VILLAGE OF ESTERO
VILLAGE COUNCIL MEETING
PACKET
OCTOBER 27, 2021, 09:30 AM

www.Estero-fl.gov

COVID-19 NOTICE:

The Village Council Meeting will be conducted physically in Council Chambers at Village Hall, 9401 Corkscrew Palms Circle, with an opportunity to participate virtually. The meeting will be broadcasted live via the Village of Estero website https://estero-fl.gov/council/watch-meetings-online/. Access in Council Chambers will be limited in order to comply with the safety instructions relating to COVID-19. Please see the bottom of this agenda for further information and instructions for public participation.

AGENDA

VILLAGE COUNCIL MEETING

9401 Corkscrew Palms Circle, Estero, Florida

October 27, 2021, 09:30 am

1. CALL TO ORDER

INVOCATION -- Pastor Chris Mueller Legacy Church

PLEDGE OF ALLEGIANCE

ROLL CALL

2. APPROVAL OF AGENDA, ADDITIONS, AND DELETIONS

3. ACTION ITEMS

a. Brooks Town Center

Request by third party homeowner associations to intervene in Council hearings related to Vested Rights Application and Appeal of Administrative Decision.

Recommended Action:

Allow legal representative of homeowner's association a limited time to speak on each item.

Attachment: Letter From Intervenor.pdf

NOTE

PUBLIC COMMENT ON AGENDA ITEM #4
Please note: The Council is not considering the site plan or development proposal. Public comment should be related to items 4 a and 4 b only. (3 minutes per speaker)

4. QUASI-JUDICIAL HEARINGS

INTRODUCTORY INFORMATION

Attachment: 1_Mary Gibbs Affidavit_Resume .pdf
Attachment: Exhibit A.1 DRI DO 1997.pdf
Attachment: Exhibit A.2 MPD Res. Z-97-037.pdf
Attachment: Exhibit A.3 Excerpt DRI DO 5th Amended.pdf
Attachment: Exhibit A.4 Final Plan Approval 2007.pdf
Attachment: Exhibit A.5 MPD amendment Z-13-009.pdf
Attachment: Exhibit A.6 5.19.20 MEMORANDUM.pdf
Attachment: Exhibit A.7 July 27_ 2020 letter to McMichael.pdf

a. Brooks Town Center -- Vested Rights Determination.

Recommended Action:
Acknowledge vesting for "multifamily low rise" use for Long Bay Partners, LLC (property owner) only. No vested rights exist for a specific number of units, or administrative (staff) review process.

Attachment: 1_VRD2021-E001 Staff Report for Council 10-27-21.pdf
Attachment: 2_Supplemental Facts for Vested Rights Analysis Final.pdf
Attachment: Exhibit B.1_Lee County 94-2ER Excerpt.pdf
Attachment: Exhibit B.2 Staff Report _Excerpt_.pdf
Attachment: Exhibit B.3 Brooks TIS _Excerpt_.pdf
Attachment: Exhibit B.4_HE Recommendation _Excerpt_.pdf
Attachment: Exhibit B.5 Laws of Florida 2015-193 _Excerpt_.pdf
Attachment: Exhibit B.6 Lee County Ordinance 94-24 _Excerpt Sec 34-940_.pdf
Attachment: Exhibit B.7_Brooks DRI DO 5th Amend _Excerpt_.pdf
Attachment: 4_Affidavit _Resume- Walter Keller.pdf
Attachment: 5_Vested Rights Analysis Final.pdf
Attachment: 6_The Brooks Community Site Plan 2001.pdf
Attachment: APPLICANT INFORMATION FOR VESTED RIGHTS front cover.pdf
Attachment: 1_10.6.21_ Ltr to Nancy Stroud_Brooks of Bonita Springs MPD DRI.pdf
Attachment: 2_Application Vested Rights Determination.pdf
Attachment: 3_Narrative - Reason for Vested Rights Determination.pdf
Attachment: 4_ Legal Description.pdf

b. Brooks Town Center -- Appeal of Administrative Decision by staff.

Recommended Action:
Affirm staff decision.

Attachment: 1_APP2021-E001 Staff Report for Village Council 10-27-21.pdf
Attachment: 2_Supplemental Statement of Facts Administrative Appeal Final.pdf
Attachment: 3_Exhibit C.1 Charter Excerpt Sec. 12_7_.pdf
Attachment: 4_Exhibit C.2 Section 2-501F.pdf

Attachment: 5_APPLICATION AND PROCEDURE FOR APPROVALdocx.pdf
Attachment: 6_ Affidavit_Resume MBishop.pdf
Attachment: APPLICANT INFORMATION FOR ADMINISTRATIVE APPEAL front cover.pdf
Attachment: 1 Application Appeal of Administrative Action.pdf
Attachment: 3 Action Being Appealed 2020-07-27 Sufficiency Letter.pdf
Attachment: 4 Summary of Action Being Appealed.pdf
Attachment: 4a SUMMARY Attachment Brooks Resolution Z-97-037.pdf
Attachment: 4b SUMMARY Attachment Brooks ADD2007-00064_Final Plan Approval_.pdf
Attachment: 4c SUMMARY Attachment Brooks Resolution Z-13-009.pdf
Attachment: 4d SUMMARY Attachment 1 2020-09-17 Gibbs Ltr re not process application.pdf
Attachment: 5 Reason for Appeal.pdf
Attachment: 5a Resolution Z-97-03-7 Final Plan Approval Conditions.pdf
Attachment: 5b Resolution Z-97-037 - Town Center TC list of permitted uses.pdf
Attachment: 5c ADD2017-E012 Pelican Landing Lot 5 Hotel - Staff Report for Council 4-11-2018.pdf
Attachment: 5d ADD2017-E012 Pelican Landing Lot 5 Hotel -Planning and Zoning Board Minutes3-20-2018.pdf
Attachment: 5e Resolution Z-97-037Town Center list of property development regulations .pdf

5. ADJOURNMENT

General Attachments

- Transcript.pdf

ESTERO VILLAGE COUNCIL MEETING
WEDNESDAY, OCTOBER 27, 2021, 9:30 A.M.

DISCLAIMER:
THIS FILE REPRESENTS AN UNEDITED VERSION OF REALTIME CAPTIONING WHICH SHOULD NEITHER BE RELIED UPON FOR COMPLETE ACCURACY NOR USED AS A VERBATIM TRANSCRIPT.
ANY PERSON WHO NEEDS A VERBATIM TRANSCRIPT OF THE PROCEEDINGS MAY NEED TO HIRE A COURT REPORTER.

09:30:11 >>MAYOR ERRINGTON: GOOD MORNING.

09:30:12 WELCOME.

09:30:15 AS CHAIR I WOULD LIKE TO NOW CALL THE MEETING TO ORDER.

09:30:18 9:30 A.M.

09:30:22 WEDNESDAY OCTOBER 27, 2021.

09:30:25 VILLAGE COUNCIL OF ESTERO MEETING IS NOW CALLED TO

09:30:28 ORDER.

09:30:31 IF YOU DO SO, PLEASE SILENCE YOUR CELL PHONES.

09:30:35 IF YOU HAVE ANY KIND OF DEVICE THAT MAY WARN YOU OF

09:30:38 SOMETHING THAT IS AN EMERGENCY FOR YOURSELF, PLEASE

09:30:39 LEAVE IT ON.

09:30:44 AND ALSO, PLEASE, AS A REMINDER, COVID IS STILL WITH US,

09:30:49 AND YOU WEAR YOUR MASKS AS YOU DEEM APPROPRIATE.

09:30:53 AND ON THE DAIS, WE ARE AT FREE LIBERTY TO DO WHAT WE

09:30:57 WANT TO DO, AND I WILL WEAR MY MASK WHEN NOT TALKING.

09:30:58 SO THANK YOU FOR COMING.

09:31:05 AND WE WANT THIS TO BE A PLEASANT MORNING.

09:31:06 AND SO WE ARE GLAD YOU ARE HERE.

09:31:11 SO WITH THAT, I WOULD LIKE TO LEAD THE INVOCATION.

09:31:14 AND CHRIS MUELLER WITH LEGACY CHURCH WILL NOW LEAD US

09:31:15 IN THAT.

09:31:18 THANK YOU, PASTOR CHRIS.

09:31:20 >>PASTOR MUELLER: IT IS A PLEASANT MORNING.

09:31:24 I WANT YOU TO KNOW THAT BLUE IS MY FAVORITE COLOR.

09:31:26 SO GLAD I WORE MY BLUE SHIRT.

09:31:28 A GLORIOUS DAY AND LET'S PRAISE THE LORD BEFORE WE

09:31:29 BEGIN.

09:31:31 FATHER IN HEAVEN, LORD, WE THANK YOU SO MUCH FOR THE

09:31:34 OPPORTUNITY TO BOW BEFORE YOU NOW AND SAY THAT YOU ARE

09:31:35 OUR GOD.

09:31:36 WE LOVE YOU.

09:31:38 YOU ARE A GRACIOUS GOD.

09:31:39 OUR MERCIFUL GOD.

09:31:43 AND WE THANK YOU FOR BLESSING US, PROTECTING US, AND

09:31:44 WATCHING OVER US.

09:31:47 DURING THIS TIME, PRAY THAT YOU WOULD JUST HELP THESE

09:31:50 PROCEEDINGS AND THESE LEADERS AND ALL THE PEOPLE THAT

09:31:55 ARE HERE TODAY TO HAVE THIS SUCCESSFUL EXPERIENCE AND

09:31:57 THAT YOU MAY BE GLORIFIED.

09:31:59 WE PRAY TO YOU.

09:31:59 WE THANK YOU.

09:32:01 AND WE PRAY ONLY IN THE NAME OF JESUS THIS DAY.

09:32:04 AMEN.

09:32:04 THANK YOU.

09:32:06 HAVE A GOOD DAY.

09:32:07 >>MAYOR ERRINGTON: THANK YOU.

09:32:13 AND PLEASE JOINS US WITH THE PLEDGE OF ALLEGIANCE AND

09:32:15 COUNCIL MEMBER JIM WARD WILL LEAD US.

09:32:29 [PLEDGE OF ALLEGIANCE]

09:32:34 >>MAYOR ERRINGTON: MADAM CLERK, PLEASE CALL THE ROLL.

09:32:40 A MOTION TO APPROVE THE ZOOM

09:32:40 ATTENDEE.

09:32:44 I NEED A MOTION TO APPROVE COUNCIL MEMBER JIM WILSON

09:32:48 BEING ON ZOOM.

09:32:52 >>JOANNE RIBBLE: SO MOVED.

09:32:54 >>CLERK: COUNCILMEMBER RIBBLE.

09:32:57 >>JOANNE RIBBLE: AYE.

09:32:59 >>LARRY FIESEL: AYE.

09:33:01 >>JIM BOESCH: HERE.

09:33:03 >>JIM WILSON: AYE.

09:33:05 >>VICE-MAYOR MCLAIN: HERE.

09:33:08 >>MAYOR ERRINGTON: HERE.

09:33:16 NOW I AM GOING TO CALL ROLL.

09:33:16 >>LARRY FIESEL: HERE.

09:33:19 >>JIM BOESCH: HERE.

09:33:23 >>JIM WILSON: HERE.

09:33:24 >>VICE-MAYOR MCLAIN: HERE.

09:33:29 >>MAYOR ERRINGTON: HERE.

09:33:33 >> MAYOR, I WOULD LIKE TO ADDRESS THE COUNCIL, PLEASE.

09:33:38 MEMBERS OF THE VILLAGE COUNCIL, VILLAGE STAFF AND

09:33:38 RESIDENTS OF ESTERO.

09:33:42 I HAVE BEEN ADVISED IN WRITING BY VILLAGE LEGAL COUNSEL

09:33:45 THAT I JUST ABSTAIN FROM VOTING ON ANY ISSUES BEFORE

09:33:47 THE COUNCIL TODAY.

09:33:50 MANY OF YOU IN THIS ROOM TODAY KNOW THAT OVER THE PAST

09:33:54 15 YEARS, I HAVE SERVED THIS COMMUNITY ON A NUMBER OF

09:33:55 DIFFERENT LEVELS.

09:33:58 THIS IS THE FIRST AND ONLY TIME THAT I HAVE EVER

09:34:01 ABSTAINED FROM A VOTE ON ANY ISSUE.

09:34:04 THIS IS A VERY DIFFICULT DECISION FOR ME AND ONE THAT I

09:34:07 HAVE GIVEN CONSIDERABLE THOUGHT AND CONSIDERATION.

09:34:09 BUT IT IS A DECISION THAT I BELIEVE IS IN THE BEST

09:34:11 INTEREST OF ALL CONCERNED.

09:34:15 I JOINED THIS COUNCIL EARLIER THIS YEAR TO SERVE THE

09:34:19 RESIDENTS OF ESTERO AND TO HAVE A POSITIVE IMPACT ON

09:34:21 THE FUTURE OF ESTERO GOING FORWARD.

09:34:25 AND IT IS MY INTENT TO CONTINUE TO DO SO IN THE FUTURE.

09:34:28 SO IT CONCERNS ME GREATLY THAT I HAVE TO MAKE THIS

09:34:29 DIFFICULT DECISION.

09:34:32 SINCE BEING ELECTED TO COUNCIL, I HAVE AVOIDED ANY

09:34:36 PUBLIC DISCUSSION ON THIS MATTER THAT IS BEFORE THE

09:34:38 COUNCIL THIS MORNING.

09:34:41 I HAD, HOWEVER, DISCUSSION ON THIS MATTER WITH

09:34:46 ESTERO LEGAL COUNSEL AND ESTERO VILLAGE STAFF.

09:34:48 THERE IS, HOWEVER, A PERCEPTION OF AN APPEARANCE OF

09:34:51 CONFLICT OF INTEREST RELATED TO ACTION THAT I TOOK

09:34:54 MONTHS BEFORE ELECTING -- BEING ELECTED TO THE VILLAGE

09:34:55 COUNCIL.

09:34:58 FOR THOSE OF YOU WHO AREN'T AWARE, PRIOR TO MY ELECTION

09:35:01 TO THE COUNCIL, I WAS PREVIOUSLY NAMED AT AN INTERVENOR

09:35:05 IN PRIOR LITIGATION RELATING TO THE APPLICANTS IN

09:35:09 TODAY'S PETITIONS INVOLVING SIMILAR ISSUES.

09:35:13 AFTER CONFERRING WITH VILLAGE ATTORNEY AND FOLLOWING

09:35:16 HIS LEGAL ADVICE, I WILL BE ABSTAINING FROM

09:35:19 TODAY'S VOTE AND NOT WARPING IN THE REMAINDER OF THIS

09:35:22 MEETING.

09:35:24 I AM DOING THIS TO PRESERVE THE INTEGRITY OF THE

09:35:28 COUNCIL'S ACTIONS TODAY, AND I BELIEVE IT IS IN THE BEST

09:35:29 INTEREST OF THE VILLAGE.

09:35:32 AT THIS POINT, I WILL ASK DEREK TO PLEASE ADDRESS THE

09:35:36 COUNCIL ON THIS ISSUE AND PROVIDE SOME GUIDANCE OF THE

09:35:39 ADVICE HE HAD GIVEN ME YET.

09:35:44 >>DEREK ROONEY: THANK YOU, COUNCIL MEMBER.

09:35:48 COUNCIL MEMBER WARD CAME TO ME LAST WEEK -- I DON'T

09:35:49 KNOW IF MY MIC IS ON.

09:35:51 OKAY.

09:35:55 COUNCIL MEMBER WARD CAME TO ME LAST WEEK ABOUT A

09:36:01 CONCERN HE HAD REGARDING PRIOR INVOLVEMENT AS A PARTY

09:36:04 INTERVENOR IN LITIGATION RELATING TO THE APPLICANTS

09:36:07 TODAY ON MATTERS SUBSTANTIALLY SIMILAR TO THE TWO ITEMS

09:36:09 THAT ARE GOING TO BE HEARD TODAY.

09:36:15 WE DISCUSSED THE -- THIS IN DETAIL AND I RESEARCHED

09:36:19 HEAVILY THE REQUIREMENTS WHETHER THIS CONSTITUTES AN

09:36:22 ACTUAL CONFLICT OF INTEREST UNDER FLORIDA LAW, TO WHICH

09:36:26 MY DETERMINATION WAS IT DID NOT.

09:36:31 HOWEVER, IN A QUASI-JUDICIAL PROCEEDING, THERE IS

09:36:34 ANOTHER ELEMENT OF -- AS THE COUNCIL IS TO BE

09:36:38 DETERMINED TO BE FREE AND IMPARTIAL DECISION-MAKER,

09:36:42 FREE OF BIAS, FREE OF ANY POTENTIAL PREJUDICE.

09:36:45 AND OUT OF CONCERN THAT THE APPLICANTS HERE MAY HAVE

09:36:52 CONCERNS ABOUT COUNCILMAN WARD'S PARTICIPATION, UNDER

09:36:55 THAT REASONING I HAVE ADVISED HIM IN MY LEGAL OPINION

09:36:58 HE SHOULD RECUSE HIMSELF FROM DISCUSSION TODAY AND

09:37:00 OBTAIN FROM ANY VOTES.

09:37:03 HE HAS FILED THE REQUIRED PAPERWORK.

09:37:06 A MEMO TO THE EFFECT IS ON FILE, AS WELL AS THE

09:37:10 DISCLOSURES REQUIRED BY STATE LAW WHEN A VOTING MEMBER

09:37:14 OBJECT CITIZENS FROM A VOTE.

09:37:21 >>MAYOR ERRINGTON: THANK YOU.

09:37:32 NEXT ON THE AGENDA IS THE APPROVAL OF THE AGENDA,

09:37:35 ADDITIONS, DELETIONS.

09:37:39 DOES ANYONE HAVE ANY CHANGES YOU WISH TO MAKE?

09:37:41 >>JIM BOESCH: I MAKE THE MOTION THAT WE GO FORWARD.

09:37:46 >>MAYOR ERRINGTON: MOTION HAS BEEN MADE BY COUNCIL

09:37:49 MEMBER BOESCH.

09:37:54 SECOND BY COUNCIL MEMBER RIBBLE.

09:37:55 >>JOANNE RIBBLE: HERE.

09:37:57 >>JIM WILSON: HERE.

09:37:58 >>JIM BOESCH: AYE.

09:38:03 >>LARRY FIESEL: AYE.

09:38:07 >>VICE-MAYOR MCLAIN: AYE.

09:38:07 >>MAYOR ERRINGTON: AYE.

09:38:10 BEFORE WE GET STARTED ON THE NEXT ITEM OF THE BROOKS

09:38:14 TOWN CENTER, I HAVE SOME COMMENTS I WANT TO MAKE.

09:38:18 BEFORE WE GET STARTED WITH THIS PUBLIC HEARING AND IT

09:38:20 IS IMPORTANT TO SHARE WITH YOU THE PROTOCOL THAT WILL

09:38:22 MAKE THE MEETING GO SMOOTHER AND FASTER.

09:38:26 FIRST, THANK YOU FOR BEING HERE.

09:38:30 THE VILLAGE OF ESTERO COUNCIL WELCOMES YOU, YOUR

09:38:31 CONCERNS AND YOUR VOICE.

09:38:34 THE PROCEDURE OF TODAY'S MEETING WILL BE EXPLAINED

09:38:39 LATER BY ATTORNEYS NANCY STROUD AND DEREK ROONEY.

09:38:41 AFTER MUCH TESTIMONY, COUNCIL WILL VOTE THREE DIFFERENT

09:38:43 TIMES DURING THIS PUBLIC HEARING.

09:38:46 THE VILLAGE OF ESTERO COUNCIL IS REFLECTIVE OF EVERYONE

09:38:50 IN THIS ROOM AND WATCHING ONLINE.

09:38:55 WE MAINTAIN OUR DIGNITY AND COMPOSURE THROUGHOUT ALL

09:38:59 MEETINGS AND WE, IN TURN, ASK ANYONE WHO COMES TO

09:39:00 OBSERVE OR PARTICIPATE TO DO THE SAME.

09:39:03 WE REALLY TRY TO LISTEN WELL.

09:39:06 AND WE IN TURN VOTE.

09:39:10 AS CHAIR, I AM REQUESTING ALL WHO SPEAK, REGARDLESS OF

09:39:14 YOUR ROLE AS ATTORNEY, STAFF, PUBLIC OR COUNCIL TO

09:39:17 SPEAK WITH KINDNESS AND TO PRACTICE PATIENCE THROUGHOUT

09:39:20 THIS HEARING.

09:39:24 THIS CHAMBER HAS NO PLACE FOR EMPTY RHETORIC OR

09:39:25 GRANDSTANDING.

09:39:28 THE COUNCIL IS ONLY INTERESTED IN THE ABSOLUTE TRUTH

09:39:33 AND THE ABSOLUTE AFFIRMNESS OF ALL FACTS PRESENTED.

09:39:36 PONTIFICATING BY ANYONE IS NOT APPROPRIATE.

09:39:41 REGARDLESS OF WHO IS SPEAKING AS CHAIR, I AM REQUESTING

09:39:44 THAT YOU SHOW GENTLENESS IN THE TONE OF YOUR VOICE AND

09:39:48 ALSO IN YOUR BODY LANGUAGE.

09:39:51 WE WILL NOW TURN THE ITEM OF THE BROOKS TOWN CENTER

09:40:00 OVER TO ATTORNEY NANCY STROUD.

09:40:05 >>NANCY STROUD: GOOD MORNING, ESTERO COUNCIL AND

09:40:06 EVERYBODY IN THE AUDIENCE.

09:40:09 I WOULD LIKE TO GIVE YOU A ROAD MAP WHAT WE WILL BE

09:40:11 ADDRESSING IN TODAY'S MEETING REGARDING THE

09:40:15 APPLICATIONS RELATED TO THE BROOKS TOWN CENTER.

09:40:19 THE COUNCIL HAS THREE ITEMS TO DECIDE.

09:40:24 THE FIRST IS WHETHER TO ALLOW CERTAIN BROOKS COMMUNITY

09:40:27 ASSOCIATIONS AND INDIVIDUALS TO BE AN INTERVENOR PARTY

09:40:31 IN THE QUASI-JUDICIAL HEARINGS YOU WILL BE HOLDING ON

09:40:33 THE REMAINING TWO ITEMS.

09:40:37 THE COMMUNITY ASSOCIATIONS ARE REPRESENTED BY COUNCIL.

09:40:39 AND THE INDIVIDUALS.

09:40:42 AND SO THAT WOULD ALLOW THE ASSOCIATIONS, THROUGH

09:40:45 THEIR COUNCIL, MISS BEVERLY GRADY, TO PRESENT EVIDENCE

09:40:49 AND ARGUMENT ON THE REMAINING TWO ITEMS.

09:40:52 THE SECOND AND THE THIRD ITEMS ARE APPLICATIONS THAT

09:40:55 HAVE BEEN BROUGHT BY THE ENTITIES WISHING TO

09:41:00 REDEVELOP THE WINN-DIXIE SITE IN THE TOWN CENTER IN THE

09:41:02 BROOKS COMMUNITY.

09:41:07 AND THOSE APPLICANTS ARE LONG BAY PARTNERS LCC, WHICH

09:41:11 IS THE OWNER OF THE TOWN CENTER, TOP CR ASSOCIATES,

09:41:19 LCC, THE LESSEE OF THE SITE, AND PAC ESTERO, LCC, THE

09:41:21 APARTMENT DEVELOPERS.

09:41:24 THOSE APPLICATIONS ARE SPECIFICALLY FOR, ONE, A

09:41:27 DETERMINATION OF VESTED RIGHTS TO DEVELOP APARTMENTS ON

09:41:27 THE SITE.

09:41:32 AND TWO, AN APPEAL OF AN ADMINISTRATIVE DECISION THAT

09:41:35 WAS MADE -- BY YOUR COMMUNITY DEVELOPMENT DIRECTOR MARY

09:41:39 GIBBS AS TO THE APPROPRIATE PROCESS FOR REVIEWING THE

09:41:41 APARTMENT PROJECT.

09:41:45 TODAY'S DECISIONS ARE NOT ABOUT WHETHER THE PROPOSED

09:41:48 APARTMENT PROJECT SHOULD BE APPROVED OR NOT.

09:41:52 THAT DECISION WILL COME A FUTURE DATE, IF IT COMES AT

09:41:53 ALL.

09:41:57 TODAY'S DECISIONS, HOWEVER, ARE NECESSARILY PRELIMINARY

09:42:00 TO A FUTURE SUCH DECISION.

09:42:03 AND WILL HELP DETERMINE WHAT PROCESS WILL BE FOLLOWED

09:42:06 WHEN THE MERITS OF THE APARTMENT COMPLEX COME BEFORE

09:42:10 THE FINAL DECISION-MAKERS.

09:42:14 AS I MENTIONED, THE SECOND AND THIRD ITEMS ARE

09:42:16 QUASI-JUDICIAL HEARINGS.

09:42:19 ITEMS 4A AND 4B ON THE AGENDA.

09:42:23 WHEN WE GET TO THOSE ITEMS, THE COUNCIL WILL FOLLOW THE

09:42:29 FORMAL QUASI-JUDICIAL PROCESSES WHICH INCLUDES AN

09:42:31 OPPORTUNITY FOR THE PUBLIC TO SPEAK.

09:42:35 WE EXPECT THIS TO BE A LONG MEETING AND COMPLICATED

09:42:38 MEETING AND ALERTED THE PARTIES, AND THAT INCLUDES

09:42:42 MYSELF, THE VILLAGE STAFF THAT EACH PARTY SHALL PLAN TO

09:42:44 TAKE NO MORE THAN AN HOUR IN TOTAL FOR THE

09:42:47 PRESENTATIONS, MEANING ABOUT AN AVERAGE OF 20 MINUTES

09:42:49 PER ITEM.

09:42:51 AND THEY ASSURED ME THEY CAN DO THAT.

09:42:55 THE PUBLIC IS LIMITED TO THREE MINUTES PER INDIVIDUAL.

09:42:59 BUT REPETITIOUS COMMENTS ARE NOT HELPFUL TO THE

09:42:59 PROCEEDINGS.

