

**M E M O R A N D U M
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

DATE: October 3, 2024

TO: Board of County Commissioners FROM: Amanda L. Rivera
Lee County Deputy Hearing Examiner

RE: ROYAL PALM MULTIFAMILY RPD
Hearing Examiner Recommendation

Deputy Hearing Examiner Amanda L. Rivera has rendered a Recommendation on the following zoning request:

ROYAL PALM MULTIFAMILY RPD

DCI2023-00049

HEARD: August 29, 2024
Record Closed: August 30, 2024

The Zoning Section of the Department of Community Development will schedule a final hearing before the Board in the coming weeks.

cc: Michael Jacob, Esq. / County Attorney's Office
Joseph Adams, Esq. / County Attorney's Office
Anthony Rodriguez, AICP / Zoning Section
Elizabeth Workman / Zoning Section
Warren Baucom / Economic Development
Phil Gillogly / Natural Resources
Jamie Prining / Community Development
Applicant(s) & Representative(s)
Other Interested Parties

Summary of Hearing Examiner Recommendation

ROYAL PALM MULTIFAMILY RPD

The request seeks to revitalize a mobile home park ravaged by Hurricane Ian. Applicant proposes to construct a multi-family community utilizing bonus density for site-built affordable housing. The property is in the Coastal High Hazard Area and must comply with site-specific development standards.

A recent Lee Plan amendment redesignated the property to Intensive Development. Proposed density, inclusive of bonus units, remains within the permissible range.

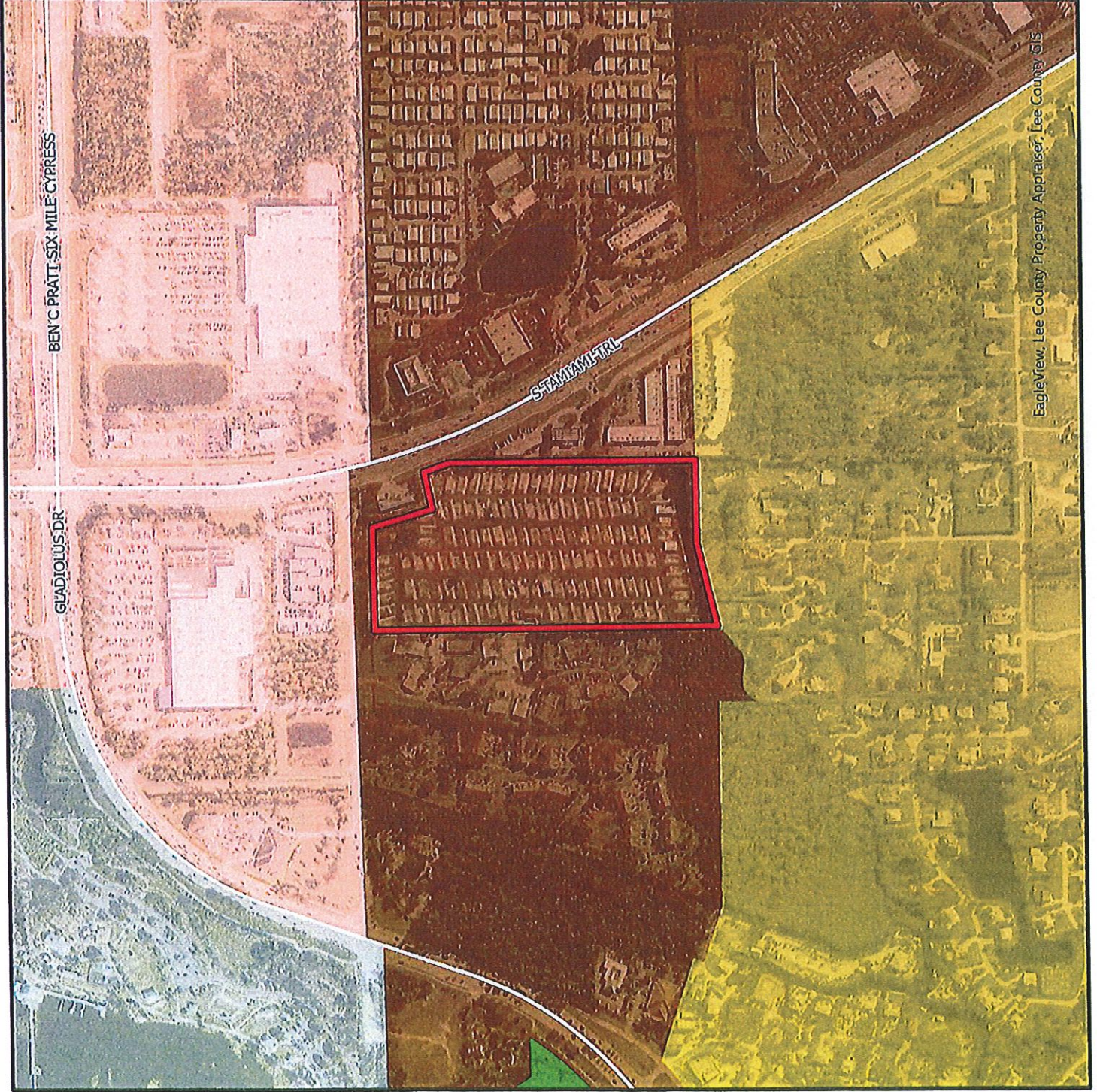
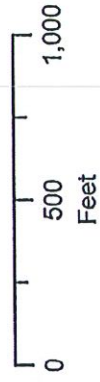
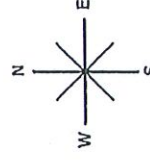
Several members of the public spoke at hearing, divided evenly between opposition and support of the request.

Detailed recommendation follows

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Future Land Use

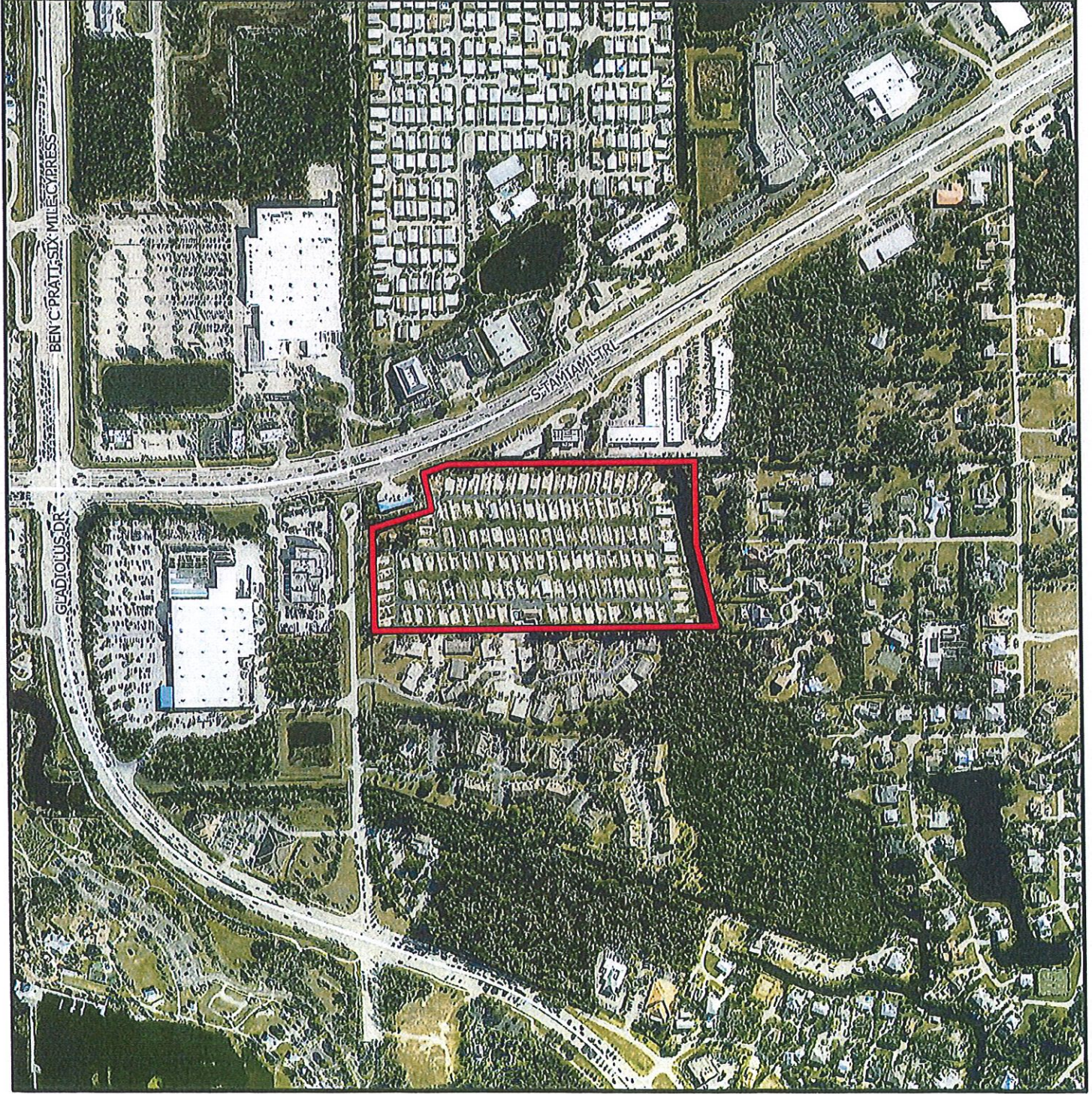
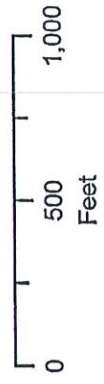
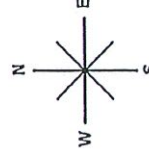
- Subject Property
- Intensive Development
- Central Urban
- Suburban
- Public Facilities
- Conservation Lands - Upland



