

II. Hearing Examiner Recommendation

Approval, 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 9.97 acres from Residential Multiple Family (RM-2) to the Community Facilities Planned Development District (CFPD). Staff recommended approval with conditions.

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.

¹ LDC §34-145(d)(4) a.

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

Request

Applicant seeks to rezone property from RM-2 to CFPD to authorize development of a water treatment facility capable of producing up to 10 million gallons of water per day, including storage tanks, administrative offices, and buildings for storage of mechanical equipment.

The property location is 913 Bolivia Drive, Lehigh Acres.

History

In 2002, the County authorized the original water treatment facility by special exception allowing development of 10,000 square feet of office space and two, two million gallon above ground storage tanks.² A few years later, the County approved another special exception and variance authorizing a deep injection well and reduction in the required 100 foot setback to 50 feet for the injection well.³

The Florida Gulf Utility Authority (FGUA) never constructed the deep injection well.

In 2013, FGUA converted the water treatment plant into a booster pump station. The utility currently uses the site for water storage and as a booster pump station. The zoning request would permit conversion of the site to a reverse osmosis water treatment facility with a deep injection well to improve water quality in Lehigh Acres and meet current/future water demands of the community.

Character of Area

The property is located at the terminus of Bolivia Drive in east Lehigh Acres. The site is bounded by canals on the north and west.⁴ The east and south property lines abut platted lands zoned for single family residential land uses. Three single family residences lie along the property's east boundary. Surrounding development consists of platted lots and scattered single family development.

² SEZ 2002-00033 Special Exception for Essential Service Facilities, Group II in the RM-2 zoning district to authorize a water treatment plant.

³ SEZ 2008-00015 and VAR 2008-00044 Special Exception for Essential Service Facilities, Group II authorizing a water treatment plant with deep injection well and a setback variance for the deep injection well.

⁴ Ibis and Sandhill Canals.

Lee Plan

Planned developments must be consistent with the Lee Plan.⁵

The Lee Plan regulates land development activity in the County.⁶ The Plan's Future Land Use Map divides the County into future urban, nonurban, and environmentally sensitive areas.

The property lies within the Urban Community future land use category. The Urban Community is characterized by intense commercial and residential with a mix of, public, quasi-public, and limited light industrial uses. The property is developed with a decommissioned water treatment plant that is now used as a water booster station.

The proposed CFPD zoning district will facilitate redevelopment of the site as a water treatment plant operated by FGUA. This use is consistent with public/quasi-public uses contemplated in the Urban Community.

The Lee Plan encourages compact and contiguous development patterns in areas with services/infrastructure to support new development.⁷ In furtherance of this objective, the Plan permits public utilities in all land use categories.⁸ The recommissioning and expansion of a former water treatment facility to provide potable water service to the Lehigh community is consistent with Lee Plan directives.⁹

The request envisions a phased plan of development:

- Phase One - existing booster pump station/vacated water treatment plant.
- Phase Two - recommission water treatment plant, convert to reverse osmosis, constructing two UFA raw wells, deep water injection well, monitoring well, and 10,000 square foot reverse osmosis building and administrative offices.
- Phase Three – construct two water storage tanks and 3,000 square foot reverse osmosis building.

⁵ Lee Plan Policy 2.1.2; LDC §§34-411(a), 34-491: Rezoning must be consistent with Lee Plan goals, objectives, and policies. Potential conflicts between the Lee Plan and the LDC must be resolved in favor of the Lee Plan.

⁶ LDC §34-491.

⁷ Lee Plan Objectives 2.1, 2.2, Policy 2.2.1.

⁸ Lee Plan Policy 2.1.3.

⁹ Lee Plan Goals 2, 53, Objectives 2.1, 2.2, 25.9, 53.1, 55.1, Policies 2.1.1, 2.2.1, 25.9.2, 25.9.3, 53.1.4, 55.1.1, See Lee Plan Glossary definition - infill.