09:43:04 AND WE HOPE THAT WE -- WHILE WE WELCOME PUBLIC COMMENT

09:43:08 AND TESTIMONY, REPETITION IS NOT NECESSARILY HELPFUL AT

09:43:09 ALL.

09:43:13 I AM SURE MR. ROONEY WILL ASSIST US ALL IN KEEPING US

09:43:16 TO TIME FRAMES SO WE CAN ANTICIPATE A VERY FULL

09:43:20 MORNING, BUT HOPEFULLY THIS WILL NOT TAKE ALL DAY.

09:43:25 IN ORDER TO PROCEED EXPEDITIOUSLY, WE HAVE PROVIDED

09:43:29 EXTENSIVE DOCUMENTATION IN YOUR AGENDA PACKAGES,

09:43:30 PROBABLY MORE THAN YOU USUALLY SEE.

09:43:34 AND THEY ARE SUBMITTED TO BE PART OF THE PROCEEDINGS IN

09:43:36 THESE HEARINGS.

09:43:39 AND THEY INCLUDE THE COMPLETE APPLICATIONS OF THE

09:43:42 DEVELOPERS, THE LETTERS, AND ARGUMENTS FROM THE

09:43:46 INTERVENORS, POTENTIAL INTERVENORS, AND IN FACT,

09:43:49 SUMMARIES AND EXHIBITS FROM THE VILLAGE STAFF AND

09:43:49 EXPERTS.

09:43:54 I WANT TO THANK OUR VILLAGE CLERK FOR PUTTING THESE

09:43:56 EXTENSIVE PACKAGES TOGETHER.

09:44:00 THE VILLAGE STAFF REPORT FOR EACH QUASI-JUDICIAL ITEM,

09:44:03 YOU WILL SEE THE STAFF RECOMMENDATIONS.

09:44:07 TWO EXPERTS THAT PROVIDED OF THE VILLAGE STAFF CASE ARE

09:44:10 AVAILABLE FOR QUESTIONS.

09:44:15 THEY ARE MR. BISHOP, WHO IS SEATED BEHIND THE VILLAGE

09:44:18 MANAGER AND EXPERT CITY PLANNER AND PLANNING

09:44:23 ADMINISTRATOR, AND MR. WALTER KELLER, WHO IS HERE ON

09:44:27 ZOOM, WHO IS AN EXPERT CITY PLANNER AND TRANSPORTATION

09:44:28 PLANNER.

09:44:34 AND MY COLLEAGUE AND CO-COUNSEL GARY OBERHOFF WILL BE

09:44:37 MAKING LEGAL ARGUMENT ON THE VESTED RIGHTS ISSUE.

09:44:41 I THANK YOU AND EVERYONE HERE FOR THEIR PATIENCE.

09:44:44 BUT BEFORE I TURN IT BACK TO MADAM MAYOR FOR THE

09:44:48 INTERVENOR'S MOTION, THE FIRST ITEM ON AGENDA, I WOULD

09:44:51 LIKE TO MAKE SURE THAT YOU KNOW THE CRITERIA FOR

09:44:59 FINDING AN ORGANIZATION OR PERSON TO BE ELIGIBLE TO BE

09:45:02 AN INTERVENOR IN THESE PROCEEDINGS.

09:45:07 TO BE ALLOWED AN INTERVENOR, THE COUNCIL FINDS THAT AN

09:45:09 ORGANIZATION OR PERSON WHO WISHES TO BE THE INTERVENOR

09:45:11 HAS DEMONSTRATED THEY HAVE AN INTEREST IN THE OUTCOME

09:45:15 THAT IS GREATER IN KIND THAN THE GENERAL COMMUNITY

09:45:18 INTEREST IN THE OUTCOME.

09:45:21 WHAT IS KNOWN AS A SPECIAL INJURY TEST.

09:45:25 THAT IS A MATTER FOR THE COUNCIL TO DECIDE IN ITS

09:45:26 DISCRETION.

09:45:29 SO IF THERE ARE NO QUESTIONS, WE CAN PROCEED TO THE

09:45:34 FIRST ITEM REGARDING THE INTERVENTION REQUEST.

09:45:39 AND THE APPLICANT TO BE AN INTERVENOR IS REPRESENTED BY

09:45:50 MISS BEVERLY GRADY.

09:45:51 >> GOOD MORNING.

09:45:55 GOOD MORNING, MADAM MAYOR AND MEMBER OF COUNCIL.

09:46:01 FOR THE RECORD, BEVERLY GRADY WITH THE LAW FIRM.

09:46:07 AND WE ARE ASKING FOR PARTY INTERVENOR STATUS AS STATED

09:46:09 IN OUR LETTER OF AUGUST --

09:46:13 >> IN CASE YOU HAVE TESTIMONY OR ANY OTHER WITNESSES, I

09:46:15 WOULD LIKE TO SWEAR YOU IN AT THE TIME.

09:46:19 >> NOT FOR THE INTERVENOR STATUS.

09:46:24 THIS WOULD APPLY TO SHADOW WOOD COMMUNITY

09:46:30 ASSOCIATION,INC, COPPER LEAF GOLF CLUB,INC, SPRING RUN

09:46:33 COMMUNITY ORGANIZATION, INC., THE HARBOR CLUB AT

09:46:39 LIGHTHOUSE BAY,INC, THE COMMON CLUBS, MARK STAINS, JIM

09:46:45 BROCK, BOB BLOCK, JIM MAYOR, ALL OF WHOM ARE RESIDENTS

09:46:46 IN THE BROOKS.

09:46:49 WE WOULD RESPECTFULLY SUBMIT THAT THE RESIDENTS AND

09:46:51 OWNERS WHO LIVE IN THE BROOKS RELIED ON THIS APPROVED

09:46:56 DEVELOPMENT OF REGIONAL IMPACT THAT INCLUDED THE TOWN

09:46:59 CENTER AND RELIED UPON THE APPROVED AND CONSTRUCTED

09:47:04 DEVELOPMENT RESULTING IN AN ACTUAL TOWN CENTER, WHICH

09:47:08 DIRECTLY SERVES THE PARTY INTERVENORS AND SERVES THE

09:47:10 RESIDENTS AND OWNERS OF THE BROOKS.

09:47:15 THE PROPOSED DEVELOPMENT SUBSTANTIALLY CHANGES THE

09:47:18 CHARACTER OF THE TOWN CENTER BY SUBSTANTIALLY

09:47:22 CONVERTING A PORTION OF THE CENTER TO A RESIDENTIAL

09:47:23 COMMUNITY.

09:47:27 THIS IMPACT WILL CAUSE THE BROOKS RESIDENTS AND MEMBERS

09:47:32 OF THE ASSOCIATION TO TRAVEL OUTSIDE OF THE BROOKS FOR

09:47:35 ITS COMMERCIAL AND OTHER SERVICE NEEDS RESULTING IN AN

09:47:39 INCREASED IN A CHANGED TRAFFIC IMPACT, CONTRARY TO THE

09:47:42 PURPOSE OF THE MIXED USE PLAN DEVELOPMENT AND CONTRARY

09:47:46 TO THE DRI DEVELOPMENT ORDER.

09:47:49 THE REDUCTION OF THE TOWN CENTER COMMERCIAL SQUARE

09:47:53 FOOTAGE AND CHANGING TO RESIDENTIAL CHANGES THE

09:47:56 CHARACTER OF THE BROOKS COMMUNITY AS IT TOWN CENTER AS

09:48:02 PROMISED AND DEVELOPED IN AN INTEGRAL PROPONENT TO THE

09:48:03 COMMUNITY.

09:48:07 THE BROOKS WAS CAREFULLY PLANNED AND SOLD TO INCLUDE A

09:48:11 TOWN CENTER WITH ITS COMMERCIAL USES AND SERVICES.

09:48:14 AND IT FUNCTIONS AS A TOWN.

09:48:17 THERE ARE NUMEROUS DEVELOPED RESIDENTIAL COMMUNITIES

09:48:21 THAT HAVE NO COMMERCIAL CENTER, BUT THE INTERVENORS WHO

09:48:25 WERE REQUESTING AND THE MEMBERS OF THE ASSOCIATION

09:48:29 INVESTED IN A COMMUNITY WITH A TOWN CENTER.

09:48:33 THERE IS NO TOWN CENTER WITHOUT THE COMMERCIAL USES.

09:48:37 THE TOWN CENTER, AS IN ANY TOWN, IS THE HEART AND

09:48:40 CENTER OF THE COMMUNITY AND EACH OF THESE PARTY

09:48:44 INTERVENORS INCLUDE RESIDENTS WITHIN EACH PARTY

09:48:49 INTERVENOR ASSOCIATION THAT USES IN A SERVICE AND HAS

09:48:53 THE COMMERCIAL NEEDS MET BY THE TOWN CENTER.

09:48:56 A KEY PURPOSE OF THE TOWN CENTER WAS SO TRANSPORTATION

09:49:00 TRIPS WERE REDUCED TO OTHER ARTERIAL AND COLLECTOR

09:49:04 ROADS IN THE VILLAGE OF ESTERO AND THE COUNTY BY HAVING

09:49:08 A TOWN CENTER THAT PROVIDES THOSE SERVICES TO THE

09:49:09 ASSOCIATION MEMBERS AND RESIDENTS.

09:49:13 THE PURPOSES STATED IN LAND DEVELOPMENT CODE AND THE

09:49:15 DEFINITION OF A MIXED USE PLANNED DEVELOPMENT AND

09:49:20 SPECIFICALLY STATED IN THE DRI DEVELOPMENT ORDER.

09:49:24 WE RESPECTFULLY SUBMIT THAT THE IMPACT OF THE PROPOSED

09:49:27 CHANGE ON THE PROPOSED PARTY INTERVENORS IS GREATER

09:49:30 CLEARLY THAN TO THE GENERAL PUBLIC.

09:49:34 AND WE WOULD RESPECTFULLY REQUEST THAT YOU WOULD GRANT

09:49:37 THAT STATUS OF PARTY INTERVENOR.

09:49:41 WE REQUEST THIS LETTER WITH EXHIBITS BE FILED IN OF THE

09:49:43 FOLLOWING HEARINGS.

09:49:46 AND WE HAVE NOT FILED ALL OUR SPEAKER CARDS BECAUSE WE

09:49:50 HAVE PLANNED, IF GRANTED INTERVENOR, WE HAVE AN

09:49:51 ORGANIZED PRESENTATION.

09:49:59 THANK YOU FOR YOUR CONSIDERATION.

09:50:01 >>MAYOR ERRINGTON: THANK YOU.

09:50:04 DOES THE COUNCIL HAVE ANY QUESTIONS OF THE INTERVENOR'S

09:50:10 ATTORNEY?

09:50:11 DISCUSSION IS LATER.

09:50:14 NOW IS THE TIME FOR QUESTIONS ONLY.

09:50:16 IS THAT CORRECT, DEREK?

09:50:22 >>DEREK ROONEY: CORRECT.

09:50:26 WOULD YOU LIKE TO GRANT THE APPLICANT'S OPPORTUNITY TO

09:50:31 RESPOND TO THE INTERVENORS?

09:50:32 >>MAYOR ERRINGTON: YES.

09:50:37 >> GOOD MORNING, NEALE MONTGOMERY FOR THE APPLICANT.

09:50:39 THE ISSUES THAT ARE GOING TO BE BEFORE YOU LATER ARE

09:50:41 BOTH PROCEDURAL IN NATURE.

09:50:45 ONE IS, WHETHER OR NOT THE APPLICANTS HAVE VESTED

09:50:49 RIGHTS TO PERMITTED USES IN THEIR ZONING.

09:50:51 IT IS THEIR VESTED RIGHTS.

09:50:54 IF THE FOLKS IN BLUE BELIEVE THAT THEY HAVE VESTED

09:50:58 RIGHTS, THEY HAVE THE OPPORTUNITY AS WE DID TO FILE AN

09:50:59 APPLICATION.

09:51:05 BUT AS THE APPLICANT'S VESTED RIGHTS UNDER

09:51:08 CONSIDERATION AND NO ONE ELSE'S TODAY.

09:51:10 THE OTHER ISSUE IS THE APPROPRIATE PROCESS.

09:51:12 SO IT IS A PROCEDURAL DISCUSSION.

09:51:16 AND THE INTERVENORS MADE ESSENTIALLY THE SAME ARGUMENTS

09:51:20 TODAY THAN THEY DID BEFORE THE CIRCUIT COURT IN CASE

09:51:26 NUMBER 20 CA 006182.

09:51:31 THAT MOTION WAS DENIED FOR THE BASIS THAT THEIR

09:51:33 INTERESTS ARE INDIRECT AND PROCEDURE AND WE WOULD

09:51:37 SUBMIT AND RELY ON THAT DETERMINATION AND THE SAME CASE

09:51:40 LAW AND THE SAME UNDERSTANDING.

09:51:48 I WILL SUBMIT A COPY OF THE ORDER TO CAROL.

09:51:53 THANK YOU.

09:51:55 >>MAYOR ERRINGTON: DO WE HAVE ANY WITNESSES -- THE

09:51:58 INTERVENOR WITNESSES?

09:51:59 >>DEREK ROONEY: NO WITNESSES.

09:52:04 BOTH THE REQUESTED INTERVENORS AND THE APPLICANT

09:52:08 ATTORNEYS ARE ESSENTIALLY ARGUMENT ONLY.

09:52:10 SO NO NEED FOR ANY CROSS EXAMINATION.

09:52:13 IF WOULD YOU LIKE TO ASK ANY FOLLOW-UP QUESTIONS OF

09:52:16 MISS STROUD, THIS WILL BE NOW AN APPROPRIATE TIME, BUT

09:52:22 IN GENERAL, WHAT I WILL STATE AS TO THE PROCESS YOU

09:52:23 HAVE BEFORE YOU.

09:52:28 YES, THERE WAS A -- AS MENTIONED BY MISS MONTGOMERY,

09:52:32 THERE WAS A LAWSUIT ON SIMILAR ISSUES PREVIOUSLY.

09:52:35 THE INTERVENORS DID MOVE TO INTERVENE THAT CASE.

09:52:39 IT WAS DENIED; HOWEVER, THE STANDARDS THAT APPLY AT THE

09:52:43 CIRCUIT COURT AND STANDINGS THAT APPLY FOR THE FINDINGS

09:52:49 OF COUNCIL OF GRANTING INTERVENOR STATUS IS SEPARATE.

09:52:53 YOU HAVE BROAD DISCRETION TO DETERMINE IF THERE IS A

09:52:54 SPECIAL INJURY QUESTION.

09:52:57 ALSO, MY CONCERN IS TRYING TO ENSURE THAT THIS IS A

09:53:00 FAIR AND IMPARTIAL HEARING.

09:53:06 I WOULD NOT ALSO WISH TO HAVE THE OPPORTUNITY FOR THE

09:53:10 INTERVENORS TO FILE ANY OBJECTIONS WHAT OCCUR TODAY AND

09:53:11 THEY WERE DENIED A RIGHT.

09:53:15 SO MY RECOMMENDATION WOULD BE THAT YOU -- THAT YOU

09:53:18 CONSIDER THE ARGUMENTS PROVIDED BY MISS GRADY.

09:53:24 AND IF YOU FEEL THAT THE INTERVENORS NEED THAT SPECIAL

09:53:27 TEST, I WOULD MOVE TO ADMIT THEM AND ALLOW THEM TO

09:53:28 PRESENT.

09:53:31 IF DO YOU NOT FELT THAT STANDARD HAS BEEN MET, YOU CAN

09:53:34 DENY THE REQUEST.

09:53:38 >>MAYOR ERRINGTON: COUNCIL, DO YOU HAVE ANY QUESTIONS

09:53:40 OR DISCUSSION?

09:53:43 >> I JUST HAVE ONE QUESTION ON THE INTERVENORS.

09:53:45 I DID HEAR YOU CORRECTLY THAT THERE WILL BE ONE FROM

09:53:55 EACH OF THE COMMUNITIES OR IS THERE ONE INTERVENOR?

09:53:58 >> WHAT WE HAD PREPARED WAS -- UNDERSTANDING THE 20

09:53:59 MINUTES.

09:54:03 WE PREPARED A PRESENTATION OF 20 MINUTES THAT INCLUDES

09:54:06 THOSE INTERVENORS THAT ARE GOING TO SPEAK.

09:54:09 I MEAN, I CAN'T REALLY SPEAK FOR EVERY SINGLE PERSON

09:54:11 WHO LIVES IN THE BROOKS.

09:54:14 AND YOU KNOW WHO DOES FILL OUT A CARD.

09:54:20 BUT I CAN SAY ON BEHALF OF THE INTERVENORS WE HAVE AN

09:54:22 ORGANIZED PRESENTATION THAT FITS WITHIN THE 20 MINUTES

09:54:23 OF THE LIST.

09:54:26 >> HOW MANY INTERVENORS WOULD YOU ESTIMATE?

09:54:27 >> OH, OKAY.

09:54:29 IT IS -- I WOULD BE RECOMMENDING THE ASSOCIATION.

09:54:37 AND THEN THEY HAVE MARK STAIN, JIM, BOB.

09:54:39 >> FROM EACH OF THE COMMUNITIES?

09:54:42 >> FOUR ARE PRESIDENTS AND ONE HAS BEEN REALLY TASKED

09:54:45 AND HATS WORKED INTIMATELY ON MONITORING THIS PROJECT.

09:54:46 YES.

09:54:49 SO WE HAVE TRIED TO ORGANIZE TO WORK WITHIN THAT TIME

09:54:50 FRAME.

09:54:53 AGAIN, I CAN'T -- I CAN'T SPEAK FOR EVERY SINGLE PERSON

09:54:57 THAT IS HERE, BUT WE HAVE ORGANIZED THAT SO WE CAN MAKE

09:55:00 OUR CASE FOR YOU WITHIN THE TIME FRAME.

09:55:03 >>MAYOR ERRINGTON: ANY OTHER DISCUSSION?

09:55:05 QUESTIONS?

09:55:08 >>DEREK ROONEY: COUNCIL, I WOULD JUST ADD TO SEE

09:55:11 CLEAR, ALLOWING AN INTERVENOR OR OBJECTOR TO

09:55:14 PARTICIPATE IS NOT JUST AN ALLOTMENT OF ADDITIONAL

09:55:15 TIME.

09:55:17 THE INDIVIDUALS THAT MISS GRADY HAS IDENTIFIED WOULD BE

09:55:21 ABLE TO SPEAK OTHERWISE WITHIN THE PUBLIC COMMENTS AND

09:55:23 MAY BE ABLE TO PROVIDE THEIR EVIDENCE THROUGH THAT

09:55:27 PROCESS, BUT BY GRANTING INTERVENOR STATUS, YOU ARE

09:55:31 ALSO PROVIDING THEM THE OPPORTUNITY TO ENGAGE IN CROSS

09:55:32 EXAMINATION OF WITNESSES AND PRESENT ADDITIONAL

09:55:36 EVIDENCE THAT MAY NOT BE ABLE TO BE DONE UNDER THE

09:55:38 FOUR-MINUTE TIME FRAME.

09:55:39 >>MAYOR ERRINGTON: THANK YOU.

09:55:44 ARE WE READY THEN TO -- I WOULD LIKE -- I AM GOING TO

09:55:51 ASK NANCY STROUD TO CRAFT A MOTION THAT WE ARE LOOKING

09:55:53 AT.

09:56:15 >>NANCY STROUD: STAFF -- IS THE GREEN LIGHT ON?

09:56:17 >> THANK YOU, MADAM MAYOR.

09:56:21 STAFF'S RECOMMENDATION IS FOR A MOTION TO ALLOW THE

09:56:27 INTERVENORS AS PROPOSED IN THE TWO QUASI-JUDICIAL

09:56:31 PROCEEDINGS TO FOLLOW.

09:56:33 >> I MOVE THAT MOTION.

09:56:37 >>MAYOR ERRINGTON: MOTION MADE BY COUNCIL MEMBER JIM

09:56:46 BOESCH AND SECONDED BY VICE-MAYOR JON MCLAIN.

09:56:50 >>JIM BOESCH: AYE.

09:56:54 >>CLERK: COUNCIL MEMBER WARD IS RECUSED.

09:56:56 >>JIM WILSON: AYE.

09:56:58 >>VICE-MAYOR MCLAIN: AYE.

09:56:59 >>MAYOR ERRINGTON: AYE.

09:57:07 THANK YOU.

09:57:08 >>MAYOR ERRINGTON: NEXT ON THE AGENDA IS THE

09:57:12 QUASI-JUDICIAL HEARINGS ON THE BROOKS TOWN CENTER.

09:57:15 I WILL TURN THIS OVER TO DEREK ROONEY, OUR VILLAGE

09:57:18 ATTORNEY, WHO WILL DESCRIBE THE QUASI-JUDICIAL

09:57:22 PROCEDURE.

09:57:22 THANK YOU.

09:57:23 >>DEREK ROONEY: THANK YOU.

09:57:24 GOOD MORNING.

09:57:27 I WILL GO INTO IT MORE DETAIL THAN NORMAL FOR BENEFITS

09:57:30 OF THE PUBLIC SO THEY UNDERSTAND THE PROCESSES THAT ARE

09:57:32 BEFORE US.

09:57:35 THE APPLICATIONS BEFORE US TODAY ARE BOTH

09:57:37 QUASI-JUDICIAL IN NATURE.

09:57:42 WHEN THE COUNSEL SITS IN A QUASI-JUDICIAL CAPACITY,

09:57:45 THEY ARE REVIEWING EVIDENCE PRESENTED AT THE HEARING TO

09:57:49 WHETHER OR NOT TO APPROVE OR DISAPPROVE BASED ON THE

09:57:52 CRITERIA ESTABLISHED WITHIN YOUR CODE AND COMPETENT

09:57:55 SUBSTANTIAL EVIDENCE PRESENTED AT THE HEARING.

09:57:59 IN ENGLISH, THIS MEANS SWORN, FACTUAL EVIDENCE OR

09:58:02 EXPERT OPINIONS ARE THE EVIDENCE WHICH SHOULD BE

09:58:06 PROPERLY CONSIDERED BY THE COUNCIL.

09:58:09 IF YOU INTEND -- IF A MEMBERS OF THE PUBLIC INTEND TO

09:58:11 PROVIDE TESTIMONY ON EITHER APPLICATIONS, THEY WOULD BE

09:58:15 SUBJECT TO THOSE QUASI-JUDICIAL STANDARDS.

09:58:18 THEY MUST BE SWORN IN BY THE VILLAGE CLERK.

09:58:21 AND WE WILL ASK IF YOU HAVE NOT AND DO INTEND TO SPEAK,

09:58:24 PLEASE FILL OUT SPEAKERS CARD THERE LOCATED IN THE

09:58:26 HALLWAY OR YOU CAN RECEIVE ONE UP HERE AND PROVIDE IT

09:58:28 TO THE VILLAGE CLERK.

09:58:31 BUT BE ADVISED THAT ANY MEMBERS OF THE PUBLIC WHO

09:58:34 INTEND TO SPEAK MAY BE SUBJECT TO CROSS EXAMINATION BY

09:58:39 THE VILLAGE, BY THE APPLICANT, OR BY THE INTERVENORS.

09:58:42 THE GENERAL PUBLIC, HOWEVER, WILL NOT HAVE THE RIGHT TO

09:58:46 CROSS-EXAMINE ANY INDIVIDUAL WHO IS PRESENTING EVIDENCE

09:58:47 TODAY.

09:58:51 THEY MAY, IF THEY FEEL IT IS APPROPRIATE, REQUEST THAT

09:58:56 THE MAYOR IN THEIR COMMENTS ASK THOSE FOLLOW-UP

09:59:01 QUESTIONS, BUT THEY MAY NOT ACTUALLY ENGAGE IN -- IN

09:59:02 EXAMINATION.

09:59:05 THAT IS THE INTENT OF THE PROCESS THAT WE JUST WENT

09:59:07 THROUGH WITH THE INTERVENOR STATUS.

09:59:09 THE VILLAGE CLERK WILL SWEAR IN ALL THOSE PERSONS.

09:59:12 EACH PERSON WILL THEN HAVE AN OPPORTUNITY TO SPEAK ON

09:59:12 THE TWO ITEMS.

09:59:16 THEY WILL HAVE NO MORE THAN THREE MINUTES TO DISCUSS

09:59:18 ANY ITEMS.

09:59:22 THE VILLAGE COUNCIL IS -- IS BOUND TO DETERMINE THE

09:59:25 EVIDENCE PRESENTED TODAY IN THE HEARING.

09:59:30 ANY PRIOR EX-PARTE COMMUNICATIONS WHICH HAVE BEEN

09:59:33 E-MAILED, PHONE CALLS, COMMUNICATIONS WITH STAFF OR

09:59:36 OTHER WILL NEED TO BE DISCLOSED BY THE COUNCIL.

09:59:39 AND I ASK FOR THEM TO DO THAT AT THE OUTSET OF THE

09:59:40 HEARING.

09:59:43 IF THERE HAS BEEN -- IF THERE IS A PERCEIVED CONFLICT

09:59:46 OF INTEREST BY ANY MEMBER OF THE COUNCIL, WE CAN

09:59:49 DISCUSS THOSE AS COUNCILMEMBER WARD DISCUSSED WITH ME

09:59:51 PREVIOUSLY AND THEY WOULD BE ASKED TO RECUSE

09:59:54 THEMSELVES.

10:00:00 WILL ALL THOSE WHO ARE ATTENDANCE PLEASE STAND AND BE

10:00:02 PREPARED TO SWEAR THE OATH.

10:00:07 IF YOU ARE UPSTAIRS AND TEND TO SPEAK LATER, COME DOWN

10:00:10 AND IDENTIFY YOURSELF AT THE TIME AS NOT HAVING TAKEN

10:00:14 THE OATH AND WE WILL SWEAR YOU IN AT THAT TIME.

10:00:15 VILLAGE CLERK.

10:00:18 >>CLERK: DO YOU SWEAR TO TELL THE TRUTH, THE WHOLE

10:00:26 TRUTH, AND NOTHING BUT THE TRUTH SO HELP YOU GOD.

