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January 15, 2013

Dear Applicants, Representatives, Hearing Participants, and Other Interest Parties:

**DCI2009-00034 MCHARRIS PLANNING AND DESIGN, in reference to
SAN CARLOS ISLAND - EBTIDE**

Enclosed please find the above referenced Lee County Hearing Examiner's Recommendation.

Thank you for your interest and participation in the Hearing Examiner process.

Sincerely,

DIANA M. PARKER
CHIEF HEARING EXAMINER
LEE COUNTY, FLORIDA

Enclosure

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2009-00034
APPLICANT: MCHARRIS PLANNING AND DESIGN, in reference to SAN CARLOS ISLAND – EBTIDE
ORIG. HEARING DATE: NOVEMBER 14, 2012 [CONTINUED ON THE RECORD]
HEARING DATE: NOVEMBER 29, 2012
CONT'D HRG DATES: DECEMBER 5, 2012
WRITTEN SUBMISSION: DECEMBER 19, 2012

I. APPLICATION:

This matter came before the Lee County Hearing Examiner as an Application for a Rezoning to a Mixed Use Planned Development (MPD) pursuant to the Lee County Land Development Code (LDC).

Filed by MCHARRIS PLANNING AND DESIGN, c/o JOSEPH M. MCHARRIS, 11338 Bonita Beach Road, Suite 103, Bonita Springs, Florida 34135 (Applicant/Agent); LAW OFFICE OF MATTHEW D. UHLE c/o MATTHEW D. UHLE, ESQ., 1617 Hendry Street, Fort Myers, Florida 33901; DELISI FITZGERALD, INC., c/o DREW FITZGERALD, 1605 Hendry Street, Fort Myers, FL 33901; PASSARELLA & ASSOCIATES, INC., c/o MIKE MYERS, 13620 Metropolis Avenue, Suite 200, Florida; and TR TRANSPORTATION CONSULTANTS, INC., c/o TED TREESH, 13881 Plantation Road, Suite 11, Fort Myers, Florida 33912 (Agents).

Request is for a rezone 36.32± acres from Marine Industrial (IM), Marine Commercial (CM), Light Industrial (IL), Mobile Home Residential (MH-2) Mobile Home Planned Development (MHPD) and Agricultural (AG-2) to Mixed Use Planned Development (MPD), to allow the redevelopment of the site with a 450 unit hotel and related uses including a 75,000 SF convention center, 271 residential units, 10,000 SF of general and medical office, and 85,000 SF of commercial retail with a maximum building height of 230 feet. The existing marina will remain. Development of the subject property will connect to public water and sanitary sewer.

The subject property is located at 1711 - 2503 Main Street and 2020 - 2500 Main Street, Iona/McGregor Planning Community, Section 19, Township 46 South, Range 24 East, Lee County, FL. (District #3)

II. STAFF REPORT AND RECOMMENDATION: APPROVAL WITH CONDITIONS.

The Department of Community Development Staff Report was prepared by Chahram Badamtchian, Senior Planner. The Staff Report is incorporated herein by this reference.

III. RECOMMENDATION OF HEARING EXAMINER:

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners **APPROVE** the Applicant's request to allow a rezone of 36.32± acres from IM, CM, IL, MH-2, MHPD and AG-2 to MPD to redevelop the site for a hotel, convention center, residential units, general and medical offices, and commercial retail with existing marina for the real estate described in Section IX. Legal Description WITH THE FOLLOWING CONDITIONS AND DEVIATIONS.

A. CONDITIONS:

1. Master Concept Plan/Development Parameters

The development of this project must be consistent with a revised Master Concept Plan entitled "San Carlos Island Master Concept Plan," stamped received November 13, 2012, last revised October 17, 2012 (**Exhibit B**), except as modified by the conditions below. This development must comply with all requirements of the Lee County Land Development Code (LDC) at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

This approval is for a maximum of 271 multiple-family residential units, 450 hotel rooms with accessory uses including up to 75,000 square feet of convention center, 10,000 SF of general and medical office, and 85,000 SF of commercial retail space and a marina and multi-slips docking with a maximum of 850 dry and wet slips including 60 live aboards.

2. Uses and Site Development Regulations

The following Limits apply to the project and uses:

a. Schedule of Uses

Uses permitted on tracts located on the north side of Main Street:

Accessory uses and structures

Administrative offices

ATM (automatic teller machine)

Bait and tackle shop

Bar or cocktail lounge

Boats:

Boat ramp, limited to one ramp and dockage

Business services: Groups I & II

Club: Private

Communication facility, wireless (roof top antennas only, subject to requirements of LDC Chapter 34, Division 11)

Consumption on premises (Administrative approval)
Convenience food and beverage store (open to residents and guests only)
Cultural facilities (limited to art galleries only)
Daycare center (child and adult and limited to residents, guests and employees only)
Dwelling units:
 Multiple-family - 271 units maximum
Entrance gates and gatehouses
Essential services
Essential services facilities: Group I
Excavation, water retention
Excess spoil removal (subject to LDC Section 10-329)
Fences, walls
Food and beverage services, limited
Hotel/motel, including accessory and ancillary uses
Home occupation (subject to LDC Sec 34-1772)
Models:
 Model units (limited to 4 units)
Multi-slip docking facility (limited to 63 slips and subject to Condition #22)
Parks: Group I
Parking lot:
 Accessory, surface and multiple story (Parking garage)
Personal Services: Groups I & II (For the exclusive use of residents and guests)
Place of worship
Real estate sales office
Recreational facilities:
 Private on site
 Personal
Recreational Vehicle units, non-transient (Phase one only), limited to 271 units and subject to Conditions #10 and 11)
Rental and leasing establishment Groups I, II & III (for the exclusive use of residents and guests)
Restaurants: Groups I, II, III & IV (open to residents and guests only)
Signs, in accordance with LDC Chapter 30
Specialty retail shops: Group I (open to residents and guests only)
Storage; incidental to residential uses, Indoor only
Studios (open to residents and guests only)
Temporary boat, trailer and vehicle parking (Phase one only, and subject to local development order approval)
Timeshare units (counted against 271 maximum residential units)
Transportation Services: Group I (for residents and guests only)

Uses permitted on tracts located on the south side of Main Street:

Accessory uses and structures
Administrative offices
ATM (automatic teller machine)
Animal clinic and kennel (indoor only)
Bait and tackle shop
Banks and financial establishments: Groups I & II
Bar or cocktail lounge
Boats:
 Boat parts store
 Boat ramp, limited to a maximum of two ramps, and
 dockage
 Boat rental
 Boat repair and service
 Boat storage, wet & dry
Business services: Groups I & II
Caretaker's residence (a maximum of 1,200 s.f. each, limited to
 two and in connection with marina uses only)
Car wash
Cleaning and maintenance services
Clothing store, general
Club: Private
Communication facility, wireless (roof top antennas only, subject
 to requirements of LDC Division 11)
Consumption on premises (Administrative approval)
Convenience food and beverage store
Cultural facilities (limited to art galleries only)
Daycare center (child and adult) Maximum 75 children and/or
 adults
Dwelling units:
 Multiple-family buildings
EMS, Fire and Sheriff's station
Essential services
Essential services facilities: Group I
Excavation, water retention
Excess spoil removal (subject to LDC Section 10-329)
Fences, walls
Fish house, wholesale
Food and beverage services, limited
Food stores: Group I
Gift and souvenir shop
Healthcare facilities: Group III
Hobby, toy and game shops
Hotel/motel, including accessory and ancillary uses
Home occupation (subject to LDC Sec 34-1772)
Household and office furnishings
Insurance companies

Kiosks (i.e., permanent or temporary structures of less than 1,000 square feet containing a permitted principal or accessory commercial use), counted against the maximum allowable commercial square footage

Laundry and dry cleaning: Group I

Lawn and garden supply store

Live-aboards (limited to 60 of the 130 wet slips)

Marina, and marina accessory uses including marine fuel (130 wet and 302 dry slips and subject to Condition #22)

Medical offices

Models:
 Model units (limited to 4 units)

Night club

Non-store retailers

Package store

Parks: Group I

Parking lot:
 Accessory, surface and multiple story (Parking garage)

Personal Services: Groups I & II

Photofinishing laboratory

Place of worship

Post office

Printing and publishing

Processing and packaging of fish

Real estate sales office (for the marketing of the units within the development only)

Recreational facilities:
 Commercial
 Private on site
 Personal

Rental and leasing establishment Groups I, II & III

Repair shops: Groups I & II

Research and development Laboratories: Groups I & II

Restaurants: Groups I, II, III & IV

Restaurant, fast food with no drive thru

Retail and wholesale sales, when clearly incidental and subordinate to a permitted use on the same premises

Ship's store

Signs in accordance with LDC Chapter 30

Specialty retail shops: Groups I, II, III & IV

Storage; incidental to the marina and residential uses:
 Indoor

Studios

Temporary uses and events

Timeshare units (counted against project's 271 maximum residential units)

Transportation Services: Groups I, II & III

Variety store

b. Site Development Regulations

Phase I: No new building shall be permitted.

Phase II:

Minimum Lot size:	3 acres
Minimum Lot Width:	250 feet
Minimum Lot depth:	500 feet
Minimum Setbacks:	
Street:	25 feet
Waterbody:	25 feet (all buildings except kiosks)
	5 feet (kiosks)
Sides:	
Marina:	25 feet
Parcels south of Main Street:	45 feet, except the marina
Parcels north of Main Street:	45 feet for parking garage below buildings and 85 feet for buildings above parking garage
Setback from internal development pod lines:	Zero feet
Maximum Building Heights:	
Hotel buildings south of Main Street:	230 feet
Marina Building:	45 feet
Residential buildings:	
Type #1:	195 feet
Type #2:	149 feet
Type #3:	230 feet
Type #4:	161 feet
Mixed Use Building on Hurricane Bay:	45 feet
Kiosks:	25 feet
Minimum Building Separation:	
South of Main Street:	20 feet
North of Main Street:	140 feet (towers)
Kiosks:	15 feet
Others:	20 feet

Minimum Open Space:	
North of Main Street:	40 percent
South of Main Street:	30 percent
Minimum Open Space per	
Development Pod:	10 percent
Maximum Lot Coverage:	50 percent

3. Environmental Conditions

a. The development order plans must delineate a minimum of ± 6.95 acres of open space for the residential portion of the project (Development Pods 1 and 2) and ± 3.55 acres for the commercial portion of the project (Development Pods 3 and 4). If each development tract provides a minimum of 10 percent open space with the remaining open space provided through the indigenous areas as depicted on the MCP, then an open space tracking table must be provided with each development order to achieve the overall open space of 10.5 acres.

b. The development order plans must delineate a minimum of ± 7.09 acres of indigenous open space in substantial compliance with the approved Master Concept Plan.

c. As part of the development order approval, the boardwalk proposed within the mangrove preserve must indicate coordination with the Division of Environmental Sciences' Staff to minimize impacts to native vegetation during installation. Trimming and removal of mangroves in this area will be limited to the installation and use of the boardwalk only.

d. As part of the development order approval for the first development tract, a maintenance plan for the indigenous mangrove preserve areas, in compliance with LDC 10-415 (b)(4), must be submitted for review and approval by Environmental Sciences' Staff. The plan must include measures to prevent the removal and/or trimming of existing mangroves within the 3-acre indigenous mangrove preserve and the mangroves in the northwest corner of the property abutting Hurricane Bay.

e. If listed species surveys meeting the requirements of LDC Section 10-473 for the development site reveal nests for migratory birds, then any necessary Florida Fish and Wildlife Conservation Commission (FWC) and/or U.S. Fish and Wildlife Service (USFWS) permits must be obtained. Any request for removal of nests protected by the Endangered Species and/or Migratory Bird Treaty Act (Title 50 CFR Part 21) must be coordinated with FWC and Division of Environmental Sciences.

f. Prior to any development order approval for areas north of Main Street or in Hurricane Bay, management plans for listed wading bird species and Florida manatee, meeting the requirements of LDC Section 10-474, must be submitted for Division of Environmental Sciences' Staff review and approval. The management plan must include informational brochures for residents on living with listed wading bird

species and manatees. A manatee educational program plan must be submitted for Division of Environmental Sciences' Staff review and approval. The plan must include at least one educational kiosk and brochures.

g. A lighting plan with fixture cut sheets must be reviewed and approved by the Division of Environmental Sciences, prior to issuance of a development order approval for the site and prior to issuance of a building permit approval for each building and dock.

h. The lighting plan must comply with the lighting requirements in LDC Sections 14-76 and 34-625, and, specifically, Lee Plan Policy 31.3.7. Appropriate light fixtures and other light management techniques must include at a minimum the following:

1. Utilizing fully shielded, full cut off luminaries; down style canisters with interior baffles on the balconies; pole lights less than 15 feet in height; bollard type fixtures with louvers; and other techniques acceptable to the Division of Environmental Sciences.