Compatibility

One purpose of “planned development” zoning is to integrate new development with surrounding land uses, providing consistency and visual harmony.¹⁰

Surrounding lands feature residential, and commercial land uses and are classified as Urban Community. Surrounding properties feature a mix of residential, commercial, a school, and a fire station. The north corner of the site abuts lands classified Central Urban. The site has been improved with water treatment infrastructure for over 20 years. Even in its decommissioned state, utility structures exist in proximity to residential land uses without incident.

Creative site design ensures compatibility with surrounding land uses. The site plan features enhanced setbacks of 50 feet for underground disposal facilities and 100 feet for above ground equipment, 30 foot Type F buffers along the north and west property boundary, and a 25 foot Type E buffer along the south and east boundaries.¹¹ Maximum building height will not exceed 35 feet.

Existing native trees will be retained and incorporated into the perimeter buffer. An existing eight foot fence and eight foot masonry wall secures the site, preventing unauthorized access.

The facility operator will shield project lighting directing illumination inward and downward to limit off site impacts.

LDC

Development must comply with County land development regulations or seek deviations.

Planned development zoning is a means to integrate new development with surrounding land uses.¹² Planned developments further the goals of the Lee Plan while providing flexibility in planning and design.¹³

The LDC imposes perimeter landscape requirements for water treatment facilities.¹⁴ The Master Concept Plan (MCP) complies with these requirements, effectively shielding the site from surrounding land uses.

¹⁰ Another purpose is to provide flexibility in development design. LDC §34-612(2).

¹¹ Type E buffer consists of a 25 foot wide strip planted with five trees and 30 shrubs per 100 linear feet and includes a solid wall, berm or wall and berm combo. Shrubs must provide visual screening and may not be pruned to reduce height. The 30 foot wide Type F buffer consists of ten trees and a double hedge row per 100 linear feet.

¹² LDC §§34-341(a), 612(2).

¹³ LDC §§34-411(a), 34-612(2), Lee Plan Policy 2.1.2.

¹⁴ LDC §10-416(d).

The request seeks only one deviation from the LDC. A “deviation” is a departure from a land development regulation.¹⁵ Applicants must demonstrate deviations enhance the planned development and will not cause a detriment to the public.¹⁶ The requested deviation pertains to reducing the minimum distance between the entrance gate and intersecting street right of way and eliminating auxiliary turn lanes and turnaround requirements.

Applicant offered testimony and evidence in support of the deviation.¹⁷ Staff recommended approval of the deviation. The Hearing Examiner agrees with staff’s recommendation, finding the deviation meets LDC approval criteria.¹⁸

Transportation

Applications to rezone property must demonstrate access sufficient to support proposed development intensity. Expected impacts to transportation facilities must be addressed by existing County regulations and conditions of approval.¹⁹

The MCP maintains the existing project access to Bolivia Drive, a County maintained local road.²⁰ The Traffic Impact Statement projects a low daily trip generation associated with the proposed 13,000 square feet of administrative offices.²¹

Further analysis of transportation impacts, including site related turn lane improvements, will occur during development order permitting.

Environmental/Natural Resources

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

The site has been developed for over 20 years with an existing storm water management system. Redevelopment of the site to accommodate the facilities and structures must comply with LDC open space and water management requirements.

¹⁵ LDC §34-2.

¹⁶ LDC §34-373(a)(9).

¹⁷ LDC §34-377(a)(4).

¹⁸ The Hearing Examiner may recommend approval, approval with modifications or denial of requested deviations based upon findings that a deviation (1) enhances the planned development and, (2) preserves/promotes public health, safety, and welfare. LDC §34-377(a)(4).

¹⁹ LDC §34-145(d)(4)a.

²⁰ Lee County Administrative Code AC 11-1.

²¹ Staff Report Attachments L, M: Zoning Traffic Study for Florida Governmental Utility Authority Lehigh Acres Water Treatment Plant No 2 dated November 2023 prepared by Johnson Engineering and Memo from Tim Brooks, DOT Project Manager dated June 5, 2024.