10:00:27 >> I DO.

10:00:30 >>MAYOR ERRINGTON: MR. ROONEY, I DIDN'T SEE MEMBERS OF

10:00:31 THE PUBLIC STAND TO BE SWORN.

10:00:34 SO THEY MIGHT NOT UNDERSTAND IF THEY ARE GOING TO TALK

10:00:38 AT THE PROCEEDINGS THEY NEED TO STAND AND ALSO BE

10:00:39 SWORN.

10:00:42 >>DEREK ROONEY: ANYONE IN THIS ROOM WHO MIGHT FEEL THE

10:00:44 URGE AT SOME POINT LATER --

10:00:44 [LAUGHTER]

10:00:48 -- THAT IS THE WAY -- FEEL THE URGE AT THIS POINT JUST

10:00:52 TO SAVE YOURSELF THE EMBARRASSMENT AND THE EXTRA TIME.

10:00:56 I WILL ASK TO YOU GO AHEAD TO STAND AND BE SWORN AT

10:01:03 THIS TIME.

10:01:06 IT IS LIKE A WEDDING, YOU KNOW, FOREVER HOLD YOUR

10:01:09 PEACE.

10:01:10 THANK YOU.

10:01:14 IT IS APPRECIATED.

10:01:17 >>CLERK: DO YOU SWEAR TO TELL THE TRUTH, THE WHOLE

10:01:20 TRUTH, AND NOTHING BUT THE TRUTH SO HAPPY YOU GOD.

10:01:23 >> I DO.

10:01:25 >>MAYOR ERRINGTON: HOW MANY HOURS IN A DAY?

10:01:26 OKAY.

10:01:26 THANK YOU.

10:01:28 THANK YOU.

10:01:34 SO DO WE GO TO PUBLIC COMMENTS NOW?

10:01:37 >> NO, NO, WE MOVE TONIGHT VERY FIRST ITEM, THE VESTED

10:01:46 RIGHTS DETERMINATION.

10:01:48 >>MAYOR ERRINGTON: ON ITEM NUMBER 4?

10:01:57 >>DEREK ROONEY: CORRECT, 4A.

10:01:59 >>NANCY STROUD: DEREK --

10:02:02 >>DEREK ROONEY: ANY EX-PARTE COMMUNICATION WITH MEMBER

10:02:04 OF THE COUNCIL, WITH STAFF, WITH ANYONE, IF YOU HAVE

10:02:08 DRIVEN BY THE FACILITIES TO INSPECT THEM, I WOULD GO

10:02:11 AHEAD AND MAKE THOSE DISCLOSURES NOW.

10:02:14 IF YOU HAVE JUST RECEIVED A SERIES OF E-MAILS, I AM

10:02:20 SURE THAT ALL OF YOUR IN BOXES HAVE BEEN BOMBARDED.

10:02:22 YOU CAN IDENTIFY THAT YOU HAVE RECEIVED THOSE E-MAILS

10:02:26 AS LONG AS THOSE ITEMS ARE MATTER OF RECORDS WITH THE

10:02:29 CLERK YOU DON'T HAVE TO GO TO DETAILS.

10:02:37 >>MAYOR ERRINGTON: START WITH COUNCIL MEMBER RIBBLE.

10:02:40 >> I HAD COMMUNICATION WITH STAFF AND E-MAILS I

10:02:42 RECEIVED FROM CONCERNED RESIDENTS.

10:02:44 >>LARRY FIESEL: I HAD CONVERSATION WITH STAFF

10:02:45 REGARDING THIS.

10:02:50 I HAVE RECEIVED A NUMBER OF E-MAILS ALSO.

10:02:53 >>JON MCLAIN: I HAVE COMMUNICATION WITH STAFF ALSO.

10:03:02 I ALSO DRIVE BY THIS TOWN CENTER ON A REGULAR BASIS.

10:03:04 >>JIM BOESCH: I DON'T BELIEVE THAT SPEAKING TO THE

10:03:11 STAFF IS E-PARTE BUT I THINK WE ALL HAVE DONE THAT.

10:03:17 I FORTUNATELY HAVE THE WONDERFUL POSITION THINK THAT

10:03:22 KNOW MANY PEOPLE IN THE BROOKS.

10:03:26 AND I AM GOING TO COMPLIMENT THEM ALL.

10:03:31 I HAD MANY QUESTIONS ASKED AND MOST ALL OF THE PEOPLE

10:03:34 IT NOT REALIZE THAT COUNCIL PEOPLE ARE NOT ALLOWED TO

10:03:37 SPEAK BEFORE IT COMES TO A PROPOSAL.

10:03:40 AND SHOULD MENTION TODAY THAT WE ARE NOT SPEAKING ABOUT

10:03:41 THE PROPOSAL TODAY.

10:03:44 WE ARE ONLY SPEAKING ABOUT THESE PARTICULAR QUESTIONS.

10:03:46 SO IT IS IMPORTANT.

10:03:48 WE HAVE NOT RECEIVED A PROPOSAL.

10:03:52 SO KEEP THAT IN MIND FROM THE COUNCIL'S STANDPOINT.

10:04:00 BUT I DO HAVE MANY PEOPLE ASK ME AND SET FORTH TO THEM

10:04:05 THAT -- ON THE COUNCIL POSITION, WE ARE NOT ALLOWED TO

10:04:07 SPEAK OF A PROJECT UNTIL IT COMES BEFORE THE COUNCIL.

10:04:16 AND EVERYONE I TALKED TO CASUALLY MENTIONED IT AS --

10:04:19 CASUAL AND EXPLAINED TO THEM THAT IS OUR POSITION.

10:04:21 THAT WE CAN NOT TALK.

10:04:27 THEY HAVE BEEN VERY KIND TO ACCEPT THAT AS A POSITION.

10:04:31 >>DEREK ROONEY: THANK YOU.

10:04:34 >>MAYOR ERRINGTON: THANK YOU.

10:04:36 COUNCIL MEMBER WILSON?

10:04:40 >>JIM WILSON: YES, MADAM MAYOR, I HAD DISCUSSION WITH

10:04:44 STAFF ON THIS ITEM AND RECEIVED A FEW E-MAILS.

10:04:45 >>MAYOR ERRINGTON: THANK YOU.

10:04:48 I, TOO, HAD DISCUSSION WITH STAFF.

10:04:49 I HAVE DRIVEN BY THE SITE.

10:04:52 I HAVE RECEIVED E-MAILS.

10:04:57 AND I HAVE ALSO STUDY THIS VOLUMINOUS PACKAGE THAT WE

10:04:57 RECEIVED.

10:04:58 SO, YES.

10:05:02 OKAY.

10:05:06 >> CAN I INQUIRE ALL THE E-MAILS YOU HAVE RECEIVED BEEN

10:05:10 PROVIDED TO THE STAFF AND PROVIDED TO THE APPLICANT?

10:05:13 >>DEREK ROONEY: I DON'T BELIEVE THEY HAVE BEEN

10:05:15 PROVIDED TO THE APPLICANT.

10:05:18 >>MARY GIBBS: EXCUSE ME MAY I SAY THAT ALL THE E-MAILS

10:05:20 YOU ARE REFERRING TO ARE THE ONES WE SENT OUT

10:05:22 YESTERDAY.

10:05:25 THERE WAS A PETITION OR A LIST OF NAMES.

10:05:28 THERE WERE SOME E-COMMENTS AND COUPLE OF E-MAILS AND

10:05:31 EVERY SINGLE ONE I FORWARDED TO THE CLERK TO MAKE SURE

10:05:32 YOU RECEIVED THEM YESTERDAY.

10:05:34 FORWARDED THEM TO THE APPLICANT.

10:05:36 SO TO MY KNOWLEDGE, THERE IS NOTHING THAT HAVEN'T BEEN

10:05:40 SHARED WITH EVERYBODY.

10:05:42 >>MAYOR ERRINGTON: I AGREE AND THANK YOU VERY MUCH FOR

10:05:44 BRINGING THAT UP.

10:05:48 IT WAS VERY NOT TO BE BOMBARDED BY E-MAILS LIKE WE HAVE

10:05:49 BEEN IN THE PAST.

10:05:50 >> YES, MAYOR.

10:05:53 FOR THE RECORD, I WANT TO SAY YESTERDAY AFTERNOON THEY

10:05:54 WERE E-MAILED TO THE COUNCIL.

10:05:56 AND ONE E-COMMENT WAS IN FAVOUR.

10:05:59 SEVEN SEPARATE ONES WERE AGAINST.

10:06:03 AND ONE PETITION WITH 2405 SIGNATURES REQUESTING DENIAL

10:06:08 OF VESTED RIGHTS IN ADMINISTRATIVE APPEAL AND I ALSO

10:06:13 HAVE ONE PERSON SIGNED UP TO SPEAK.

10:06:15 >>MAYOR ERRINGTON: ARE WE READY FOR THEM FIRST?

10:06:16 >>DEREK ROONEY: NO.

10:06:24 IN THIS PROCEEDINGS I WOULD HEM HAVING THE COME FORWARD

10:06:27 AND INTRODUCE THE ITEM AND THEN THE APPLICANT'S TURN TO

10:06:28 SPEAK.

10:06:31 >>MAYOR ERRINGTON: MARY GIBBS, OUR COMMUNITY

10:06:32 DEVELOPMENT DIRECTOR WILL PRESENT.

10:06:33 >>MARY GIBBS: GOOD MORNING.

10:06:37 I WILL DO A QUICK INTRODUCTION, BUT BEFORE I DO THAT, I

10:06:39 NEED TO GIVE YOU A LITTLE BIT OF BACK GROUND ABOUT THE

10:06:42 ZONING AND THE DRI BECAUSE YOU ARE GOING TO SEE ABOUT

10:06:45 THIS FROM THE APPLICANT, YOU WILL HEAR ABOUT THIS FROM

10:06:48 THE INTERVENORS AND I WILL GIVE YOU A QUICK HISTORY OF

10:06:51 THE BROOKS PROJECT.

10:06:52 AND.

10:06:53 IF WE CAN PUT THE MAP UP.

10:06:55 I WILL TALK ABOUT THAT BEFORE WE INTRODUCE THE VESTED

10:07:04 RIGHTS.

10:07:09 SO THE BROOKS PROJECT IS WHAT WE CALL "A DEVELOPMENT OF

10:07:11 REGIONAL IMPACT."

10:07:13 AND THAT MEANS IT IS A VERY LARGE PROJECT, A

10:07:16 STATE DESIGNATION WITH PROJECTS WITH A CERTAIN NUMBER

10:07:20 OF UNITS AND CERTAIN INTENSITY OF DEEMED DEVELOPMENT OF

10:07:21 REGIONAL IMPACT.

10:07:23 WHEN THAT COMES FORWARD, IN ADDITION TO A LOCAL REVIEW

10:07:26 BY THE LOCAL GOVERNMENT WHICH AT THE TIME WAS LEE

10:07:31 COUNTY, IT ALSO HAS A STATE REVIEW.

10:07:34 THE BROOKS WAS ACTUALLY BROUGHT FORWARD IN 1997.

10:07:39 AND WHAT THEY INITIALLY PROPOSED WAS 5200 UNITS, WHICH

10:07:44 YOU CAN SEE THIS PROJECT IS ABOUT 2500 ACRES IN SIZE.

10:07:47 AND THEY PROPOSED 5200 UNITS AND ALSO PROPOSED

10:07:51 COMMERCIAL USES, SPECIFIC AND COMMUNITY USES, OPEN

10:07:54 SPACE, GOLF.

10:07:57 A WIDE VARIETY OF USES.

10:08:00 THE PROPERTY OWNED BY LONG BAY PARTNERS AND LEE COUNTY

10:08:03 APPROVED THE DRI AND ALSO A REZONING AT THE TIME

10:08:06 BECAUSE THE PROPERTY WAS ZONED AGRICULTURE.

10:08:09 THAT WAS REZONED IN 1997.

10:08:12 THE ZONING WAS FOR A MIXED USE PLANNED DEVELOPMENT.

10:08:16 SO WHEN IT WAS APPROVED AND HAD A MASTER CONCEPT PLAN

10:08:18 AND IDENTIFIED CERTAIN AREAS ON THE PROPERTY.

10:08:21 SO FOR -- SOME FOR RESIDENTIAL.

10:08:23 SOME FOR COMMERCIAL.

10:08:26 OPEN SPACE CONSERVATION AREAS IDENTIFIED AND THIS TOWN

10:08:28 CENTER IDENTIFIED.

10:08:30 AND ALL THIS INFORMATION, BY THE WAY, IS IN

10:08:31 THE BOOK.

10:08:36 IN THE INTRODUCTORY INFORMATION AND I AM GOING TO

10:08:37 SUMMARIZE IT.

10:08:41 WHAT WE ARE TALKING ABOUT TODAY IS THE TOWN CENTER AREA

10:08:45 AND ON YOUR MAP HIGHLIGHTED IN THE YELLOW.

10:08:48 THE CORNER OF THREE OAKS AND COCONUT ROAD.

10:08:51 WHAT IT WAS APPROVED OF INITIALLY WAS 100,000 SQUARE

10:08:54 FEET OF RETAIL AND OFFICE SPACE AND 50,000 SQUARE FEET

10:08:56 OF WHAT WE CALL COMMUNITY TYPE USES.

10:08:59 THAT IS THE COMMONS CLUB AND FITNESS CENTER AND THOSE

10:09:01 THINGS HAVE DEVELOPED.

10:09:05 NOW IN 2002, THERE WAS A CHANGE TO THE DRI IN THE

10:09:06 ZONING.

10:09:09 AND IT ADDED 20,000 SQUARE FEET ADDITIONAL COMMERCIAL

10:09:11 TO THE TOWN CENTER AREA.

10:09:16 AND ALSO REDUCED THE DENSITY FROM 5200 UNITS TO 3600

10:09:17 UNITS.

10:09:21 SO MOVING FORWARD -- AND I AM GOING TO SKIP TO 2007.

10:09:25 IN 2007, IN THIS TOWN CENTER AREA THAT IS HIGHLIGHTED,

10:09:28 THERE WAS A FINAL ZONING PLAN APPROVAL GRANTED BY THE

10:09:31 COUNTY FOR 80,000 SQUARE FEET WHICH IS THE SHOPPING

10:09:35 PLAZA ON TEN ACRES WHICH IS KIND OF THE EASTERLY PART

10:09:40 OF THE YELLOW HIGHLIGHTED AREA.

10:09:42 THEY ALSO RECEIVED AFTER THAT A DEVELOPMENT ORDER TO DO

10:09:45 A SPECIFIC SITE PLAN IN THE BUILDING PERMITS AND

10:09:49 CONSTRUCTED THE SHOPPING CENTER THAT HAD A VARIETY OF

10:09:54 SMALL STORES AND A BANK AND AT THE TIME A SWEET BAY

10:09:55 SUPERMARKET.

10:09:56 THAT WAS IN 2007.

10:10:00 2013, KIND OF SKIPPING FORWARD, THERE WAS SOME PROPERTY

10:10:05 ADDED TO THE BROOKS DRI WHICH IS CALLED, IF YOU SEE IT,

10:10:08 ON THE EAST SIDE OF THE PROPERTY CALLED "PEBBLE POINT."

10:10:12 IT IS RIGHT NEXT TO THE INTERSTATE.

10:10:14 THAT PIECE OF PROPERLY IS KNOWN AS THE FUNNEL PROPERTY

10:10:18 BECAUSE LOOKS LIKE A FUNNEL IF YOU LOOK AT IT SIDEWAYS

10:10:22 AND KNOWN AFFECTIONATELY AS A MARTINI GLASS BECAUSE

10:10:25 SOME PEOPLE THOUGHT IT WAS A MARTINI GLASS.

10:10:29 THAT WAS POSITIONED TO BE THE INTERCHANGE FOR I-95.

10:10:32 9 PLANS TO HAVE THE INTERCHANGE ON COCONUT ROAD AND

10:10:36 COCONUT ROAD WOULD GO ALL THE WAY TO THE WATER AND

10:10:42 SOMEBODY HAD GRANDIOSE PLANS TO BRIDGE OVER TO FORT

10:10:43 MYERS BEACH.

10:10:46 THE PLANS AT THE TIME AND THEY WERE NEVER MATERIALIZED.

10:10:49 AND THEY CAME BACK IN TO REZONE THAT PROPERTY BECAUSE

10:10:55 IT WAS AGRICULTURE AND ADDED INTO THE DRI.

10:10:58 AND ADDED AT THE TIME 200 MULTIFAMILY UNITS AND THE

10:11:01 TOTAL DRI WENT UP TO 3800.

10:11:04 I AM GIVING YOU A QUICK HISTORY TO UNDERSTAND THE

10:11:05 CONCEPT OF IT.

10:11:09 AND, AGAIN, THE APPLICANT NOW IS PROPOSING TO TAKE THAT

10:11:13 SWEET BAY SUPERMARKET THAT TURNED INTO WINN-DIXIE THAT

10:11:17 IS NOW VACANT AND DEMOLISH THAT AND CONSTRUCT A

10:11:20 MULTIFAMILY BUILDING KIND OF IN THE MIDDLE OF THE

10:11:24 PARKING LOT USING UNITS THAT I WOULD SAY WERE LEFT OVER

10:11:28 IN THE DRI THAT WERE NOT CONSTRUCTED BUT APPROVED FOR

10:11:29 CERTAIN AMOUNT OF UNITS.

10:11:31 AND WE WILL EXPLAIN THAT A LITTLE BIT MORE OF THE

10:11:36 LEFTOVER UNITS OF THE PRESENTATION LATER, BUT WE ARE

10:11:39 NOT HERE AGAIN TALKING ABOUT THE SPECIFIC PROPOSAL, BUT

10:11:42 I WANTED TO GIVE YOU A CONTEXT AND A BACKGROUND.

10:11:45 AGAIN IS IN YOUR POCKET.

10:11:47 I HAVE AN AFFIDAVIT IN THERE.

10:11:48 I AM NOT GOING TO REHASH THAT.

10:11:51 BUT WHAT I WANT TO TELL AND TALK TO YOU ABOUT IS THE

10:11:53 QUICK INTRODUCTION OF VESTED RIGHTS.

10:11:55 I AM NOT AN ATTORNEY.

10:11:59 SO I AM GOING TO EXPLAIN IT IN PLAIN LANGUAGE AND THEN

10:12:03 LET THE ATTORNEYS GET UP AND DO THEIR THING.

10:12:06 SO THE APPLICANT IS ASKING FOR WHAT THEY CALL A "VESTED

10:12:10 RIGHTS DETERMINATION" FOR THE PROPOSED 154 UNITS FOR THE

10:12:13 MULTIFAMILY DEVELOPMENT AT THE BROOKS TOWN CENTER.

10:12:18 THEY WANT TO, AGAIN, REMOVE THE WINN-DIXIE BUILDING,

10:12:21 CONSTRUCTING WHERE IN THE PARKING LOT AREA.

10:12:24 THEY BELIEVE THEY ARE VESTED UNDER THE DETERMINATION OF

10:12:26 THE DEVELOPMENT REGIONAL IMPACT I JUST MENTIONED AND

10:12:28 THE COUNTY ZONING RESOLUTION BECAUSE EVEN THOUGH IT WAS

10:12:32 DEVELOPED AS COMMERCIAL SHOPPING CENTER, THERE WAS

10:12:36 LISTED IN THE ZONING RESOLUTION, ALONG WITH COMMERCIAL

10:12:38 USES, MULTIFAMILY LOW RISE.

10:12:40 THAT IS THE CRUX OF THEIR ARGUMENT.

10:12:44 VESTING JUST MEANS WHAT YOU ARE ENTITLED TO DO OR WHAT

10:12:46 YOU ARE ALLOWED TO DO.

10:12:49 SO BY CLAIMING THEY ARE VESTED, WE ARE ALLOWED TO DO

10:12:49 THAT.

10:12:50 THAT IS THE POINT.

10:12:52 WE DON'T HAVE TO GO BACK THROUGH A PUBLIC HEARING

10:12:55 PROCESS AND GO TO THE COUNCIL.

10:12:56 SO WE DON'T AGREE.

10:12:58 WE DO NOT AGREE COMPLETELY WITH THAT ARGUMENT.

10:13:01 AND WE ARE GOING TO EXPLAIN THAT IN OUR PRESENTATION

10:13:02 AND OUR RECOMMENDATION.

10:13:05 BUT JUST TO GIVE YOU A QUICK OVERVIEW, AND IF YOU DON'T

10:13:08 HAVE ANY QUESTIONS FOR ME, I WOULD LIKE TO TURN IT OVER

10:13:10 TO THE APPLICANT.

10:13:12 THEY ARE GOING TO EXPLAIN THEIR SIDE.

10:13:16 AND WE WILL HAVE OUR ATTORNEYS EXPLAIN OUR SIDE.

10:13:18 >>MAYOR ERRINGTON: ANY QUESTIONS FROM COUNCIL?

10:13:19 COMMENTS?

10:13:22 DISCUSSIONS?

10:13:25 >>MARY GIBBS: I THINK -- NEALE MONTGOMERY WILL BE

10:13:27 PRESENTING FIRST.

10:13:33 >>MAYOR ERRINGTON: SO THE APPLICANT WILL BE.

10:13:35 THANK YOU, WELCOME, AGAIN.

10:13:37 >> THANK YOU.

10:13:43 HOPEFULLY ALONG THE WITH THE MAYOR YOU BROUGHT YOUR BIG

10:13:44 PILE OF PAPER.

10:13:48 AND THEIR, CAROL, FOR PUTTING THAT TOGETHER BECAUSE THE

10:13:52 DOCUMENTS PROVIDED IN THAT PACKAGE IS PIVOTAL TO WHAT

10:13:53 WE ARE GOING TO TALK ABOUT TODAY.

10:13:55 WE ARE HERE TO TALK ABOUT VESTED RIGHTS.

10:13:59 AND THE DOCUMENTS THAT YOU WERE PROVIDED ARE IMPORTANT

10:14:03 IN ESTABLISHING OR EXPLAINING THOSE VESTED RIGHTS.

10:14:06 ONE OF THE FIRST DOCUMENTS THAT YOU HAVE IS THE 1997

10:14:11 DRI DEVELOPMENT ORDER.

10:14:15 AND THERE IS ALSO, ALONG WITH THAT AS DULY NOTED THE

10:14:17 COMPANION ZONING RESOLUTION.

10:14:20 SO THOSE DOCUMENTS SET FORTH ALL THE TERMS AND

10:14:23 CONDITIONS THAT WERE APPROVED BY THE BOARD OF COUNTY

10:14:24 COMMISSIONERS.

10:14:26 THERE ARE A LOT OF PEOPLE WHO OFFERED OPINIONS IN THE

10:14:29 WRITTEN INFORMATION YOU HAVE BEEN PROVIDED ABOUT WHAT

10:14:34 HAPPENED AT THE HEARING.

10:14:37 I THINK I AM PROBABLY THE ONLY PERSON IN THE ROOM WHO

10:14:39 ATTENDED ALL THREE DAYS.

10:14:43 MISS GIBBS ATTENDED SIGNIFICANT PARTS OF IT, BUT BEYOND

10:14:47 THAT, I DON'T THINK ANYBODY ELSE CAN ATTEST TO

10:14:49 FIRSTHAND WHAT ACTUALLY HAPPENED AT THAT HEARING.

10:14:51 IT IS IMPORTANT TO NOTE THAT THE STAFF RECOMMENDED

10:14:53 DENIAL.

10:14:56 SO THE STAFF POSITION DID NOT SUPPORT THE PROJECT.

10:14:59 AND IT IS ALSO IMPORTANT WHEN I LOOKED AT THAT TO

10:15:03 REMEMBER, THERE WAS NO COCONUT ROAD THAT WAS PROVIDED

10:15:05 BY THE DEVELOPER OF THE BROOKS.

10:15:08 AND NO PARKWAY EXTENSION THAT WAS PROVIDED OF THE

10:15:14 DEVELOPER OF THE BROOKS AND COMMERCIAL WAS NOT FAVORED

10:15:15 BY THE STAFF.

10:15:20 AND THE STAFF DIDN'T THINK THAT THE PRICE POINTS OR THE

10:15:23 ABSORPTION RATES WOULD BE ACCOMPLISHED AND, THEREFORE,

10:15:26 THE PROJECT WOULD HAVE A NEGATIVE FISCAL IMPACT ON THE

10:15:28 COUNTY.

10:15:30 HISTORY HAS PROVEN THE APPLICANT WAS CORRECT.

10:15:33 THE PRICE POINTS WERE EXCEEDED THE DEVELOPMENT

10:15:37 ABSORPTION WAS MUCH FASTER THAN ANTICIPATED, AND I

10:15:40 THINK THE VILLAGE CAN ATTEST TO THE BROOKS AS A

10:15:43 POSITIVE ECONOMIC IMPACT FOR THE COUNTY AND FOR THE

10:15:44 VILLAGE OF ESTERO.

10:15:49 SO JUST BY WAY OF BACKGROUND.

10:15:51 THE ISSUE IN THE COMMERCIAL HAS MORE TO DO WITH THE

10:15:55 FISCAL NEUTRALITY AND THINGS LIKE THAT.

10:15:56 YOU WILL HEAR A LOT OF INFORMATION ABOUT TRAFFIC.

10:15:59 AND WE ARE NOT GOING TO GET INTO THAT WITH THE VESTED

10:16:03 RIGHTS, BUT LET ME SAY IN ORDER TO OBTAIN A DRI

10:16:06 DEVELOPMENT ORDER THERE IS A VERY THOROUGH TRAFFIC

10:16:07 ANALYSIS.

10:16:11 AND WHEN YOU ARE DONE, A SECTION OF THE DRI THAT DEALS

10:16:14 WITH TRAFFIC AND NUMBER OF EXTERNAL TRIPS.

10:16:17 AND THAT IS SORT OF A CAP.

10:16:19 NO MATTER WHAT WE DO WITHIN THE COMMUNITY NOW OR

10:16:24 FOREVER, YOU GO BACK AND LOOK AT THAT TRIP GENERATION.