2. Up-lighting, including wall wash lighting, is prohibited. Mercury vapor or metal halide lamps are also prohibited.

3. The treating of glass windows and doors to achieve an industry-approved, inside-to-outside light transmittance value of 45 percent or less.

i. As part of any local development order approvals for Phase II located south of Main Street, the existing docking facilities and dry storage building must be brought into compliance with Lee Plan Policy 31.3.7, within 180 days of any development order approval.

j. Prior to issuance of a development order for any development tract containing heritage trees, landscape plans must depict heritage trees located within the development footprint that are determined to be of good health, as per a certified arborist. The heritage trees must be incorporated into the internal open space (i.e., perimeter planting and/or enlarged landscape areas), or must be replaced with 20-foot-tall like species in a suitable open space area where final site design constraints (i.e., fill requirements, building construction, cross access and entrance roads) do not allow preservation of the heritage tree. For all preserved trees, the site plans must provide a detailed cross section which includes the location of the trees and assurance that protection of the roots and the trunk of the trees are addressed. Root pruning or root barriers may be necessary to protect the parking lot from damage by an adjacent tree.

k. Prior to issuance of a vegetation removal permit, all preserved heritage trees must be staked and field verified for appropriate protection measures, such as root pruning, root barriers and trimming, by a certified arborist.

l. As part of development order approval, the mangroves located west of the north boat ramp must be included in the indigenous management plan and must be allowed to grow.

m. Within 180 days of zoning approval, a Type "D" buffer must be installed along Main Street and east of the property line for the existing Salty Sam's Marina dry storage building (19-46-24-00-00023.0020)

n. As part of the local development order approval, the development plans must depict the number of wet and dry slips consistent with the approved schedule of uses.

o. As part of the local development order approval, the proposed boardwalk in Hurricane Bay must display the following:

- The boardwalk must be designed to be five feet above mean high water (MHW), with fixed handrails, including intermediate rails, installed around the perimeter of the structure; and

- A minimum of two "No boat mooring" signs placed along the boardwalk, adjacent to the Hurricane Bay, facing the water; and

- Shielded, permanent lighting, using amber LED bulbs, must be installed every 50 feet on the boardwalk along Hurricane Bay to ensure the structure is visible at night to boaters to improve boater safety from the water; and

- The trimming of the indigenous area is limited to the area of the installation of the boardwalk only.

p. As part of local development order for the expansion or building permit review for replacement/reconfiguration to any existing docks, a current Manatee Protection Plan (MPP) evaluation, meeting the standards set out in Chapter 26 of the Lee County Land Development Code, must be provided. A development order must be submitted for approval of any additional dry slips beyond the existing 261 dry slips, for which proper approval was previously obtained. In order to obtain approval of the additional dry slips, the Applicant must provide written approvals from US Army Corps of Engineers (ACOE), and the Florida Department of Environmental Protection (DEP), and be in compliance with the Lee County Natural Resources' MPP evaluation.

q. The MCP must be revised to reflect the property line along Hurricane Bay following the existing shoreline. Once the Applicant has provided current documentation from Florida DEP indicating ownership or a submerged land lease, then the property line can be extended into Hurricane Bay.

4. Hurricane Conditions-Residential

Prior to any redevelopment of the site for residential purposes, including any single development pod, an agreement must be executed between the County and the property owners to mitigate the project's hurricane sheltering and evacuation impacts.

The agreement will include provisions to construct an on-site shelter to withstand Category 5 hurricane force winds and storm surge to accommodate residents in compliance with the following requirements:

1. On-site shelters and all required equipment and supplies for these facilities must comply with the following standards:

a. Elevation to the anticipated storm surge height from a land falling Category 5 storm.

b. Construction to withstand winds of 200 mph, in accordance with the Florida Building Code.

c. Construction with minimum exterior glass with all glazed openings provided with impact protection, in accordance with the Florida Building Code.

d. Equipped with emergency power and potable water supplies to last up to five days.

e. Protected with adequate ventilation, sanitary facilities, and first aid medical equipment.

2. The developer/operator must conduct annual training of the on-site shelter managers. The training is to be conducted by the Red Cross and approved by Lee County Emergency Management.

3. The developer/operator must submit a post-storm recovery plan, including a post-storm evacuation plan for review and approval by Lee County Emergency Management.

5. Traffic Conditions

a. The Applicant must provide fee title to the County for any additional rights-of-way, which may be required by the County during the development order process for turn lanes within the project. This R.O.W. dedication shall be considered site related improvement and is not subject to any impact fee credit.

b. Prior to the issuance of the first local development order for any development pod in Phase II, except for any development orders for modification of existing docks, in accordance with existing DEP and ACOE permits issued prior to the approval of this rezoning application, Main Street eastward from San Carlos Blvd to its terminus must be brought up to Class "A" standards. This road improvement shall be subject to any deviations which are determined to be appropriate during the development order process by the Development Services' Director. This road improvement must also include the addition of bicycle and pedestrian facilities to promote alternative modes of transportation from the development.

c. A bus stop, meeting Lee Tran standards or better, must be provided on Main Street.

d. Prior to approval of first development order for construction on the south side of Main Street, a unified parking agreement/plan must be recorded that will ensure that users of the hotel and commercial uses can park in any of the areas on the south

side of Main Street and utilize all commercial properties that are part of this rezoning without having to move their vehicle. The unified parking agreement/plan must include the following:

1. Site plan of parking spaces intended for shared parking and their proximity to land uses that they will serve.

2. A signage plan that directs drivers to the most convenient parking areas for each particular use or group of uses (if such distinctions can be made).

3. A pedestrian circulation plan that shows connections and walkways between parking areas and land uses. These paths should be as direct and short as possible.

4. A safety and security plan that addresses lighting and maintenance of the parking areas.

e. A Type "F" curb and gutter must be designed and constructed on Main Street along the project frontage as a part of the development order to bring Main Street up to Category "A" standards. A 2-foot-high berm, measured from the finished grade of the Main Street right-of-way at the property line, must be provided and shown as a part of the first development order for construction of uses to the north of Main Street.

f. Moving from west-to-east, the connection separation from the third (ingress only) access point to the fourth (egress only) access point may be no less than 150 feet. The connection separation for all other access points to Main Street must be no less than 225 feet.

6. Vehicular/Pedestrian Impacts

Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

7. Lee Plan Consistency

Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1 (b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee Plan provisions.

8. Concurrency

Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.

9. Solid Waste Management

As part of any local development order approval for vertical development, the development order plans must include facilities in compliance with LDC Section 10-261 and Solid Waste Ordinance # 11-27 for the pick-up/disposal of solid waste and recyclables. The minimum area required for, and specific locations of, these facilities will be reviewed at the time of local development order application.

10. Phase I (Existing Conditions)

All legally existing buildings, structures and uses will remain in place as Phase I of this project; however, any improvement, rebuilding, or replacement of structures must be in conformance with the requirements and limitations of the Land Development Code Article VIII, Nonconformities; however, no expansion or enlargement of any structure or use shall be allowed in this Phase. No new buildings or structures shall be constructed. Furthermore, the RV sites in Phase I shall be subject to the limitations of the approved "86-36" site plan, a copy of which is attached hereto as Exhibit C. Any unpermitted structure or use shall not be considered vested or permitted under this approval; however, permits authorizing buildings or uses shown on the Phase I MCP may be issued without triggering the requirements for Phase II in Condition 11.

11. Phase II

Phase II consists of four (4) development pods labeled as Pods 1 through 4. These development pods may be developed in any order. All buildings, structures and uses for the development pod subject to redevelopment must be removed and made to comply with the Phase II MCP. Improvements to Main Street, required by Condition 5, and permits for water management facilities, other than retention/detention areas, do not trigger the removal and compliance requirements listed above.

12. Boat Display, Sales, Rental or Storage Areas

All boat display, sales, rental or storage areas must comply with LDC Sec 34-1352, except for changes as granted by Deviation #5.

13. Common Architectural Theme and Style

The development of the property must include a common architectural theme. The common architectural theme may include, but is not limited to the following: architectural style, roof type, building color, etc. The common architectural theme must be reviewed and approved by the Lee County Department of Community Development as part of the first local development order for vertical construction. All commercial buildings in Phase II must use vernacular Florida architectural styles for all buildings. Mediterranean styles of architecture are not permitted.

14. Big Box Retail

Big box retail and any single free-standing retail facilities over 20,000 square feet in area are prohibited.

15. Public Access Easement

Prior to the issuance of the first local development order for any development pod in Phase II, a public access easement guaranteeing public access to waterfront on the south side of Main Street must be recorded.

16. Unified Sign Plan

A unified sign plan in compliance with LDC Section 10-630 must be reviewed and approved by Lee County Department of Community Development as part of the first development order for vertical construction in any development pod in Phase II.

17. Duration of Rights for the Planned Development Zoning

Phase I of this project is to allow the existing uses to remain until such time as the site is redeveloped. As such, this project shall be subject to the requirements of LDC Section 34-381 for Phase II of the development. Phase I shall not vest the Planned Development zoning of this project.

18. Boat barn

The boat barn shown on Pod #3 (southwest corner of the development) is for storage/rental and launching of boats, kayaks and canoes only. No sanding, repainting or repair of boats or boat engines, or sale of boats or marine fuel shall be allowed.

19. Interconnection

Prior to the approval of first development order for any development pod in Phase II, the Applicant must record an easement for future interconnection to the properties to the west. This interconnection is for properties located on the south side of Main Street.

20. Utilities

The utility lines for potable water and sanitary sewer must be installed on the site and this development must be connected to those services as part of any development activity on this site. The Applicant will be financially responsible for the upsizing and improvement of the lines, as may be necessary to provide water and sewer services to this site.

21. Water Taxi

A water taxi service must be provided between this site (with the completion of the first development pod of Phase II) and Town of Fort Myers Beach. This water taxi must provide at least three round trip services to and from Town of Fort Myers Beach on a daily basis, seven days a week.

22. Boat docks and marina

The multi-slip docking facility located on Hurricane Bay (north of Main Street) will contain a maximum of 63 slips for the exclusive use of the residents of the development. The marina on Matanzas Pass (south of Main Street) will contain a maximum of 130 wet and 302 dry slips. These numbers may be modified based on review and approval, by Lee County, for compliance with the Lee County Manatee Protection Plan, and approval by State and Federal Agencies with jurisdictional oversight. However, in no case shall the total number of all slips - wet and dry - exceed 850.

23. Commercial building north of Main Street

The commercial building, containing a maximum of 5,000 square feet of restaurant space and 3,000 square feet of retail, located along Hurricane Bay, north of

Main Street, shall not be open to the general public. No signs along Main Street shall be allowed to advertise or identify those businesses to motorists travelling on Main Street.

24. Revocation of San Carlos Redevelopment Overlay election

Prior to application for a local development order for any development pod of Phase II, the Applicant must execute and record a Notice of Revocation of Election for all parcels for which the owners had elected to opt into the San Carlos Redevelopment Overlay District. Those parcels' STRAP numbers are: 19-46-24-00.0022.0000, 19-46-24-00.0022.0020 and 19-46-24-00-00021.001A.

25. Buffers

I. The development of the property must include a common landscaping theme. The landscaping theme must be reviewed and approved by the Lee County Division of Environmental Sciences as part of the first development order approval and must be followed by all subsequent development orders.