Buffers and landscaped areas must follow Xeriscape principles and consist of native landscape to conserve water.²²

The Hearing Examiner finds the proposed CFPD will not harm environmentally critical/sensitive areas or natural resources. The proposed plan of development enhances the site's environmental features by removing exotic vegetation.

Public Services and Infrastructure

Public services are services, facilities, capital improvements, and infrastructure necessary to support development.²³ The Lee Plan requires an evaluation of public services during the rezoning process.²⁴ The site has access to public services and infrastructure including public water, paved roads, police, fire, and emergency medical services.²⁵

The site is currently served by an onsite septic system. The septic system will be updated to accommodate the planned 13,000 square foot administrative offices.

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County's resources.²⁶ Conditions must be plausibly related to the project's anticipated impacts, and pertinent to mitigating impacts to the public.²⁷ The CFPD will be subject to conditions of approval designed to address impacts reasonably anticipated from development.²⁸

The Hearing Examiner revised wording of conditions/deviations to improve clarity.

Public

No members of the public attended the hearing.

²² Lee Plan Objective 126.2, Policies 54.1.3, 126.2.1.

²³ Public services and infrastructure available to serve the project will include public water and sewer (Lee County Utilities), paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools.

²⁴ Lee Plan Goal 95 and Policy 2.2.1.

²⁵ Lee Plan Goals 4, 65, 70, 95, Objective 4.1, Policies 1.1.4, 2.2.1, 2.2.2.

²⁶ Lee Plan Policies 5.1.5, 135.9.6; LDC §§34-145(d)(4) a.2.(b), 34-377(a)(3), 34-411, and 34-932(c).

²⁷ LDC §34-932(b).

²⁸ LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Objective 77.3.

Conclusion

The Hearing Examiner recommends approval subject to conditions in Exhibit B. The Hearing Examiner finds the requested CFPD zoning meets LDC criteria and, as conditioned, is compatible with surrounding development.²⁹

The Hearing Examiner revised conditions of approval for clarity, compliance with state law and to remove references to the LDC applicable to development by Condition 1.

IV. Findings and Conclusions

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

- A. The requested CPPD is consistent with the Lee Plan. Lee Plan Goals 2, 4, 25, 53, 95, 125; Objectives 2.1, 2.2, 2.9, 4.1, 25.9, 39.1, 53.1, 55.1, 125.1, 126.2, 158.3, and Policies 1.1.4, 2.1.1, 2.1.2, 2.2.1, 25.9.2, 25.9.3, 54.1.3, 55.1.1, 125.1.2, 125.1.3, Lee Plan Maps 1-A, 1-B, 2-A.
- B. As conditioned, the CFPD zoning district:
 - 1. Is consistent with the Land Development Code or qualifies for deviations. LDC Chapters 2, 10, 33, and 34.
 - 2. Is compatible with existing or planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, and Policies 5.1.5, 135.9.6; 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, 38.1.5, 39.1.1; LDC § 34-411.
 - 5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goal 77, Objectives 77.3, 125.1, 126.2, Policies 54.1.3, 77.3.2, 126.2.1.
 - 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.
- C. The proposed uses are appropriate at the location. Lee Plan Goals 2, 25, Objectives 2.1, 2.2, Policies 2.1.1, 2.1.2.

²⁹ Lee Plan Policy 6.1.4.

- D. The County regulations and recommended conditions provide sufficient safeguards to protect the public interest and relate to impacts expected from the proposed development.
- 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 Date: October 14, 2024.