10:16:28 SO HAVING SAID THAT, AS MARY NOTED, THERE IS AN

10:16:34 APPROVED NUMBER OF UNITS AND SQUARE FOOTAGE IN THE DRI.

10:16:37 ALL THE DEVELOPMENT THAT IS PERMITTED -- MAYBE NOT

10:16:39 BUILT, BUT PERMITTED IN THE BROOKS HAS BEEN FULLY

10:16:41 MITIGATED.

10:16:49 I RECEIVED WHEN IT WAS ALL DONE A COPY OF A LETTER FROM

10:16:53 COLLINS WHO WAS THE THEN ASSISTANT COUNTY ATTORNEY

10:16:56 CONFIRMING THAT ALL THE TRAFFIC MITIGATION HAD BEEN

10:16:56 PROVIDED.

10:17:00 JUST ANECDOTALLY IT IS IMPORTANT TO NOTE THAT THE

10:17:04 DEVELOPER GOT CREDIT FOR THE PART OF COCONUT ROAD BUILT

10:17:08 FOR THE BENEFIT OF THE PUBLIC LIKE -- OR FOR THE

10:17:11 COMMUNITY, BUT THEY WERE DISCOUNTED WHAT SHOULD HAVE

10:17:15 BEEN FULL CREDIT FOR THE ROAD BECAUSE IT WAS, QUOTE

10:17:19 "PREMATURE" AND HAVING SAID THAT, THE COUNTY LATER CAME

10:17:23 BACK AND SAID, WELL, HEY, NOW THAT YOU HAVE IT AND IT

10:17:27 IS NOT PREMATURE, TURN IT OVER EARLY AND PUT THE LAST

10:17:29 BIT OF ASPHALT ON AND THEY DID.

10:17:33 I SAY ALL OF THAT TO SAY THAT THE PROPERTY OWNERS --

10:17:37 THE APPLICANTS HAVE SPENT A LOT OF MONEY -- NOT JUST

10:17:40 TRANSPORTATION BUT OTHER THINGS IN RELIANCE ON THE

10:17:43 APPROVALS SET FORTH IN THE DRI AND HAD EXPENSIVE

10:17:48 EXPENDITURES OF FUNDS IN SUPPORT OF THIS AND PROVIDED

10:17:51 EXTENSIVE MONITORING THROUGHOUT THE YEARS WHEN IT WAS

10:17:54 STILL REQUIRED TO CONFIRM COMPLIANCE TO THE DRI

10:17:55 DEVELOPMENT ORDER.

10:17:58 SO I DON'T KNOW IF YOU HAVE YOUR TABBED, BUT IF YOU

10:18:04 TURN TO THE ZONING RESOLUTION ADOPTED IN '97, AND IF

10:18:07 YOU LOOK IN THERE, YOU WILL SEE THE VARIOUS SUB

10:18:08 CATEGORIES.

10:18:11 IN OTHER WORDS, YOU WILL SEE R FOR RESIDENTIAL AND YOU

10:18:16 SEE THE LIST OF USES, C FOR COMMERCIAL.

10:18:21 AND THEN YOU WILL SEE TOWN CENTER, TC.

10:18:22 DO YOU ALL HAVE THAT?

10:18:24 HAVE YOU BEEN ABLE TO FIND THAT?

10:18:27 WHAT THAT IS AND WHAT IT SAYS IT IS --

10:18:33 >> EXCUSE ME -- TAB NUMBER PLEASE?

10:18:40 >> IT IS 3 IN MY BOOK.

10:18:47 SO WHAT THAT SECTION SAYS IS PERMITTED PRINCIPAL USES

10:18:48 ON STRUCTURES.

10:18:50 AND YOU WILL SEE THAT THERE IS THE LONG LIST OF

10:18:55 PERMITTED USES IN THE ZONING RESOLUTION IN THE TOWN

10:19:02 CENTER.

10:19:03 AND --

10:19:06 >>DEREK ROONEY: NEALE, CAN YOU HOLD ON ONE SECOND.

10:19:09 I WANT TO CONFIRM THE TABS BECAUSE I DON'T THINK THEY

10:19:10 LINE UP.

10:19:15 RESOLUTION Z 97037?

10:19:15 >> YES.

10:19:20 >>DEREK ROONEY: IT WILL BE TAB 4-A FOR COUNCIL.

10:19:20 >> SORRY.

10:19:30 >>DEREK ROONEY: AND ON PAGE 7 OF 28.

10:19:33 >> NOW YOU HEARD MISS STROUD SAY AT LEAST EIGHT TIMES

10:19:38 DURING HER INITIAL PRESENTATION ABOUT -- USED THE WORD

10:19:39 "APARTMENTS."

10:19:42 YOU WILL SEE ON THAT LIST OF PERMITTED USES AND

10:19:48 STRUCTURES THERE IS NO REFERENCE TO APARTMENTS.

10:19:51 HOWEVER, IF YOU SCROLL DOWN TO THE NEXT PAGE TO

10:19:56 DWELLING UNITS, YOU WILL SEE MULTIFAMILY, LOW-RISE,

10:20:00 MINIMUM SETBACK OF 100 FEET FROM EXTERNAL PROPERTY

10:20:02 LINES.

10:20:07 SO LOW RISE, MULTIFAMILY RESIDENTIAL WAS A PERMITTED

10:20:10 USE IN 1997.

10:20:12 AND IT STILL A PERMITTED USE.

10:20:15 NOTHING HAS HAPPENED TO TAKE THAT OUT OF THE LIST OF

10:20:23 PERMITTED USES THERE WAS AS MARY GIBBS NOTED IN 2007, A

10:20:26 FINAL PLAN APPROVAL.

10:20:30 AND THAT WAS FOR THE COMMERCIAL.

10:20:33 NOT IN THAT -- AND YOU HAVE A COPY OF THAT AS WELL IN

10:20:39 YOUR AND NOTHING IN THERE THAT TAKES AWAY ANY OF THE

10:20:51 PERMITTED USES IN THE 1997 ZONING.

10:20:53 ALL THAT WAS ASKING WAS THAT THE ZONING WILL BE

10:20:54 CONSISTENT WITH THE DRI.

10:20:58 >>DEREK ROONEY: NEALE, HOLD ON, THE REFERENCE TO 8 IS

10:21:02 ON PAGE 10, MIDPAGE DWELLING UNITS.

10:21:05 >>MARY GIBBS: TAB A-2.

10:21:06 A-2.

10:21:08 I THINK YOU SAID 4.

10:21:10 >>DEREK ROONEY: 4 ON MINE.

10:21:14 >>MARY GIBBS: 2 ON MINE.

10:21:18 >> ACTUALLY 4-A-2.

10:21:21 >> 4-A-2?

10:21:23 >> UNDER AGENDA ITEM 4.

10:21:26 AND THEN A-2.

10:21:31 >> I HAVE THE BENEFIT OF -- YES, SIR, MR. MCLAIN?

10:21:34 >>VICE-MAYOR MCLAIN: MULTIFAMILY LOW RISE.

10:21:42 HELP ME WITH THE DEFINITION OF THAT.

10:21:46 >> WELL, MULTIFAMILY IS -- THE TECHNICAL DEFINITION IS

10:21:49 THREE OR MORE UNITS TACKED TOGETHER.

10:21:51 THE MORE EXTENSIVE DEFINITION THAN THAT.

10:21:59 BUT IF YOU KEEP SCROLLING, YOU WILL HIT WHAT I CALL

10:22:00 PROPERTIES INVOLVED IN REGULATIONS.

10:22:01 YOU SEE THE CHARTS.

10:22:03 STARTS OFF WITH RESIDENTIAL.

10:22:05 THEN IT GOES TO COMMERCIAL.

10:22:09 AND THEN IT GOES TO TOWN CENTER.

10:22:11 AND, AGAIN, IF YOU LOOK AT THE PROPERTY DEVELOPMENT

10:22:17 REGULATIONS, YOU CAN GO DOWN AND ASSESS C, TOWN CENTER

10:22:18 AS A TOP OF THAT PAGE.

10:22:23 AND YOU WILL SEE A LINE ITEM THAT SAYS, MULTIFAMILY

10:22:24 LOW-WISE.

10:22:30 WHAT THAT DOES IS TELLS YOU THE AREA, THE WIDTH, DEPTH

10:22:32 OF WHAT THAT PARCEL WILL LOOK LIKE.

10:22:37 AND THEN I GO DOWN TO NEXT SECTION AND HAS MINIMAL

10:22:38 SETBACKS.

10:22:40 WE WILL SEE WHAT THE MINIMAL SETBACKS ARE.

10:22:48 >> PAGE 17, COUNCIL, VICE-MAYOR MCLAIN.

10:22:51 >> THE NEXT PAGE IS THE HEIGHT.

10:22:54 THE MULTIFAMILY USE THAT HAS TO MEET THE AREA

10:22:59 REQUIREMENTS, THE HEIGHT REQUIREMENTS, AND ALL THE

10:23:12 RESTRICTIONS THAT ARE IN THE ZONING RESOLUTION.

10:23:14 THESE HAVE NOT BEEN MOVED OR TAKEN OUT.

10:23:17 THE LAST ZONING HEARING -- PUBLIC HEARING ACTION IS THE

10:23:21 ONE THAT MARY REFERENCED WITH THE MARTINI GLASS WITH

10:23:23 THE FUNNEL PARCEL.

10:23:28 I HAD THE BRIM LEDGE OF BEING AT THAT -- PRIVILEGE OF

10:23:31 BEING AT THAT HEARING AS WELL AND THE ORIGINAL INTENT A

10:23:40 FLYOVER THE INTERSTATE.

10:23:44 THE SENATOR FROM ALASKA HAD MONEY FOR THE STUDY AND

10:23:47 DIDN'T WANT TO FLY OVER THERE AND HAD HAND SURROUNDED

10:23:52 BY THE DRI THAT WASN'T USED AND THAT WAS THE GENESIS OF

10:23:55 THE REZONING.

10:23:58 IF YOU LOOK AT THE 2013 RESOLUTION THAT WAS IN THE

10:24:08 PACKAGE, YOU WILL FIND THAT IT DIDN'T TAKE AWAY.

10:24:10 LOW-RISE IS A PERMITTED USE.

10:24:13 HIGHLIGHT IS THE SAME.

10:24:14 SETBACKS ARE THE SAME.

10:24:15 NOTHING HAS CHANGED.

10:24:23 IT IS STILL A PERMITTED USE.

10:24:26 THE APPLICANTS PROCEEDED FORWARD IN RELIANCE AND

10:24:29 SUBMITTED AN APPLICATION FOR FINAL PLAN APPROVAL.

10:24:35 NOW WHY WOULD THEY DO THAT?

10:24:38 IF YOU GO BACK TO THE Z 970.

10:24:44 HOPEFULLY DEREK CAN TELL ME WHAT PAGE IT IS ON, BUT YOU

10:24:46 WILL SEE THE EXCEPTION ON CONDITIONS.

10:24:57 AND YOU WILL SEE 1A, 1B, AND 1C.

10:25:06 GOT TO GO LEFT.

10:25:09 >>MARY GIBBS: SHOULD BE PAGE 5.

10:25:13 >> 5?

10:25:16 SO THIS IS WHERE FINAL PLAN APPROVAL COMES FROM.

10:25:19 THIS ISN'T THE ONLY DEVELOPMENT THAT HAS FINAL PLAN

10:25:25 APPROVAL, BUT OBVIOUSLY THE ONE THAT WE ARE HERE FOR

10:25:25 TODAY.

10:25:28 WHAT THAT SAYS ANY TIME YOU DO VERTICAL DEVELOPMENT

10:25:31 WITHIN THIS PROJECT, YOU HAVE TO SUBMIT.

10:25:33 WELL, WHY DID THE STAFF CREATE THIS PROCESS?

10:25:37 WELL, ONE OF THE MAIN REASONS THE STAFF CREATED THE

10:25:39 PROCESS WAS SO THEY COULD TRACK THE DEVELOPMENT.

10:25:42 IN OTHER WORDS, YOU COULD HAVE, PERHAPS, THREE

10:25:44 DIFFERENT APPLICATIONS AT THE SAME TIME.

10:25:48 AND HOW WOULD THEY KNOW HOW MUCH SQUARE FOOTAGE HAS

10:25:49 BEEN BUILT.

10:25:52 HOW WOULD THEY KNOW HOW MANY UNITS.

10:25:55 THE BURDEN ON THE PROPERTY OWNER AND APPLICANTS TO

10:25:59 PROVIDE, WHAT I WOULD CALL, TRACKING INFORMATION AND

10:26:01 OF WANT TO MAKE THEIR THAT THE DEVELOPMENT MET ALL OF

10:26:04 THE REQUIREMENTS BECAUSE AS YOU SEE FROM THE SIZE OF

10:26:05 THE BOOK THERE ARE A LOT OF REQUIREMENTS.

10:26:08 ALL THESE DOCUMENTS IN ADDITION TO THE LAND DEVELOPMENT

10:26:08 CODE.

10:26:12 IF YOU LOOK AT 1-C, IT TELLS YOU ALL THE INFORMATION

10:26:13 THAT HAS TO BE PROVIDED.

10:26:19 SO THE APPLICANT IN RELIANCE ON THE APPROVED USE,

10:26:23 SUBMITTED AN APPLICATION ON THE -- ON THE ESTERO

10:26:29 VILLAGE FORM FOR FINAL PLAN APPROVAL AND WAS TOLD

10:26:33 ESSENTIALLY THAT THEY DIDN'T HAVE A RIGHT TO THE

10:26:35 MULTIFAMILY LOW-RISE USE.

10:26:39 NOW WHEN I LOOKED AT THE STAFF REPORT YOU HAVE PROVIDED

10:26:46 ON VESTED RIGHTS, STAFF RECOMMENDATION NUMBER ONE.

10:26:48 WE AGREE WITH.

10:26:52 IT SAYS, ACKNOWLEDGE VESTING FOR USE OF MULTIFAMILY

10:26:53 LOW-RISE.

10:26:57 SO WE AGREE WITH THE STAFF POSITION THAT THE PERMITTED

10:27:03 USE OF MULTIFAMILY LOW RISE IS VESTED AND ASK YOU TO

10:27:08 SUPPORT ITEM 1 UNDER THE STAFF RECOMMENDATIONS.

10:27:12 THEY SAY WE DON'T HAVE VESTED RIGHTS FOR A SPECIFIC

10:27:13 NUMBER OF UNITS.

10:27:17 I WOULD RESPECTFULLY DISAGREE WITH THAT BECAUSE, AS I

10:27:19 INDICATED EARLIER ALL THE UNIONS IN THE PROJECT HAVE

10:27:21 BEEN FULLY MITIGATED.

10:27:25 THE PROPERTY OWNER HAS A RIGHT, IF THEY CAN COMPLY WITH

10:27:32 ALL THE OTHER RULES TO PUT THE UNITS ON THIS PROPERTY.

10:27:35 OBVIOUSLY THE STAFF IS STAYING THAT, OKAY, YOU GOT TO

10:27:36 SHOW YOU CAN FIT.

10:27:40 I AGREE WITH THAT, BUT IN TERMS OF -- TO THE EXTENT WE

10:27:43 CAN MEET ALL THE RULES WE SUBMITTED THE 154 UNITS.

10:27:47 WOULD LIKELY TO PROCEED FORWARD AND HAVE THOSE RIGHTS

10:27:48 VESTED.

10:27:52 AND THEN IT SAYS, NO VESTED RIGHTS FOR AN

10:27:54 ADMINISTRATIVE STAFF REVIEW PROCESS.

10:27:57 AND I THINK THERE IS SOME CONFUSION ON THAT ISSUE.

10:28:02 AND I CAN TELL YOU WHY I THINK THERE IS CONFUSION.

10:28:05 THE RESIDENTS OF THE BROOKS OR ONE OF THE ASSOCIATIONS

10:28:13 FILED AN APPLICATION TO EXPAND THEIR FACILITIES IN THE

10:28:14 TOWN CENTER.

10:28:16 THAT VERTICAL DEVELOPMENT.

10:28:18 THEY DIDN'T COMPLY WITH THIS AT ALL.

10:28:21 THEY DIDN'T SUBMIT FOR A FINAL PLAN APPROVAL.

10:28:27 SO THEY -- SOMEBODY IN BLUE FILED AN APPLICATION AND

10:28:30 GOT APPROVAL TO EXPAND IT BUT DIDN'T GO THROUGH THE

10:28:33 FINAL PLAN APPROVAL PROCESS AS THEY SHOULD HAVE.

10:28:37 THE ONLY OTHER FINAL PLAN APPROVALS THAT I AM AWARE OF

10:28:41 IS CALLED -- A PARCEL WITHIN -- AND MISS RIBBLE, YOU

10:28:45 PROBABLY KNOW BECAUSE WITHIN THE PELICAN LANDING, IT

10:28:46 WAS FOR THE HOTEL.

10:28:51 THE VILLAGE AND THE VILLAGE COUNSEL DETERMINED THAT THE

10:28:54 APPROPRIATE PROCESS WAS TO SUBMIT THE FINAL PLAN

10:28:59 APPROVAL APPLICATION, WHICH WE DID, REVIEWED BY STAFF

10:29:03 AND ULTIMATELY WENT TO COUNCIL FOR DETERMINATION OF

10:29:08 CONSISTENCY OF THOSE THINGS WE JUST LOOKED AT IN 1-A,

10:29:11 1-B AND 1-C.

10:29:14 IN THAT OCCASION, THEY APPROVED IT.

10:29:16 WE WERE ASKING TO GO THROUGH THE SAME PROCESS THAT THE

10:29:23 VILLAGE COUNCIL AND THE STAFF ASKED THE HOTEL TO GO

10:29:24 THROUGH.

10:29:28 WE WEREN'T ASKED TO BE TREATED LIKE THE EXPANSION OF

10:29:29 THE HEALTH CARE FACILITIES.

10:29:32 SO WE WILL SUBMIT THAT THE RIGHTS ARE VESTED UNDER ALL

10:29:35 OF THE APPROVALS THAT YOU HAVE IN THAT BOOK AND THE

10:29:46 PROCESS THAT YOU IMPOSED ON A PRIOR APPLICANT.

10:29:49 AND YOU WILL SAY, WHAT WOULD THE BASIS BE THAT BE?

10:29:52 SOME OF YOU REMEMBER WHEN YOU WERE ADOPTING THE LAND

10:29:55 DEVELOPMENT CODE IN JANUARY, I SHOWED UP NUMEROUS TIMES

10:29:59 AND SAID I AM VERY CONCERNED OF THIS VESTS RIGHTS

10:30:02 LANGUAGE TO MAKE SURE IT IS CLEAR.

10:30:05 SOME FOLKS SAY, OH, IT'S CLEAR.

10:30:06 NOT TO WORRY.

10:30:09 NOW I KNOW WHY I WAS WORRIED.

10:30:12 YOU HAVE SEVERAL SECTIONS OF YOUR CODE THAT I WANT TO

10:30:13 TALK ABOUT.

10:30:16 1.604 THAT SAYS "VESTED RIGHTS."

10:30:18 EXISTING VESTED RIGHTS.

10:30:23 IT SAYS NOTHING -- NOTHING IN THIS LDC TO APPEAL,

10:30:29 SUPERCEDE, ANULL, INTERFERE OF ANY VESTED RIGHTS UNDER

10:30:31 APPLICABLE LAW.

10:30:33 SO NOTHING -- NOTHING IN YOUR LAND DEVELOPMENT CODE CAN

10:30:38 TAKE AWAY OR REPAIR THE RIGHTS THAT ARE SET FORTH IN

10:30:43 THE DOCUMENTS IN YOUR BOOKS.

10:30:47 YOU HAVE ANOTHER SECTION, 1.805 THAT SAYS ALL

10:30:52 DEVELOPMENT APPROVALS OR PERMITS BEFORE JANUARY 27,

10:30:52 2021.

10:30:53 THAT'S US.

10:30:56 ALL THESE APPROVALS WERE BEFORE THAT DATE.

10:31:03 REMAIN VALID UNTIL THEIR EXPIRATION DATES.

10:31:05 THESE DOCUMENTS HAVE NOT EXPIRED.

10:31:08 ALL THE RIGHTS IN THE ZONING RESOLUTION AND THE DRI

10:31:10 REMAIN VALID.

10:31:12 THE LDC ACKNOWLEDGES THE FACT THAT THE APPLICANTS

10:31:16 RETAINED ALL THOSE RIGHTS.

10:31:19 AND EVEN BEFORE YOU GOT TO THE LAND DEVELOPMENT CODE,

10:31:25 YOU HAVE FUTURE LAND USE ELEMENT 1.7.1 VESTED RIGHTS.

10:31:28 AGAIN, THIS SAYS NOTHING IN THE COMPREHENSIVE PLAN WILL

10:31:35 TAKE AWAY ANY RIGHTS THAT I GOT UNDER 3806 WHICH IS A

10:31:38 DRI OR 163 WHICH IS MY ZONING.

10:31:41 I CAN READ YOU WHOLE THING AND I WILL SPARE YOU.

10:31:45 THE COMP PLAN ACKNOWLEDGES VESTED RIGHTS FOR PRIOR

10:31:45 APPROVALS.

10:31:49 IF THAT WEREN'T ENOUGH, THE LEGISLATURE SPOKE TO THE

10:32:04 VILLAGE IN CHAPTER 2015-193, AND WHAT THIS SAYS IS THAT

10:32:08 THE -- YOU DON'T HAVE TO -- THERE HAVE BEEN PRIOR

10:32:14 JURISDICTIONS WHEN BONITO WAS CREATED SO THAT HE MADE

10:32:17 THE APPLICANT SURVEY THE CITY-COUNTY LINE AND THEY

10:32:21 DIDN'T KNOW WHERE THE LINE WAS THROUGH PELICAN LANDING

10:32:24 AND HAVE THEM FILE A SEPARATE APPLICATION FOR A DRI IN

10:32:25 THE CITY.

10:32:27 THE LANGUAGE IN PART SAID WE DIDN'T HAVE TO DO THAT

10:32:28 THIS TIME.

10:32:31 BUT GOES ON TO SAY THAT THE VILLAGE IS SUBJECT TO

10:32:40 WITHOUT LIMITATION ALL RIGHTS, COVENANTS AND

10:32:43 COMMITMENTS DEVELOPED IN DRI DEVELOPMENT ORDERS AND

10:32:46 ZONING IN CONJUNCTION WITH OR PURSUANT TO THE DRI

10:32:51 DEVELOPMENT ORDER BEFORE DECEMBER 31, 2014, INCLUDING,

10:32:54 WITHOUT LIMITATION, ALL RIGHTS AND ENTITLEMENTS

10:32:58 INCLUDED IN ANY LOCAL DEVELOPMENT ORDER OR PLATS

10:33:00 PURSUANT TO THE DRI AND RELATED ZONING.

10:33:04 THE VILLAGE SHALL WITH MANDATORY THE PROPERTY RIGHTS

10:33:08 AND INTEREST HELD BY PROPERTY OWNERS WITH DRI ORDERS

10:33:12 AND ALL OTHER VESTED RIGHTS.

10:33:14 SO THE LEGISLATURE IN AMENDING YOUR CHARTER

10:33:19 SPECIFICALLY SAID, YOU SHALL, YOU MUST RECOGNIZE THE

10:33:22 PROPERTY RIGHTS THAT ARE VESTED UNDER DRI DEVELOPMENT

10:33:24 ORDER AND ASSOCIATED ZONING.

10:33:30 WHAT DOES THAT MEAN THAT MEANS THE RIGHT TO THE

10:33:36 LOW-RISE MULTIFAMILY WAS APPROVED, STILL APPROVED.

10:33:40 NEVER ERADICATED WAS VESTED.

10:33:43 AND WHAT IS SET FORTH IN THE FINAL ZONING APPLICATION

10:33:45 WAS VESTED.

10:33:48 THE DISTINCTION THAT YOU FOLKS CAME UP WITH IS, AND

10:33:54 RIGHTFULLY SO, COUNCIL MEMBER LEVITAN, THE 2013-01 THE

10:33:58 FIRST ORDINANCE THAT YOU ADOPTED GOT RID OF ALL THE

10:34:00 ADMINISTRATIVE PROCESSES IN THE CITY.

10:34:07 WE COMPLIED WITH 1-A, B AND C AND THE FINAL DECISION

10:34:09 IN THE PELICAN LANDING HOTEL CASE.

10:34:12 THAT SHOULD BE THE SAME PROCESS WE ARE UNDER.

10:34:15 WE SHOULD BE VESTED JUST LIKE THEY WERE.

10:34:20 SO IN CONCLUSION, WE ARE VESTED TO THE USE, WE ARE

10:34:22 VESTED TO THE REMAINING UNITS AS LONG AS WE ARE APPLIED

10:34:25 TO EVERYTHING ELSE AND SHOULD BE VESTED FOR THE SAME

10:34:28 PROCESS THAT YOU SUBMITTED PELICAN LANDING TO AND NOT

10:34:30 THE EXPANSION OF THE HEALTH CARE FACILITIES.

10:34:32 AND WE RESERVE THE RIGHT FOR REBUTTAL.

10:34:39 THANK YOU.

10:34:41 >>MAYOR ERRINGTON: ARE WE PERMITTED TO ASK QUESTIONS

10:34:42 NOW, DEREK?

10:34:45 >>DEREK ROONEY: YOU MAY QUESTIONS OF THE APPLICANT IF

10:34:47 YOU HAVE ANY?

10:34:49 >>MAYOR ERRINGTON: I HAVE ONE.

10:34:53 ANY OTHERS?

10:34:56 >> STATEMENTS -- WAIT FOR THE STATEMENTS.

10:35:02 >>DEREK ROONEY: COUNCILMAN BOESCH.

10:35:05 THESE ARE QUESTIONS OR CLASSIFICATION.

10:35:06 >>MAYOR ERRINGTON: I HAVE A QUESTION.

10:35:07 >> YES, MA'AM.

10:35:12 >>MAYOR ERRINGTON: Z-97-037 THE LEE COUNTY RESOLUTION.

10:35:14 THAT WAS AMENDED IN 1999.