II. As part of the DO approval, the enhanced buffers must be installed per the following:

- North of Main Street - the following buffer must be provided for the residential/hotel development:

- a. 10 trees per 100 feet and 30 shrubs along with an 8-foot-high solid wall along the east and west property lines. The wall must be installed 15 feet off the property line. The wall is not a requirement along Indigenous Area 7.

- South of Main Street - the following buffers must be provided along the east and west property lines:

- a. A Type "D" buffer along the east property line abutting the dry boat storage area.

- b. A 7.5-foot-wide Type "A" buffer along the west property line.

- Type "D" buffers must be provided along each side of Main Street.

B. DEVIATIONS:

Deviation #1 seeks relief from Lee County Land Development Code (LDC) Section 10-329(d)(1)(a)(2), which requires all excavations to have a minimum 50-foot setback from any collector or arterial road right-of-way or easement, to allow two lakes with 27.5 feet of setback from Main Street right-of-way.

Justification The Applicant has proposed to provide a type "F" curb and gutter on the reconstructed Main Street along the property frontage in addition to a 2-foot-high berm between the edge of pavement and the lakes. Furthermore, there is also a type "D" buffer between the roadway and the lakes. Main Street is a public roadway through the subject site, but becomes a private roadway to the east of the subject property. At

such location, it no longer serves as a collector roadway. Staff recommended approval of this deviation, subject to condition 5(e).

The Hearing Examiner recommends **APPROVAL** of Deviation #1, **SUBJECT TO** Condition 5(e).

Deviation #2 seeks relief from Lee County Land Development Code (LDC) Section 34-2020, which requires 12.5 parking spaces per 1,000 square feet of restaurant space and 1 parking space per 350 square feet of retail space, when located in a multiple use development, to reduce the number of parking spaces by up to 20% for up to 5,000 square feet of restaurant and 3,000 square feet of retail space located on the north side of the development facing Hurricane Bay.

Justification The building housing the restaurant and retail uses on the north side of Main Street, are located behind residential buildings and are not readily accessible to the general public. These commercial uses, as conditioned in Condition #23, are intended for and restricted to the residents of the development and, possibly, hotel guests, which will not need parking spaces. The 20 percent reduction in the number of parking spaces will be offset by the internal capture. Staff recommends approval of this request.

The Hearing Examiner recommends **APPROVAL** of Deviation #2, **SUBJECT TO** Condition #23.

Deviation #3 seeks relief from Lee County Land Development Code (LDC) Section 10-285, which requires a minimum of 330 feet connection separation on collector roads, to allow 150-foot of connection separation.

The Hearing Examiner recommends **PARTIAL APPROVAL** of Deviation #3, **SUBJECT TO** Condition 5(f).

The request is to limit the connection separation to no less than 150 feet. The only driveway that is shown to have a 150-foot separation is, moving west-to-east, the third and fourth driveways on the south side of Main Street. These driveways will function collectively as one driveway as the third driveway is an ingress point and the fourth driveway is an egress point. Based on this configuration, Staff will support the 150 foot connection separation for these two driveways. However, Staff recommends limiting the connection separation at the other locations to no less than 225 feet.

Deviation #4 seeks from Lee County Land Development Code (LDC) Section 10-416(d)(9), which requires a 50-foot-wide natural waterway buffer landward of non seawalled natural waterways, to allow for no additional buffer beside the existing mangroves.

Justification – This deviation relates only to the northwest corner of the north parcel, where the mangroves are less than 50 feet wide. Applicant has committed to preserving the existing mangroves in these areas, as well as maintaining the passive recreation uses existing in the area in and around the lagoon. The existing mangroves

will be included in the project's indigenous management plan. Staff recommended approval of this deviation, subject to conditions 3(l) and 26.

The Hearing Examiner recommends **APPROVAL** of Deviation #4, **SUBJECT TO** Conditions 3(l) and 26.

Deviation #5 seeks relief from Lee County Land Development Code (LDC) Section 34-1352, which requires boat display, sale, rental or storage facilities to provide a 25-foot-wide landscape buffer from all roads, to allow a 15-foot-wide landscape buffer.

Justification – This deviation is sought for the existing marina that was built prior to the LDC amendment which requires the wider landscape buffers. The buildings were constructed with a 25-foot street setback, and there is no room to widen the existing buffers. Staff recommends approval of this deviation, subject to Conditions 3(m) and 26.

The Hearing Examiner recommends **APPROVAL** of Deviation #5, **SUBJECT TO** Conditions 3(m) and 26.

IV. HEARING EXAMINER DISCUSSION:

This is a request to rezone 36.3 acres, located on the north and south sides of Main Street on San Carlos Island, from a mix of marine, light industrial, agricultural, and mobile home conventional and planned development zoning districts, to MPD (Mixed Planned Development). This rezoning will allow development of this site with high rise residential buildings, and destination resort uses, including hotel units, convention centers, office and retail uses, and marina uses, with expanded wet and dry slips.

The subject property is basically squarish in shape, and is bisected by Main Street. The north portion of the site is abutted on the north by the waters of Hurricane Bay, on the east by a large mobile home planned development, and on the west by a mix of mobile home and conventional dwelling units. The south portion is abutted on the south by the waters of Matanzas Pass, to the east by the large mobile home planned development, and on the west by marine and port related uses. (Matanzas Pass and Hurricane Bay are part of the Estero Bay Aquatic Preserve.) The site is designated Destination Resort Mixed Use Water Dependant, and Conservation Lands.

POLICY MATTER:

Conclusion/Summary

This rezoning request did not follow the usual order or process to get before the Hearing Examiner. Before the rezoning was requested, the Applicant in this case obtained a Lee Plan amendment adopting the entire project, down to building heights, uses, amount of development, and land development regulations. This was essentially a "rezoning by Plan Amendment," as the project had already been approved before the necessary rezoning request was made and came before the undersigned Hearing Examiner.

When the rezoning matter came to public hearing, it became obvious that Staff and Applicant believed that this project should be approved – with little or no changes – because it had already been approved in the Lee Plan Amendment. As discussed below, this matter has raised the following concerns for the Hearing Examiner:

1. Protection of citizen and adjacent property owner's rights in a rezoning situation; and
2. Abrogation of the County's quasi-judicial zoning process; and
3. Establishment of a serious precedent for other developers with potentially controversial projects.

The Hearing Examiner asks that the BOCC consider her concerns, as discussed below, and take the appropriate action to direct Staff, in the future, not to consider or bring forward Lee Plan Amendment requests that contain the level of project detail and land development regulations that were contained in this case.

Lee Plan Amendment

This proposed project was based on the criteria approved by the Board of County Commissioners, in 2009, as a Lee Plan Amendment (Goal 31). That Plan Amendment was site specific and contained a very specific plan of development. The legal description attached to the Plan Amendment was that of the subject property; no other properties were included. Applicant stated that other properties could have the same land use designation, but that owner/developer would have to amend the Lee Plan to include their specific properties.

Staff and Applicant acknowledged that this Plan Amendment was "significantly more detailed than the usual plan amendment" and went "way beyond what the comprehensive plan should be. It is more like a zoning code. . ." (Uhle at page 15; Badamtchian at pages 175-176, Nov 29, 2012 Transcript). They also acknowledged that, given the degree of detail, the review of the Amendment was "very much akin to [that of] a zoning case." (id, at page 16) It included a degree of site specific and development detail that is not typically seen in a customary amendment. Included were the exact types of uses, amounts of development, building heights, site lay-out, and other development regulations that are typically found in the Land Development Code (LDC) for a zoning district.

Further, the MPD rezoning request was for the exact plan of development that had already been reviewed and approved by the BOCC in the Plan Amendment. Mr. Uhle described the plan of development proposed in this zoning hearing as being "to a large extent just a refinement of that plan that was reviewed and approved by the Board of County Commissioners [in the Lee Plan Amendment], which makes it unusual for a plan amendment." (id, at page 16)

First, the undersigned Hearing Examiner wants to make it clear that she has no objection to a Plan Amendment being adopted to establish a specific land use category for a specific piece of property. She acknowledges that such adoption is proper

legislative action. Her concerns arise, however, when that Plan Amendment contains a specific plan of development and detailed land development regulations that apply only to one piece of property. That Amendment adoption becomes, in essence, a "rezoning by Plan Amendment."

The Hearing Examiner has some serious concerns about using the Lee Plan amendment process to "rezone" a piece of property. She points out that the Plan Amendment process is a legislative process, while the zoning process is a quasi-judicial process, under Florida case law. The legislative process does not require the testimony to be sworn or the BOCC to sit as a fact-finding body or to apply the standard of review to the testimony and evidence that is required in a quasi-judicial proceeding.

As such, the Hearing Examiner is concerned that the rights of the public, particularly the adjacent property owners, are not receiving the same protection in the legislative process that they receive in the quasi-judicial process. Additionally, as in this case, once a property has been, in effect, "rezoned" by the legislative process (Lee Plan amendment), the public's rights to have their comments weighed by the fact-finder (Hearing Examiner) in a fair, full and unbiased zoning process are compromised. In a case where the detailed proposed plan of development has, essentially, been approved by the BOCC in the Plan Amendment, the Hearing Examiner is left with little, if any, discretion in her analysis of the rezoning request. For all purposes, this situation relegates the Hearing Examiner process to simply "rubber stamping" the rezoning request, because it has already been approved by the BOCC. It is the opinion of the Hearing Examiner that such a situation is not consistent with Florida law or with the intent of the County's adopted zoning hearing process.

She points out that the thoughts in the preceding paragraph were clearly understood by Applicant in their discussion of the project at the zoning hearing. They commented several times, during the course of that public hearing, that the issues and objections of the adjacent property owners and residents had already been heard by the BOCC during the Plan Amendment hearings. (*id.*, at pages 17-21, 156-157; Treesh, pages 124-125, Nov 29, 2012 Transcript; and Uhle, pages 164, 171, Dec 5, 2012 Transcript)

Applicant asserted that the BOCC clearly considered those objections and concerns, when it approved the Plan Amendment with several minor modifications to the request. Their rezoning request reflects those modifications. However, the public argued that those modifications were not really related to their objections and concerns, since, for instance, the objectionable building heights and amount of commercial development were not changed by the BOCC. (see page 171, Dec 5, 2012 Transcript)

Finally, the Hearing Examiner is concerned that the facts surrounding the adoption of this land use category and rezoning will set a precedent for other developers with controversial projects. Once it becomes known that a developer can use a Plan Amendment to effectively rezone a property, many controversial projects will be brought through the Plan Amendment process before a rezoning action is requested. When Applicant was asked why they included such development detail in the Plan Amendment, the response was that

The plan amendment was approved before the zoning case was filed. The plan amendment was filed in 2007 and approved in 2009. **The zoning case was filed late in 2009 with the knowledge that the plan amendment had been approved. Otherwise, the Applicant wouldn't have been willing to invest the money into something that didn't look like it was - - had already been accepted, the parameters of it had.** (Uhle, page 173, Dec 5, 2012 Transcript) (emphasis added by Hearing Examiner)

Background

The north portion of the subject property contains an existing 271-unit RV/mobile home park, with accessory docks for 63 boat slips and a passive recreation area, a vacant parcel and a large mangrove wetland. The south portion contains a mix of marina uses – docks with wet slips, a large dry storage boat barn, restaurants and bars. The property also includes several mangrove islands in Hurricane Bay and mangrove wetlands abutting the small north docks and seawall. Those mangroves are to be preserved.

The Master Concept Plan (MCP) divides the property into four Development Pods. Pod 1 covers the west side of the north parcel, and Pod 2 covers the central and east sides of the north parcel, including the mangrove preserve area. Pod 3 covers the west side of the south parcel, and Pod 4 covers the central and east sides of the south parcel.

North of Main Street - Applicant proposes to remove the RV park and its associated amenities (except the multi-slip docks), and to redevelop that parcel with five high-rise residential buildings. The five residential buildings will contain a total of 271 units and will range in height from 161 to 230 feet, which includes a maximum 45-foot-high multi-level parking garage for each building. The 63 wet slips will be retained and the indigenous area, in the north corner of that portion of the site, will be placed in a conservation easement, with a board walk meandering through it. The buildings will line both sides of a spine road, which will have a round-about, at the north end of the Pod, that leads into the second access point onto Main Street.