DCI2023-00049

Aerial

 Subject Property





OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2023-00049

Regarding: ROYAL PALM MULTIFAMILY RPD

Location: 15180 Meadow Circle
South Fort Myers Planning Community
(District 3)

Hearing Date: August 29, 2024
Record Closed: **August 30, 2024**

I. Request

Rezone 19.33± acres from Mobile Home (MHC-2) to Residential Planned Development (RPD) to allow a maximum of 391 multi-family units, 60 feet in height. Requested density includes 136 bonus 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

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone 19.33± acres to RPD.

In preparing a recommendation for the Board, Hearing Examiner must apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other County regulations to the facts presented. There must be competent substantial evidence in the record to support the recommendation to the Board.

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

¹ LDC §34-145(d)(4)a.

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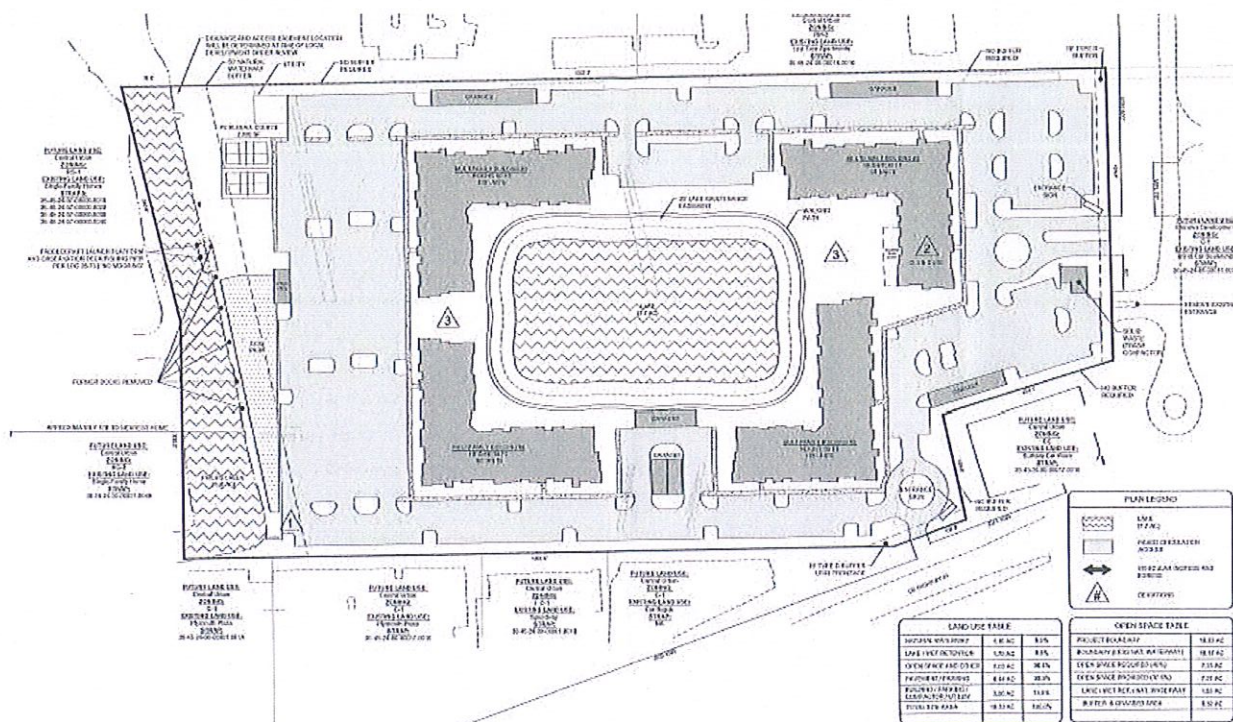
Request

The property is west of US 41, south of Old Gladiolus Drive. The site is uniquely positioned between intense commercial and residential uses. A mobile home park historically occupied the site, but was destroyed by Hurricane Ian.

The request seeks approval of a residential development consisting of 391 multi-family dwelling units.² Applicant proposes to develop 136 affordable housing units utilizing the bonus density program. Site design includes four residential buildings with a clubhouse, garages, lake, dog park, pickleball courts, open space, and parking. Buildings are centralized around the lake to maximize buffers from adjacent residents. Maximum building heights will be 60 feet.

The Board approved a Lee Plan map amendment designating the property as Intensive Development on August 7, 2024.³

Staff recommended approval, finding the proposed RPD satisfies review criteria in the LDC and Lee Plan.



² Base density is 255 units with up to 136 bonus units.

³ See Staff Report (pg. 1, referencing CPA2023-00011, Attachment D). The property was previously in the Central Urban future land use category.

Zoning Review Criteria

Before recommending approval for rezoning to the Board, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations, or qualifies for deviations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Provides access sufficient to support the proposed development intensity;
- E. The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- F. Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- G. Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.⁴

If the request involves planned development zoning, such as RPD, the Hearing Examiner must also find:

- H. The proposed use is appropriate at the proposed location;
- I. Recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
- J. Each requested deviation (1) enhances the achievement of the objectives of the planned development, and (2) protects public health, safety, and welfare.⁵

⁴ See LDC §34-145(d)(4)(a)(1).

⁵ See LDC §34-145(d)(4)(a)(2).

History of the Site

The Royal Palm Village mobile home community occupied the site from 1982 until Hurricane Ian struck in 2022.⁶ The property supported 130 mobile homes on individually owned lots governed by a Declaration of Condominium.⁷ The owners voted to dissolve the condominium following destruction caused by the hurricane.⁸ The site is mostly vacant, with some remnants of development.⁹

Character of Surrounding Area

The site fronts Old Gladiolus Drive and US 41. Intense commercial uses line the US 41 corridor. The Gladiolus Drive/US 41 intersection is among the busiest in the county and sits just north of the site. Commercial retail centers including a Lowe's hardware store, auto dealership, car wash, auto repair shop, gas station, and Walmart Plaza with fast food outparcels are to the north and east.

Phillips Creek adjoins to the south, separating the property from a large lot residential neighborhood.¹⁰ The Lost Tree Village and Pine Meadows multifamily communities abut to the west.¹¹

The requested RPD infills a heavily developed area, promoting contiguous and compact growth patterns consistent with the Lee Plan.¹²

Lee Plan Consistency

Planned developments must be consistent with the Lee Plan.¹³

The Lee Plan Future Land Use Map classifies the property as Intensive Development in the South Fort Myers Planning District.¹⁴ The Intensive Development land use category permits high levels of development. Permissible density ranges from 8 to 22 dwellings per acre but may be as high as 30 units per acre under certain circumstances.¹⁵ Intensive Development areas are suited to accommodate high densities.¹⁶

⁶ See Staff Report (pg. 1-2).

⁷ *Id*; See also Attachment F.

⁸ See Staff Report (pg. 2).

⁹ The Hearing Examiner conducted a site visit on August 28, 2024.