10:35:16 HOW DOES THAT AFFECT THAT?

10:35:20 Z-99-076.

10:35:27 THE WHOLE THING CHANGED.

10:35:28 >> I AM SORRY.

10:35:30 >>MAYOR ERRINGTON: RESOLUTION CHANGED.

10:35:31 IT WAS AMENDED.

10:35:34 THE ONE YOU KEEP REFERRING TO IS IN 1997 AND IT WAS

10:35:39 AMENDED IN 1999.

10:35:42 >> THE FINAL ONE -- THE ONE -- WHAT I AM SUBMIT

10:35:45 SOMETHING IN 2013, WHICH IS THE LAST PUBLIC HEARING.

10:35:51 AND THAT ONE IS Z 13009.

10:35:58 >>MAYOR ERRINGTON: Z-99-076.

10:36:01 >> I AM SUBMITTING THE RIGHT TO DO LOW-RISE MULTIFAMILY

10:36:04 AND THE FINAL PLAN APPROVAL PROCESS DID NOT CHANGE.

10:36:09 THE NUMBER OF TOTAL UNITS CHANGED WHEN THEY ADDED THE

10:36:09 LAND.

10:36:13 THE PROPERTY OWNER ACQUIRED ADDITIONAL LANDS BECAUSE --

10:36:17 IT WAS EASY TO ACQUIRE IN ORDER TO FACILITATE THE

10:36:17 EXTENSION.

10:36:23 A HIATUS BETWEEN THE BROOKS PROPERTY AND CORKSCREW.

10:36:27 SO THE DEVELOPER WORKED WITH THE COUNTY TO ACQUIRE THAT

10:36:30 PROPERTY AND IN SO DOING, HAD ANOTHER PIECE OF PROPERTY

10:36:31 WHICH WAS ADDED.

10:36:33 THEY CHANGED THE NUMBER OF UNITS.

10:36:36 WE ARE NOT ASKING TO EXCEED THE NUMBER OF UNITS IN THE

10:36:41 DRI AND WE ARE NOT ASKING TO EXCEED THE NUMBER OF NET

10:36:43 NEW EXTERNAL TRIPS.

10:36:45 WHAT WE ARE ASKING FOR IS CONSISTENT WITH THE ZONING

10:36:48 ADOPTED AT PUBLIC HEARING AND THE DRI DEVELOPMENT

10:36:51 ORDER.

10:36:55 >>MAYOR ERRINGTON: SOMETHING THERE.

10:36:56 STATE YOUR NAME, PLEASE.

10:36:58 >> GOOD MORNING.

10:37:00 MY NAME IS PAULA MCMICHAEL, THE VICE PRESIDENT OF

10:37:05 PLANNING WITH HOLE MONTES REPRESENTING THE APPLICANT.

10:37:08 IF I UNDERSTAND YOUR QUESTION CORRECTLY, IF YOU LOOK AT

10:37:12 Z-13009 WHICH IS THE MOST RECENTLY ADOPTED RESOLUTION.

10:37:15 IT IS ON PAGE 3 OF SIX.

10:37:20 I DON'T -- GENERAL ATTACHMENT, SUMMARIES.

10:37:23 CONDITION B STATES, ALL USES AND PROPERTY DEVELOPMENT

10:37:28 REGULATIONS MAY BE FOUND IN ZONING RESOLUTIONS Z-97-0

10:37:33 37 AS SUBSEQUENTLY AMENDED BY ZONING REGULATIONS Z 99

10:37:35 AND Z 02.

10:37:39 THOSE PREVIOUS APPROVALS ARE STILL IN EFFECT AS

10:37:42 REFERENCED RIGHT THERE.

10:37:45 DOES THAT ANSWER YOUR QUESTION?

10:37:49 >>MAYOR ERRINGTON: DOES THAT SATISFY COUNCIL?

10:37:54 HOW DOES THE CHARTER -- THIS WOULD BE FOR NEALE

10:37:55 MONTGOMERY.

10:37:58 HOW DOES THE CHARTER FIT IN?

10:38:05 I NOTICE I READ IN YOUR DOCUMENTS THAT YOUR CHARTER FOR

10:38:11 VILLAGE OF ESTERO, THAT ON PAGE 81 AND 84, SUBSEQUENT

10:38:14 TO THE COMMENCEMENT OF THE VILLAGE'S CORPORATE

10:38:20 EXISTENCE AND AMENDMENT OF THE COMPREHENSIVE LAND USE

10:38:23 PLAN AND ENACTED BY THE BOARD OF COUNTY COMMISSIONERS

10:38:27 OF LEE COUNTY SHALL NOT BE DEEMED OF THE VILLAGES

10:38:32 COMPREHENSIVE LAND USE PLAN OR LAND USE RULES TAKEN

10:38:43 EFFECT WITHIN THE VILLAGE'S MUNICIPAL BOUNDARIES.

10:38:47 >> I APOLOGIZE, BUT I DON'T THINK I UNDERSTAND THE

10:38:48 QUESTION.

10:38:53 >>MAYOR ERRINGTON: I READ IT THE WAY IT IS.

10:38:58 >> MISS MONTGOMERY, YOU TESTIFIED ON THE VILLAGE --

10:39:04 MAYOR IS LOOK FOR CLARIFICATION OF YOUR TESTIMONY AND

10:39:06 THE WRITTEN SUBMITTAL.

10:39:09 >> WHAT I READ FROM AND I WILL FIND THE DOCUMENT.

10:39:22 WHAT I READ FROM IS A 2015 AMENDMENT THAT DID SEVERAL THINGS

10:39:25 AND FOR THINGS THAT WERE CORRECTED AND THE LANGUAGE WAS

10:39:26 CORRECTED.

10:39:30 AND DEALS WITH DEVELOPMENTAL IMPACT AND WHAT THAT LONG

10:39:32 TYPICALLY SAYS IS THAT THE VILLAGE COULDN'T TAKE AWAY

10:39:41 RIGHTS THAT WERE STILL IN EFFECT IN DRI DEVELOPMENT

10:39:45 ORDERS AND RELATED ZONINGS, PLATS AND DEVELOPMENT

10:39:46 APPROVAL.

10:39:49 SO WHAT I AM SUBMITTING IS THE DRI DEVELOPMENT ORDER IS

10:39:50 STILL VALID.

10:39:53 THE ZONING IS STILL VALID.

10:39:56 AND THE RIGHTS SET FORTH ARE VALID -- STILL VALID AND

10:39:59 REMAIN IN EFFECT AND CAN'T BE TAKEN AWAY.

10:40:03 THE STATE LEGISLATURE ACKNOWLEDGED THAT IS THE STATUS

10:40:09 OF THOSE RIGHTS.

10:40:11 >>MAYOR ERRINGTON: YOU MENTIONED AND I CAN'T PUT MY

10:40:13 FINGER CONTINUES TO RIGHT NOW --

10:40:14 >> UNDERSTANDABLE.

10:40:19 >>MAYOR ERRINGTON: BUT A BIG DEAL OF DECEMBER 3, 2014.

10:40:27 THE VILLAGE DID NOT -- WE WERE INCORPORATED IN 2014,

10:40:31 BUT WE DID NOT BEEN A VILLAGE WITH A COUNCIL UNTIL

10:40:33 MARCH 17, 2015.

10:40:45 I REMEMBER THE RUSH THAT WAS ON AT MIDNIGHT IN JANUARY

10:40:51 OF WANTING TO GO INTO ESTERO TO THE LEE COUNTY BOARD OF

10:40:55 COMMISSIONERS TO TRY TO GET THINGS APPROVED.

10:40:57 AND THAT WAS NOT ONE OF THEM.

10:41:00 >> NO, THIS WAS NOT OF THEM BECAUSE THIS WAS ALREADY

10:41:01 APPROVED.

10:41:04 THIS DRI WAS APPROVED IN 1997.

10:41:07 >>MAYOR ERRINGTON: THE OTHERS WERE APPROVED TOO, WHICH

10:41:10 IS WHAT I AM REFERRING TO.

10:41:12 THEY WANTED MORE LENIENCY FOR COMMISSIONERS.

10:41:15 >> I CAN'T SPEAK FOR EVERY APPLICATION, I DO KNOW ON

10:41:19 ANOTHER DRI THAT IS IN THE VILLAGE, THAT I HAD SOMEHOW

10:41:21 -- MY BIRTHDAY IS IN DECEMBER.

10:41:24 SOMEHOW -- IT SEEMS LIKE EVERY DECEMBER I HAD A PELICAN

10:41:27 LANDING AMENDMENT ON MY BIRTHDAY.

10:41:30 I AM MINDFUL OF THE FACT WE WERE THERE IN DECEMBER BUT

10:41:32 JUST IN THE DUE COURSE OF EVENTS BECAUSE IT TAKES A

10:41:37 YEAR OR SO OR LONGER TO GET THROUGH THE PROCESS.

10:41:46 IT WASN'T AN EFFORT TO BEAT THE VILLAGE.

10:41:49 THE DROP-DEAD DATE WAS IN NOVEMBER OF 2014.

10:41:52 AND YOUR FIRST MEETING WAS IN MARCH AND THERE IS A

10:41:54 HIATUS PERIOD AFTER THAT.

10:41:56 >>MAYOR ERRINGTON: BUT DEVELOPERS HAD A CHANCE TO GO

10:41:58 BEFORE LEE COUNTY AND BRING THIS UP AT THE TIME THERE

10:41:59 WAS A GAP THERE.

10:42:05 AND THAT WOULD FIT -- I THINK THIS WOULD FIT INTO THAT

10:42:06 GAP.

10:42:10 >> I DON'T THINK THE GAP -- WITH ALL DUE RESPECT, I

10:42:11 DON'T KNOW IF THAT HAS ANYTHING TO DO WITH THIS CASE

10:42:14 BECAUSE NONE OF THE APPROVALS WERE DURING THAT -- THAT

10:42:17 I AM AWARE OF -- THERE MIGHT HAVE BEEN LOCAL DEALS OR

10:42:21 SOMETHING, BUT NOTHING DURING THAT GAP TIME THAT WAS

10:42:22 UNDER CONSIDERATION.

10:42:26 THE DATES THAT MISS GIBBS AND I HAVE OUTLINED, YOU

10:42:31 KNOW, ARE THE PERTINENT DATE IS '97 IT WAS APPROVED.

10:42:32 AMENDMENTS.

10:42:36 2007 THE FINAL PLAN APPROVAL AND 2013 WAS THE DOCUMENT

10:42:41 THAT MISS MCMICHAEL READ FROM ALL THE RIGHTS UNDER THE

10:42:43 PRIOR REMAIN IN EFFECT.

10:42:46 SO THERE WASN'T AN OPERATIVE CHANGE HERE.

10:42:52 I READ FROM THE SPECIAL ACT SIMPLY BECAUSE IT JUST

10:42:55 DIDN'T APPLY TO PELICAN LANDINGS OR THE BROOKS, THE

10:42:58 ZONING OF BROOKS.

10:43:02 IT APPLIED TO ALL THE DRIS IN THE VILLAGE.

10:43:04 >>MAYOR ERRINGTON: I WANT US TO KEEP IN MIND DECEMBER

10:43:07 31 ALREADY 2014 IS PIVOTAL IN PART OF THIS.

10:43:12 AND SO WHEN THE VILLAGE -- THAT TIME LAPSE, AND WE

10:43:15 BECAME AN ACTUAL COUNCIL, I THINK THERE IS SOMETHING

10:43:17 THERE.

10:43:20 SO IF YOU CAN PRESENT THAT LATER, THAT WILL BE FINE.

10:43:20 >> YES.

10:43:21 AND I APPRECIATE THAT.

10:43:24 JUST I DON'T BELIEVE THERE IS ANYTHING THAT THE -- THAT

10:43:27 HAPPENED IN THE BROOKS THAT WAS PIVOTAL DURING THAT

10:43:29 THREE-MONTH HIATUS.

10:43:32 >>MAYOR ERRINGTON: THANK YOU.

10:43:35 >> MISS MONTGOMERY, WHEN YOU REFER TO THE PROPERTY IN

10:43:38 PELICAN LANDING, THE HOTEL PROPERTY, THAT WAS DONE BY A

10:43:45 FINAL PLAN APPROVAL BECAUSE -- IT WAS AN EMPTY

10:43:47 PROPERTY, THE BLANK SLATE.

10:43:51 AND THE CRITERIA FOR THE FINAL APPROVAL COULD BE EASY

10:43:51 TO UNDERSTAND.

10:43:52 EASY TO SEE.

10:43:56 WHEN YOU ARE TALKING OF THE VILLAGE CENTER, YOU ARE

10:43:59 DESTROYING A BUILDING, YOU ARE CHANGING PROPERTY, YOU

10:44:01 ARE CHANGING GREEN SPACE.

10:44:05 THERE IS AN IMPACT -- THE AN UNKNOWN IMPACT TO THE REST

10:44:06 OF THE SHOPPING CENTER.

10:44:13 PROBABLY A LOT OF OTHER IMPACTS THAT I CAN'T EVEN THINK

10:44:14 OF.

10:44:16 HAD YOU CAN ALL THESE CHANGES BE DONE BY AN

10:44:19 ADMINISTRATIVE DECISION?

10:44:22 >> AS YOU ALL WELL KNOW, YOU HAVE A VERY ROBUST

10:44:28 PLANNING ZONING DESIGN BOARD -- REVIEW PROCESS FOR ONE

10:44:29 THING.

10:44:36 SO ARCHITECTURE, LIGHTING, LANDSCAPING, PARKING, ALL

10:44:39 THOSE THINGS AND MORE GET LOOKED AT FROM THE PUBLIC

10:44:43 HEARING PROCESS AND NOT UNUSUAL TO HAVE A WORKSHOP AND

10:44:44 ONE MORE PUBLIC HEARING AFTER THAT.

10:44:48 OPEN SPACE -- OPEN SPACE GETS EVALUATED BY THE STAFF

10:44:55 AND WILL BE EVALUATED BY THIS COUNCIL FOR A PLAN

10:44:57 APPROVAL PROCESS TO MEET THE OPEN SPACE.

10:44:59 THERE IS AN ESTABLISHED OPEN SPACE NUMBER BOTH

10:45:02 INDIGENOUS AS WELL AS, YOU KNOW, GENERAL OPEN SPACE

10:45:10 THAT HAS TO BE MET AGAINST.

10:45:13 THOSE IN THE ZONING RESOLUTION, YOU HAVE TO COMPLY WITH

10:45:14 THEM.

10:45:17 DEMOLITION OF A BUILDING IS A SEPARATE PROCESS.

10:45:20 YOU HAVE TO FILE FOR A DEMOLITION PERMIT AND FOLLOW ALL

10:45:22 THE RULES RELATED TO THAT.

10:45:26 BUT THIS PARCEL IS NO DIFFERENT THAN THE ONE IN PELICAN

10:45:26 LANDING.

10:45:29 HAS TO BE A PERMITTED USE AND DEVELOPED IN ACCORDANCE

10:45:33 WITH ALL OF THE CRITERIA AND COME TO THE COUNCIL IN

10:45:36 CONFORMANCE WITH ANY OF THESE BACTERIA.

10:45:40 AND YOU HAVE TO HAVE ALL THE THINGS THAT GO WITH WILL

10:45:44 BE LOOKED AT BY THE DESIGN REVIEW BOARD.

10:45:52 TRAFFIC IS TO MAKE SURE YOU DO YOUR D.O. TRAFFIC

10:45:56 IMPACT STATEMENT AND DO YOUR DEAL, TRAFFIC MITIGATION

10:46:01 AND IT GETS EVALUATED AGAINST THE NET NEW TRIP APPROVED

10:46:05 BY THE DRI ASSURE YOU ARE NOT EXCEEDING THOSE.

10:46:17 SO BECAUSE OF YOUR PROCESS HERE.

10:46:19 NOBODY SNEAKS BY ANYTHING.

10:46:22 THERE ARE VARIOUS PLACES FOR THE PUBLIC TO COME IN AND

10:46:25 RAISE ISSUES AND MAKE SURE THAT THEY ARE ADDRESSED.

10:46:27 THE FOLKS HERE WILL HAVE THE OPPORTUNITY TO COME BEFORE

10:46:29 YOU WHEN YOU CONSIDER THE FINAL PLAN APPROVAL.

10:46:32 THEY HAVE THE OPPORTUNITY TO COME BEFORE YOU WHEN WE

10:46:36 HAD A WORKSHOP BEFORE THE PLANNING BOARD.

10:46:37 AND THEY WILL BE ABLE TO COME BEFORE THE PLAN INNING

10:46:41 BOARD, YOU KNOW, WHEN THEY -- WHEN THEY REACH A FINAL

10:46:48 DECISION AND AS THEY HAVE DONE IN OTHER CASES YOU WILL

10:46:51 HAVE AN APPEAL AND ANOTHER PUBLIC HEARING AND GO IN

10:46:52 DEPTH AGAIN.

10:46:56 I AM VERY CONFIDENT IF THE PUBLIC HAVE A CHANCE TO TALK

10:47:07 OF THIS UNDER YOUR PROCEDURES.

10:47:08 >> FINAL PLAN APPROVAL IS PIVOTAL.

10:47:11 YOU TALK OF PELICAN LANDING AND THE HOTEL.

10:47:14 I AM NOT FAMILIAR WITH THAT TOTALLY BUT I UNDERSTAND

10:47:15 WHAT YOU ARE TALKING ABOUT.

10:47:19 WHEN I LOOK AT THE FINAL PLAN APPROVAL, THE DRI 2007,

10:47:26 THAT IS WHEN THE SHOPPING CENTER WAS APPROVED DURING

10:47:27 THAT TIME.

10:47:30 AND NOW YOU ARE COMING UP SAYING YOU BASICALLY WANT

10:47:32 ANOTHER PLAN THAT WILL BE FINAL APPROVAL.

10:47:37 HOW MANY TIMES DO WE GIVE TO HAVE FINAL APPROVAL ON A

10:47:38 PROJECT?

10:47:41 IF THERE IS A CONSTRUCTION THAT HAS BEEN PERFORMED, A

10:47:44 BUILDING HAS BEEN BUILT, AND IT IS CALLED FINAL PLAN

10:47:49 APPROVAL TO GET TO THAT POINT.

10:47:51 IF I AM UNDERSTANDING THAT PROPERLY YOU ARE COMING TO

10:47:55 US NOW SAYING THOSE USES WERE APPROVED.

10:47:59 WE CAN DESTROY A BUILDING AND PUT IT UP AND DON'T HAVE

10:48:01 TO GO THROUGHOUT WHOLE ADMINISTRATIVE PROCESS.

10:48:02 IS THAT --

10:48:05 >> THE FINAL PLAN APPROVAL PROCESS IS IN THE ZONING

10:48:12 RESOLUTION AND THAT PROCESS IS CONTROLLING.

10:48:17 PEOPLE WHO HAVE -- PROPERTY OWNERS WHO HAVE TO GO

10:48:18 THROUGH THAT GO THROUGH.

10:48:21 THE PROJECT THAT DOESN'T HAVE THAT STEP THAT HAS ZONING

10:48:24 AND PERMITTED USES WOULD SIMPLY GO APPLY FOR A

10:48:28 DEVELOPMENT ORDER AND A DEMOLITION PERMIT, AND WE

10:48:30 WOULDN'T HAVE THIS DISCUSSION.

10:48:34 A EXTRA STEP AND EXTRA REVIEW FOR CERTAIN PROJECTS.

10:48:40 AND THERE ARE OTHER PROJECTS IN THE VILLAGE.

10:48:42 PELICAN LANDING BEING TWO OF THEM THAT HAVE THAT

10:48:43 PROCESS.

10:48:44 THE ANSWER IS, HOW LONG CAN YOU DO THAT?

10:48:46 WILL YOU HAVE TO DO THAT?

10:48:50 AND UNTIL THE ZONING IS TO TAKE THAT PROCESS OUT.

10:48:53 YOU ALWAYS HAVE TO GO THROUGH THAT EXTRA STEP.

10:48:57 IF YOU ARE GOING TO REDEVELOP.

10:48:59 AND THE REASON THERE IS SUCH A LONG LIST OF PERMITTED

10:49:04 USES AND PROVIDE FLEXIBILITY IS BECAUSE THE WORLD

10:49:04 CHANGES.

10:49:07 WE DON'T USE ANALOG ANYMORE.

10:49:09 WE DON'T USE HORSE AND BUGGY.

10:49:13 AND I GUARANTEE EVERYBODY HAD A VAN WITH A SMILEY FACE

10:49:17 TO COME AND DELIVER RETAIL GOODS.

10:49:22 BECAUSE EVEN BEFORE COVID, THE COMMERCIAL WORLD CHANGED

10:49:25 AND THE FACT OF THE MATTER IS IN THIS CASE, THE REASON

10:49:29 THE WINN DIXIE ISN'T THERE ANYMORE BECAUSE THE

10:49:31 RESIDENTS DIDN'T USE IT.

10:49:35 YOU CAN'T ASK -- I WOULD SUBMIT A PROPERTY OWNER TO

10:49:37 CONTINUE TO HAVE A DARK BUILDING THAT NOBODY WANTED TO

10:49:43 USE AND WASN'T VIABLE AND SHOULD BE ABLE TO PURSUE

10:49:46 ANOTHER PERMITTED USE IN THEIR ZONING AND THE DRI.

10:49:51 >>VICE-MAYOR MCLAIN: THANK YOU.

10:49:53 >> MADAM MAYOR, WHAT I WOULD RECOMMEND JUST TO BE

10:49:56 CLEAR FOR THE COUNCIL, THE NEXT STAGE WILL BE TO ALLOW

10:49:59 THE VILLAGE ATTORNEY.

10:50:04 AND THE INTERVENOR SOUTHERN TO ASK -- CROSS-EXAMINE

10:50:08 MISS MONTGOMERY'S TESTIMONY OR MISS MCMICHAEL.

10:50:11 BUT SPECIFICALLY TO WHAT THEY JUST DISCUSSED HERE.

10:50:15 NOT TO GIVE A NEW PRESENTATION.

10:50:17 >> IT WOULD BE IMPROPER RIGHT NOW NOT TO TAKE A BREAK

10:50:20 BUT LET US STAND FOR ONE MINUTE.

10:50:21 IS THAT OKAY.

10:50:23 AND NOT TALK.

10:50:29 >>DEREK ROONEY: DEALER'S CHOICE.

10:50:31 >>MAYOR ERRINGTON: THESE CHAIRS KIND OF GET

10:51:24 UNCOMFORTABLE.

10:51:25 >>MAYOR ERRINGTON: JUST A LITTLE STANDING BREAK.

10:51:29 >> THE VILLAGE STAFF HAS NO CROSS-EXAMINATION.

10:51:39 WE WILL RESPOND IN OUR OWN REMARKS.

10:51:49 >>DEREK ROONEY: SEEING NO CROSS-EXAMINATION.

10:51:51 >>MAYOR ERRINGTON: STATE YOUR NAME AGAIN, PLEASE.

10:51:53 >> MY NAME IS GARY --

10:51:53 [INAUDIBLE]

10:52:00 -- AND I AM SPECIAL COUNSEL ON -- WE HAVE BEEN ASKING

10:52:06 TO ANALYZE THE VESTED RIGHTS CLAIM -- WE HAVE BEEN

10:52:09 ASKED TO ANALYZE THE VESTED RIGHTS CLAIM.

10:52:12 OH, MY GOODNESS, I AM BALD.

10:52:22 [LAUGHTER]

10:52:24 >>MAYOR ERRINGTON: AND YOU ARE GLISTENING TOO.

10:52:35 [LAUGHTER]

10:52:38 >> COMMISSIONERS, I HOPE I DON'T HAVE TO USE THE 20

10:52:39 MINUTES.

10:52:43 BUT I WANT TO PREFACE MY REMARKS AND WHAT I HAVE DONE

10:52:48 IN THAT REGARD IS ANALYZE THE REQUEST.

10:52:52 AND I AM PROVIDING YOU THE ANALYSIS THAT I HAVE DONE

10:52:55 AND THE CONCLUSIONS AND RECOMMENDATIONS THAT I REACHED

10:52:59 UPON ANALYZING THIS MATTER FROM THE STANDPOINT OF THE

10:53:07 LEGAL PRINCIPLE OF VESTED RIGHTS.

10:53:10 I KNOW THAT YOU THOROUGHLY REVIEWED YOUR PACKETS.

10:53:13 I KNOW YOU REISSUED THE STATEMENT OF SUPPLEMENTAL FACTS

10:53:16 THAT I PROVIDED THAT GO ALONG WITH THIS PARTICULAR

10:53:19 ANALYSIS, AS WELL AS THE ANALYSIS THINK THAT PROVIDED

10:53:22 FOR YOU IN WRITING.

10:53:26 SO I AM GOING TO KEEP MY COMMENTS SHORT.

10:53:35 I HAVE FOUR OR FIVE.

10:53:41 I HAVE FOUR OR FIVE POWERPOINT SLIDES TO HELP WITH THIS

10:53:43 AND WHAT THE VESTED RIGHTS ARE AND THE ANALYSIS OF EACH

10:53:45 ONE OF THOSE VESTED RIGHTS ITEMS.

10:53:50 BUT THE FIRST THING THAT I WOULD LIKE TO DO -- SURE.

10:53:56 I JUST DON'T WANT IT TO -- WELL, COVER MY BALD SPOT,

10:54:14 PLEASE.

10:54:16 >> JUST CLICK TO THE NEXT.

10:54:17 VERY, VERY GOOD.

10:54:19 VERY GOOD, THANK YOU.

10:54:21 THE FIRST THING THINK THAT NEED TO DO JUST AS A MATTER

10:54:26 OF PRESENTATION AND FOR HOUSEKEEPING IS, I WANT TO ASK

10:54:32 TO YOU TAKE A LOOK AT ITEM NUMBER 4 IN YOUR PACKET.

10:54:36 IT FOLLOWS ITEM B-7 THAT GOES WITH THIS.

10:54:39 IT IS AN AFFIDAVIT FROM WALTER KELLER.