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

Exhibit A

Legal Description & Plat

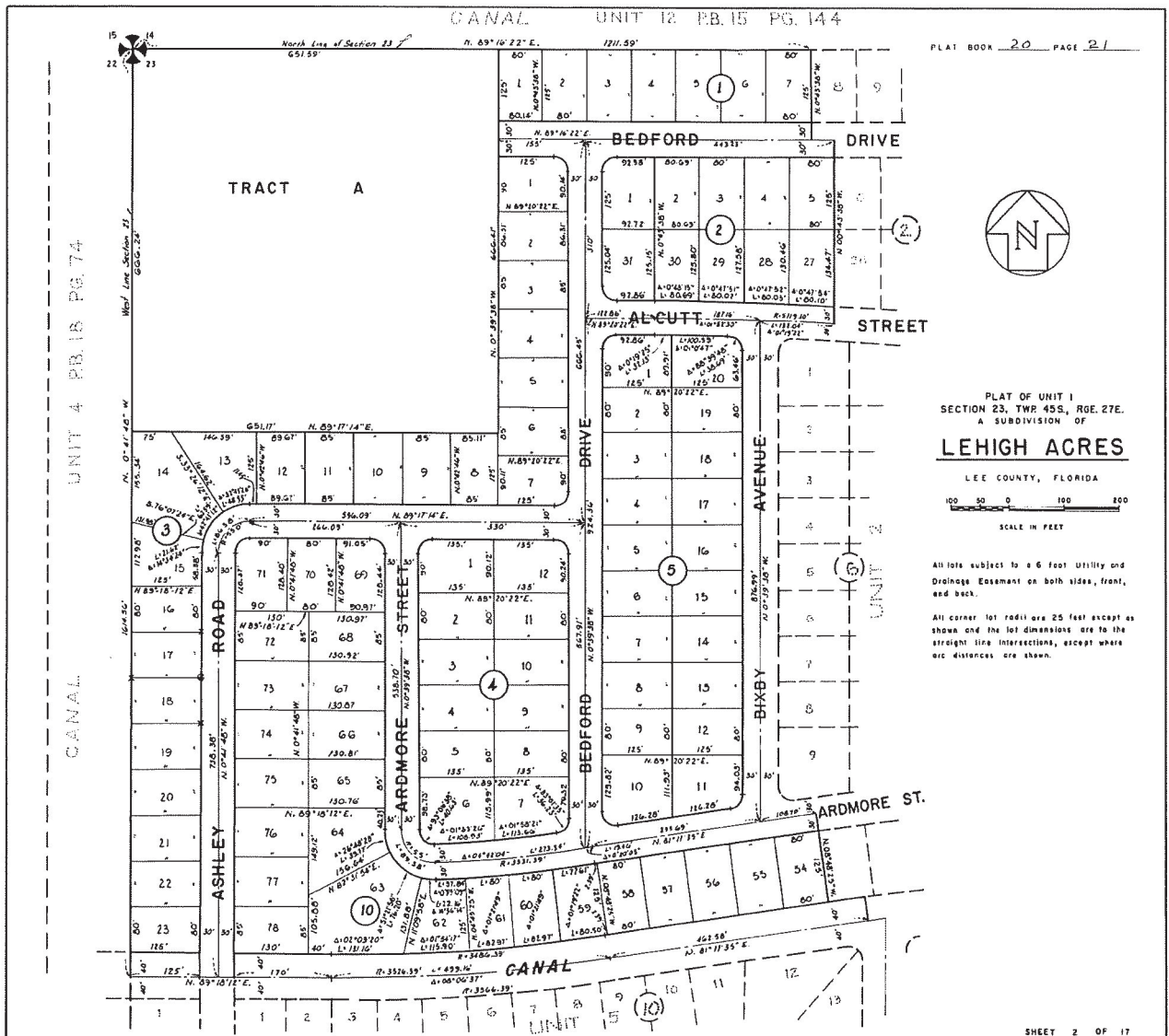
REVIEWED
DCI2024-00003
Rick Burris, Principal
Planner
Lee County DCD/Planning
3/13/2024

Legal Description

Tract "A", Plat of Unit 1, Section 23, Township 45 South, Range 27 East, a subdivision of Lehigh Acres, Lee County, Florida, Recorded in Plat Book 20, Page 21 of the Public Records of Lee County, Florida.