¹⁰ See Staff Report (pg. 2-3). The RS-1 lots to the south consist of ½ acre to ¾ acre lots in the Phillips Creek Subdivision Plat (Staff Report Attachment G).

¹¹ Lands to the west are zoned RM-2 and have been developed with single-story and two-story residential buildings. See Staff Report (pg. 3).

¹² Lee Plan Objectives 2.1 and 2.2.

¹³ Lee Plan Policy 2.1.2; LDC §34-411(a).

¹⁴ Lee Plan Maps 1-A, 1-B, Policy 1.1.2.

¹⁵ Maximum density is 22 units per acre. Developers may increase maximum density to 30 dwellings per acre when utilizing Greater Pine Island Transfer of Development Units. Lee Plan Policy 1.1.2.

¹⁶ Lee Plan Policy 1.1.2.

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The proposed density of 21 units per acre falls within the permissible range. Applicant seeks 136 units through the affordable housing bonus density program.¹⁷ The RPD will utilize site-built affordable housing consistent with Lee Plan directives for properties within the Coastal High Hazard Area.¹⁸ Providing a diversity of housing types while meeting the community's affordable housing needs satisfies various Lee Plan directives.¹⁹

Requests for bonus density must demonstrate compliance with supplemental requirements set forth in the LDC.²⁰ Applicants must show:

1. Additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector/arterial road;
2. Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;
3. Storm shelters are provided if the development is located within the coastal high hazard area; and
4. The resulting development will be compatible with existing and planned surrounding land uses.

Traffic

The property has an existing access to Old Gladiolus Drive, a county-maintained local road.²¹ Old Gladiolus Drive intersects with Gladiolus Drive, a state-maintained arterial road. Site design envisions adding a right-in/right-out access on US 41, a state-maintained arterial road. The Florida Department of Transportation (FDOT) is reviewing Applicant's permit application seeking US 41 access.²²

Project traffic will directly access an arterial road in satisfaction of the review criteria.²³

Public Facilities

The record reflects existing and committed public facilities will not be so overwhelmed that a density increase would be contrary to the public interest.²⁴

¹⁷ Applicant also indicated it may utilize gray water legislation to achieve additional density. See Applicant Ex. 1 (slide 13); Drovdlc Testimony (Transcript pg. 18-19).

¹⁸ Lee Plan Policies 101.3.6, 101.3.7; Drovdlc Testimony (Transcript pg. 50-51).

¹⁹ See Lee Plan Goal 135, Objective 135.1, Policy 135.1.1, 135.1.4, 135.1.9, 135.1.14, 135.4.14.

²⁰ LDC §2-146(b).

²¹ Applicant proposes to relocate the access farther west and gate it to restrict use to residents and guests.

²² Drovdlc and Treesh Testimony (Transcript pgs. 33-35, 43-45).

²³ Mr. Treesh testified FDOT permitting was underway with no indication that the US 41 access would not be approved. *Id.* at 45. Ms. Workman elaborated traffic on Old Gladiolus passes medical office, commercial, and multi-family uses before reaching Gladiolus Drive, the next arterial road. *Id.* at 76.

²⁴ See Staff Report (pg. 4, Attachment G & I).

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Sufficient road capacity accommodates projected trip generation.²⁵ Applicant provided a Traffic Impact Statement (TIS) and letters of availability from service providers to demonstrate compliance with this criterion.²⁶

Storm Mitigation

The property is located within the Coastal High Hazard Area.²⁷ Applicant prepared a Coastal High Hazard/Hurricane Risk Assessment Report analyzing the flooding/storm surge risks, FEMA flood elevation designation, and how site design improves resiliency.²⁸ Applicant's expert pointed to significant safety benefits afforded by construction standards applicable to new development.²⁹

Compatibility

The LDC defines *compatible* to mean the state wherein two land uses/buildings/structures/zoning districts exhibit either: (1) a positive relationship based on fit, similarity or reciprocity of characteristics; or (2) a neutral relationship based on a relative lack of conflict or on a failure to communicate negative/harmful influences on one another.³⁰

A multi-family residential use is compatible with existing development patterns. Multi-family development is generally accepted as an appropriate transition between lower density residential and nonresidential land uses along arterial road networks. The proposed RPD serves as a transition from the single-family neighborhood to the south to commercial uses along US 41/Old Gladiolus Drive.

The proposed site plan considers neighboring uses and buffers adjacent residents by:

- Increasing setbacks from prior mobile home placement.³¹
- Clustering development as far north as possible to distance site activity from existing residences.³²

²⁵ See Staff Report (Attachment E: TIS prepared by TR Transportation Consultants, dated Dec. 6, 2023).

²⁶ See Staff Report (Attachment E, H). Applicant obtained letters from the Lee County Sheriff, South Trail Fire Control and Rescue District, Lee County School District, Lee County Utilities, Public Safety, Parks & Recreation, and Lee County Solid Waste.

²⁷ Lee Plan Map 5-A.

²⁸ See Staff Report (pg. 9, Attachment E); Fountain Testimony (Transcript pg. 37-42); Applicant Ex. 1 (slide 25-28).

²⁹ Ms. Fountain elaborated that mobile home residents evacuate at higher rates than apartment dwellers, further aiding regional evacuation efforts. Other safety benefits include strict construction standards imposed by FEMA, state, and local regulations. Fountain and Workman Testimony (Transcript pg. 37-42, 66-68).

³⁰ LDC §34-2.

³¹ Drovdlc Testimony (Transcript pg. 23-24).

³² The nearest residence is 400-550 feet away from project buildings. The MCP reflects 170 feet separates the parking areas from the nearest residence. Drovdlc Testimony (Transcript pg. 24, 58).

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- Restricting access on Old Gladiolus Drive to residents/guests to prohibit cross-through traffic.³³
- Enhancing buffers, including a 50-foot waterway buffer to separate the RPD from southern neighbors.³⁴
- Locating garages along the western boundary to minimize off-site impacts to western neighbors.³⁵
- Replacing six existing docks in Philips Creek with one unified observation deck/paddlecraft launch constructed consistent with LDC requirements.³⁶
- Improving water quality and implementing shoreline stabilization of Philips Creek.³⁷
- Prohibiting lighting and limiting hours for the dog park and pickleball courts.

Applicant provided sufficient evidence to satisfy each of the requisite criteria to support participation in the bonus density program.

Transportation

Planned developments must have access to roads with sufficient capacity to support proposed intensity.³⁸ Existing regulations or conditions of approval must address expected impacts on transportation facilities.³⁹

The site plan reflects direct access to US 41.⁴⁰ A second access is located on Old Gladiolus Drive with indirect access to Gladiolus Drive.⁴¹ FDOT governs connections to US 41 and is reviewing the proposed right-in/right-out access.⁴²

Access will be gated to prevent passthrough traffic.⁴³ Project accesses have a circular design to facilitate traffic flow.⁴⁴ Ultimate traffic circulation design will be determined during development order review.

The record supports a finding that there is sufficient access to support the proposed development.⁴⁵

³³ Treesh Testimony (Transcript pg. 44-45).

³⁴ Applicant provided Line-of-Sight exhibits at hearing. Applicant Ex. 1 (slide 18). Deviation 1 grants a slight reduction for parking areas in the southeast.

³⁵ Garages are lower impact activity centers than the multi-family buildings clustered around the internal lake.

³⁶ See MCP; Drovdlc Testimony (Transcript pg. 25-26).

³⁷ Lee Plan Objective 101.4.

³⁸ LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).

³⁹ LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).

⁴⁰ US 41 at this location is a six-lane divided arterial road. Applicant proposes a right-in/right-out to US 41. See Staff Report (Attachment J).

⁴¹ Old Gladiolus Drive is a county-maintained road that connects to Gladiolus Drive, a county-maintained arterial road. See Staff Report (pg. 9, Attachment J).

⁴² See *Id.*; Drovdlc and Treesh Testimony (Transcript pg. 33-35, 43-47).

⁴³ Drovdlc and Treesh Testimony (Transcript pg. 15, 44).

⁴⁴ Drovdlc Testimony (Transcript pg. 55-57).

⁴⁵ Treesh Testimony (Transcript pg. 43-47); See Staff Report (Attachment E, J); Applicant Ex. 1 (slide 29).