10:54:45 AND I AM ALSO GOING TO, AT THIS TIME, IF YOU CAN UNSAVE

10:54:50 THE SCREEN, I AM GOING TO ASK MR. KELLER IF HE CAN JOIN

10:54:51 US ON THE SCREEN.

10:55:04 AND I AM GOING TO JUST ASK HIM TWO QUESTIONS.

10:55:09 MR. KELLER, IT APPEARS YOU ARE MUTED.

10:55:13 THANK YOU.

10:55:15 GOOD MORNING, MR. KELLER.

10:55:18 WOULD YOU PLEASE INTRODUCE YOURSELF TO THE MEMBERS OF

10:55:21 THE COUNCIL AND THE MAYOR AND ALL THESE WONDERFUL

10:55:24 PEOPLE THAT ARE HERE FOR THIS MEETING?

10:55:26 >> YES.

10:55:30 COUNCILMEMBERS AND MAYOR, MY NAME IS WALTER KELLER.

10:55:33 I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF

10:55:37 FLORIDA AND ALSO A MEMBER OF THE AMERICAN INSTITUTE OF

10:55:39 CERTIFIED PLANNERS.

10:55:44 >> MR. KELLER, YOU HAVE PROVIDED FOR THE -- COUNCIL'S

10:55:48 PACKET, THEIR AGENDA PACKET, ITEM NUMBER 4, AN

10:55:54 AFFIDAVIT THAT YOU SIGNED TESTIFYING UNDER OATH; IS

10:55:55 THAT CORRECT?

10:55:56 >> YES, SIR.

10:55:59 >> DO THE FACTS AND STATEMENTS CONTAINED IN THAT

10:56:02 AFFIDAVIT, ARE THEY TRUE AND ACCURATE?

10:56:03 >> YES.

10:56:07 >> AND DO THEY -- DO THEY CONTAIN YOUR PROFESSIONAL

10:56:12 CONCLUSIONS AND OPINIONS BASED UPON YOUR -- YOUR

10:56:15 KNOWLEDGE AND EXPERIENCE IN THE AREAS OF URBAN PLANNING

10:56:18 AND TRANSPORTATION PLANNING?

10:56:20 >> YES.

10:56:21 >> THANK YOU.

10:56:24 IF IT WOULD BE ALL RIGHT, I WOULD LIKE TO ASK IF THERE

10:56:28 ARE QUESTIONS FOR MR. KELLER, THAT THEY BE PRESENTED OR

10:56:33 PROPOSED AFTER I HAVE MADE THE REST OF MY COMMENTS.

10:56:34 THANK YOU.

10:56:37 OKAY, SO LET'S TAKE A LOOK AT THE VESTED RIGHTS

10:56:38 ANALYSIS.

10:56:45 AND WHERE DID YOU GO.

10:56:47 CHECK ONE.

10:56:53 THANK YOU.

10:56:56 SO NOW WE ARE GOING TO TALK ABOUT THE VESTED RIGHTS

10:57:01 ANALYSIS AND I WILL START WITH THE FIRST QUESTION WHICH

10:57:06 IS THE APPLICATION AND REQUEST FOR A VESTED RIGHTS

10:57:15 ACKNOWLEDGMENT AS TO A PROCEDURE FOR THE REVIEW AND THE

10:57:23 ANALYSIS AND THE BE SIGNIFICANCES MAKING OF THE

10:57:26 APPLICANTS MAY COME UP WITH FOR THE CHANGE THE USE ON

10:57:30 THIS TOWN CENTER PARCEL THAT THEY CLAIM IS PROVIDED FOR

10:57:35 IN -- IN THE DRI DEVELOPMENT ORDER CONDITION 1-A.

10:57:38 THE ANSWER TO THAT QUESTION IS VERY, VERY SIMPLE.

10:57:41 THERE IS NO LEGAL VESTED RIGHT TO A PROCEDURE.

10:57:47 THAT IS A PROCEDURE THAT THEY CLAIM IS CONTAINED IN THE

10:57:51 DRI DEVELOPMENT ORDER AND THE LAW IS VERY, VERY CLEAR.

10:57:57 NO VEST THE RIGHTS TO PROCEDURE.

10:58:01 LEGISLATIVE CAN MAKE A CHANGE TO THE PROCEDURE AND AS

10:58:04 LONG AS THAT PROCEDURE IS ONE THAT IS SUBSTANTIAL AND

10:58:07 DEFICIENT THAT COVERS THE REASONABLE THINGS THAT ARE

10:58:10 NECESSARY TO BE REVIEWED TO MAKE A -- TO MAKE A

10:58:13 MEANINGFUL DECISION OR JUSTIFIED -- LEGALLY JUSTIFIED

10:58:15 DECISION.

10:58:17 AS LONG AS THAT IS AVAILABLE AND THERE IS A REMEDY

10:58:24 PROVIDED, THEN THE LAW -- THE LAW WILL RESPECT THAT

10:58:24 PROCEDURE.

10:58:30 NOW SINCE THIS VILLAGE HAS BEEN INCORPORATED AND COME

10:58:35 INTO EXISTENCE AND TAKEN OVER THIS -- THIS

10:58:40 RESPONSIBILITY WITH THIS DRI, IT HAS THE FULL AUTHORITY

10:58:44 TO ESTABLISH IN ITS OWN CODE WHAT PROCESS, PROCEDURE,

10:58:48 PROCEDURES, WHATEVER WILL BE NECESSARY AND REQUIRED AT

10:58:52 THE TIME IF THERE IS AN APPLICATION FOR DESIRE TO MAKE

10:58:56 -- MAKE DEVELOPMENT OF A PROPERTY IN THE VILLAGE.

10:58:59 I THINK IT ACTUALLY -- COUNCIL FOR THE APPLICANT'S

10:59:06 ANSWER TO COUNCILMEMBER RIBBLE'S QUESTION AS TO, WELL,

10:59:09 WHAT WOULD HAPPEN TO BE DONE TO THIS PROJECT?

10:59:12 SPEAKS TO THE ACKNOWLEDGMENT AND ACCEPT STANCE THAT THE

10:59:16 VILLAGE HAS PROCEDURES AND THOSE PROCEDURES HAVE TO BE

10:59:16 FOLLOWED.

10:59:17 VERY SIMPLE.

10:59:18 WE WILL PUT THAT ONE TO THE SIDE.

10:59:23 THAT ONE -- THERE IS NO VESTED RIGHT TO A PROCEDURE.

10:59:29 THE SECOND THING WE WILL TAKE A LOOK AT WILL BE -- WILL

10:59:37 BE AS TO -- AS TO THE VESTED RIGHTS.

10:59:40 HERE WE SEE -- THESE ARE THE FACTORS THAT WE TAKE UP.

10:59:52 AND THE FACTOR GOES TO WHAT ARE THE REASONABLE

10:59:56 EXPECTATIONS WITH REGARD TO THIS PROJECT.

11:00:02 WHAT WERE THE EXPECTATIONS THAT THE DEVELOPER HAD.

11:00:04 WHAT PLANNING WAS REQUESTED?

11:00:08 WHAT SHOWINGS WERE MADE WITH THE ESTABLISHED CRITERIA

11:00:12 THAT THE LOCAL GOVERNMENT HAD TO SUPPORT THE PROPOSED

11:00:12 PROJECTS.

11:00:17 AND WHAT CONDITIONS WERE IMPOSED, PROPOSED OR ACCEPTED.

11:00:27 THAT FRAMES THE MIND SET OF THE DEVELOPER WHAT WAS THE

11:00:30 REASONABLE EXPECTATION WITH REGARD TO THE PROPERTY.

11:00:33 THE SECOND THING WE LOOKED AT WHAT DID THE LOCAL

11:00:34 GOVERNMENT APPROVE.

11:00:37 WHAT IS THE REASONABLE EXPECTATION OF WHAT THE LOCAL

11:00:38 GOVERNMENT APPROVED.

11:00:42 AND THE THIRD THING IS, WHAT DID THE DOCUMENTS SAY?

11:00:46 THE DOCUMENTS REALLY PROVIDE THE BEST INFORMATION, THEY

11:00:49 GET DOWN TO THOSE DOCUMENTS AND BOILS DOWN TO

11:00:54 REASONABLE RELIANCE, BUT MOST IMPORTANTLY REASONABLE

11:00:58 EXPECTATIONS WHICH BEGS THE QUESTION, OKAY, WHAT DID

11:01:02 THE DEVELOPER COMMIT TO BUILDING?

11:01:09 AND WHAT IS CONTAINED IN THE DRI DEVELOPMENT ORDER AND

11:01:10 THE REZONING.

11:01:12 WE LOOK AT THAT AND WITH RESPECT TO THE FIRST QUESTION

11:01:22 I WOULD LIKE TO TAKE A LOOK AT IS -- WE BELIEVE THAT

11:01:26 THERE IS A VESTING AS TO A RIGHT TO DEVELOP MULTIFAMILY

11:01:29 LOW RISE IN THE TOWN CENTER.

11:01:32 BUT THAT IS THE EXTENT OF IT.

11:01:35 IT SAYS IT IN THE DRI DEVELOPMENT ORDER.

11:01:36 IT WAS PROPOSED.

11:01:40 BUT AS -- AS I WILL GET INTO MORE DETAIL A LITTLE BIT

11:01:46 LATER, IT'S A CONDITIONAL OR A CONTINGENT USE AS TO THE

11:01:54 NUMBER OF UNITS ARE ITS PLACEMENTS OR DESIGN.

11:01:57 THE SECOND THING IS THE REQUEST FOR FINDING OF VESTING

11:02:02 RIGHTS FOR 154 MULTIFAMILY UNITS AND TOWN CENTER.

11:02:08 IN THAT REGARD, WE HAVE TO LOOK AT WHAT WAS AGAIN --

11:02:11 WHAT WAS THE REASONABLE EXPECTATION AS TO THIS PROPERTY

11:02:14 AND AS TO THIS PROJECT.

11:02:23 SO WE WILL LOOK AT THE NEXT SLIDE HERE.

11:02:25 I GOT THIS SLIDE AND I DON'T KNOW WHETHER I CAN BLOW IT

11:02:28 UP, BUT ON THE NEXT SLIDE I WILL SHOW YOU THIS IS A

11:02:37 PLAN THAT THE DEVELOPER COMPANY HAD WHERE THEY SHOWED

11:02:40 AND MARKETED THE PROPERTY IN 2001 AND THIS SHOWS A

11:02:44 VERY, VERY GOOD GRAPHIC REPRESENTATION OF EXACTLY WHAT

11:02:48 THE DEVELOPER'S EXPECTATION WAS.

11:02:51 EXACTLY WHAT THE COUNTY'S EXPECTATION WAS AS TO THE

11:02:53 PROJECT, AS TO WHAT WAS APPROVED.

11:03:00 AND AS TO WHAT COULD BE DONE BUT WHEN WE ZOOM IN HERE,

11:03:03 WE NOTICE THAT THIS IS THE TOWN CENTER PARCEL.

11:03:08 AND THE TOWN CENTER PARCEL SAYS "FUTURE COMMERCIAL"ON

11:03:09 IT.

11:03:17 IT ONLY SAYS FUTURE COMMERCIAL ON IT.

11:03:19 IT DOESN'T SAY RESIDENTIAL OR FUTURE RESIDENTIAL.

11:03:23 IT SAYS TOWN CENTER BUILT AND THE REST OF IT FOR

11:03:24 COMMERCIAL.

11:03:27 WE TAKE A LOOK AT THAT AND SAY, WAIT A MINUTE, THE

11:03:31 DOCUMENTS ALSO SAY THIS.

11:03:34 THE BROOKS INCLUDE A TOWN CENTER INTENDED TO PRIMARILY

11:03:38 SERVE A COMMERCIAL RETAIL SERVICE AND OFFICE NEEDS IN

11:03:39 THE COMMUNITY.

11:03:43 TOWN CENTER IS ANTICIPATED TO INTERNALLY CAPTURE A

11:03:47 PORTION OF THE TOTAL TRIPS THAT HELP REDUCE THE

11:03:51 PUBLIC'S IMPACT ON THE ROADWAY NETWORK.

11:04:01 WELL, THE TOWN CENTER IS AN IMPORTANT FEATURE OF THIS

11:04:04 PROPERTY AND A CRITICAL FEATURE OF THIS PROJECT AND

11:04:07 FACTORS WHAT THE REASONABLE EXPECTATION WAS AS TO THE

11:04:08 PROPERTY.

11:04:11 AND IN THE MATERIALS I PROVIDED FOR THAT YOU LOOK

11:04:16 THROUGH.

11:04:19 THE REASON WHY THIS IS IN THERE BECAUSE IN ORDER FOR

11:04:23 THIS PROJECT TO IMPROVE -- INDEED THE ONLY WAY IT CAN

11:04:27 BE APPROVED IN 1997 BECAUSE OF ITS ROW MOAT LOCATION IN

11:04:30 THE COUNTY AT THIS TIME, OUTSIDE OF THE AREA WHERE THE

11:04:34 COUNTY WAS PROVIDING URBAN SERVICES OR PLANNING FOR THE

11:04:37 URBAN SERVICES WAS IF -- IF THE PROJECT WAS GOING TO BE

11:04:44 ABLE TO BE SELF-SUSTAINING.

11:04:48 AND THIS TOWN CENTER WAS THE WAY THAT THIS WAS

11:04:53 PRESENTED AND PROPOSED TO BE SELF-SUSTAINING.

11:04:56 AND SO IN THE ORDERS THAT WE HAVE HERE IN THE DOCUMENTS

11:05:00 CONNECTED WITH THE PROJECT, THERE IS -- FOR THE TOWN

11:05:05 CENTER THERE IS ORIGINALLY 100,000 SQUARE FEET OF

11:05:06 RETAIL OFFICE.

11:05:09 AND THEN LATER IN THE DEVELOPMENT ORDERS, IT GOES UP TO

11:05:16 120,000 SQUARE FEET IN THE TOWN CENTER AND THE REASON

11:05:20 WHY THAT IS IN THE TOWN CENTER IS BECAUSE IT -- BY

11:05:23 HAVING IT THERE, IT IS GOING TO REDUCE THE PROJECT'S

11:05:29 TRAFFIC IMPACTS ON THE PUBLIC ROADWAY NETWORK.

11:05:33 THIS PROPERTY IS ZONED TO THE MPD ZONING DISTRICT.

11:05:35 IT HAS A ZONING DISTRICT OF MPD.

11:05:38 IT IS UNIQUE FOR ITS OWN PROPERTY, BUT THESE WERE THE

11:05:44 CRITERIA THAT WERE PUBLISHED FOR THE MPD ZONING

11:05:46 DISTRICT AT THE TIME IT CAME UP.

11:05:49 THE PROPERTY HAD TO BE ZONED FOR MPD FOR ZONING

11:05:54 DISTRICT AND HAVE TO BE SELF-SUSTAINING UNDER THE PBO

11:05:56 PLAN OPTION.

11:06:00 THIS RISE THAT A SUBSTANTIAL PROPORTION OF THE TRIPS OF

11:06:08 THE PROJECT BE INTERNALLY CAPTURED ACTUAL LET

11:06:12 EXPECTATION THAT WE GOT HERE -- AND I AM NOT FROM

11:06:13 AROUND HERE.

11:06:16 THE EXPECTATION AND THIS IS ONLY ONE EXPECTATION

11:06:18 ASSOCIATED WITH THIS ENTIRE PROJECT.

11:06:23 IT'S THE TOWN CENTER.

11:06:28 THAT WAS THE ONLY ELEMENT OF THIS PROJECT THAT WAS

11:06:32 EXPECTED AND WAS NECESSARY.

11:06:36 THAT HAD TO BE THERE TO CAPTURE THE TRAFFIC.

11:06:43 AND IT WAS UNDERSTOOD AS BEING THAT WAY BY -- BY THE

11:06:45 APPLICANT AND BY THE COUNTY AND THIS COMES FROM

11:06:49 SOMETHING THAT THEIR TRANSPORTATION PLANNER WROTE IN

11:06:50 1999.

11:06:54 I BELIEVE THE TIME OF THE ZONING APPLICATION THAT THE

11:06:57 MAYOR WAS REFERRING TO.

11:07:04 IN THERE THAT PLANNER SAID THE INTERNAL CAPTURE RIGHT

11:07:08 32% OF THE APPROVED DRI APPLICATION.

11:07:11 IN OTHER WORDS, CAPTURE FOR THOSE WHO DON'T DO

11:07:15 TRANSPORTATION PLANNING, "CAPTURE" IS WHEN A CAR LEAVES

11:07:22 HOMES OR GENERATORS, BUSINESSES ARE ATTRACTORS.

11:07:25 SHOPPING CENTERS ARE ATTRACTORS.

11:07:28 PEOPLE GET IN THEIR CAR AND THEY DRIVE SOME PLACE.

11:07:30 THEY GENERATE A TRIP.

11:07:33 IF A TRIP GOES FROM ONE PIECE OF THE PROJECT TO ANOTHER

11:07:38 PIECE OF THE PROJECT IT IS CONSIDERED TO BE CAPTURED.

11:07:40 IT DOESN'T GO ON TO THE EXTERNAL ROADWAYS.

11:07:47 FOR THIS PROJECT THE INTERNAL CAPTURE RIGHT WAS

11:07:55 PRESENTED AT 32%.

11:07:57 AND THIS COMMERCIAL HAD TO BE BUILT.

11:08:03 SO IN MY -- IN MY OPINION, MY UNDERSTANDING IS THAT

11:08:06 THIS PROPERTY, THIS TOWN CENTER COULD NOT BE DEVELOPED

11:08:11 EXCLUSIVELY WITH RESIDENTIAL.

11:08:13 BUT THERE IS NO RIGHT TO THAT AT ALL.

11:08:14 NO VESTED RIGHT TO THAT AT ALL.

11:08:18 AND THE ONLY THINGS THAT NEEDS TO HAVE IS 100,000

11:08:22 SQUARE FEET OR 120,000 SQUARE FEET.

11:08:26 THE REASON WE HAVE THAT IS FOR THE POINT THAT THAT MISS

11:08:27 MONTGOMERY RAISED.

11:08:31 SHE SAID, WELL, WE DID MITIGATION.

11:08:32 MITIGATION.

11:08:39 WELL, THE MITT THAT WAS DONE WAS BASED UPON THE TOTAL

11:08:41 NUMBER OF TRIPS THAT WILL BE GENERATED THAT WILL GO TO

11:08:46 THE EXTERNAL ROADWAY NETWORK BASED ON 32% OF THE

11:08:51 PROJECT'S RESIDENTIAL TRIPS STAYING WITHIN THE PROJECT.

11:08:54 GOING TO THE SHOPPING CENTER.

11:08:58 GOING TO THE SHOPPING THAT WAS GOING TO BE PROVIDED

11:09:01 THERE AND TO THE QUESTION OF WHETHER OR NOT THERE IS A

11:09:08 VESTED RIGHT TO A SPECIFIC NUMBER OF UNITS IN -- IN THE

11:09:11 TOWN CENTER, THERE IS NOTHING IN THE DRI DEVELOPMENT

11:09:15 ORDER THAT ALLOCATED ANY RELATION DWELLING UNITS TO THE

11:09:16 TOWN CENTER.

11:09:19 THE ONLY THING THAT WAS ALLOCATED SPECIFICALLY TO THE

11:09:23 TOWN CENTER WAS THE COMMERCIAL RETAIL SERVICE OFFICE

11:09:28 AND THE COMMUNITY.

11:09:33 BEFORE ANY UNITS COULD BE VESTED IN THE TOWN CENTER,

11:09:37 THEY WOULD HAVE TO BE ACKNOWLEDGED AND RECOGNIZED IN

11:09:40 THE TOWN CENTER.

11:09:49 AND SO, HE WOULD LOVE THEN TO THE NEXT QUESTION.

11:09:52 THE NEXT QUESTION IS, WHETHER OR NOT THERE IS A VESTED

11:10:00 RIGHT TO CHANGE THE COMPLETED TOWN CENTER'S COMMERCIAL.

11:10:06 TO DEMOLISH THE 35 OR 36 OR 37,000 SQUARE FEET OF

11:10:09 COMMERCIAL SPACE THAT IS THERE AND REPLACE IT, TAKING

11:10:13 UP ALL THE REMAINING SPACE THAT IS IN THE TOWN CENTER

11:10:16 WITH THE 154 MULTIFAMILY UNITS.

11:10:21 WHETHER THAT IS A VESTED RIGHT THAT THEY HAVE TO BE

11:10:22 ALLOWED TO DO.

11:10:25 WE CAN SEE THAT THE ANSWER TO THAT QUESTION IS, NO,

11:10:31 THERE IS NO REASONABLE EXPECTATION TO BE ABLE TO DO

11:10:32 THAT.

11:10:34 BECAUSE THE REASONABLE EXPECTATION THAT THE TOWN CENTER

11:10:36 IS GOING TO BE THERE.

11:10:39 AND THE TOWN CENTER IS GOING TO BE ABLE TO FUNCTION.

11:10:48 AND IN THAT REGARD THEN, WE CAN SEE THAT THIS

11:10:52 DEVELOPMENT ORDER, THE DRI DEVELOPMENT ORDER AND THE

11:10:55 REZONING RESOLUTIONS HAVE BEEN LEFT OPEN ON THAT

11:10:56 QUESTION.

11:11:01 THERE IS A PLACE HOLDER FOR MULTIFAMILY RESIDENTIAL.

11:11:04 BUT IT DOESN'T SPECIFY WHAT GOES IN IT.

11:11:06 AND THAT IS LOGICAL.

11:11:12 BECAUSE BEFORE -- BEFORE UNITS CAN BE PLACED IN THE

11:11:23 TOWN CENTER, THERE HAS TO BE AN ASSURANCES THAT THE

11:11:26 COMMERCIAL THAT IS IN THE TOWN CENTER WILL BE ABLE TO

11:11:26 BE THERE.

11:11:30 AGAIN, THE ONE CRITICAL FEATURE OF THE PROJECT IS TOWN

11:11:33 CENTER AND COMMERCIAL, OFFICE, SERVICE AND RETAIL.

11:11:36 THAT WAS LEFT OPEN FOR A LATER DAY.

11:11:47 AND I THINK THAT IS WHY THESE DOCUMENTS DON'T SPEAK TO

11:11:50 THAT AND AN ALLOCATION INTO THE TOWN CENTER.

11:11:53 WHETHER OR NOT THIS IS GOOD OR BAD OR TIMINGS HAVE

11:11:56 CHANGED OR -- TIMES HAVE CHANGED OR WHETHER IT IS

11:12:00 APPROPRIATE OR NOT APPROPRIATE, THAT IS NOT REALLY A

11:12:02 QUESTION FOR ME TO LOOK AT OR TO DECIDE.

11:12:07 MY QUESTION THINK THAT LOOKED AT WHETHER OR NOT THERE

11:12:10 IS A VESTED RIGHT THAT SAYS, I HAVE AN ABSOLUTE RIGHT

11:12:12 TO DO.

11:12:16 I CAN DO THIS RIGHT NOW.

11:12:19 THAT MATTER, WHETHER THIS CAN BE DONE RIGHT NOW BY A

11:12:24 VESTED RIGHT, THERE ISN'T A VESTED RIGHT AT THIS POINT.

11:12:28 A VESTED RIGHT FOR RESIDENTIAL UNITS WITH THIS

11:12:33 BUILD-OUT POINT OF THIS PROJECT IS SOMETHING THAT

11:12:38 REALLY NEEDS TO BE DETERMINED BY THE COUNCIL.

11:12:43 AND WHETHER OR NOT IT STAYS IN KEEPING WITH THE MPD

11:12:46 ZONING DISTRICT THAT THE PROPERTY HAS, AND IT STAYS IN

11:12:50 KEEPING WITH THE DRI DEVELOPMENT ORDER THAT THE

11:12:51 PROPERTY HAS.

11:12:56 AND WHETHER OR NOT IT STILL IS GOING TO BE ABLE TO WORK

11:13:02 WITHIN THE CONFINES OF THE LEGAL REQUIREMENTS THAT WERE

11:13:05 PLACED BOTH AT THE TIME OF THE DRI AND THE REZONING AND

11:13:08 ARE IN PLACE RIGHT NOW WITH RESPECT TO THE ZONING CODES

11:13:15 AND PLAN OF THE VILLAGE.

11:13:18 SO TO SUM UP -- TO SUM UP.

11:13:27 LET ME GO TO THE LAST SLIDE.

11:13:33 BASED ON MY ANALYSIS, MISS STROUD AND MY ANALYSIS, WE

11:13:38 CONCLUDED THE APPLICATION FOR VESTED RIGHTS TO REVIEW

11:13:43 OR APPROVE OR DENY THE FINAL PLANS BY STAFF ONLY SHOULD

11:13:47 BE DENIED, SHOULD BE REJECTED.

11:13:51 WE CONCLUDE THAT THE APPLICATION FOR VESTED RIGHT TO

11:13:54 MULTIFAMILY USE IN THE TOWN CENTER SHOULD BE

11:14:06 ACKNOWLEDGED ARE BUT ONLY TO THE USE AS TO LONE BAY

11:14:07 PARTNERS ONLY.

11:14:08 THEY OWN THE LAND.

11:14:13 THEY ARE THE DEVELOP THEIR HOLDS THE DEVELOPMENT

11:14:14 PERMITS OF.

11:14:16 IT WILL BE ACKNOWLEDGED IF THAT IS WHAT THE APPLICANT

11:14:19 IS ASKING AN ACKNOWLEDGMENT ON.

11:14:23 WE ACKNOWLEDGE THAT A DRI AND DEVELOPMENT ORDER WILL

11:14:25 PERMIT MULTIFAMILY USE THERE.

11:14:30 THE APPLICATION FOR VESTED RIGHT FOR 154 MULTIFAMILY

11:14:34 RESIDENTIAL UNITS OR ANY SPECIFIC NUMBER OF RESIDENTIAL

11:14:37 UNITS IN THE TOWN CENTER SHALL BE REJECTED OR DENIED.