The MCP for the north parcel also depicts a low rise building, containing a private club, waterfront restaurant, a community learning center, a ship's store/convenience food and beverage store, and a multi-level parking garage, at the northeast end of the round-about. As this portion of the project is a gated community, those amenities will be restricted to the use of the residents and their guests. Applicant advised that they might make the restaurant accessible to the guests of the hotel on the south parcel, but it will never be open to the general public. They also wanted approval for a number of hotel and/or time-share units in the multi-family buildings on the north parcel, instead of introducing a principal hotel use on that portion of the project.

The water management facilities for both the north and south parcels will be located on the north parcel.

South of Main Street – That portion of the project is to be developed with a maximum of 450 hotel rooms, a 75,000-square-foot convention/conference center, 10,000 square feet of office, and 85,000 square feet of retail and other commercial uses, including restaurants and entertainment facilities, small retail/service kiosks scattered along the waterfront boardwalk, and a ship's store. The existing marina, 130 wet slips, including live-aboard slips, and the 302 dry slip boat storage building will be retained, and another dry storage building will be added in the southwest corner of the south parcel.

Applicant intends to expand the existing marina and boat storage uses to bring the total number of slips (wet and dry) for the entire project to a maximum of 850. (The 63 slips on the north side will not be expanded, so the balance of 787 slips will be located on the south parcel.) They are proposing to have 60 live-aboard slips, which will be accounted for in the total number (130) of wet slips. They explained that they would not have to expand the footprint of the existing boat barn. Instead, Applicant could reconfigure the rack storage system so that it would accommodate more boats than the building had been approved for. They understood that they would need to receive the appropriate state and federal approvals for the proposed expansion of the number of wet and dry slips.

The south parcel will have about five entrances from Main Street, and none of those entrances will be gated. An elevated boardwalk is planned to run along the waterfront, and will be developed with about 20 small (1,000-square-foot or smaller) structures. Behind that boardwalk, will be three large buildings for the hotel, restaurant, retail and office uses, and then three parking garages east of that. Two free-standing convention centers are located close to Main Street, and the westernmost center is separated from the hotel building by the second boat barn.

Phasing Plan - Applicant explained they have divided the site's development plan between two Phases. Phase 1 consists of the existing development uses on the 36-acre site – essentially preserving the status quo. The Schedule of Uses for that Phase covers those existing uses, and legitimizes their continuance on the property under the new zoning district. Phase 2 consists of the proposed new uses and redevelopment plan for the entire site and the Schedule of Uses reflects those new uses and the total amount of development.

Staff and Applicant agreed the intent of Phase 1 was to allow the legally permitted uses to continue on the site until the new development plan is commenced. It was recognized, however, there were some uses in existence on the property that had not been "legally" permitted. Staff was recommending a condition that would require those uses to obtain the appropriate necessary approvals, if they were to remain on the site, but agreed that such approvals would not trigger the start of Phase 2 (redevelopment) for the Pod associated with those approvals.

Traffic Impacts - Applicant prepared a Traffic Impact Statement (TIS) covering San Carlos Boulevard, an arterial that connects Summerlin Road and Estero Boulevard on Fort Myers Beach, and Estero Boulevard. The TIS revealed that the traffic from the proposed development would not adversely impact the Level of Service (LOS) on San Carlos Boulevard or Estero Boulevard in 2017, the anticipated build-out date of the

project. Applicant conceded that there would be some impacts, but felt their impacts would not trigger any negative impacts on the traffic conditions in the area.

Applicant explained that, while San Carlos Boulevard and the bridge over the Matanzas Pass fall within the unincorporated portion of Lee County, Estero Boulevard is within limits of the Town of Fort Myers Beach. Nevertheless, the County is responsible for the improvements and capacity protection of both these roads. They pointed out that the bridge and Estero Boulevard are designated as constrained facilities, which, in all likelihood, will never be widened. It was their determination that neither the approach to nor the bridge itself were the causes of the traffic back-up on San Carlos Boulevard. Instead, the bottlenecking of traffic trying to get onto or out of the Beach is due entirely to the constrained condition of Estero Boulevard, and to the Town's requirements for traffic stops at all pedestrian crosswalks, particularly in the Times Square area at the base of the bridge.

They reviewed the anticipated impacts on Estero Boulevard, using the criteria set out in the Town's comprehensive plan, which establishes a capacity threshold at 1,300 vehicles per hour. That number is calculated by averaging the number of vehicles utilizing Estero Boulevard, on an hourly basis between 10 a.m. and 5 p.m., over the previous 12-month period. As long as that vehicle number does not exceed the threshold (1,300 vehicles per hour) for a minimum of four months of the previous year, then the new project traffic meets the intent of the Town's comprehensive plan.

Although not required to do so (Main Street is only a minor collector), Applicant performed a traffic review, using the 2017 peak volume, to determine the corresponding LOS on Main Street. They determined that the peak hourly volume on Main Street in 2017 would be 700 vehicles, which falls between LOS C (650 vehicles) and LOS D (820 vehicles) under the County's regulations. That LOS was an acceptable level, under the County's criteria. They also advised that they are required to improve Main Street to Category "A" standards (24-foot-wide pavement width, with appropriate drainage and pedestrian facilities), under the adopted Goal 31 (Lee Plan Amendment).

Deviations - Applicant requested five Deviations for this plan of development. The first Deviation was for a reduced setback for the water management lakes on the north parcel from Main Street. Instead of the required 50-foot setback, Applicant was requesting a 27.5-foot setback for the two lakes. The second Deviation was for a 20 percent reduction in the number of parking spaces for the restaurant and retail space in the north parcel, since those uses would not be open to the public and the residents would not need vehicles to utilize them. The third Deviation was to allow a 150-foot separation for the third and fourth driveways on the south side of Main Street. The third driveway will be the entrance driveway for the hotel and shops, and the fourth driveway will be the exit driveway for those uses. The fourth Deviation asks for a reduced natural waterway buffer along the mangrove area in the northeast corner of the property. The last Deviation is to allow only a 15-foot-wide landscape buffer, instead of a 25-foot-wide one, for the existing marina boat display, sale, rental and storage facilities. Those existing buildings were built with 25-foot street setbacks, which mean the existing buffers cannot be widened.

Applicant asserted that the proposed project is consistent with the intent and provisions of the recently adopted Destination Resort Mixed Use Water Dependant land use category (Goal 31), and is otherwise consistent with the intent and provisions of the Lee Plan. They advised that, in accordance with the Lee Plan Amendment, they will provide a water taxi, a shuttle service and an airport pick-up/delivery service to help reduce the number of vehicles utilizing Main Street, Estero Boulevard and San Carlos Boulevard. That service is in addition to the widening and improvement of the Main Street corridor. They acknowledged that there might be some impacts to the local intersections, but explained such impacts will be reviewed and addressed in the development order review process.

Applicant understood that some of the residents were complaining about the height of the residential buildings on the north parcel. However, they had provided information at the Lee Plan Amendment hearing that the taller buildings would be located further away from the neighbors, and would not be as oppressive as a series of mid-rise structures located over a larger footprint and closer to the edges of the property. Having the taller buildings would allow them to have smaller footprints and more open space on their site. They believed that the BOCC agreed with their explanation, as it approved the requested building heights in the Lee Plan Amendment.

Staff supported Applicant's requested rezoning, finding that the request, as conditioned, was consistent with the intent of the Lee Plan and the Land Development Code, and was compatible with the mix of residential, marine, industrial and commercial uses in the area. They also found that it would not be detrimental to the persons or properties in the neighborhood or to the public health, safety and welfare.

Staff recommended approval of all five Deviations, with conditions, finding that the Deviations, as conditioned, met the criteria for approval in LDC Section 34-377.

Public Input

Several nearby residents and other property and business owners attended this 2-day public hearing to voice their support, questions, concerns or objections to the requested rezoning. A small number of the business owners and a few residents were in favor of the proposed project, asserting that the new development would increase the value of their properties and would start a redevelopment of this area, which was badly needed.

A larger number of residents, however, objected to the rezoning, particularly the height of the buildings, the large amount of commercial uses, and the expansion of the marinas and the resulting use of their waterways. They argued that the height of the buildings was extreme, especially since the surrounding residential uses were single-story mobile homes and small dwelling units. The tallest structure on the Island was the 50-foot-high boat barn at the far end of the subject property. Several residents complained that these buildings would be higher than most of the nearby hotel and condo buildings on the Beach, and were similar in size to the numerous condo buildings lining the Caloosahatchee River in downtown Fort Myers. They believed that buildings of that height were totally incompatible with the rest of the development on the Island, and

would change the character and nature of their neighborhood. In addition, they feared that the project – with its tall buildings and large amount of commercial uses – would “set the stage” for the future development of other properties on this small island, which would eventually “squeeze” them out.

The public acknowledged that the number of residential units was consistent with the number of RV units currently on the property, and were willing to accept the traffic from that component of the project. However, they pointed out that this project significantly increases the amount of commercial uses on this site, and, thereby, increases the traffic and other impacts associated with that amount of commercial development.

The primary concern of many of the residents related to the amount of traffic that would be generated on Main Street by this development. Several residents testified that they are already experiencing traffic problems - without this large development. Many have problems getting into and out of their driveways when there is a lot of traffic on Main Street. They were concerned that, once the project is developed and Applicant holds one of their special events, there will not be enough parking on the south parcel to handle the demand. Since the north parcel is gated, they feared those extra vehicles will spill over into their residential neighborhood, and would result in people parking on their properties or blocking their driveways and streets. They also cited safety concerns, because of the increased traffic, for residents walking or biking on their neighborhood streets, and along Main Street.

These residents advised that it is almost impossible – during season – to turn left from Main Street or Buttonwood Drive onto San Carlos Boulevard, or to get out onto San Carlos Boulevard in any reasonable amount of time, because of the “traffic jams.” Cars back up on Main Street, and up and down Buttonwood, and they spend minutes just trying to get to an intersection so they can get onto San Carlos Boulevard. They asserted that the hotel and other commercial uses will increase the number of vehicles coming to the site, which will, in turn, increase the number of vehicles trying to get out onto the main road (San Carlos Boulevard).

They cited to the County’s continuing inability to address or resolve the current traffic problems in this area, and questioned whether the County or Applicant could do anything to resolve this situation before those conditions are seriously aggravated by the increase in traffic associated with this development.

Although the Town of Fort Myers Beach did not object to the rezoning, several members of the Town Staff and Council attended the hearings to voice the Town’s concerns about this project’s potential traffic impacts on the Beach’s roads and community. Those representatives indicated that the County or Applicant should take some measures to reduce or alleviate the traffic tie-ups on San Carlos Boulevard, which might alleviate some of the traffic problems the Town is experiencing. However, no such curative measures were suggested.

Hearing Examiner Analysis

As explained in the Policy Matter section above, the undersigned Hearing Examiner reluctantly concurs with Staff's findings that this project, as conditioned, is consistent with Goal 31 of the Lee Plan, and Staff's recommendation of approval of this rezoning, as conditioned. The basis for the Hearing Examiner's recommendation of approval is the fact that the project is identical – for all purposes – to the criteria adopted in Goal 31 by the BOCC.

The Hearing Examiner shares the public's concerns about the impacts associated with the building heights, the large amount of commercial uses and the amount of traffic being generated by this project. During her site visit, the Hearing Examiner noted that Main Street divides the Island into historic mobile home parks and other single-family residential uses (on the north side) and scattered commercial and marine related uses on the south side. The entire area projects a quaint, quiet, "laid-back" feeling, which she believes will be destroyed or significantly impacted by the types of requested uses and the amount of development for this project.

It is her opinion that this amount of development will change the character and nature of this community of mixed single-family residential and marine related uses. That change of character is inconsistent with the intent of Policy 5.1.5, which requires the County "to protect existing and future residential areas from any encroachment of use that are potentially destructive to the character and integrity of the residential environment." It is also inconsistent with the intent of Policy 135.9.5, in which "new development adjacent to areas of established residential neighborhoods must be compatible with or improve the area's existing character." Additionally, the redevelopment of the subject property also falls under the provisions of Objective 2.6, in which Policy 2.6.2 requires that redevelopment activities include the "protection of adjacent residential neighborhoods and historic and natural resources."