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The Traffic Impact Statement (TIS) demonstrates area roadways will operate at acceptable levels of service at buildout.⁴⁶ The report concluded the request does not significantly impact affected roads.⁴⁷

Site-related improvements will be evaluated during local development order review.⁴⁸

Environmental

Rezoning requests cannot adversely affect environmentally critical or sensitive areas and natural resources.⁴⁹

Applicant meets open space requirements on upland areas.⁵⁰ The request includes an open space deviation due to calculations involving Philips Creek acreage in the property boundary.⁵¹

Philips Creek is a natural waterbody that conveys offsite flows from the east side of US 41 to Hendry Creek and the Estero Bay Aquatic Preserve.⁵² Applicant will preserve the existing flow way consistent with Lee Plan directives.⁵³

The surface water management system will be directed to onsite attenuation areas prior to discharging into Phillips Creek.⁵⁴ The Florida Department of Environmental Protection (FDEP) identifies the Creek as an impaired waterbody.⁵⁵ Accordingly, Applicant must abide by the Surface Water Quality Monitoring Plan to ensure maximum daily loads are not exceeded and that the request does not degrade water quality.⁵⁶

There are no protected species or wetlands on site.⁵⁷

⁴⁶ See Staff Report (Attachment E: TIS prepared by TR Transportation Consultants, dated Dec. 6, 2023), (Attachment J).

⁴⁷ Mr. Treesh explained County regulations define "significant impacts" as project trips exceeding 10% of LOS C on affected roadways. Transcript at 42. Ms. Workman echoed the LOS remains the same with/without project traffic. *Id.* at 68.

⁴⁸ Applicant must address site related improvements, including turn lanes, if warranted during the development order process. Lee Plan Objective 39.1, Policy 39.1.1, LDC §10-287.

⁴⁹ See LDC §34-145(d)(4)a1(e).

⁵⁰ LDC §10-415(a) requires 40% open space based on total land area. Philips Creek occupies 1.16 acres, prompting Applicant to seek a deviation in recognition of this constraint. The MCP reflects 36.4% open space including the Philips Creek acreage.

⁵¹ See *Id.* Condition 1 incorporates the Open Space Plan into the RPD zoning resolution.

⁵² See Staff Report (Attachment I); Fountain Testimony (Transcript pg. 53-55).

⁵³ Lee Plan 60.4.3, 126.1.4.

⁵⁴ See Staff Report (Attachment E, I); Fountain and Workman Testimony (Transcript pg. 53-55, 72-73, 133-136).

⁵⁵ See Staff Report (Attachment I).

⁵⁶ Condition 6.

⁵⁷ *Id.*

Public Services

The Lee Plan requires the availability of urban services be evaluated during the rezoning process. Public services are the services, facilities, capital improvements, and infrastructure necessary to support development.⁵⁸

A broad range of services and infrastructure serve the site.⁵⁹ Services include public water and sewer, solid waste collection, schools, libraries, medical facilities, law enforcement, fire, and emergency medical services.⁶⁰

Shopping, recreation, and employment centers are in proximity. Transit stops are within walking distance, as well as bicycle and pedestrian facilities.⁶¹

Development will be subject to road, park, school, fire, and EMS impact fees.⁶²

Public Participation

Applicant conducted a public information meeting, not required by the LDC.⁶³

There was significant public participation at hearing, with speakers both in support and opposition of the request.⁶⁴ Speakers in opposition reside south and west of the site. Concerns focused on flooding, traffic, impact on property values, noise, and compatibility. Rebuttal testimony addressed concerns, resulting in additional conditions prepared by the parties to protect residents from development impacts.⁶⁵

Conditions

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts to adjacent residential properties.⁶⁶

⁵⁸ Lee Plan Glossary definition of public services.

⁵⁹ Applicant Ex. 1 (slide 11); Staff Report (Attachment H).

⁶⁰ South Trail Fire Station #63, EMS Station #35 and Medic #8 provide emergency services to the site. Law Enforcement will be supplied by Lee County Sheriff's offices. Each provider submitted letters confirming capacity to serve the proposed development. Lee County provided letters of availability for potable water and sanitary sewer. See Staff Report (pg. 3, Attachment H); Lee Plan Maps 4-A, 4-B.

⁶¹ See Staff Report (pg. 4); Lee Plan Maps 3-D, 4-E; LDC §10-256. Shared use paths are on US 41 and Gladiolus Drive. A bicycle path is also on US 41. LeeTran has a stop within easy walking distance. Drowdlic Testimony (Transcript pg. 16-17, referencing Routes 240 and 140).

⁶² LDC §§2-261 *et seq.*, §§2-301 *et seq.*, §§2-341 *et seq.*, §§2-381 *et seq.*

⁶³ See Staff Report (pg. 1, Attachment E), Applicant Ex. 1 (slide 7). The meeting was held on December 6, 2023. The Staff Report contains a meeting summary, notice of the meeting sent to affected neighbors, and an aerial map. See *Id.* Strayhorn Testimony (Transcript pg. 10-11).

⁶⁴ Public Testimony (Transcript pg. 80-119). Staff also submitted a letter of objection from the Parkside Place community at hearing. See Staff Ex. 5; Workman Testimony (Transcript pg. 79-80).

⁶⁵ Rebuttal Testimony (Transcript pg. 120-139); Applicant Ex. 2: Post-Hearing Written Submissions (dated August 30, 2024).

⁶⁶ Lee Plan Policy 135.9.6.

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Accordingly, the proposed RPD will be subject to conditions of approval. Conditions must plausibly relate to impacts anticipated from the development and be pertinent to mitigating impacts on public health, safety, and welfare.⁶⁷

Staff and the Applicant provided additional conditions after hearing public comment to address concerns related to off-site impacts. Specifically, the parties agreed to limit height to four stories; prohibit lighting of amenity areas including the dog park and pickleball courts; restrict operation of amenity areas to dusk/dawn; and require gated access to limit passthrough traffic. These are in addition to conditions governing site development parameters, permitted uses, water quality monitoring, and enhanced buffer plantings.

Deviations

The proposed RPD includes three deviation requests. "Deviations" are departures from the land development regulations.⁶⁸

The Hearing Examiner's standard of review for deviations requires a finding that each deviation:

1. Enhances objectives of the planned development; and
2. Protects public health, safety, and welfare.⁶⁹

The requested deviations pertain to buffers, open space, and parking.⁷⁰ Staff found two deviations met LDC criteria for approval, but recommended denial of the parking deviation.⁷¹

The Hearing Examiner agrees with staff's recommendations finding the open space and buffer deviations, as conditioned, enhance the RPD and protect public health, safety, and welfare.⁷² The Hearing Examiner further agrees with staff's recommended denial of the parking deviation. There is not sufficient evidence in the record to support a finding that reducing parking protects public health, safety, and welfare.⁷³

⁶⁷ LDC §34-932(b).

⁶⁸ LDC §34-2.

⁶⁹ LDC §34-377(a)(4).

⁷⁰ Applicant seeks deviations from LDC §10-416(d)(9), 34-2020, and 10-415(a).

⁷¹ See Staff Report (pg. 4); Drovdlc and Workman Testimony (Transcript pgs. 27-31, 73-76).

⁷² LDC §34-373(a)(9), §34-377(a)(4).

⁷³ Applicant provided ample testimony and argument as to why the parking standard should be lower for clubhouses under certain circumstances but did not submit a parking study. There is no evidence to suggest that granting the requested deviation protects public health, safety, or welfare. Absent LDC amendment to lower clubhouse parking standards, the Hearing Examiner cannot make the requisite finding to support approval of Deviation 2.

Conclusion

In conclusion, the Hearing Examiner recommends approval of the requested RPD, subject to the conditions set forth in Exhibit B.