11:14:40 AND THE FOURTH, THAT THE APPLICATION FOR VESTED RIGHT

11:14:45 TO THE PRINCE GEORGE THAT IS BEING PROPOSED DEMOLISHING

11:14:51 AND REMOVING THE 36,000 SQUARE FEET OF COMMERCIAL

11:14:58 OFFICE RETAIL AND REPLACING IT WITH 90,000-SQUARE-FOOT

11:15:02 MULTIFAMILY STRUCTURE WITH 154 MULTIFAMILY UNITS AND

11:15:05 THEIR ASSOCIATED AMENITIES SHALL BE DENIED.

11:15:10 RIGHT AT THIS POINT TO THOSE -- TO THAT PROJECT.

11:15:14 THAT PROJECT, WE BELIEVE, BASED ON WHAT LOCAL VETERANS

11:15:16 ARE SUPPOSED TO DO.

11:15:21 AND REMEMBERING THE ADMONITION FROM JUSTICE OLIVER

11:15:25 WENDELL HOLMES OFTEN THE SUPREME COURT ABOUT 100 YEARS

11:15:26 AGO.

11:15:29 GOVERNMENT MUST TURN SQUARE CORNER.

11:15:32 AND YOU CAN'T CUT CORNERS WHEN YOU ARE WITH THE

11:15:32 GOVERNMENT.

11:15:37 TO DO IT THE RIGHT WAY, THE RIGHT WAY WILL NECESSITATE

11:15:49 COMING BEFORE THIS COUNCIL SO THE COUNCIL CAN ASSESS

11:15:56 WEATHER THE PROPOSAL AND THE LIMITATION IN THE

11:15:58 COMMERCIAL STAGE AND REPLACED PERMANENTLY WITH A

11:16:08 RESIDENTIAL PRODUCT IS -- IS CONSISTENT WITH THE DRI

11:16:11 DEVELOPMENT ORDER, WHAT WAS BEHIND THE DRI PROJECT, AND

11:16:16 WHAT IS SET FORTH IN THE -- IN THE ZONING, THE MPD

11:16:19 DISTRICT AND THE MPD DISTRICT FOR THIS SPECIFIC

11:16:23 PROPERTY, TO SEE IF IT ACTUALLY GETS -- OR HAS TO BE

11:16:28 SOME KIND OF AN AMENDMENT MAYBE FOR THAT.

11:16:29 OKAY.

11:16:30 ANY QUESTIONS?

11:16:41 >>MAYOR ERRINGTON: ANY QUESTIONS FROM COUNCIL?

11:16:43 COUNCIL MEMBER WILSON, DO YOU HAVE ANY QUESTIONS?

11:16:45 I HAVE ONE QUESTION.

11:16:49 DEFINE "USE"IN PARAGRAPH NUMBER TWO.

11:16:52 TOUGH IN BOLD.

11:16:53 >> "USE."

11:16:54 YES.

11:16:59 THE USE IN THAT STATEMENT WHERE I ITALICIZED IT IS

11:17:01 MULTIFAMILY USE.

11:17:09 IT'S -- IT'S A PRODUCT THAT IS A SINGLE STRUCTURE,

11:17:15 MAYBE CARVED UP BY TOWN HOMES, FOR INSTANCE, THAT

11:17:18 PARTICULAR USE WHERE THERE ARE UNITS FOR MORE THAN ONE

11:17:25 FAMILY CONTAINED IN A SINGLE -- A SINGLE STRUCTURE OR

11:17:33 SINGLE BUILDING.

11:17:36 >>DEREK ROONEY: MADAM MAYOR, IT WOULD BE APPROPRIATE

11:17:40 FOR THE INTERVENOR TO PROVIDE ANY EVIDENCE THEY MAY

11:17:48 HAVE.

11:17:52 NEALE, UNLESS YOU HAVE ANY CROSS EXAMINATION.

11:18:10 >> I RESERVE THE RIGHT TO REBUT THOUGH.

11:18:13 >> GOOD MORNING, MADAM MAYOR AND MEMBERS OF THE

11:18:15 COUNCIL.

11:18:23 FOR THE RECORD BEVERLY GRADY OF 2021 E001.

11:18:26 WE SUPPORT THE STAFF RECOMMENDATION AND THE

11:18:33 PRESENTATION MADE TODAY TO DENY VESTED RIGHTS IN TERMS

11:18:40 OF A DEVELOPER SPECIFIC SITE PLAN, A DENIAL OF SPECIFIC

11:18:43 RESIDENTIAL UNITS AND ANY CLAIM OF VESTED RIGHTS TO

11:18:48 DEMOLISH OVER 50% OF THE EXISTING RETAIL TO BE REPLACED

11:18:56 WITH 154-UNIT FOUR-STORY INDEPENDENT BUILDING.

11:19:00 I WILL FILE AT THE CONCLUSION MY LETTER WHICH WAS SENT

11:19:03 TO YOU DATED OCTOBER 22 WITH ATTACHMENTS WITH THE

11:19:03 CLERK.

11:19:07 AND WE WILL RESPECT THE TIME FRAME THAT HAS BEEN

11:19:09 OUTLINED.

11:19:11 I WILL GIVE A BRIEF OVERVIEW, FOLLOWED BY OUR EXPERT

11:19:15 IN LAND USE PLANNING WHOSE REPORT WAS ALSO FILED

11:19:21 OCTOBER 22 FOLLOWED BY THE PARTY INTERVENORS.

11:19:24 TO ESTABLISH VESTED RIGHTS, THE INCIDENT TEE MUST SHOW

11:19:27 RELIANCE IN GOOD FAITH.

11:19:29 AND I EMPHASIZE GOOD FAITH.

11:19:34 ON GOVERNMENT ACTS MADE -- MAKING A SUBSTANTIAL CHANGE

11:19:38 IN POSITION FOR INCURRING EXTENSIVE FINANCIAL

11:19:40 OBLIGATIONS.

11:19:45 THEREFORE, WE BELIEVE WE WOULD RESPECTFULLY SUBMIT THAT

11:19:49 TOMORROW CR ASSOCIATES ESTERO APARTMENTS MEET NONE OF

11:19:50 THOSE CRITERIA.

11:19:54 IN ADDITION, WE WOULD RESPECTFULLY SUBMIT THAT LONG BAY

11:20:00 PARTNERS FAILS TO MEET ALL CRITERIA AS TO VESTING AS

11:20:03 PROVIDED BY THE PRESENTATION TODAY AND AS SPECIFICALLY

11:20:09 SET FORTH ON YOUR PAGE 278 OF YOUR POCKET.

11:20:13 THAT WAS A LETTER DATED FROM THE ATTORNEY FOR THE

11:20:18 APPLICANT 10/6/21, CLARIFYING THEY BELIEVE AND SUBMIT

11:20:22 THAT THEY HAVE RESTED RIGHTS TO 154 UNITS IN THE TOWN

11:20:27 CENTER AND A VESTED RIGHT TO FINAL ADMINISTRATIVE

11:20:30 APPROVAL AND WHICH ALSO STATED THAT SHOULD BE AN

11:20:33 ADMINISTRATIVE APPROVAL WHICH I UNDERSTOOD AND HEARD

11:20:34 SOMETHING DIFFERENT TODAY.

11:20:40 MIXED USE PLANNED DEVELOPMENT IS REQUIRED BY LAND

11:20:42 DEVELOPMENT 34-940.

11:20:46 IN EFFECT WHEN THIS BROOKS WAS APPROVED AND IN EFFECT

11:20:51 AT THE TIME THAT THIS APPLICATION WAS SUBMITTED.

11:20:52 TO DISCUSS CAPTURE.

11:20:57 I AM NOT GOING TO GO THAT BECAUSE I THINK THAT WAS VERY

11:21:01 WELL ADDRESSED FOR THE ATTORNEY FOR THE TOWN.

11:21:02 I THINK CAPTURE IS IMPORTANT.

11:21:05 IT IS A REQUIREMENT THAT THE TOWN CENTER BE DESIGNED TO

11:21:09 CAPTURE INTERNALLY INSIDE OF THE BROOKS TRAFFIC TRIPS

11:21:12 SO THEY DIDN'T IMPACT THE OUTSIDE ROADS.

11:21:16 IN THE DRI DEVELOPMENT ORDER AND PART OF MIXED USE

11:21:17 PLANNED DEVELOPMENT ZONING.

11:21:22 YOU WILL NOTE MISS MONTGOMERY REALLY SAID SHE WASN'T

11:21:23 GOING TO GO INTO TRAFFIC TODAY.

11:21:25 WASN'T APPROPRIATE.

11:21:28 WE ARE NOT TALKING ABOUT DETAILS BUT WE ARE TALKING OF

11:21:30 THE INFORMATION ALREADY PROVIDED BY THE APPLICANT IS,

11:21:36 THEY ARE SIGNIFICANTLY REDUCING TRIPS TO THE TOWN

11:21:39 CENTER BY DEMOLISHING THE COMMERCIAL.

11:21:42 WHERE ARE THOSE TRIPS GOING TO GO?

11:21:54 THEY ARE GOING TO GO TO THE OUTSIDE ROAD.

11:21:59 IF YOU LOOK AT WHAT WAS PROVIDED FOR YOU TO GET DENSITY

11:22:03 AT THE TIME WILL HAVE THIS MIXED USE PLANNED

11:22:07 DEVELOPMENT FOR ZONING THAT REQUIRED THEM -- THEY USED

11:22:10 THE COMMERCIAL TO CAPTURE THE TRANSPORTATION TRIPS.

11:22:13 IT WAS LONG BAY PARTNERS THAT ESTABLISHED THAT ITS TOWN

11:22:19 CENTER WOULD CAPTURE TRIPS INSIDE THE BROOKS WITH FULL

11:22:21 SERVICE INCLUDING RETAIL AND PERSONAL SERVICES.

11:22:27 I WOULD LIKE TO SHOW YOU AND PROVIDE TO YOU -- AND THIS

11:22:37 WAS ATTACHED TO MY LETTER THAT THIS IS THE 2001

11:22:42 APPLICATION -- BROCHURE AND ITS TITLE IS "TOWN CENTER."

11:22:44 APRIL 2001.

11:22:47 AND PROVIDES BROOKS, A NEW CONCEPT OF RESIDENTIAL

11:22:48 DEVELOPMENT.

11:22:50 A RETURN TO VALUES OF THE PAST.

11:22:53 NOT LONG AGO, NEIGHBORHOODS WERE PLACES WHERE

11:22:57 EVERYONE'S NAME AND EVERYONE KNEW YOURS.

11:23:01 A VISIT TO THE TOWN CENTER WAS A ASSOCIATE OUTING AS

11:23:02 WELL AS A SHOPPING TRIP.

11:23:06 MAJOR CELEBRATIONS TOOK PLACE IN THE TOWN CENTER,

11:23:09 PICNICS, PARADES, COMMUNITY SPECIAL EVENTS.

11:23:13 THE TOWN CENTER HELPED CREATE A SENSE OF BELONGING AND

11:23:16 HELPED AT A FRIENDLIER PACE.

11:23:21 THE BROOKS BONITA BAY A 5332-ACRE COMMUNITY AROUND THIS

11:23:23 SMALL TOWN CONCEPT.

11:23:28 SO THE POINT IS, THIS IS WHAT WAS PROMISED TO THE

11:23:32 PEOPLE WHO THEN INVESTED AND I WILL FILE THE ACTUAL

11:23:36 LARGE COPY YOUR CLERK AND I HAVE OTHER COPIES HERE IF

11:23:41 WOULD YOU LIKE TO STUDY THIS.

11:23:47 IN 2007, LONG BAY PARTNERS FULL IF I HAD THE MAP THAT

11:23:51 IS SHOWN HERE AND IN THE TOWN CENTER LOCATION AT THE

11:23:56 CENTER OF THREE OAKS AND COCONUT IT SAID "FUTURE

11:23:56 DEVELOPMENT."

11:23:58 YOU SAW A BLOW-UP ON THE SLIDE.

11:24:02 207, A FINAL PLAN APPROVAL AND 85,000 SQUARE FEET OF

11:24:07 RETAIL AS PROMISED AND ACTUALLY BUILT 71,000 OF IT.

11:24:11 THAT IS PART OF THE TOWN CENTER ALONG WITH THE OTHER

11:24:18 AMENITIES THAT ARE PROVIDED AT THE TOWN CENTER.

11:24:21 I UNDERSTAND THAT MANY RESIDENTS OF THE BROOKS HAVE

11:24:24 PURCHASED AND MADE THE INVESTMENT IN THE BROOKS.

11:24:26 LOOKING AT OTHER COMMUNITIES THAT HAVE NO COMMERCIAL,

11:24:30 THEY MADE THIS INVESTMENT BECAUSE OF THE TOWN CENTER

11:24:36 AND WHAT IT HAS OFFERED AND HOW IT CREATED A COMMUNITY.

11:24:39 I WILL ASK THOSE ATTENDEES THAT WE HAVE FROM THE BROOKS

11:24:43 -- AND I WILL SAY WE HAVE NOR ATTENDEE S -- THE ROOM IS

11:24:43 FILLED.

11:24:47 MORE ATTENDEES UPSTAIRS AND MORE THAT WERE OUTSIDE.

11:24:49 THEY HAVE SIGNED A LIST THAT THEY WERE HERE.

11:24:52 THEY WANT THEIR NAMES INCORPORATED AS PART OF THE

11:24:54 RECORD THAT THEY DID ATTEND THE HEARING.

11:24:57 I WOULD ASK THOSE RESIDENTS OF THE BROOKS TO PLEASE

11:25:00 STAND IF THE TOWN CENTER WAS A PART OF THE

11:25:03 DECISION-MAKING PROCESS TO DECIDE TO LIVE IN THE

11:25:07 BROOKS.

11:25:10 SO JUST LET THE RECORD NOTE THAT ALMOST EVERY PERSON IN

11:25:13 THE ROOM HAS STOOD AND IT IS FILLED TO CAPACITY.

11:25:14 I APPRECIATE THAT.

11:25:21 THANK YOU.

11:25:25 IT IS THE PARTY INTERVENORS THAT RELIED ON THE ACTUAL

11:25:28 GOVERNMENT ACTS, ACTS OF APPROVING A DRI AND ZONING

11:25:30 THAT CREATED A TOWN CENTER.

11:25:33 THE ACTUAL DESIGN OF THE TOWN CENTER AND THE PERMITS TO

11:25:35 ACTUALLY BUILD THE TOWN CENTER.

11:25:39 I JUST WANTED -- I NEEDED TO COMMENT ON A STATEMENT

11:25:43 MADE BY MISS MONTGOMERY WHEN SHE CITED THE PEBBLE POINT

11:25:45 ZONING RESOLUTION.

11:25:48 I KNOW THAT A FULL COPY OF THAT RESOLUTION IS ACTUALLY

11:25:52 A PART OF MY EARLIER LETTER TO INTERVENE.

11:25:55 IT IS EXHIBIT 3 ATTACHED TO THAT LETTER.

11:25:58 AND IF YOU LOOK AT THE FULL RESOLUTION.

11:26:02 THE LEGAL DESCRIPTION AND THE SURVEY ATTACHED FOR THE

11:26:07 INCREASE OF 200 UNIT IS FOR THE PEBBLE POINT PARCEL.

11:26:10 THE RECORD IS CLEAR THAT THE APPLICANT REQUESTED STAFF

11:26:15 REVIEW AND THE HEARING EXAMINER SPECIFICALLY FOUND THAT

11:26:19 200 UNITS WERE APPROVED FOR THAT FUNNEL OR THAT PARCEL.

11:26:24 IN FACT, THAT PARCEL, FROM MY RESEARCH, WAS OWNED BY

11:26:29 MR. MCARDLE WHO JOINED IN THIS APPLICATION AND WENT TO

11:26:34 OAKBROOK PROPERTIES, THE FELLOW LCC AND NOT LONG BAY

11:26:34 PARTNERS.

11:26:37 THAT IS WHOLE ANOTHER QUESTION THAT REALLY NEEDS TO BE

11:26:41 LOOKED INTO TO, BUT I WANTED TO MAKE THAT

11:26:42 CLARIFICATION.

11:26:45 WE ARE LOOKING AT THE DEVELOPER HAS NOT ESTABLISHED

11:26:48 GOOD FAITH RELIANCE ON DEMOLITION OF THE RETAIL AND THE

11:26:49 TOWN CENTER.

11:26:52 THERE IS NO GOVERNMENT ACT THAT PROVIDED FOR THE

11:26:55 DEMOLITION AND THEN REPLACEMENT OF OUR COMMERCIAL WITH

11:26:56 THE RESIDENTIAL.

11:27:01 AND WE WOULD REQUEST THAT AS STAFF HAS RECOMMENDED AND

11:27:04 THE ATTORNEY'S PRESENTATION, THERE ARE NO VESTED RIGHTS

11:27:09 AS -- AS CLAIMED BY THE APPLICANT OTHER THAN

11:27:13 MULTIFAMILY IS AND HAS BEEN A PERMITTED USE, BUT

11:27:17 NOTHING HAS TO A SITE PLAN, AS TO A SPECIFIC NUMBER AND

11:27:19 AS TO A DESIGN.

11:27:21 I WOULD LIKE TO ASK RICK STEWART.

11:27:24 WHEN I FILED THIS LETTER WITH THE CLERK, IT INCLUDES

11:27:27 MR. STEWART'S RESUME AS PART OF THAT.

11:27:30 DOES ANYONE WANT A COPY OF THE BROCHURE BECAUSE I HAVE

11:27:47 SEVERAL HERE.

11:27:50 >>MAYOR ERRINGTON: IS THAT IS IT?

11:27:50 >> YES.

11:27:51 >>MAYOR ERRINGTON: THANK YOU.

11:27:56 >> I AM CONSCIOUS OF THE TOWN.

11:27:57 >>MAYOR ERRINGTON: THANK YOU.

11:27:59 STATE YOUR NAME, WELCOME.

11:28:00 >> GOOD MORNING, GREG STEWART.

11:28:03 STEWART AND ASSOCIATES, PLANNING AND DESIGN SERVICES.

11:28:07 I REPRESENT THE BROOKS COPPER LEAF GOLF CLUB

11:28:12 ASSOCIATION, HARBOR LIGHTHOUSE BAY, SHADOWWOOD AND

11:28:13 SPRING RUN.

11:28:16 I HAVE BEEN RECOGNIZED AS A EXPERT IN COMPREHENSIVE

11:28:20 LAND USE AND ZONING, URBAN DESIGN AND LAND DEVELOPMENT

11:28:25 IN THE SUPERIOR FEDERAL COURT OF TACOMA, KING COUNTY IN

11:28:25 SEATTLE.

11:28:30 LEE COUNTY CIRCUIT CAUGHT AND 30 OTHER LOCAL

11:28:33 GOVERNMENTS THROUGHOUT FLORIDA, WASHINGTON STATE AND

11:28:33 THE U.S.A.

11:28:36 MY CONDITION IS THE OCTOBER 22 LETTER OF WHICH WAS

11:28:37 SUBMITTED TO THE COUNCIL.

11:28:42 AND I JUST PROVIDED A DEALERSHIP CAROL.

11:28:46 IT IS MY PROFESSIONAL OPINION THAT I AGREE WITH STAFF,

11:28:50 THAT THOUGH THE USE A PERMITTED USE, THE DEVELOPER HAS

11:28:55 NOT -- HAS NOT ESTABLISHED VESTING TO THE NUMBER OF

11:28:58 UNITS TO, TO THE DESIGN AND THE DEMOLITION OF THE

11:29:01 ANCHOR RETAIL BUILDING.

11:29:05 THE APPLICANT IS NOT VESTED FOR MONOLITH THICK

11:29:09 FOUR-STORY 154-UNIT BUILDING THAT DEMOLISHING THE

11:29:13 COMMERCIAL CENTER 38,211 SQUARE FEET.

11:29:19 THAT ALSO COMPLETELY ELIMINATES THE COMMERCIAL FRONTAGE

11:29:25 ALONG THREE OAKS PARKWAY AND OUTPARCELS OF THE

11:29:28 INTERSECTION OF THREE OAKS AND COCONUT.

11:29:31 BY FUNDAMENTALLY WEAKENING AND POTENTIALLY -- I SAY

11:29:34 POTENTIALLY BUT I BELIEVE ULTIMATELY IT WILL COULD AWAY

11:29:37 WITH THE COMMERCIAL VIABILITY OF THE TOWN CENTER'S

11:29:38 COMMERCIAL AREA.

11:29:44 BY THIS TYPE OF WEAKENING, THE REQUEST IS FUNDAMENTALLY

11:29:47 CONSISTENT WITH THE DRI DEVELOPMENT ORDER AND THE

11:29:48 RESOLUTION.

11:29:50 THE MF PROJECT IS NOT VESTED.

11:29:53 IN 1997, THE MIXED USE PLANNED DEVELOPMENT WAS APPROVED

11:29:57 PURSUANT TO 34-931-H.

11:30:02 AND ALSO OF THE LEE PLAN AND REDUCE THE NUMBER OF

11:30:11 VEHICLE -- VEHICULAR TRIPS AND COLLECTOR ROAD NETWORK.

11:30:15 SECTION E-5 TRANSPORTATION SUGGESTS THAT THE TOWN

11:30:18 CENTER IS, QUOTE, ANTICIPATED TO INTERNALLY CAPTURE A

11:30:22 PORTION OF THE INTERNAL TRIPS TO HELP THE TRAFFIC

11:30:24 IMPACTS ON THE PUBLIC NETWORK.

11:30:28 THE DEVELOPERS CLIMB VESTING SHOULD BE DENIED BECAUSE

11:30:31 THE PROPOSAL REDUCES THE COMMERCIAL SQUARE FOOTAGE --

11:30:34 THE COMMERCIAL AREA, EXCUSE ME, BY 56%.

11:30:38 AND REDUCES INTERNAL TRANSPORTATION TRIP CAPTURE BY

11:30:40 69%.

11:30:43 THAT IS THE APPLICANT'S NUMBERS.

11:30:47 THE SUBJECT'S 69% TRIP CAPTURE -- THOSE TRIPS WILL BE

11:30:51 SPREAD OUT ALONG THE PUBLIC ROAD NETWORK.

11:30:54 THE PROPOSAL IS NOT AT ALL CONSISTENT WITH THE BROOKS

11:30:58 AND DCI APPROVALS AND NOT VESTED TO SIGNIFICANTLY

11:31:04 REDUCE INTERNAL TRIP CAPTURE BY DEMOLISHING THE TOWN

11:31:04 CENTER.

11:31:09 AND FINALLY, A WEALTH OF DEVELOPER PROPOSALS DOES NOT

11:31:12 MEET THE DEFINITION OF PROFESSIONAL PRACTICE WITH MIXED

11:31:16 USE DEVELOPMENT.

11:31:18 THE PURPOSES OF THE PLANNED DEVELOPMENT SUCH AS THE

11:31:21 BROOKS TOWN CENTER SHOULD HAVE MIXED USES FOR

11:31:23 NEIGHBORHOOD GOODS AND SERVICES IN A MANNER THAT

11:31:26 REDUCES TRAFFIC IMPACTS AND ALSO TO PROVIDE CONVENIENCE

11:31:28 TO THE SURROUNDING NEIGHBORHOODS.

11:31:32 THE CONVERSION OF THE COMMERCIAL ACREAGE AND THE SQUARE

11:31:36 FOOTAGE FOR A NEW NONMIXED USE MULTIFAMILY BUILDING,

11:31:39 THAT IS SEPARATE AND DISTINCT FROM THE COMMERCIAL AREA

11:31:43 HAS NEVER BEEN DISCUSSED OR EVALUATED OR CONTEMPLATED

11:31:44 BY THE VILLAGE OR STAFF.

11:31:50 SO TO CONCLUDE STAFF FINDS ARE CORRECT, THAT THERE IS

11:31:54 NO VESTING FOR THE PROPOSED MF PROJECT.

11:31:58 THE PROJECT DOES REQUIRE A FORMAL ZONING AMENDMENT WITH

11:32:01 NORMATIVE PUBLIC HEARING PROCESSES.

11:32:02 THANK YOU.

11:32:15 >>MAYOR ERRINGTON: THANK YOU.

11:32:17 >> GOOD MORNING.

11:32:18 MY NAME IS MARK SPAINS.

11:32:21 THE PRESIDENT OF COPPER LEAF GOLF CLUB, REPRESENTING

11:32:24 THE 570 FAMILIES THAT LIVE THERE.

11:32:28 MY WIFE AND I LIVE 10550 COPPER LAKE DRIVE.

11:32:31 I WANT TO THANK YOU, MADAM MAYOR, COUNCILMEMBERS AND

11:32:34 STAFF FOR AN OPPORTUNITY TO SHARE MY THOUGHTS WITH YOU.

11:32:38 MY WIFE AND I MOVED TO ESTERO IN THE YEAR 2000.

11:32:42 AND BOUGHT A HOME IN PELICAN SOUND WHERE WE WERE VERY

11:32:45 PART-TIME RESIDENTS SPENDING NO MORE THAN TWO MONTHS A

11:32:48 YEAR IN THAT COMMUNITY, USING MOSTLY AS A VACATION

11:32:49 HOME.

11:32:53 IN 2008, AFTER OUR SONS HAVE BOTH GONE OFF TO COLLEGE,

11:32:57 WE DECIDED TO SPEND MORE TIME IN FLORIDA.

11:33:00 BEGAN A SEARCH FOR A LARGER HOME.

11:33:03 IT DIDN'T TAKE LONG TO FIND A COMMUNITY WHERE WE WANTED

11:33:06 TO SPEND THE REST OF OUR LIVES, THE BROOKS.

11:33:10 ALTHOUGH IT WASN'T FAR FROM PELICAN SOUND, WE HAVEN'T

11:33:13 DRIVEN THROUGH THE AREA DURING THE PREVIOUS EIGHT

11:33:14 YEARS.

11:33:15 OUR IMPRESSION WAS IMMEDIATE.

11:33:19 WHAT A BEAUTIFUL AND WELL-PLANNED COMMUNITY.

11:33:23 BESIDES THE MANICURED AREAS ALONG THE MAIN ACCESS ROAD,

11:33:26 YOU KNOW, TO LET YOU KNOW YOU WERE IN THE BROOKS, THE

11:33:29 THREE GOLF COMMUNITIES THAT WE ENTERED ALL WERE KEPT IN

11:33:33 PRISTINE CONDITION.