She concedes that Applicant's graphics depict a beautiful project, which, by its size, clearly dwarfs the other uses in the area. While this amount of development might ultimately be appropriate on this small island, the Hearing Examiner is concerned that approval of this project - at this time - is inconsistent with the intent of Policy 2.2.2. That Policy sets out that Map 1 of the Future Land Use series "**is not a guarantee** that such densities or uses are **immediately appropriate**, as the map provides for the county's growth beyond the Lee Plan's planning horizon of 2030." (emphasis added by Hearing Examiner)

Despite her misgivings about the appropriateness of this project in this small quaint area and the project's consistency with Policy 2.2.2 and Policies 2.6.2, 5.1.5 and 135.9.5, the Hearing Examiner has no other basis on which to recommend that the BOCC reduce the building heights, or the amount of commercial and marine related uses in this project. It is her opinion that the BOCC's adoption of this "project" in Goal 31 effectively prevents her from making any findings or recommendations different than those of Staff in the Staff Report. It is the Hearing Examiner's opinion that this situation has reduced her quasi-judicial hearing and decision making process to a "rubber-stamp" review and

recommendation, even in the face of relevant and legitimate concerns expressed by adjacent property owners.

Under these circumstances, the Hearing Examiner finds that the conditions imposed herein are rationally related to the impacts anticipated from the project, and, with other regulations and Lee Plan provisions, will safeguard the public's interests.

She also finds that the approved Deviations, as conditioned, will enhance the objective of the planned development, and will promote the protection of the public health, safety and welfare.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, and the previous Policy Matter discussion, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the proposed plan of development was, in essence, approved by the BOCC in the 2009 Lee Plan Amendment. Given that approval, Applicant has proved entitlement to this rezoning, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes or regulations.

B. That the requested project, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.

C. That the proposed project, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan for this land use category, and the mix of uses, as conditioned, are appropriate at the subject location.

D. That the requested uses, as conditioned and as adopted in Goal 31 of the Lee Plan, are compatible with existing or planned uses in the surrounding area.

E. That approval of this project, as conditioned and as adopted in Goal 31 of the Lee Plan, will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.

F. That the mixed use project, as conditioned, will not adversely affect environmentally critical areas and natural resources.

G. That the recommended conditions to the Master Concept Plan are rationally related to the impacts anticipated from the proposed development, and, with other regulations, will provide sufficient safeguard to the public interest.

H. That the approved Deviations, as conditioned, will enhance the objective of the proposed development, and will promote the protection of the public health, safety and welfare.

I. That urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

1. Transportation Element, Appendix B, page 7-B-12, dated January 1, 1999 (1 page – 8.5"x11")
2. Resolution of the Town Council of the Town of Fort Myers Beach, Florida, Resolution Number 12-24 (multiple pages – 8.5"x11")
3. Transportation Element, As Amended by Ordinance 09-03 (2008-07/08/09-Text), page 7 – 33 / as amended 11/25/2009 (1 page – 8.5"x11")
4. A January 2012 aerial photograph prepared by Lee County – depicting the Florida Department of Environmental Preserve Aquatic Preserve, map created date November 7, 2012 (1 page – 24"x36")[color]
5. A 2012 large aerial photograph and a small aerial photograph depicting two photographs on one page, prepared by Lee County, mapped June 2012 (1 page - 31"x19" and 1 page – 8.5"x11")[color]
6. Submerged Lands and Environmental Resource Program Environmental Resource Permit from the Department of Environmental Protection for Salty Sams' (multiple pages – 8.5"x11")
7. Submerged Lands and Environmental Resource Program Environmental Resource Permit from the Department of Environmental Protection for Hanson Marina (multiple pages – 8.5"x11")
8. A letter from Alan M. Dodd, a Colonel for the U.S. Army District Commander, to Mr. Bob Beasley, with Oyster Bay Land Company, dated September 25, 2012 (2 pages – 8.5"x11")
9. Revised Environmental Condition 3 p (1 page – 8.5"x11")
10. A letter from Terry E. Wilkinson, Chief of the Bureau of Survey and Mapping – Division of State Lands – Florida Department of Environmental Protection, to Craig Brown, with Lee County Division of Environmental Sciences (1 page – 8.5"x11")
11. A 2012 aerial photograph prepared by Lee County DCD mapped June 2012, remapped December 2012 (1 page - 31"x19")[color]

12. A memorandum from Chahram Badamtchian, a Senior Planner, to Diana M. Parker, a Chief Hearing Examiner, dated December 19, 2012, including a complete list of revised conditions and schedule of uses (multiple pages – 8.5"x11"){post hearing submittal}

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

1. CPA2007-51 San Carlos Island Private Initiated Amendment to Lee County Comprehensive Plan, dated February 25, 2009 (multiple pages – 8.5"x11")
2. Résumé for Joseph M. McHarris (multiple pages – 8.5"x11")
3. An Environmental Assessment aerial photograph prepared by Passarella & Associates Inc., revised 11/27/12 (1 page – 11"x17")
4. Traffic Impact Study prepared by TR Transportation Consultants, Inc., dated May 11, 2012, send to Mr. Joe McHarris, with McHarris Planning and Design (multiple pages – 8.5"x11")
5. Excerpt from 2012 Concurrency Report (1 page – 8.5"x11")
6. Letters of support (multiple pages – 8.5"x11")
7. Quit Claim Deed for the peninsula (3 pages – 8.5"x11")
8. A letter from Justin D. McBride, with Lee County Public Works, to John P. Riley, dated June 17, 2005 regarding the Manatee Plan Project Results (1 page – 8.5"x11")
9. An aerial photograph prepared by Passarella & Associates Inc., revised 11/27/12 (1 page – 24"x36")[color]
10. PowerPoint hard copy (multiple pages – 8.5"x11")
11. An email from Matthew Uhle dated 12/3/2012 at 2:51:54 p.m., to several people regarding outstanding issues for continued hearing (1 page – 8.5"x11")
12. An email from Matt Uhle, Esquire to the Hearing Examiner, and several staff members, dated December 19, 2012 10:17 AM, in response to Staff's December 19, 2012 memorandum (1 page – 8.5"x11"){post hearing submittal}

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

Other Exhibits

Whitehead:

1. A letter from Mary Ellen Ruddick dated February 25, 2009
2. A letter from Ralf Brookes, an Attorney, to Charles Gauthier, AICP, with the Division of Community Planning with the Department of Community Affairs, dated November 14, 2008 (multiple pages- 8.5"x11")
3. Emails to Mr. Whitehead (multiple pages – 8.5"x11")

Hladik

1. Emails to Ms. Hladik (multiple pages – 8.5"x11")

Town of Fort Myers Beach

1. PowerPoint presentation hard copy dated November 29, 2012 (multiple pages – 8.5"x11")
2. Résumé for Laurence F. Keegan, Jr., PE (multiple pages – 8.5"x11")
3. Master Concept Plans Phase I and II prepared by McHarris Planning & Design date stamped RECEIVED NOV 13 2012 COMMUNITY DEVELOPMENT (2 pages – 24"x36")
4. Resolution Number 12-24 (2 pages – 8.5"x11")
5. Résumé for Jeffrey A. Wilson PE (3 pages – 8.5"x11")
6. Comparison of Existing vs. Proposed Uses prepared by West & Sampson (1 page – 11"x17")[color]
7. Three aerial photographs prepared by Weston & Sampson (1 page – 11"x17")[color]

VII. PRESENTATION SUMMARY:

November 14, 2012 Hearing:

Laura B. Belflower introduced herself as the Hearing Examiner for the continuance of Case No. DCI2009-00034, SAN CARLOS ISLAND – EBTIDE and stated that, depending upon the continued day, there may be a different Hearing Examiner for the actual hearing. The Hearing Examiner explained that a continuance had been requested and the only thing required at this time was to choose a date. After discussion, it was agreed to continue the case to Thursday, November 29, 2012. Matthew D. Uhle, Esquire,

attorney for the Applicant, added that he believed at least a full day would be required but could not speculate whether a second date would be needed. The Hearing Examiner proposed December 5, 6, 13, and 14, 2012, for secondary dates and when any or all of those dates were cleared, they would be held on the calendar.

Michael Jacob, Assistant Lee County Attorney, noted that additional public participation forms had been submitted. The Hearing Examiner explained that since the current hearing was only for the continuance, the forms would be held for the continued hearing and added that completing the forms did not preserve the right to speak before the Board of County Commissioners unless someone spoke at the actual hearing. The forms would be held for a future date. The case was continued until November 29, 2012 at 9:00 a.m.

A member of the public asked about people who would not be available on the 29th. The Hearing Examiner said that the Applicant had the right to ask for a continuance and they had done so in a timely manner. She added that the points he wished to raise could be presented by someone else, but unfortunately that would not preserve his rights to speak before the Board, although he would get his point addressed. He could also send a letter to introduce his points. Again, he would have to attend the hearing to be able to speak before the Board of County Commissioners. If there was a second day of hearing, he could attend that and be able to speak.

She also stated that if the total testimony from the Applicant and Staff took a full day, and required a second day to complete the hearing, he might not be able to speak on the first day. If someone could only be there on the first day, and could not attend on the second, she would try to accommodate that, to allow such person to speak. The difficulty with multiple-day hearings was that you really needed to attend on each day to be sure to have an opportunity to speak.

Another member of the public asked about notification of a second day hearing, and the Hearing Examiner replied that another date would be set during the first day of hearing when it became obvious it was needed.

Mr. Jacob confirmed that by having completed a public participation form, a copy of the continuance order would be sent out. The Hearing Examiner said the second hearing day may be set shortly after the first one and therefore an e-mail address would be the quickest way of receiving a continuance order. However, she did say that e-mails would technically become public record, and although she did not think anyone was digging for them, some people might not want to have e-mails in the public record. The Hearing Examiner continued the case until November 29, 2012.

November 29, 2012 & December 5, 2012 Hearings:

See Official Court Reporting Transcript

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Shane Johnson, c/o Passarella & Associates, Inc., 13620 Metropolis Avenue, Suite 200, Fort Myers, Florida 33912
2. Darrell Hanson, c/o Hanson Marine Properties, Inc., 2500 Main Street, Fort Myers Beach, Florida 33931
3. Robert W. Beasley, c/o Oyster Bay Land Company, 1711 Main Street, Fort Myers Beach, Florida 33931

ADDITIONAL COUNTY STAFF:

1. Michael Jacob, Assistant County Attorney, P. O. Box 398, Fort Myers, Florida 33902
2. Robert Price, Development Services, P. O. Box 398, Fort Myers, Florida 33902
3. Craig Brown, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VII.):

For:

1. Richard Hobot, 91 Blackbeard Way, Fort Myers Beach, Minnesota 33931
2. John Kean, 77 Cortez Way, Fort Myers Beach, Florida 33931
3. Ian Rankin, 48 Doubloon Way, Fort Myers Beach, Florida 33931
4. Joanne Semmer, 792 Oak Street, Fort Myers Beach, Florida 33931

Against:

1. Walter Fluegel, 2523 Estero Boulevard, Fort Myers Beach, Florida 33931
2. Janet Hladik, 1595 Main Street, Fort Myers Beach, Florida 33931
3. Carol Murphy, 34 S. Mango, #302, Fort Myers Beach, Florida 33931

4. Chester Troczynski, 41 Emily Lane, Fort Myers Beach, Florida 33931
5. Charlie Whitehead, c/o Emily Lane Association, 20 Emily Lane, Fort Myers Beach, Florida 33931

General:

1. Larry Keegan, Jr., 4210 Metro Parkway, Suite 250, Fort Myers, Florida 33916
2. Marilyn Miller, 2235 First Street, Fort Myers, Florida 33901
3. Beverly Wolfe, 65 Emily Lane, Fort Myers Beach, Florida 33931

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER RECOMMENDATION:

For:

1. Geri Peterson, 33 Nancy Lane, Fort Myers Beach, Florida 33931

Against:

1. Steve Gumm, 85 Blackbeard Way, Fort Myers Beach, Florida 33931
2. Erin O'Connell, 345 Mango Street, #206, Fort Myers Beach, Florida 33931
3. Gary Steffen, 27 Doubloon Way, Fort Myers Beach, Florida 33931
4. Don Vance, 55 Doubloon Way, Fort Myers Beach, Florida 33931