Strap #23-45-27-01-00000.30A0

REVIEWED
DCI2024-00003
Rick Burris, Principal
Planner
Lee County DCD/Planning
3/13/2024

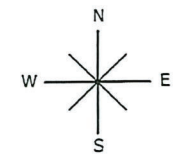




DCI2024-00003

Zoning

 Subject Property



0 300 600 900
Feet



Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by the Hearing Examiner

CONDITIONS

1. Master Concept Plan/ Approved Development Parameters

Master Concept Plan. Development must be consistent with the one-page Master Concept Plan (MCP) entitled “Lehigh Acres Water Treatment Plant No. 2” date stamped May 31, 2024, except as modified by the conditions below. (Exhibit B1).

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

Approved Development Parameters. The infrastructure necessary to produce up to 10 million gallons of water per day including storage tanks, 13,000 square feet of administrative offices, and buildings to store mechanical equipment.

2. Permitted Uses and Property Development Regulations

The following limits apply to the project and uses:

a. Schedule of Uses

Accessory Uses and Structures

Administrative Offices

Entrance Gates and Gatehouse

Essential Services

Essential Service Facilities: Groups I, II (Group II – Limited to Above Ground Water Storage Facilities, Water Treatment Plants, and Communications only)

Excavation: Water Retention Only

Fences, Walls

Government Agencies, Offices Only

Maintenance Facility (Government)

Parking Lot, accessory

Signs

Storage, Indoor

Temporary Uses

b. Site Development Regulations

Minimum lot area and dimensions:

Lot area: 43,560 Square Feet

Lot width: 100 feet

Lot Depth: 100 feet

Setbacks:

Water Treatment Facilities: In accordance with LDC §10-351

Minimum Below Ground Disposal Perimeter Setbacks: 50 feet

All other buildings and structures:

Street: 25 feet

Waterbody: 25 feet

Maximum building height: 35 feet except structures ref. in LDC §34-2173

Minimum Open Space: 20 percent

Maximum lot coverage: 35 percent

3. Open Space

Development order plans must depict 7.9 acres of open space.