IV. Findings and Conclusions

Based on record testimony and evidence, the Hearing Examiner makes the following findings and conclusions:

As conditioned, the Royal Palm RPD:

- A. Complies with the Lee Plan. Lee Plan Goals 2, 4, 5, 135; Objectives 2.1, 2.2, 4.1, 5.1, 60.4, 77.1, 77.3, 135.1; Policies 1.1.2, 1.6.5, 2.1.2, 2.2.1, 4.1.1, 4.1.2, 4.1.4, 5.1.2, 5.1.3, 5.1.5, 5.1.6, 5.1.7, 5.1.8, 60.4.1, 61.3.6, 61.3.11, 61.4.4, 101.1.1, 101.3.2, 101.3.7, 135.1.9, 135.1.14, 135.9.5, 135.9.6, 160.1.3; Lee Plan Maps 1-A, 1-B, 3-D, and 5-A.
- B. Complies with 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;
- C. 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;
- D. Will provide sufficient access to support the proposed development. LDC §34-411(d).
- E. Expected impacts on transportation facilities will be addressed by the conditions of approval or County regulations. Lee Plan Policies 39.1.1; LDC §§ 2-261 *et seq.*, 10-287, 34-411;
- F. Will not adversely affect environmentally critical areas and natural resources. Lee Plan Goals 77, 125; Objectives 77.1, 77.3, 101.1.1, 101.3, 126.2; Policies 61.3.1, 61.3.6, 61.3.11, 125.1.2, 126.2.1, Standard 4.1.4; and LDC §34-411;
- G. Will be served by urban services. 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 §10-256, 34-411.
- H. 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, 135.9.6.
- I. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. Lee Plan Policies: 5.1.5, 5.1.6, 126.2.1 and 135.9.6; LDC §34-411, 34-932.

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F. As conditioned herein, the requested deviations:

1. Enhance the objectives of the planned development, and
2. Protect public health, safety, and welfare.

Date of Recommendation: October 3, 2024.



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

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Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

ROYAL PALM VILLAGE
LEGAL DESCRIPTION**Exhibit A**

A TRACT OR PARCEL OF LAND LYING IN THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, FURTHER DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 35; THENCE RUN SOUTH 89°09'08" WEST ALONG THE NORTH LINE OF THE NORTHEAST 1/4, OF SAID SECTION 35, A DISTANCE OF 253.82 FEET TO THE NORTHWESTERLY CORNER OF A PARCEL AS RECORDED IN OFFICIAL RECORDS BOOK 994, PAGE 648, PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED:

THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 17°05'41" EAST, A DISTANCE OF 253.17 FEET; THENCE RUN NORTH 77°50'39" EAST, A DISTANCE OF 150.51 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF TAMIAMI TRAIL (AKA STATE ROAD 45, A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY PER RIGHT-OF-WAY MAP PROJECT NUMBER 12010-2561), SAID POINT ALSO BEING ON A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2932.79 FEET AND A CENTRAL ANGLE OF 02°07'24", SUBTENDED BY A CHORD WITH A BEARING OF SOUTH 19°53'27" EAST, 108.68 FEET; THENCE RUN ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND SAID NON-TANGENT CURVE, AN ARC DISTANCE OF 108.69 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 35; THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE AND CURVE, RUN SOUTH 00°51'31" EAST ALONG SAID EAST LINE, A DISTANCE OF 1009.27 FEET TO THE SOUTHEAST CORNER OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 35; THENCE DEPARTING SAID EAST LINE, RUN SOUTH 89°27'57" WEST ALONG THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 35, A DISTANCE OF 332.25 FEET TO THE CENTERLINE OF PHILLIPS CREEK; THENCE DEPARTING SAID SOUTH LINE, RUN SOUTH 76°13'19" WEST, MEANDERING ALONG SAID CENTERLINE OF PHILLIPS CREEK, A DISTANCE OF 340.46 FEET TO THE INTERSECTION WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4; THENCE DEPARTING SAID MEANDER LINE, RUN NORTH 00°56'37" WEST, A DISTANCE OF 78.00 FEET TO THE SOUTHWEST CORNER OF SAID EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35; THENCE RUN NORTH 00°56'37" WEST, A DISTANCE OF 1321.92 FEET TO THE NORTHWEST CORNER OF SAID EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35; THENCE RUN NORTH 89°09'08" EAST ALONG SAID NORTH LINE OF SECTION 35, A DISTANCE OF 412.33 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED PARCEL OF LAND LIES IN LEE COUNTY, FLORIDA, AND CONTAINS 19.324 ACRES, MORE OR LESS.

SURVEYOR'S NOTES

1. THIS LEGAL DESCRIPTION IS NOT VALID IF PRINTED, OR WITHOUT THE ORIGINAL SIGNATURE AND RAISED SEAL OF THE PROFESSIONAL SURVEYOR AND MAPPER SHOWN HEREON.
2. NO ABSTRACT FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD HAVE BEEN PROVIDED BY THIS FIRM.
3. THE "LEGAL DESCRIPTION" HEREON HAS BEEN PREPARED BY THE SURVEYOR AT THE CLIENT'S REQUEST.
4. THIS SKETCH DOES NOT REPRESENT A FIELD SURVEY, AS SUCH.
5. THE DELINEATION OF LANDS SHOWN HEREON IS AS PER THE CLIENT'S INSTRUCTIONS.
6. THIS LEGAL DESCRIPTION DOES NOT CONSTITUTE A BOUNDARY SURVEY, AS SUCH.
7. ATTENTION IS DIRECTED TO THE FACT THAT THIS MAP MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
8. BEARINGS SHOWN HEREON ARE ASSUMED, DERIVING A BEARING OF N89°09'08"E ALONG THE NORTH LINE OF SECTION 35, TOWNSHIP 45 SOUTH, RANGE 24 EAST, AS MEASURED.
9. NORTHINGS AND EASTINGS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN DATUM OF 1983 (NAD83), 2011 ADJUSTMENT, FLORIDA STATE PLANES, WEST ZONE.

LEGEND & SYMBOLS

POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
POT = POINT OF TERMINATION
RW = RIGHT-OF-WAY
SEC = SECTION
PID = PARCEL IDENTIFICATION
PB = PLAT BOOK
ORB = OFFICIAL RECORDS BOOK
PG = PAGE
SQ.FT. = SQUARE FEET
AC = ACRES
AKA = ALSO KNOWN AS
(C) = CALCULATED DATA
(D) = RECORDED DATA
(M) = MEASURED DATA
(N) = NORTHING
(E) = EASTING

REVIEWED
DCI2023-00049
Rick Burris, Principal
Planner
Lee County DCD/Planning
7/25/2024

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT ALL PARTS OF THIS SKETCH HAVE BEEN COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF FLORIDA, 5J-17, F.A.C., TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF. NOT VALID WITHOUT A SIGNATURE AND RAISED SEAL FROM THE SURVEYOR.

Digitally
signed by
Dalton Cross

Date:

2024.03.13

14:55:04

04'00"

DALTON R. CROSS, P.S.M.
FLORIDA LICENSE #7329



DATE 03/13/2024

THIS SKETCH HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS, OR ORGANIZATIONS IDENTIFIED BELOW AND ITS CERTIFICATION IS NON-TRANSFERABLE. ANY COPY HEREOF, TO BE CONSIDERED VALID, MUST BE EMBOSSED WITH THE SEAL OF A REGISTERED SURVEYOR EMPLOYED BY THIS FIRM.

FLOURNOY DEVELOPMENT GROUP

THIS SKETCH IS NOT A SURVEY

SHEET	1	OF	3
DRW:	MC	CHK:	NW
		PM:	DC
SEC:	35	TWN:	45S
		RNG:	24E
PLOT DATE:	03/13/2024		
FILE:	23001930 ROYAL PALM VILLAGE-SOD		