General:

1. Wendy Bouchard, 1711 Main Street, Lot H7, Fort Myers Beach, Florida 33931
2. Mary Jo Bundy, 340 Sherman Drive, Battle Creek, Michigan 49015
3. Howard J. Carpenter, 32 Helen Lane, Fort Myers Beach, Florida 33931
4. Mrs. Howard J. Carpenter, 32 Helen Lane, Fort Myers Beach, Florida 33931
5. Linda Cebulski, 880 Buttonwood Drive, Fort Myers Beach, Florida 33931
6. Ted Cebulski, 880 Buttonwood Drive, Fort Myers Beach, Florida 33931
7. Lauren DiSpirito – lauren.dispirito@nbc-2.com

8. Wilma Gabrielson, 1326 Reed Avenue, Belmond, Iowa 50421
9. Chas Karlosky, 51 Osten Bay Lane, Fort Myers Beach, Florida 33931
10. Susan McLaughlin, Esquire, Attorney for San Carlo Cove Inc., 2030 McGregor Boulevard, Fort Myers, Florida 33901
11. Bob Raymond, 2523 Estero Boulevard, Fort Myers, Florida 33931
12. Mike Rodgers, 19281 San Carlos Boulevard #60, Fort Myers Beach, Florida 33931
13. Don Skelton, 29 Helen Lane, Fort Myers Beach, Florida 33931
14. Helen Skelton, 29 Helen Lane, Fort Myers Beach, Florida 33931
15. Don Valento, 6900 Estero Boulevard, #404, Fort Myers, Beach, Florida 33931
16. Jan Valento, 6900 Estero Boulevard, #404, Fort Myers, Beach, Florida 33931
17. Jeffrey A. Wilson, P.E., 4210 Metro Parkway, Ste 250, Fort Myers, Florida 33916

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communication (Hearing Examiner) means communication in any form, whether written, verbal, or graphic, with the Hearing Examiner or the Hearing Examiner's staff, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed, anticipated, or pending matter relating to appeals, variances, special permits, rezonings, special exceptions or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for discussion or recommendation, except as permitted in the County Administrative Code. Communications regarding procedural aspects of a proceeding are not deemed unauthorized.....[LDC Section 2-191(a)]

No person may communicate with a Hearing Examiner or the Hearing Examiner's staff regarding the substance (non-procedural aspects) of a pending rezoning action or appeal to be considered by the Hearing Examiner under Sections 2-420 through 2-429, or 34-145.....[LDC Section 2-191(b)(2)]

Penalties. Any person who intentionally makes or attempts to initiate an unauthorized communication to or with a Hearing Examiner, a member of the Hearing Examiner's

staff, a County Commissioner or an Assistant to a County Commissioner, or any Hearing Examiner or County Commissioner who fails to publicly disclose and report an unauthorized communication or an attempt to initiate an unauthorized communication, may be subject to the following penalties: [LDC Section 2-291(c)]

Revocation, suspension or amendment of any permit, variance, special exception or rezoning granted as a result of the Hearing Examiner action that is the subject of the unauthorized communication.....[LDC Section 2-191(c)(2)] or

A fine not exceeding \$500.00 per offense, by imprisonment in the County jail for a term not exceeding 60 days, or by both such fine and imprisonment.....[LDC Section 1-5(c)]

XI. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. This Recommendation is made this 15TH day of January, 2013. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

C. The Board of County Commissioners will hold a hearing at which they will consider the record made before the Hearing Examiner. The Department of Community Development will send written notice to all hearing participants of the date this hearing before the Board of County Commissioners. Only participants, or their representatives, will be allowed to address the Board. The content of all statements by persons addressing the Board shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

D. The original file containing the original documents used in the hearing before the Hearing Examiner will be brought by the Staff to the hearing before the Board of County Commissioners. Any or all of the documents in the file are available on request at any time to any County Commissioner.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.



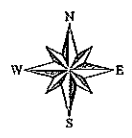
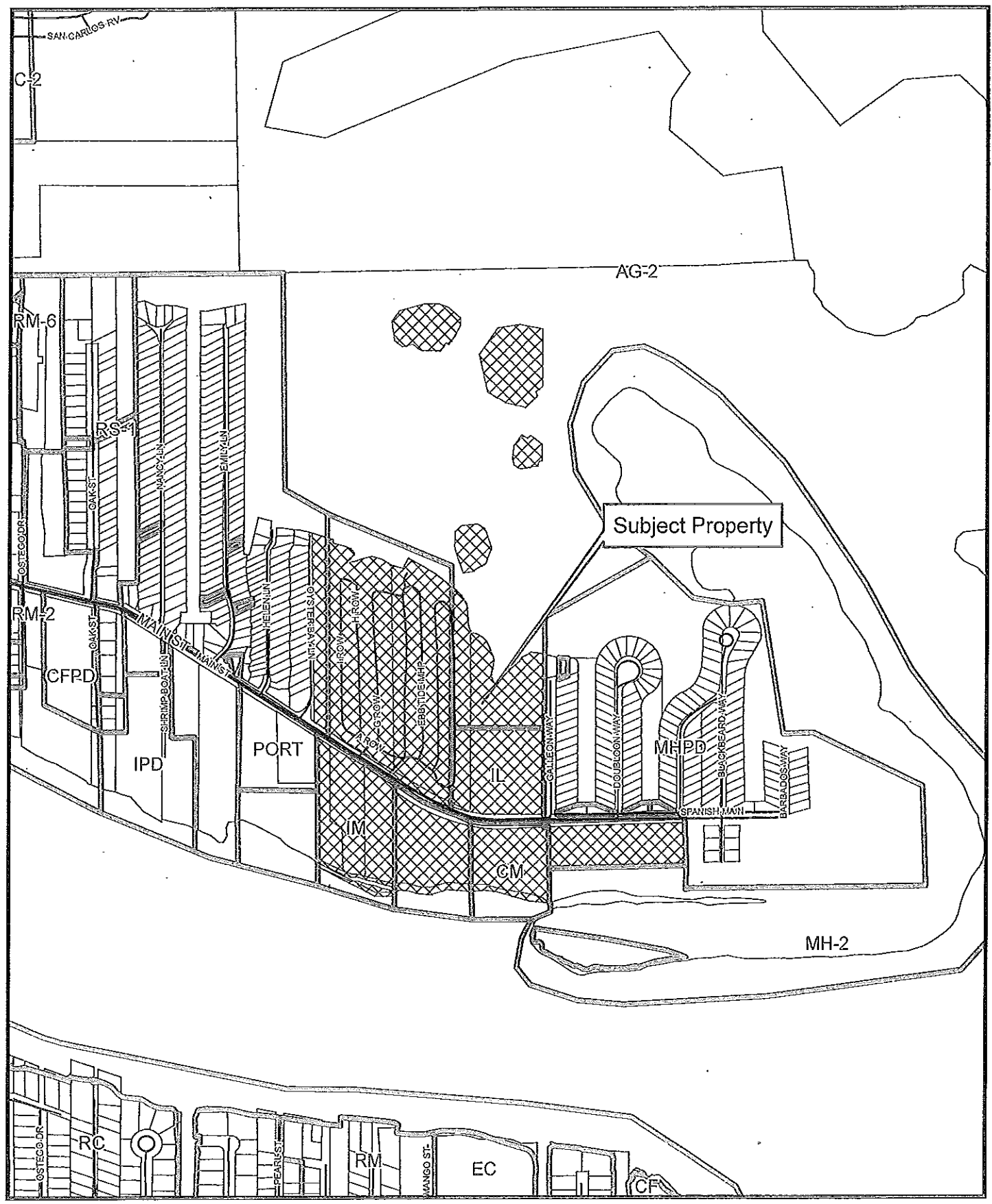
DIANA M. PARKER
LEE COUNTY CHIEF HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/533-8100
Facsimile: 239/485-8406

ATTACH MAP A
ATTACH SITE PLAN (if approved)

Attachment 'A'
Zoning Map

DCI2009-00034

10/15/2012

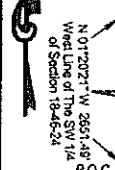


ENVIRONMENTAL LAND SERVICES, INC.

3677 CENTRAL AVENUE SUITE G
FORT MYERS, FLORIDA 33901
PHONE: (239) 274-8022 BLS
FAX: (239) 274-8019 LH 5986

SPECIAL PURPOSE UPLAND LOCATION SKETCH

SEE PAGES 2 THRU 5 OF 5 FOR DESCRIPTION OF
ISLANDS, ISLANDS, AND MANGROVE IMPACT AREA



W/4 quarter corner of Section 18-46-24,
per Certified Corner Record #755148,
777343.063 N
673162.809 E

NW Corner of
Section 18-46-24
Latitude 09°27'52.21\" N
Longitude 81°57'03.82\" W
Florida State Plane Coordinates
(West Zone)
77113.324 N
672224.78 E

- Island 1
1.16+/- Acres
50379.00+/- Sq. Ft.
- Island 2 (On Prop.)
1.93+/- Acres
83986.68+/- Sq. Ft.
- Island 3 (On Prop.)
0.37+/- Acres
16010.95+/- Sq. Ft.
- Island 4
0.62+/- Acres
27031.50+/- Sq. Ft.
- Mangrove Impact Area
3.01+/- Acres
131117.34+/- Sq. Ft.

State Plane Coordinates (Florida West Zone)
Information Obtained from Florida Department
of Natural Resources Document #055150

LINE TABLE

- L1 S 34°41'00\" W 21.40'
- L2 N 00°00'00\" W 28.30'
- L3 N 08°53'40\" W 99.77'
- L4 N 25°11'24\" W 64.65'
- L5 N 47°33'45\" W 115.40'
- L6 N 52°10'01\" W 118.65'
- L7 N 54°15'56\" W 98.63'
- L8 N 76°51'14\" W 28.78'
- L9 N 59°47'05\" W 33.38'
- L10 N 58°56'42\" W 79.28'
- L11 N 73°33'33\" W 91.52'
- L12 N 76°25'44\" W 215.095'

- L13 S 55°19'09\" E 55.01'
- L14 S 00°00'00\" E 60.90'
- L15 N 00°00'00\" W 37.10'
- L16 S 00°00'00\" E 10.00'
- L17 N 81°01'06\" W 47.02'
- L18 N 03°45'51\" E 40.82'
- L19 N 82°06'39\" W 20.16'
- L20 S 03°21'15\" W 40.85'
- L21 N 81°27'39\" W 268.85'
- L22 N 00°00'00\" W 13.12'
- L23 N 69°15'56\" W 60.44'
- L24 N 63°12'26\" W 85.70'
- L25 N 75°35'47\" W 44.71'
- L26 S 89°40'03\" W 41.06'
- L27 N 73°24'43\" W 243.13'
- L28 S 28°55'17\" W 15.94'
- L29 N 64°44'23\" W 98.845'

- L30 S 67°10'36\" E 55.64'
- L31 S 37°55'33\" E 65.02'
- L32 S 02°30'47\" E 81.13'
- L33 S 44°00'00\" E 60.00'
- L34 S 00°00'00\" E 40.00'
- L35 N 45°00'00\" E 60.00'
- L36 N 00°00'00\" W 20.00'
- L37 N 45°00'00\" E 100.00'
- L38 S 89°59'37\" E 60.331'

LINE TABLE (cont.)