DEVIATIONS

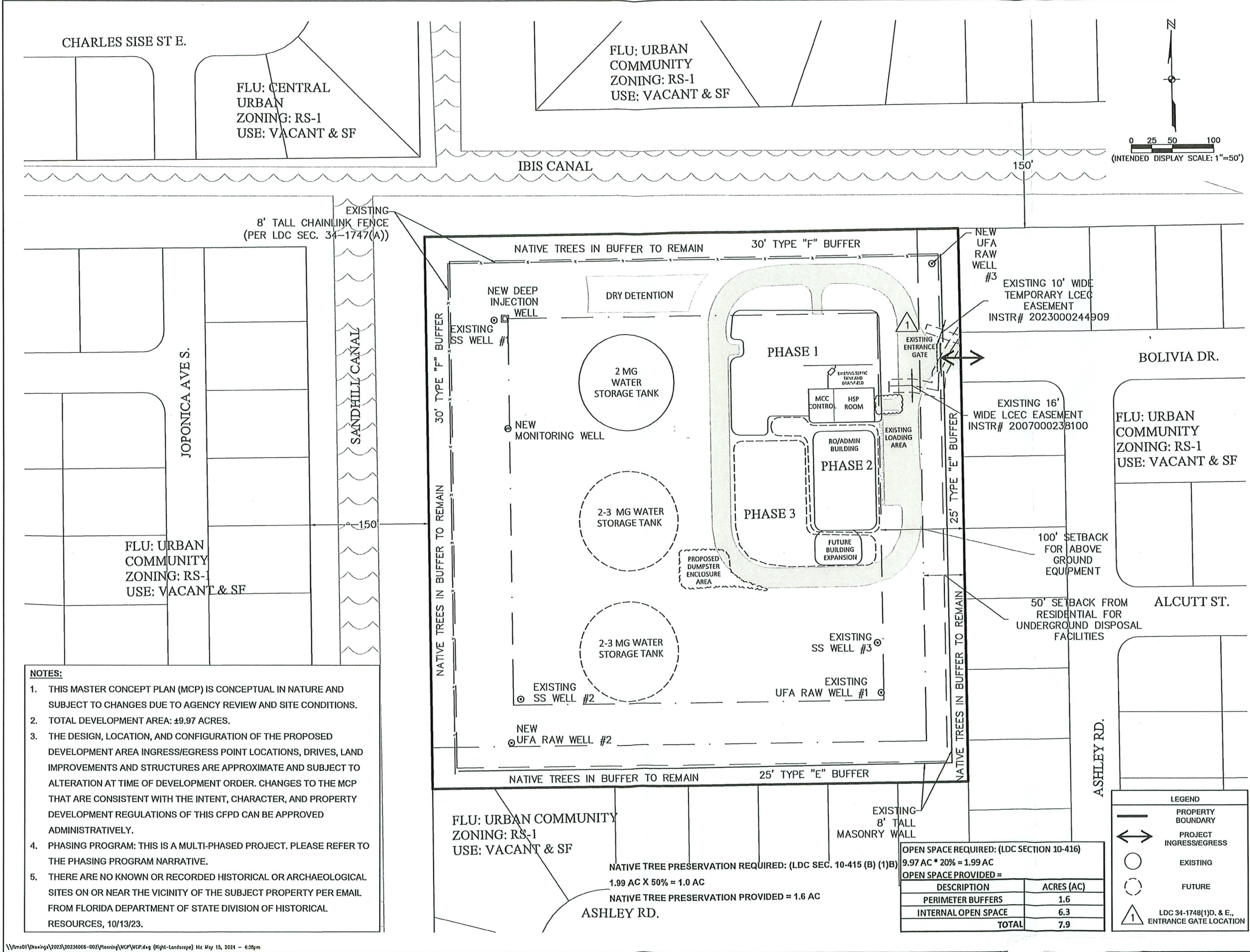
1. Entrance Gates and Gatehouses. Deviation (1) requests relief LDC §§34-1748(1)d. & e. and (5), which require entrance gates/gatehouses that control access to property 24 hours a day to be set back 100 feet from existing rights-of-way or easements and designed to provide adequate turn lanes and turnarounds to safely enter/exit the development, to reduce the 100-foot minimum distance between the entrance gate and existing intersecting street right-of-way to 20 feet, and to eliminate the right and left auxiliary turn lane and turnaround requirements.

Hearing Examiner Recommendation: This deviation is approved.

Exhibits to Conditions:

B1 Master Concept Plan "Lehigh Acres Water Treatment Plant No. 2" date stamped May 31, 2024.

EXHIBIT B-1



JOHNSON
ENGINEERING

JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0016
FAX: (239) 334-3661
E.B. #612 & L.B. #612



LEHIGH ACRES WATER TREATMENT PLANT
NO. 2
LEE COUNTY, FLORIDA

REVISIONS	DATE
DESCRIPTION	
NO.	

DATE: SEPT 2023
PROJECT NO. 20230606-002
FILE NO. 23-45-27
SCALE: 1" = 200'

MASTER
CONCEPT
PLAN

SHEET NUMBER

1 OF 1

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Dirk Danley, Jr., Principal Planner, date received September 18, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for DCI2024-00003, Lehigh Acres Water Treatment Plant No. 2, dated October 3, 2024 (multiple pages – 8.5"x11")

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Christine M. Fisher with Johnson Engineering, LLC., to Maria Perez, Scott Towler, M Wardeh, John Carlson, Dirk Danley, Jr., Laura S. DeJohn, with copies to Rebecca Sweigert, Tracy Toussaint, Jamie Princing, Elizabeth Workman, Audra Ennis, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee Werst, Warren Baucom, Mikki Rozdolski, Anthony Rodriguez, Phil Gillogly, Marcus Evans, and Jennifer Rodriguez, dated Tuesday, October 1, 2024, 10:22 AM (3 pages – 8.5"x11")
1. *Composite Exhibit:* (multiple pages - 8.5"x11")

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Dirk Danley, Jr.

Applicant Representatives:

1. John Carlson
2. Mike Currier
3. Christine Fisher

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.