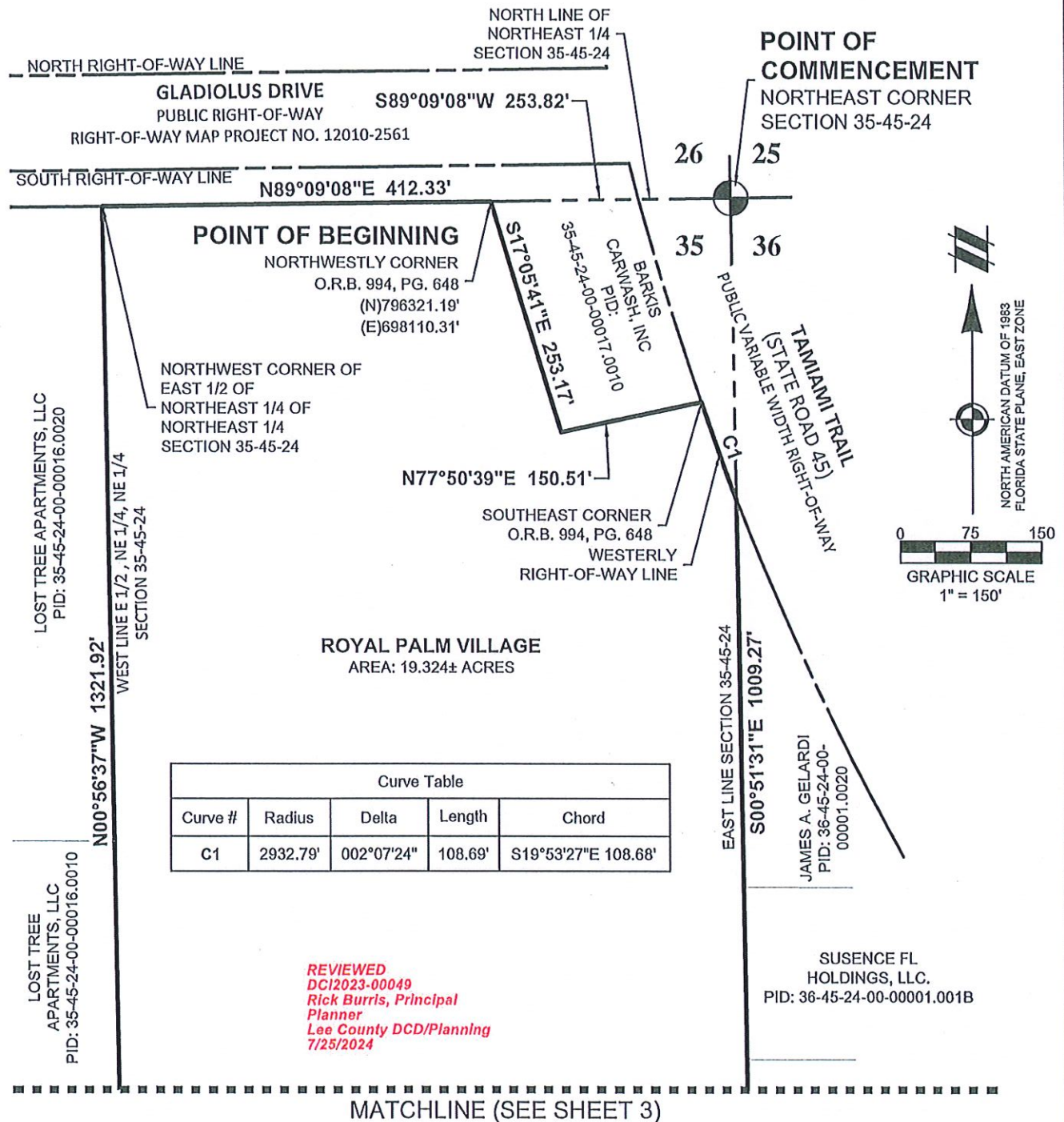
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ROYAL PALM VILLAGE

SKETCH OF LEGAL DESCRIPTION



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FLOURNOY DEVELOPMENT GROUP

THIS SKETCH IS NOT A SURVEY

SHEET	2	OF	3
DRW:	MC	CHK:	NW
SEC:	35	TWN:	45S
PLOT DATE:	03/13/2024	RNG:	24E
FILE:	23001930 ROYAL PALM VILLAGE-SOD		



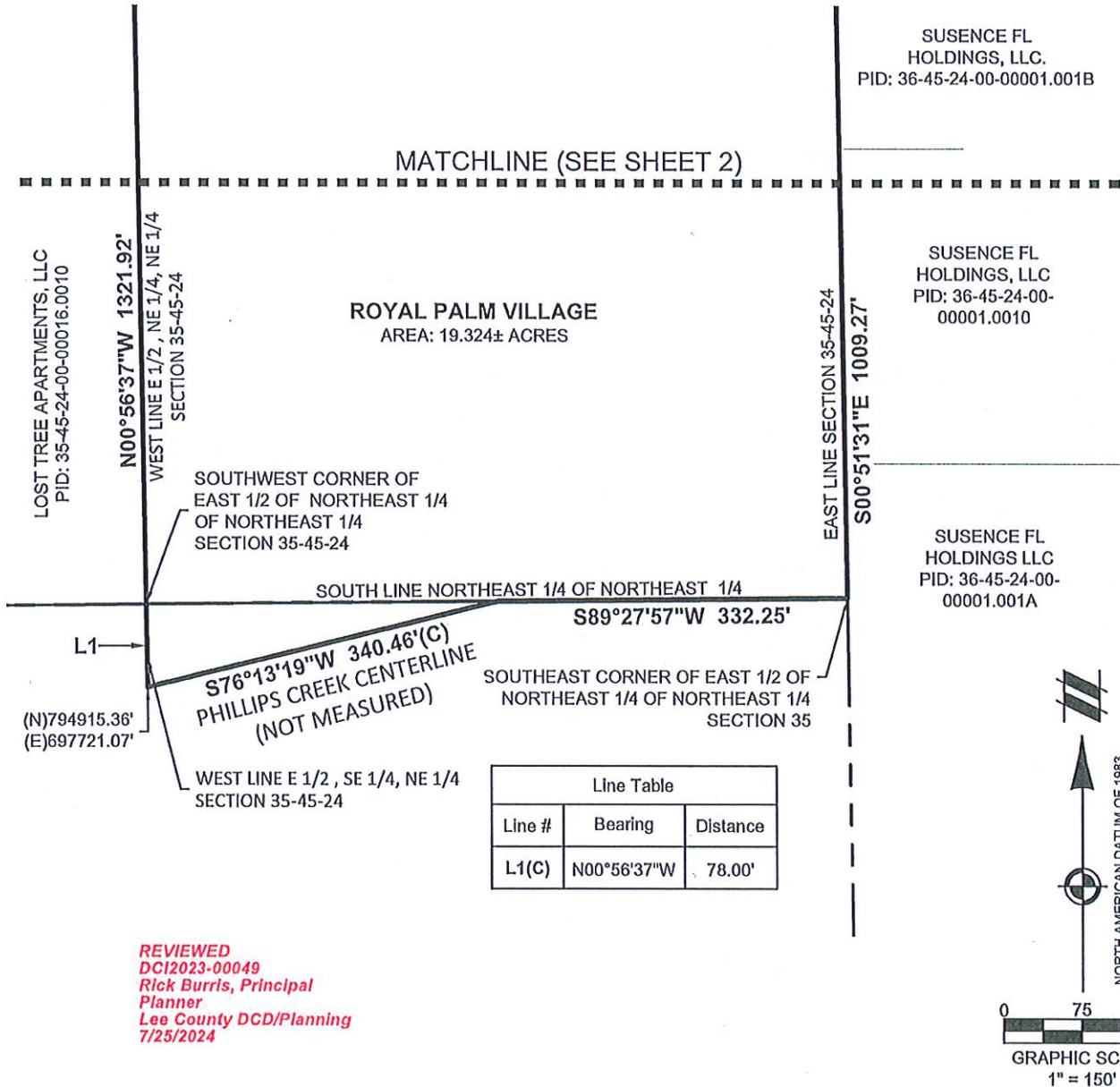
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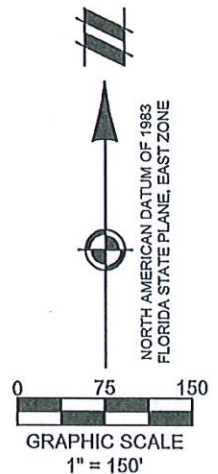
ROYAL PALM VILLAGE

SKETCH OF LEGAL DESCRIPTION



REVIEWED
DCI2023-00049
Rick Burris, Principal
Planner
Lee County DCD/Planning
7/25/2024

Line Table		
Line #	Bearing	Distance
L1(C)	N00°56'37\"W	78.00'



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FLOURNOY DEVELOPMENT GROUP

THIS SKETCH IS NOT A SURVEY

SHEET		3	OF		3
DRW:	MC	CHK:	NW	PM:	DC
SEC:	35	TWN:	45S	RNG:	24E
PLOT DATE: 03/13/2024					
FILE: 23001930 ROYAL PALM VILLAGE-SOD					



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DCI2023-00049

Zoning

 Subject Property

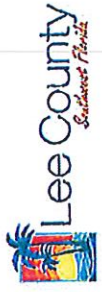
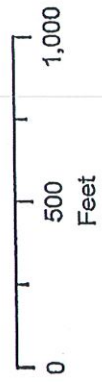
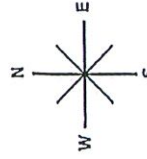


Exhibit B**RECOMMENDED CONDITIONS AND DEVIATIONS**

As modified by the Hearing Examiner

CONDITIONS**1. Master Concept Plan (MCP)/Development Parameters**

- a. MCP. Development must be substantially consistent with the two-page MCP entitled "Royal Palm Multi-Family RPD," prepared by RVi Planning + Architecture, dated April 2, 2024, except as modified by conditions below (Exhibit B1).
- b. LDC and Lee Plan. Development must comply with the LDC and Lee Plan at time of development order approval, except where deviations are granted herein. Subsequent modifications to the MCP or conditions of approval may require further development approvals.
- c. Development Parameters. The RPD is limited to a maximum 391 dwelling units, including 136 bonus density units, and amenities. The maximum height permitted is four stories, or sixty (60) feet.