- L39 S 73°29'44\" W 112.64'
- L40 S 32°54'19\" W 60.75'
- L41 S 07°35'41\" E 90.80'
- L42 S 49°32'16\" E 20.85'
- L43 N 74°44'42\" E 45.61'
- L44 S 50°21'21\" E 45.49'
- L45 S 88°36'10\" E 82.02'
- L46 N 35°06'45\" E 45.22'
- L47 S 58°23'33\" E 15.26'
- L48 N 28°42'21\" E 95.77'
- L49 N 06°00'32\" E 38.21'
- L50 N 45°31'32\" E 77.08'
- L51 N 68°11'53\" W 41.78'
- L52 N 89°59'46\" W 89.991'

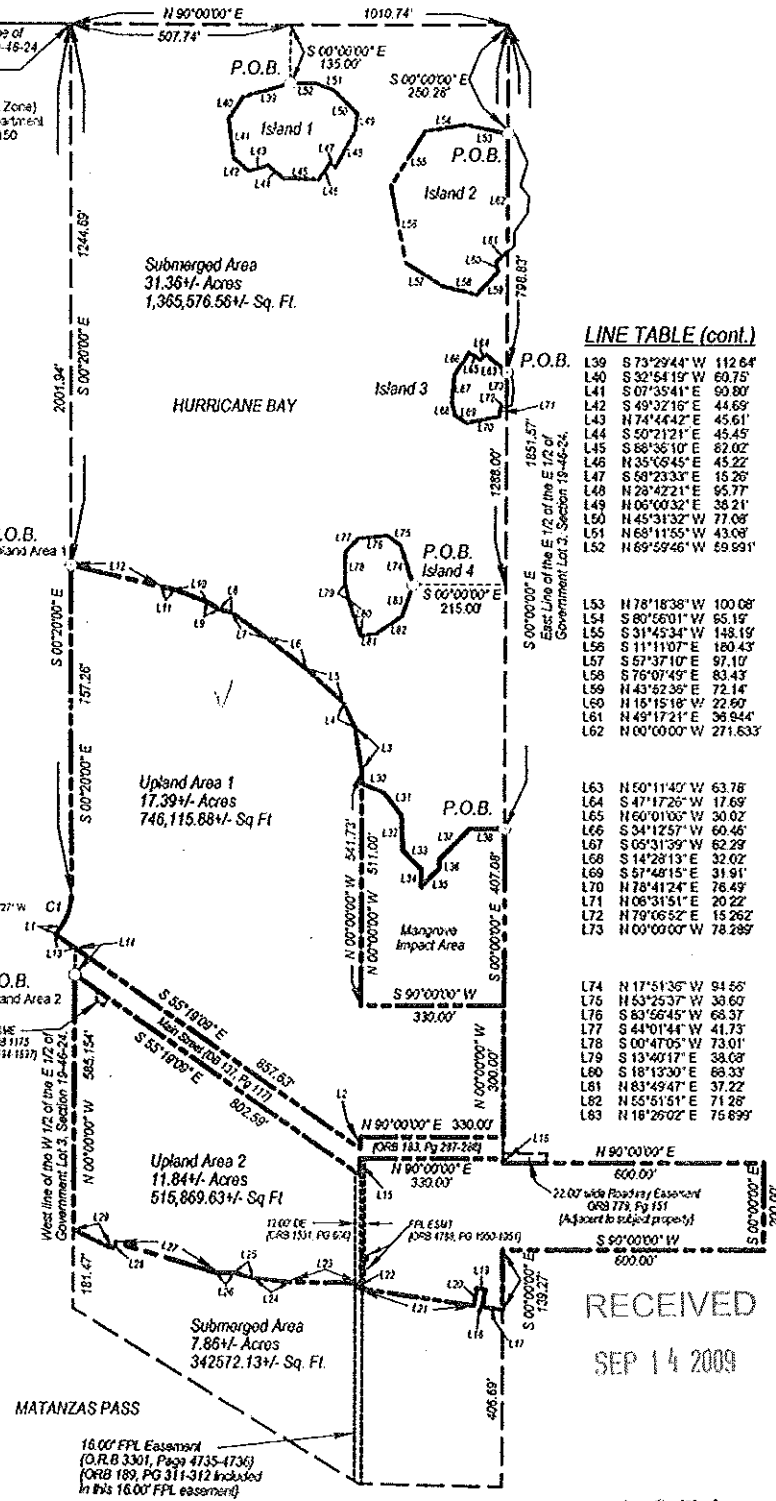
- L53 N 78°18'38\" W 100.08'
- L54 S 80°56'01\" W 65.19'
- L55 S 31°45'34\" W 148.19'
- L56 S 11°11'07\" E 160.43'
- L57 S 57°37'10\" E 97.10'
- L58 S 76°07'49\" E 83.43'
- L59 N 43°52'36\" E 72.14'
- L60 N 15°15'18\" W 22.60'
- L61 N 49°17'21\" E 36.944'
- L62 N 00°00'00\" W 271.633'

- L63 N 50°11'40\" W 63.78'
- L64 S 47°17'25\" W 17.69'
- L65 N 60°01'00\" W 30.02'
- L66 S 34°12'57\" W 60.46'
- L67 S 05°31'39\" E 62.29'
- L68 S 14°28'13\" E 32.02'
- L69 S 57°48'15\" E 31.91'
- L70 N 78°41'24\" E 78.49'
- L71 N 08°31'51\" E 20.22'
- L72 N 79°06'52\" E 15.262'
- L73 N 00°00'00\" W 78.289'

- L74 N 17°51'35\" W 94.56'
- L75 N 63°25'37\" W 30.60'
- L76 S 83°56'45\" W 68.37'
- L77 S 44°01'44\" W 41.73'
- L78 S 00°40'05\" W 73.01'
- L79 S 13°40'17\" E 58.03'
- L80 S 18°13'30\" E 68.33'
- L81 N 83°49'47\" E 37.22'
- L82 N 55°51'51\" E 71.28'
- L83 N 18°26'02\" E 75.899'

Alfred J. Watson
ALFRED J. WATSON
PROFESSIONAL SURVEYOR AND MAPPER
#2300 - STATE OF FLORIDA

- ABBREVIATIONS:**
- (C) = CALCULATED
 - CRD = CORNER
 - CL = CENTERLINE
 - CH = CONCRETE MONUMENT
 - (D) = DEED
 - DR = DEED BOOK
 - DE = DRAINAGE EASEMENT
 - ESMT = EASEMENT
 - FIP = FOUND IRON PIPE
 - FIR = FOUND IRON ROD
 - FND = FOUND NAIL & DISC
 - FPL = FLORIDA POWER AND LIGHT
 - GOVT = GOVERNMENT
 - L = ARC LENGTH
 - (D) = HEAD-POD
 - HWL = HIGH WATER LINE
 - OSB = OFFICIAL RECORD BOOK
 - (P) = PLAT
 - PR = PLAT BOOK
 - PC = POINT OF CURVATURE
 - PCP = PERMANENT CONTROL POINT
 - PI = POINT OF INTERSECTION
 - PL = PROPERTY LINE
 - POB = POINT OF BEGINNING
 - ROC = POINT OF COMMENCEMENT
 - RM = PERMANENT REFERENCE MONUMENT
 - PT = POINT OF TANGENCY
 - RUDE = PUBLIC UTILITY & DRAINAGE EASEMENT
 - RU = PUBLIC UTILITY EASEMENT
 - ENG = RANGE
 - R/W = RIGHT-OF-WAY
 - SEC = SECTION
 - SIR = SET IRON ROD
 - SME = SEWER MAINTENANCE EASEMENT
 - SUBD = SUBDIVISION
 - T = TANGENT
 - TWP = TOWNSHIP
 - UE = UTILITY EASEMENT
 - URGS = UNITED STATES GEOGRAPHIC SURVEY



Applicant's Legal Checked
By 9/16/09
Pages 4 thru 5

GRAPHIC SCALE: 1" = 350'
DCL 2009-00034

RECEIVED
SEP 14 2009

DATE OF FIELD WORK: 06/06/2009	BEARINGS SHOWN HEREON ARE BASED ON: West Line of the SW 1/4 of Section 18-46-24 Being N 01°20'21\" W	PAGE NUMBER: 1 of 5
REVISION: Easements	DATE: 08/31/2009	
SCALE: 1" = 350'	DRAWN BY: KLL	CHECKED BY: RAW
DATE OF SIGNATURE: 08/31/2009		JOB NUMBER: 2007-1114J

EXHIBIT A

*DESCRIPTIONS OF UPLAND, ISLANDS, AND
MANGROVE IMPACT AREAS ON SUBJECT PROPERTY
AS SHOWN ON PAGE 1*

The Metes and Bounds Descriptions as provided are for County Planning and GIS Information Only, Therefore, these Alternative Descriptions do not Impact Current Deeded Property or Current Ownership of Subject Properties .

**Point of Commencement For All Following Metes and Bounds Descriptions is the Northwest Corner of Section 19, Township 46 South, Range 24 East.
Latitude 26°27'52.21" N; Longitude 81°57'03.82" W
Florida State Plane Coordinates: N 774,525.15; E 672,176.92**

UPLANDS AREA 1

Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, Go N 90°00'00" E along the North line of said section for a distance of 1,674.80 feet; thence S 00°20'00" E for 1,244.69 feet to the Point of Beginning of the following described Uplands Area 1:

From said Point of Beginning, continue S 00°20'00" E, 757.26 feet to a point of curvature (curve having a Radius of 135.00 feet, Delta Angle of 35°01'06", and Arc Length of 82.51 feet); thence continue along said curve to a point of tangency (Chord Bearing S 17°10'33" W and Chord Length of 81.23 feet); thence run S 34°41'00" W for a distance of 21.40 feet (L1) to the Northerly right-of-way of a county road known as Main Street (as recorded in Deed Book 137 at page 117); thence run S 55°19'09" E along said right-of-way for 857.63 feet; thence go N 00°00'00" W for 26.30 feet (L2); thence N 90°00'00" E for 330.00 feet; thence N 00°00'00" W, 300.00 feet; thence run S 90°00'00" W, 330.00 feet; thence N 00°00'00" W for 541.73 feet; thence N 08°53'40" W, 99.77 feet (L3); thence N 25°11'24" W, 64.85 feet (L4); thence N 47°33'45" W for 115.40 feet (L5); thence N 52°10'01" W for 118.66 feet (L6); thence N 54°15'56" W, 98.63 feet (L7); thence N 76°51'14" W, 28.78 feet (L8); thence N 59°47'06" W for 33.38 feet (L9); thence N 69°56'42" W for a distance of 79.38 feet (L10); thence N 79°33'33" W, for 31.52 feet (L11); thence N 76°25'44" W for 215.096 feet (L12) back to the Point of Beginning of the herein described "Uplands Area 1" portion of the Subject Property.

Containing Approximately 17.39 Acres or 757,350.57+/- Square Feet.

UPLANDS AREA 2

Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, Go N 90°00'00" E along the North line of said section for a distance of 1,674.80 feet; thence S 00°00'00" E for 2,001.94 feet to a point of curvature (curve having a Radius of

135.00 feet, Delta Angle of 35°01'06", and Arc Length of 82.51 feet); thence continue along said curve to a point of tangency (Chord Bearing S 17°10'33" W and Chord Length of 81.23 feet); thence run S 34°41'00" W for a distance of 21.40 feet (L1) to the Northerly right-of-way of a county road known as Main Street, as recorded in Deed Book 137 at page 117, thence run S 55°19'09" E along said right-of-way for 55.04 feet (L13); thence run S 00°00'00" E for a distance of 60.80 feet (L14) to the Point of Beginning of the following described Uplands Area 2:

From said Point of Beginning, run S 55°19'09" E, along the Southerly right-of-way line of Main Street for a distance of 802.59 feet; thence go N 00°00'00" W for 37.10 feet (L15); thence N 90°00'00" E, 330.00 feet; thence S 00°00'00" E for 10.00 feet (L16); thence N 90°00'00" E, 600.00 feet; thence S 00°00'00" E for 200.00 feet; thence S 90°00'00" W for 600.00 feet; thence S 00°00'00" E, 139.27 feet to the face of a concrete seawall; thence N 81°01'06" W for 47.02 feet (L17); thence N 08°45'51" E, 40.82 feet (L18); thence N 82°06'39" W for 20.16 feet (L19); thence S 08°21'15" W for 40.65 feet (L20); thence N 81°27'39" W for 266.85 feet (L21); thence N 00°00'00" W for 13.12 feet (L22); thence N 89°15'56" W, 160.44 feet (L23); Thence N 83°12'26" W for 85.70 feet (L24); thence N 75°35'47" W for 44.71 feet (L25); thence S 89°40'03" W for a distance of 41.06 feet (L26); thence N 73°24'43" W for 243.13 (L27); thence S 28°56'17" W for 15.94 feet (L28), thence N 64°44'23" W, 98.845 feet (L29); thence N 00°00'00" W for a distance of 585.154 feet back to the Point of Beginning of the herein described "Uplands Area 2" portion of the subject parcel.