2. Uses and Site Development Regulations**a. Schedule of Uses**

Accessory Uses, Buildings, and Structures
Administrative Offices
Dwelling unit: Multi-family
Entrance gates and gatehouse
Essential services
Essential service facilities: Group I
Excavation:
 Water retention
 Fences, Walls
Recreation facilities:
 Personal
 Private on-site
Signs
Temporary Uses

DCI2023-00049

b. Site Development RegulationsGeneral Parameters

Minimum Lot Coverage:	40 percent
Maximum Multi-family Building Height:	60 feet
Maximum Garage Building Height:	35 feet
Minimum Open Space:	40 percent
Minimum Lot Area:	19.33 acres

Building Setbacks

Street (Public):	20 feet
Front:	15 feet
Rear:	5 feet
Side:	0 feet
Minimum Building Separation:	20 feet
Natural Waterway:	50 feet
Waterbody:	20 feet

3. Condominium Lots

Developer must provide documentation from Lee County Property Appraiser's office demonstrating the condominium lots have been removed prior to development order issuance.

4. Open Space

Development order plans must calculate required open space based on 18.17 acres of developable land (less 1.16 acres for Philips Creek).

5. Natural Waterway Buffer

Development order plans must depict ten native trees, 50 shrubs, and 20 salt tolerant littoral grasses per 100 linear feet. Species must be native and meet LDC §10-420 specifications. Grasses must be salt tolerant.

6. Water Quality Monitoring

Developer must provide a Surface Water Quality Monitoring Plan for approval by the Lee County Division of Natural Resources. At a minimum, the Surface Water Monitoring Plan (the "Plan") must establish the following:

- a. The overall Goals and Objectives of the Plan.
- b. An outfall monitoring schedule during "wet" season of June through September and "dry" season of October through May for Total Phosphorus, Total Nitrogen, Copper, Iron, Enterococci, Field Temperature, Specific Conductance, Dissolved Oxygen, Turbidity, pH, Total Dissolved Solids, and Total Hardness.
- c. A baseline monitoring event that must be completed prior to commencement of construction.

DCI2023-00049

- d. Water quality monitoring data must be provided to the Division of Natural Resources annually for a minimum of 5 years and must include a report with a comparison of State surface water quality standards, plots of parameters, and recommendations. After five years of meeting/exceeding State surface water quality monitoring standards, Developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources.
- e. A contingency plan in the event an exceedance of State Surface Water Quality Standards is discovered. The Plan must include notification to impacted residents and applicable authorities.

7. Transportation

- a. The US 41 access shown on the MCP is conceptual and subject to modification based upon final approval from the Florida Department of Transportation (FDOT).
- b. Development is allowed a maximum calculated intensity for new trip generation utilizing the following development scenario based upon the Institute of Transportation Engineers (ITE) Trip Generation Manual in effect at the time of local development order: 391 Dwelling Units of Multi-Family Housing Mid-Rise (LUC 221).

8. Amenities

The dog park and pickleball courts will be open from dawn to dusk and will not be lighted.

9. Gated Access

Vehicular entrance and exit points must be gated to restrict access to residents and their guests.

10. Development Permits

County development permits do not create rights to obtain permits from state/federal agencies. Further, County development permits 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 undertake actions in violation of state/federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DCI2023-00049

DEVIATIONS

1. **Waterway Buffer.** **Deviation (1)** seeks relief from LDC §10-416(d)(9), which requires developments abutting a natural waterway to provide a 50-foot-wide natural waterway buffer measured from mean high water or top of bank, whichever is further landward, within a common element/tract and containing six native canopy trees and 50 native shrubs per 100 linear feet, *to allow a 20-foot-wide buffer at the southeast corner where the parking encroaches into the 50-foot-wide buffer.*

HEX Recommendation: Approve, subject to Condition 5.

2. **Deviation (2)** seeks relief from Lee County Land Development Code (LDC) Section 34-2020, Table 7, which requires four parking spaces per 1,000 square feet for clubhouses and ancillary uses within a residential community without a golf course, *to allow the 10,000-square-foot clubhouse parking to be calculated at 2.5 spaces per 1,000 square feet of parking.*

HEX Recommendation: Deny.

3. **Open Space.** **Deviation (3)** seeks relief from LDC §10-415(a), which requires large residential developments to provide 40 percent open space based on the total area of the subject request, *to allow the open space calculation from the developable land area of 18.17 acres since 1.16 acres is within Philips Creek.*

HEX Recommendation: Approve, subject to Conditions 4 and 5.

Exhibits to Conditions:

B1 Master Concept Plan dated April 2, 2024

DCI2023-00049

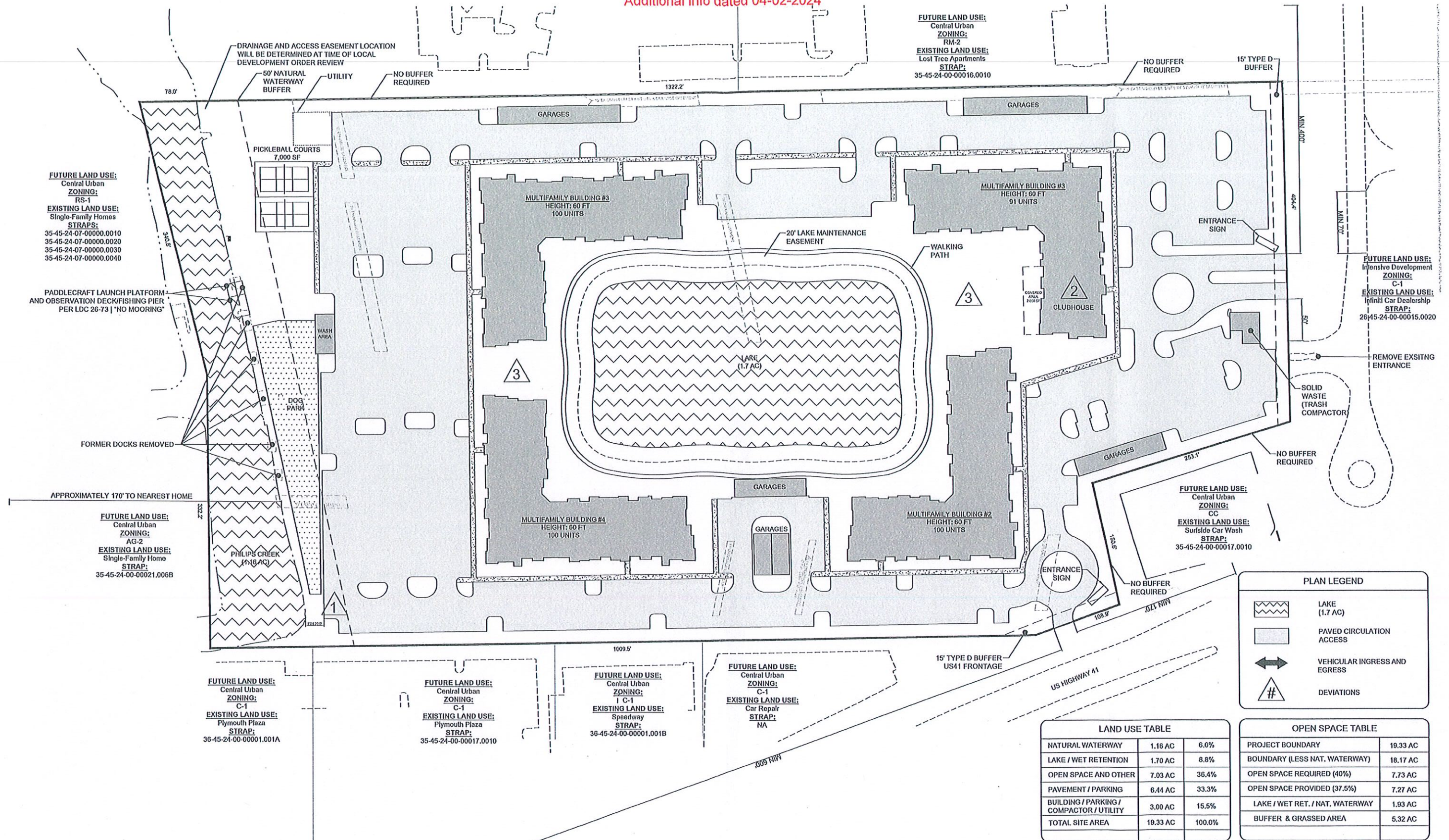
Exhibit C**EXHIBITS PRESENTED AT HEARING****STAFF EXHIBITS**

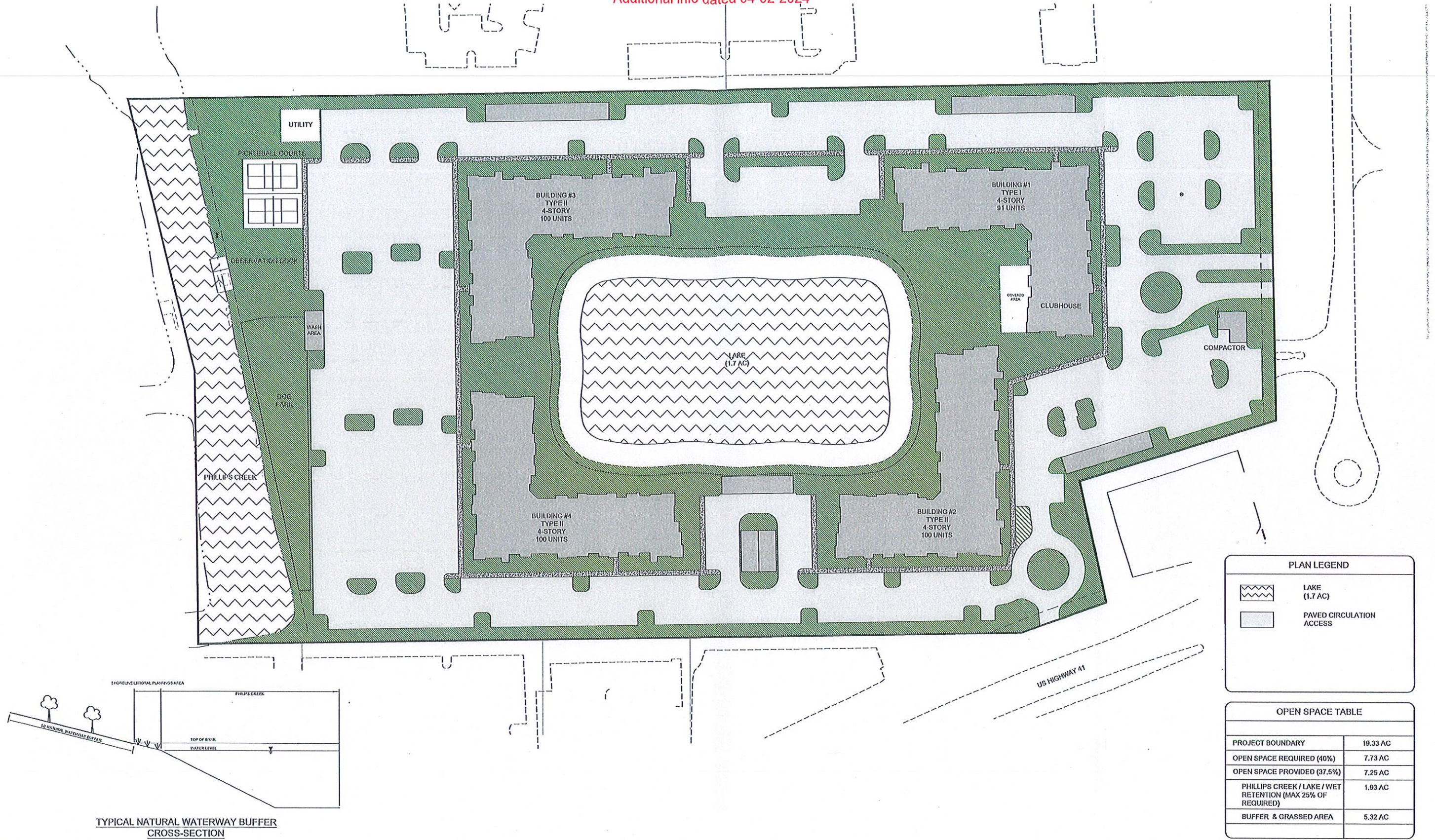
1. *DCD Staff Report with attachments for DCI:* Prepared by Elizabeth Workman, Principal Planner, date received August 13, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *Affidavit of Publication:* For case DCI2023-00049 Palms Multifamily RPD (1 page – 8.5"x11")
3. *Permit Plan:* Prepared by Atwell Group for Flournoy Development Group, Inc., dated July 12, 2024 (1 page – 11"x17")
4. *PowerPoint Presentation:* Prepared by Lee County Staff for DCI2023-00049, Royal Palm Multi-Family RPD, dated August 29, 2024 (multiple pages – 8.5"x11")[color]
5. *Letter:* From Sara Whitmer, President of Parkside Place Condominium Association, to Elizabeth Workman, received by Community Development August 28, 2024 (1 page – 8.5"x11")

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Megan Strayhorn, Esq., to Maria Perez, Reece Cooper, Fred Drovdic, Paul Damico, D. Gastel, Bruce Strayhorn, Esq., TR Transportation, Elizabeth Workman, with copies to Rebecca Sweigert, Tracy Toussaint, Jamie Prining, Elizabeth Workman, Audra Ennis, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee Werst, Warren Baucom, Mikki Rozdolski, Anthony Rodriguez, Dirk Danley, Jr., Phil Gillogly, Marcus Evans, and Jennifer Rodriguez, dated Tuesday, August 27, 2024, 6:49 AM (multiple pages – 8.5"x11")
- b. *Exhibit List:* Email from Megan Strayhorn, Esq., to Maria Perez, dated Wednesday, August 28, 2024, 8:00 a.m. (2 pages – 8.5"x11")
- c. *Revised Exhibit List:* Email from Megan Strayhorn, Esq., to Maria Perez, dated Wednesday, August 28, 2024, 2:37 p.m. (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by for DCI2023-00049, Royal Palm Multi-Family RPD, dated August 29, 2024 (multiple pages – 8.5"x11")[color]

Additional info dated 04-02-2024





ROYAL PALMS MULTIFAMILY RPD • OPEN SPACE PLAN
LEE COUNTY, FLORIDA
JANUARY 31, 2024
2300-1057
FLOURNOY DEVELOPMENT GROUP

0 25' 50' 100'
SCALE: 1" = 50'-0"

Information limited regarding this property is from sources deemed reliable. RVI has not made an independent investigation of these sources and no warranty is made as to their accuracy or completeness. This plan is conceptual, subject to change, and does not represent any regulatory approval.

Exhibit C**EXHIBITS PRESENTED AT HEARING****STAFF EXHIBITS**

1. *DCD Staff Report with attachments for DCI:* Prepared by Elizabeth Workman, Principal Planner, date received August 13, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *Affidavit of Publication:* For case DCI2023-00049 Palms Multifamily RPD (1 page – 8.5"x11")
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1. *PowerPoint Presentation:* Prepared by for DCI2023-00049, Royal Palm Multi-Family RPD, dated August 29, 2024 (multiple pages – 8.5"x11")[color]

DCI2023-00049

2. *Written Submissions:* Email from Megan Strayhorn, Esq., to Maria Perez, with copies to Elizabeth Workman and Fred Drovdic, dated Friday, August 30, 2024, 10:48 AM (multiple pages – 8.5"x11"){post hearing submittal}

OTHER EXHIBITS

Zachary Shankle

1. *Photographs:* (3 pages – 8.5"x11")[color]

DCI2023-00049

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Elizabeth Workman

Applicant Representatives:

1. Fred Drovdllic
2. Elizabeth Fountain
3. Magen Strayhorn, Esq.
4. Ted Treesh

Public Participants:

1. Janet Bley
2. Robyn Campbell
3. Gregory Dudek
4. Thomas Estrella
5. Eric Farmer
6. Tim Kendall
7. Tom Lowen
8. Rod Pickett
9. Zachary Shankle

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.