Containing Approximately 11.84 Acres or 515,869.63 +/- Square Feet.

MANGROVE IMPACT AREA

Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, Go N 90°00'00" E along the North line of said section for a distance of 1,674.80 feet; thence continue N 90°00'00" E, along said North section line, for a distance of 1,010.74 feet; thence run S 00°00'00" E for 1,851.57 feet to the Point of Beginning of the following described "Mangrove Impact Area":

From Said Point of Beginning, continue S 00°00'00" E for 407.08 feet; thence S 90°00'00" W, 330.00 feet; thence N 00°00'00" W, 511.00 feet; thence S 67°10'36" E for 55.64 feet (L30); thence S 37°58'33" E, 65.02 feet (L31); thence S 02°30'47" E for 81.13 feet (L32); thence S 44°00'00" E for 60.00 feet (L33); thence S 00°00'00" E for 40.00 feet (L34), thence N 45°00'00" E, 60.00 feet (L35); thence N 00°00'00" W, 20.00 feet (L36); thence N 45°00'00" E for 100.00 feet (L37); thence S 89°59'37" E, 80.334 (L38) feet back to the Point of Beginning.

Containing Approximately 3.01 Acres or 131,117.34 +/- Square Feet.

ISLAND 1

Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, thence go N 90°00'00" E along the North line of Section 19 for a distance of 1,674.80 feet; thence continue along said section line, N 90°00'00" E for 507.74 feet; thence run S 00°00'00" E for a distance of 135.00 feet to the Point of Beginning of the following described "Island 1":

From the Point of Beginning, run S 73°29'44" W, 112.64 feet (L39); thence S 32°54'19" W for 60.75 feet (L40); thence S 07°35'41" E for 90.80 feet (L41); thence go S 49°32'16" E, 44.69 feet (L42); thence N 74°44'42" E for a distance of 45.61 feet (L43); thence run S 50°21'21" E for 45.45 feet (L44); thence S 88°36'10" E, 82.02 feet (L45); thence go N 35°05'45" E for 45.22 feet (L46); thence S 58°23'33" E, 15.26 feet (L47); Thence N 28°42'21" E, for 95.77 feet (L48); thence N 06°00'32" E for 38.21 feet (L49); thence run N 45°31'32" W for 77.08 feet (L50); thence N 68°11'55" W for a distance of 43.08 feet (L51); thence N 89°59'46" W, 59.991 feet (L52) back to the Point of Beginning

Containing Approximately 1.16 Acres or 50,379.00 +/- Square Feet.

ISLAND 2

Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, thence go N 90°00'00" E along the North line of Section 19 for a distance of 1,674.80 feet, thence continue N 90°00'00" E, along said North section line, for a distance of 1,010.74 feet; thence run S 00°00'00" E for 250.28 feet to the Point of Beginning of the following described "Island 2":

From the Point of Beginning, go N 78°18'38" W for a distance of 100.08 feet (L53); thence go S 80°56'01" W, for a distance of 95.19 feet (L54); thence go S 31°45'34" W for 148.19 feet (L55); thence run S 11°11'07" E for 180.43 feet (L56); thence S 57°37'10" E, 97.10 feet (L57); thence go S 76°07'49" E for 83.43 feet (L58); thence N 43°52'36" E, 72.14 feet (L59); thence go N 15°15'18" W for 22.80 feet (L60); thence N 49°17'21" E, 36.944 feet (L61); thence N 00°00'00" W, 271.633 (L62) feet back to the Point of Beginning.

Containing approximately 1.93 Acres or 83,986.68 +/- Square Feet of said island on the original Subject Property.

ISLAND 3

Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, thence go N 90°00'00" E along the North line of Section 19 for a distance of 1,674.80 feet, thence continue N 90°00'00" E, along said North section line, for a distance of 1,010.74 feet; thence run S 00°00'00" E for 798.83 feet to the Point of Beginning of the following described "Island 3":

From said Point of Beginning, run N 50°11'40" W for a distance of 63.78 feet (L63); thence go S 47°17'26" W for 17.69 feet (L64); thence N 60°01'06" W, 30.02 feet (L65); thence S 34°12'57" W for 60.46 feet (L66); thence S 05°31'39" W for 62.29 feet (L67); thence S 14°28'13" E for 32.02 feet (L68); Thence go S 57°48'15" E, 31.91 feet (L69); thence run N 78°41'24" E, 76.49 feet (L70); thence go N 08°31'51" E for 20.22 feet (L71); thence run N 79°06'52" E for a distance of 15.262 feet (L72); thence run N 00°00'00"W, for a distance of 78.289 feet (L73) back to the Point of Beginning.

Containing Approximately 0.37 Acres or 16,010.95 +/- Square Feet of "Island 3" on the original Subject Property.

ISLAND 4

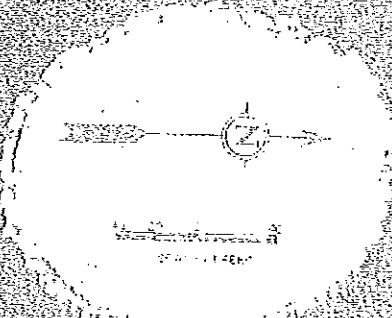
Commencing at the Northwest Corner of Section 19, Township 46 South, Range 24 East, thence go N 90°00'00" E along the North line of Section 19 for a distance of 1,674.80 feet, thence continue N 90°00'00" E, along said North section line, for a distance of 1,010.74 feet; thence run S 00°00'00" E for 1,288.00 feet; thence run S 90°00'00" W, 215.00 feet to the Point of Beginning of the following described "Island 4":

From the Point of Beginning of "Island 4", go N 17°51'36" W for a distance of 94.56 feet (L74); thence run N 53°25'37" W for 38.60 feet (L75); thence run S 83°56'45" W, 66.37 feet (L76); thence go S 44°01'44" W for a distance of 41.73 feet (L77); thence go S 00°47'05" W for 73.01 feet (L78); thence S 13°40'17" E for 38.08 feet (L79); thence S 18°13'30" E, 86.33 feet (L80); thence go N 83°49'47" E for 37.22 feet (L81); thence run N 55°51'51" E, 71.28 feet (L82); thence run N 18°26'02" E for a distance of 75.899 feet (L83) back to the Point of Beginning.

Containing Approximately 0.62 Acres or 27,031.50 +/- Square Feet.

LAND RECORDS DIVISION

EXHIBIT C



Prepared by: [illegible]
Date: [illegible]

LOT DIMENSIONS & AREAS AND TRAVEL DISTANCE

LOT NUMBER	WIDTH X DEPTH (FEET)	AREA (SQ. FT.)	LOT NUMBER	WIDTH X DEPTH (FEET)	AREA (SQ. FT.)	LOT NUMBER	WIDTH X DEPTH (FEET)	AREA (SQ. FT.)
A-1	31' X 75'	2325	E-1	28' X 50'	1400	H-2	30' X 50'	1500
A-2	25' X 80'	2000	E-2	30' X 50'	1500	H-3	30' X 50'	1500
A-3	25' X 80'	2000	E-3	26' X 70'	1820	H-4	31' X 50'	1550
A-4	25' X 80'	2000	E-4	31' X 70'	2170	H-5	24' X 70'	1680
A-5	25' X 80'	2000	E-5	35' X 50'	1750	H-6	24' X 50'	1200
A-6	25' X 80'	2000	E-6	23' X 50'	1150	H-7	27' X 50'	1350
A-7	25' X 80'	2000	E-7	25' X 50'	1250	H-8	24' X 50'	1200
A-8	25' X 80'	2000	E-8	27' X 50'	1350	H-9	20' X 50'	1000
A-9	25' X 80'	2000	E-9	25' X 70'	1750	H-10	20' X 50'	1000
A-10	25' X 80'	2000	E-10	25' X 70'	1750	H-11	20' X 50'	1000
A-11	25' X 80'	2000	E-11	20' X 50'	1000	H-12	20' X 50'	1000
A-12	25' X 80'	2000	E-12	20' X 50'	1000	H-13	20' X 50'	1000
A-13	25' X 80'	2000	E-13	25' X 50'	1250	H-14	20' X 50'	1000
A-14	25' X 80'	2000	E-14	25' X 50'	1250	H-15	20' X 50'	1000
A-15	25' X 80'	2000	E-15	24' X 50'	1200	H-16	20' X 50'	1000
A-16	25' X 80'	2000	E-16	24' X 50'	1200	H-17	20' X 50'	1000
U-1	25' X 80'	2000	E-17	20' X 50'	1000	H-18	20' X 50'	1000
U-2	25' X 80'	2000	E-18	20' X 50'	1000	H-19	20' X 50'	1000
U-3	25' X 80'	2000	E-19	20' X 50'	1000	H-20	20' X 50'	1000
U-4	25' X 80'	2000	E-20	20' X 50'	1000	H-21	20' X 50'	1000
U-5	25' X 80'	2000	E-21	20' X 50'	1000	H-22	20' X 50'	1000
U-6	25' X 80'	2000	E-22	20' X 50'	1000	H-23	20' X 50'	1000
U-7	25' X 80'	2000	E-23	20' X 50'	1000	H-24	20' X 50'	1000
U-8	25' X 80'	2000	E-24	20' X 50'	1000	H-25	20' X 50'	1000
U-9	25' X 80'	2000	E-25	20' X 50'	1000	H-26	20' X 50'	1000
U-10	25' X 80'	2000	E-26	20' X 50'	1000	H-27	20' X 50'	1000
U-11	25' X 80'	2000				I-2	20' X 50'	1000
U-12	25' X 80'	2000				I-3	20' X 50'	1000
U-13	25' X 80'	2000				I-4	20' X 50'	1000
U-14	25' X 80'	2000				I-5	20' X 50'	1000
U-15	25' X 80'	2000				I-6	20' X 50'	1000
U-16	25' X 80'	2000				I-7	20' X 50'	1000
U-17	25' X 80'	2000				I-8	20' X 50'	1000
U-18	25' X 80'	2000				I-9	20' X 50'	1000
U-19	25' X 80'	2000				I-10	20' X 50'	1000
U-20	25' X 80'	2000				I-11	20' X 50'	1000
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U-65	25' X 80'	2000						
U-66	25' X 80'	2000						
U-67	25' X 80'	2000						
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U-69	25' X 80'	2000						
U-70	25' X 80'	2000						
U-71	25' X 80'	2000						
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U-73	25' X 80'	2000						
U-74	25' X 80'	2000						
U-75	25' X 80'	2000						
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U-77	25' X 80'	2000						
U-78	25' X 80'	2000						
U-79	25' X 80'	2000						
U-80	25' X 80'	2000						
U-81	25' X 80'	2000						
U-82	25' X 80'	2000						
U-83	25' X 80'	2000						
U-84	25' X 80'	2000						
U-85	25' X 80'	2000						
U-86	25' X 80'	2000						
U-87	25' X 80'	2000						
U-88	25' X 80'	2000						
U-89	25' X 80'	2000						
U-90	25' X 80'	2000						
U-91	25' X 80'	2000						
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U-95	25' X 80'	2000						
U-96	25' X 80'	2000						
U-97	25' X 80'	2000						
U-98	25' X 80'	2000						
U-99	25' X 80'	2000						
U-100	25' X 80'	2000						

THIS SITE PLAN APPROVED BY THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS PURSUANT TO SECTION 163.01 OF THE LEE COUNTY ZONING ORDINANCE (35-17). THIS APPROVAL CONFERS THE STATUS OF A NONCONFORMING LOT OF RECORD TO THE FOLLOWING ZONING RESOLUTION(S):

DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THIS _____ DAY OF _____ 19____ BY _____

NOTE: L-ESS
 Lot J-27

LOT SIZES ON CURVED BOUNDARIES, IRREGULAR LOTS & CORNERS ARE ESTIMATED BASED ON APPENDIX A-2 OF THE DEVELOPMENT STANDARDS ORDINANCE NO. 35-27.

CHURCH ASSOCIATES
 555 N. DE SOTO AVE.
 LOT 105 113
 DATE 11-17-1980