11:33:35 BUT THE I THINK THAT ULTIMATELY WON US OVER WAS THE

11:33:37 TOWN CENTER.

11:33:39 THE IDEA TO ARE RETAIL ESTABLISHMENTS NEARBY WITHOUT

11:33:43 HAVING TO DRIVE UP AND DOWN ROUTE 41 IS EXTREMELY EN

11:33:44 DICING.

11:33:47 ALSO THE COMMONS CLUB WITH THE RESTAURANT AND FITNESS

11:33:52 CENTER AND OPEN SPACES FOR CONCERTS AND WALKS ADDED TO

11:33:53 THE ATTRACTIVENESS.

11:33:57 TRULY GAVE US A SENSE OF A VILLAGE SHARED BY A FEW

11:33:58 THOUSAND RESIDENTS.

11:34:01 THE BROOKS WERE OBVIOUSLY WELL PLANNED AND DEVELOPED

11:34:05 BUT MOST IMPORTANT CONTINUE TO BE MAINTAINED INSIDE AND

11:34:07 OUTSIDE ITS GATES.

11:34:12 TO THIS DAY IF YOU DRIVE WITHIN THE FOUR-AND-A-HALF

11:34:15 SQUARE MILE THE COMMITMENT TO ENSURE THAT THE BROOKS IS

11:34:17 A SPECIAL PART OF THE VILLAGE.

11:34:21 THE DEVELOPERS CLAIM VESTED RIGHTS TO DEMOLISH A PART

11:34:23 OF THE TOWN CENTER SHOULD BE DENIED.

11:34:26 TO BE HONEST, WE THE RESIDENTS OF THE BROOKS, ARE THE

11:34:29 ONES THAT EARNED VESTED RIGHTS.

11:34:32 I URGE YOU TO PLEASE SUPPORT THE STAFF'S POSITION TO

11:34:34 KEEP THE TOWN CENTER.

11:34:37 THANK YOU.

11:34:38 >>MAYOR ERRINGTON: THANK YOU.

11:34:45 [APPLAUSE]

11:34:47 >>MAYOR ERRINGTON: I WILL ASK TO YOU PLEASE REFRAIN

11:34:50 FROM APPLAUDING.

11:34:53 THANK YOU.

11:34:54 STATE YOUR NAME.

11:34:59 >> MY NAME IS ROBERT BLOCK.

11:35:02 I AM PRIVILEGED TO BE PRESIDENT OF LIGHTHOUSE BAY WITH

11:35:05 654 DOORS AND OVER 1200 RESIDENTS.

11:35:09 MADAM MAYOR AND MEMBERS OF THE COUNCIL AND STAFF, I

11:35:12 APPRECIATE THE OPPORTUNITY TO ADDRESS YOU THIS MORNING.

11:35:15 IT IS IMPORTANT TO ME AND IT IS IMPORTANT TO THE

11:35:17 RESIDENTS OF LIGHTHOUSE BAY.

11:35:21 MY WIFE AND I BOUGHT OUR HOME IN LIGHTHOUSE BAY IN

11:35:22 2008.

11:35:24 WE LOOKED AT A NUMBER OF COMMUNITIES.

11:35:29 AND WE BEGAN FLORIDA RESIDENTS IN 2010 AND I AM PROUD

11:35:33 TO SAY WE VOTED TO ESTABLISH THE VILLAGE OF ESTERO AND

11:35:35 VOTED FOR MEMBERS OF THE COUNCIL.

11:35:35 [LAUGHTER]

11:35:39 JUST SAYING.

11:35:42 THE BROOKS IS A SPECIAL COMMUNITY.

11:35:45 AS MARK JUST SAID, IT IS COMPOSED OF FOUR

11:35:50 NEIGHBORHOODS: LIGHTHOUSE BAY, SHADOW WOOD, SPRING RUN

11:35:51 AND COPPER LEAF.

11:35:55 IT ALSO HAS THE COMMONS CLUB AND THEN AN INTEGRAL PART

11:35:58 OF IT IS THE TOWN CENTER, THE BROOKS TOWN CENTER.

11:36:02 IF YOU LOOK AT THE MAPS IT IS LITERALLY THE CENTER OF A

11:36:04 PINWHEEL THAT THE DEVELOPMENT OCCURS ON.

11:36:08 SO IT IS REALLY THE EPICENTER OF A LOT OF ACTIVITIES

11:36:10 THAT WE REALLY ENJOY.

11:36:13 WE CAME TO FLORIDA -- AND I WAS THE CITY MANAGER OF

11:36:17 SUBURBAN COMMUNITY WHERE EVERYTHING WAS STERILE.

11:36:20 YOU HAD THE RESIDENTIAL COMMUNITY AND YOU HAD TO DRIVE.

11:36:23 AND WE LOOKED FORWARD TO WHAT WE FOUND HERE IS THAT IT

11:36:26 WAS IN A COMMUNITY INTEGRATED WITH USES.

11:36:29 SO IT HAD THE COMMERCIAL AND THE OFFICE AND THE

11:36:33 RESIDENTIAL ALL CONVENIENTLY LOCATED SO WE CAN WALK OR

11:36:35 RIDE OUR BIKES TO SHOP OR SIMPLY PARTICIPATE IN THE

11:36:38 CULTURAL ACTIVITIES AND THE RECREATIONAL ACTIVITIES

11:36:43 AVAILABLE AT THE COMMONS CLUB.

11:36:48 THE -- THE OWNERS OBVIOUSLY OF LIGHTHOUSE BAY AND THE

11:36:51 BROOKS COMMUNITY WANT TO KEEP THE IMPORTANT NATURE OF

11:36:53 THE TOWN CENTER COMMERCIAL ASPECT.

11:36:55 IT IS IMPORTANT.

11:36:59 WE MADE OUR DECISION TO PURCHASE IN THESE COMMUNITIES

11:37:04 BASED ON THE EXISTENCE OF THIS INTEGRATED MIXED USE

11:37:07 DEVELOPMENT.

11:37:09 THE APPLICANT TALKS ABOUT RELIANCE.

11:37:12 WE RELY ON WHAT WE FOUND WHEN WE BOUGHT.

11:37:15 SO I THINK THAT NEEDS TO ENTER INTO IT AND WEIGH PART

11:37:21 OF WHAT YOUR CONSIDERATION MIGHT BE.

11:37:24 WE ENCOURAGE TO YOU RECOGNIZE THAT WE INVESTED BASED ON

11:37:27 THE EXISTING PATTERNS, AND TO DENY THE DEVELOPER'S

11:37:29 REQUEST FOR A VESTED INTEREST.

11:37:33 BECAUSE YOU REALLY HAVE TO RECOGNIZE THE FACT THAT WE

11:37:37 HAVE GOT -- AS OWNERS, WE HAVE VESTED INTERESTS OF OUR

11:37:39 OWN IN CONTINUING THAT COMMERCIAL DEVELOPMENT.

11:37:39 THANK YOU.

11:37:42 >>MAYOR ERRINGTON: THANK YOU.

11:37:53 DO WE HAVE ANYONE ELSE?

11:38:02 >> MY NAME IS JAMES ROCK, 9201 SPRING RUN BOULEVARD.

11:38:05 MADAM MAYOR, THE REST OF THE ESTERO COUNCIL.

11:38:07 THANK YOU FOR ALLOWING US TO ADDRESS YOU ON THESE

11:38:08 ISSUES.

11:38:11 BEFORE THE COUNCIL DEALING WITH VESTED RIGHTS AND THE

11:38:13 PUBLIC HEARING PERTAINING TO THE DEMOLITION OF THE

11:38:19 ANCHOR FOOTPRINT.

11:38:22 YOU KNOW AS I REFLECT ON THE CHANGES SINCE WE HAVE BEEN

11:38:25 COMING DOWN HERE FOR 20 YEARS NOW, I THINK OF U.S. 41

11:38:28 -- IF YOU REMEMBER IT WAS TWO-LANE TRAFFIC.

11:38:38 COCONUT POINT MALL WAS A GRAZING PASTURE CATTLE AND THE

11:38:39 THREE OAKS EXTENSION DIDN'T EXIST.

11:38:46 THOSE WERE POSITIVE CHANGES FOR ALL OF US AND WE

11:38:48 APPRECIATE THOSE CHANGES.

11:38:52 THAT PLAN IS NOT ONE THAT WILL BENEFIT THE PEOPLE THE

11:39:02 WAY THOSE CHANGES DID THE STAGE OF UNRAVELLING OF A

11:39:04 PLAN FOR A TOTAL VILLAGE CONCEPT.

11:39:07 THOSE LOOKING TO BUY IN THE BOOKS COMMUNITY.

11:39:10 THE BROOKS TOWN CENTER HAS BEEN PART OF OUR CULTURE

11:39:12 SINCE WE ARRIVED IN THE BROOKS.

11:39:17 HAVING SERVED ON THE LOCAL ASSOCIATION BOARD FOR TEN

11:39:21 YEARS OUR SPRING RUN FOR 12 YEARS, THE LAST FOUR YEARS

11:39:22 AS PRESIDENT.

11:39:28 EVERY ORIENTATION WITH NEW OWNERS AND TRANSFER OWNERS

11:39:31 WE APPLAUDED THE TOWN CENTER AND COMMUNICATED THE

11:39:32 CONVENIENCE OF THAT.

11:39:35 BY REMOVING THE ANCHOR STRUCTURE, JEOPARDIZES THE

11:39:40 ENTIRE TOWN CENTER CONDITION SEPTEMBER.

11:39:43 WE SUPPORT THE VILLAGE OF ESTERO STAFF POSITION THAT

11:39:46 THE DEVELOPER IS NOT VESTED FOR THE DEMOLITION AND THE

11:39:47 REPLACEMENT.

11:39:51 AND WITH SUCH IMPACT ON THE BROOKS RESIDENTS.

11:39:55 WE FEEL IT IS TRULY THE RIGHT OF ALL WHO RESIDE IN THE

11:40:01 BROOKS TO BE ABLE TO PARTICIPATE IN A PUBLIC HEARING

11:40:02 FOR THESE TOPICS.

11:40:05 WE WANT TO THANK ALL OF THE RESIDENTS WHO SHOWED UP IN

11:40:05 SUPPORT.

11:40:09 AND THANK YOU, THE COUNCIL, FOR YOUR DUE DILIGENCE.

11:40:13 THANK YOU.

11:40:14 >>MAYOR ERRINGTON: THANK YOU VERY MUCH.

11:40:21 NANCY, DO WE HAVE ANYONE ELSE?

11:40:23 >> GOOD MORNING.

11:40:25 >> GOOD MORNING, I AM ROD WOOLSEY.

11:40:31 I RESIDE IN SHADOW WOOD AT 10240 ORCHID RIDGE LANE.

11:40:34 MADAM MAYOR, VILLAGE COUNCILMEMBERS AND STAFF, THANK

11:40:36 YOU FOR THE OPPORTUNITY TO SPEAK ON THE MATTERS THAT

11:40:39 ARE BEFORE YOU THIS MORNING, NAMELY THE REDEVELOPMENT

11:40:41 OF THE BROOKS TOWN CENTER.

11:40:44 I AM PRESIDENT OF THE SHADOW WOOD COMMUNITY

11:40:45 ASSOCIATION.

11:40:48 SHADOWWOOD IS THE LARGEST OF THE FOUR COMMUNITIES IN

11:40:51 THE BROOKS WITH 1481 HOMES.

11:40:56 AND THAT INCLUDES 28 HOMES IN THE MAGNOLIA BEND

11:40:56 NEIGHBORHOOD.

11:41:00 AND THIS IS A NEIGHBORHOOD THAT IS CLOSEST IN PROXIMITY

11:41:06 TO THE REDEVELOPMENT AREA IN THE TOWN CENTER.

11:41:09 SOME OF THE SHADOWWOOD RESIDENTS HAVE OWNED SINCE THE

11:41:11 EARLY 2000S.

11:41:16 OTHERS HAVE BOUGHT LAST WEEK, BUT ALL HAD THEIR OWN

11:41:20 INDIVIDUAL CRITERIA FOR CHOOSING SHADOW WOOD, BUT MOST

11:41:22 WERE DROWN TO THE BROOKS BECAUSE OF THE INTEGRATED

11:41:27 APPROACH TO DESIGN, KIND OF ATTENTION TO DETAIL AND

11:41:31 UNIFORMITY IN THE FIELD IF YOU WOULD ACROSS ALL FOUR

11:41:34 COMMUNITIES, BOTH INSIDE THE GATES ON THE COMMON SHARED

11:41:37 LANDSCAPE ALONG WITH PUBLIC ROADS.

11:41:40 MAJOR CONSIDERATION IN OUR PURCHASE DECISION WAS A

11:41:44 SENSE OF COMMUNITY AND THE TOWN CENTER'S NEARBY RETAIL

11:41:50 SPACE AND THE ADJOINING COMMONS CLUB WHICH SERVES AS A

11:41:53 GATHERING PLACE FOR MANY OF RESIDENTS.

11:41:58 WE ARE ALL HERE TODAY BECAUSE OF THE DEVELOPER'S CLAIM

11:42:02 OF VESTED RIGHTS TO DEMOLISH THE ANCHOR STORE THAT

11:42:05 DESTROYS 50% OF THE TUN CENTER AS MENTIONED AND REPLACE

11:42:09 WITH A STAND-ALONE MULTIFAMILY FOUR-STORY BUILDING.

11:42:13 PING THIS LARGE TURNOUT OF THE SEA OF BLUE OR THE BLUES

11:42:20 OR WHATEVER HAS BEEN TERMED BEFORE SHOWS THE STRONG

11:42:23 FEELING OF THE BROOKS COMMUNITY AND EVIDENCE OF THEIR

11:42:28 OPPOSITION TO THE DEVELOPER'S CLAIM.

11:42:32 ADDITIONALLY OVER 2400 HOMEOWNERS ADDED A NAME TO THE

11:42:39 LETTER WRITE YOU RECEIVED ON MONDAY AND THAT LIST HAS

11:42:43 GROWN TO 2500 AS YOU NOTED TODAY AND NOTICED THAT YOU

11:42:46 HAD A FEW E-MAILS AND THE INTENT WHY WE DID THIS THE

11:42:49 WAY WE DID WAS TO AVOID 2,000-PLUS E-MAILS COMING TO

11:42:52 EACH OF YOUR IN-BOXES.

11:42:55 THIS DEMONSTRATES A LARGE CROSS-SECTION OF THE BROOKS

11:42:58 RESIDENTS ACTIVELY OPPOSING CHANGING THE FORM AND

11:43:01 FUNCTION OF THEIR TOWN CENTER.

11:43:05 THEREFORE TRYING, AS IT HAS BEEN MENTIONED BEFORE, THE

11:43:10 LOSS OF THE BALANCE OF THE COMMERCE PROPERTY.

11:43:14 PROPERTY THAT IT WAS DESIGNED, BUILT AND UTILIZED BY

11:43:17 US, THE RESIDENTS FOR 15 YEARS.

11:43:20 WE ALL CONSIDERED THAT WE HAVE VESTED RIGHTS IN WHAT

11:43:25 WAS PLANNED AND MARKETED BY THE ORIGINAL DEVELOPER AS

11:43:30 SHOWN IN THE FOLDER THAT BEVERLY PRESENTED AND AS A

11:43:33 GATHERING SPACE FOR RETAIL, RECREATIONAL AND

11:43:34 ENTERTAINMENT VENUES.

11:43:39 WE URGE THAT THE INTENT OF THE DRI BE RETAINED.

11:43:42 I JOINED WITH THE OTHERS THIS MORNING OF ALL THE BROOKS

11:43:46 RESIDENTS AND IN ATTENDANCE TODAY AND THOSE WHO SIGNED

11:43:49 THAT LETTER THAT YOU RECEIVED EARLIER IN THE WEEK TO

11:43:52 REJECT THE DEVELOPER'S REQUEST FOR VESTED RIGHTS TO

11:43:57 BUILD PROPOSED FOUR-STORY MULTIFAMILY COMPLEX.

11:44:01 THANK YOU ON BEHALF OF MYSELF, 1481 HOMEOWNERS IN

11:44:07 SHADOWWOOD AND 3552 HOMEOWNERS THROUGHOUT THE

11:44:11 BROOKS.

11:44:12 >>MAYOR ERRINGTON: THANK YOU VERY MUCH.

11:44:13 NANCY.

11:44:15 >>NANCY STROUD: I DON'T KNOW IF THE INTERVENOR HAS

11:44:19 OTHER PERSONS AS PART OF HER CASE, BUT WE ARE GETTING

11:44:21 CLOSE TO THE TIME.

11:44:26 >> YES, THAT COMPLETES -- THANK YOU.

11:44:31 >>DEREK ROONEY: MADAM MAYOR, AT THE TIME GIVE THE

11:44:34 VILLAGE ATTORNEY OR THE APPLICANT'S ATTORNEY TO HAVE

11:44:39 THE OPPORTUNITY TO QUESTION THE WITNESSES.

11:44:42 IF NOT PUBLIC COMMENT AND RESERVE TIME FOR REBUTTAL AT

11:44:43 THE END.

11:44:45 >> RESERVING TIME FOR REBUTTAL.

11:44:48 >>DEREK ROONEY: SEEING NO OBJECTION, TIME TO OPEN FOR

11:44:49 PUBLIC COMMENT.

11:44:52 >>MAYOR ERRINGTON: IF YOU HAVE NOT ALREADY DONE SO, IF

11:44:55 YOU WISH TO SPEAK, YOU NEED TO FILL IN A CARD AND MAKE

11:44:58 SURE YOU WERE SWORN IN.

11:45:00 DO YOU HAVE ANY CARDS?

11:45:02 >> I DO.

11:45:04 >>MAYOR ERRINGTON: HOW MANY DO YOU HAVE?

11:45:16 >> JUST ONE.

11:45:22 >>MAYOR ERRINGTON: OKAY.

11:45:24 >> WOULD YOU LIKE ME TO CALL THE FIRST ONE UP, TOM

11:45:31 KAVANAUGH WHO IS REPRESENTING THE DEVELOPER.

11:45:33 >> IF IT PLEASES EVERYBODY, I WOULD LIKE TO TALK AFTER

11:45:36 THE NEXT CASE.

11:45:42 >>DEREK ROONEY: HE CAN BE PULLED UP IN THE REBUTTAL.

11:45:44 >> IS THAT THE ONLY ONE?

11:45:45 >> THE ONLY ONE.

11:45:48 TWO PEOPLE --

11:45:51 >>MAYOR ERRINGTON: YOU WILL YOU HAVE TO DO IS PUT YOUR

11:45:52 NAME DOWN.

11:45:54 >>DEREK ROONEY: IF YOU WOULD LIKE, STEP UP TO THE

11:46:05 PODIUM AND COMPLETE THE CARD AFTERWARDS.

11:46:07 ARE YOU SWORN, SIR?

11:46:09 >> I WILL LET HIM SAY HIS NAME.

11:46:12 I CAN'T READ IT.

11:46:13 >> FRANK DUKE.

11:46:14 I LIVE IN THE BROOKS OBVIOUSLY.

11:46:17 I AM A DIRECTOR OF THE COMMONS CLUB.

11:46:21 I CHAIR THE ROOKERY COMMITTEE AND THE DIRECTOR OF

11:46:22 LIGHTHOUSE BAY 3.

11:46:28 I AM A RETIRED SENIOR VICE PRESIDENT OF THE NATIONALLY

11:46:31 UTILITIES INVESTORS CORPORATION.

11:46:34 THE LAST COMPANY WE BOUGHT SUPPLIED MIAMI, DADE AND

11:46:36 BREVARD COUNTIES.

11:46:42 WE SOLD GAS THROUGH ABOUT FOUR DIFFERENT CORPORATIONS

11:46:44 THAT WE OWNED.

11:46:49 I RAN OPERATIONS, ENGINEERING, LONG-RANGE PLANNING.

11:46:57 I RETIRED 25 YEARS AGO TO VERMONT, RIGHT OUTSIDE A

11:47:01 FOUND CALL QUEGEE RIGHT UP ON THE MOUNTAINS.

11:47:04 IF YOU EVER SKIED IN VERMONT, THE GREATEST MOUNTAIN

11:47:07 RANGE WAS KILLINGTON MOUNTAIN RIGHT THERE.

11:47:11 WE WERE RIGHT ON THE SIDE OF KILLINGTON MOUNTAIN.

11:47:15 WE HAD A GOLF COURSE ON THE MOUNTAIN TOP.

11:47:18 WE STARTED VACATIONING TO FLORIDA IN THE WINTER.

11:47:22 AND WE DISCOVERED FROM SOME OF OUR NEIGHBORS THAT WE

11:47:31 LIVED WITH, THIS COMMUNITY CALLED THE BROOKS.

11:47:35 AND AFTER COUPLE OF YEARS, I SAID WAIT A MINUTE.

11:47:37 WHAT ARE WE DOING UP THERE.

11:47:38 30 BELOW.

11:47:39 I CAN'T DRIVE ON SOME OF THE ROADS.

11:47:42 IF YOU DON'T KNOW VERMONT, THEY DON'T HAVE ALL PAVED

11:47:43 ROADS.

11:47:44 THEY HAVE DIRT ROADS.

11:47:47 WHEN YOU HAVE A DIRT ROAD IN THE WINTER AND MINUS 30

11:47:48 DEGREES.

11:47:52 YOU GET LITTLE BUMPY AND YOU SLIDE A LITTLE BIT.

11:47:55 AND THERE AREN'T ENOUGH INTERSTATES OR FEDERAL HIGHWAYS

11:47:57 THAT YOU CAN GET TO ALL OF THE PLACES THAT YOU WANT TO

11:48:01 GO THROUGH, SO YOU STAY PUT.

11:48:03 BUT ANYWAY, WE ARE HERE.

11:48:08 AND THE BROOKS AN UNIQUE PLACE.

11:48:10 I LIVED IN SEVERAL COMMUNITIES THROUGH MY LIFE.

11:48:17 WE TRAVELED A LOT AND THE PEOPLE HERE ARE VERY SPECIAL.

11:48:19 THEY ARE WELCOMING.

11:48:21 THEY COME FROM ALL OVER THE UNITED STATES.

11:48:25 AND THEY GET TOGETHER AND THEY SUPPORT EACH OTHER.

11:48:28 IF MY WIFE DOESN'T FEEL GOOD, SOMEBODY WILL SAY WHAT DO

11:48:31 YOU NEED AND PICK UP THE STUFF.

11:48:32 I PLAY BRIDGE.

11:48:36 I PLAY POKER.

11:48:38 EVERYTHING IS SPECIAL HERE, UNLIKE MANY OF THE

11:48:41 COMMUNITIES THAT MY WIFE AND I HAVE LIVED IN, THIS IS

11:48:42 UNIQUE.

11:48:48 NOW YOU ARE DEALING WITH FACT THAT ONE OF THE THINGS

11:48:51 THAT YOU ENJOY ABOUT LIVING HERE IS THAT MY WIFE

11:48:53 DOESN'T HAVE TO GO FAR TO GET MOST OF THE THINGS THAT

11:48:54 WE NEED.

11:48:57 AND WHAT YOU ARE TALK ABOUT IS NOW -- YOU HEARD HOW

11:49:00 MANY CARS ARE IN SHADOW WOOD.

11:49:03 BUT I THINK YOU WILL BE SURPRISED OVER 2000 CARS IN OUR

11:49:04 COMMUNITY RIGHT NOW.

11:49:07 I AM ACTIVE IN IT, AND I GET ENOUGH FEED.

11:49:09 BACK FROM PEOPLE.

11:49:15 IF YOU TAKE SHADOW WOOD AND LIGHTHOUSE BAY AND YOU PUT

11:49:18 THE COMMUNITIES IN, YOU REALLY HAVE 2,000 CARS.

11:49:23 PICTURE 2,000 CARS NOW GOING OUT.

11:49:29 I DON'T EVEN WANT TO THINK ABOUT WHAT THAT IS GOING TO

11:49:31 DO IF YOU CAN'T GO TO THE LOCAL CENTER.

11:49:33 YOU ARE GOING TO HAVE TRAFFIC GOING ALL OF THESE PEOPLE

11:49:35 IN THIS COMMUNITY --

11:49:37 >>MAYOR ERRINGTON: I DON'T WANT TO INTERRUPT, BUT YOUR

11:49:40 OUT OF TIME.

11:49:41 >> I APOLOGIZE.

11:49:42 >>MAYOR ERRINGTON: THANK YOU.

11:49:45 >> BUT PLEASE I THINK YOU ARE MAKING A BIG MISTAKE IF

11:49:47 YOU ALLOW IT TO HAPPEN.

11:49:47 >>MAYOR ERRINGTON: THANK YOU.

11:49:48 THANK YOU.

11:49:53 >> WE HAVE ANOTHER, JULIE MCCANN FROM 23580 COPPER LEAF

11:49:54 BOULEVARD.

11:49:57 >>MAYOR ERRINGTON: REMEMBER YOU HAVE THREE MINUTES.

11:50:00 >> I WILL BE QUICK BECAUSE I GET REAL NERVOUS TALKING

11:50:02 IN PUBLIC.

11:50:03 SO --

11:50:05 >>MAYOR ERRINGTON: STATE YOUR NAME PLEASE.

11:50:11 >> SORRY, JULIE MCCANN, 2380 COPPER LEAF BOULEVARD.

11:50:21 MY CONCERN IS EVERYTHING THAT HAS BEEN STATED HERE TODAY

11:50:25 BUT ALSO WHAT IT DOES TO OUR NATURE PRESERVE, WILDLIFE,

11:50:28 ANY THREATENED WILDLIFE THAT WE HAVE, THE WATER WAYS

11:50:29 THAT WE HAVE.

11:50:38 WE ENJOY THE NATURE IN OUR COMMUNITY, AND THIS WOULD

11:50:43 SIGNIFICANTLY IMPACT OUR WATER SHED AND WILDLIFE.

11:50:44 >> COMPLETES COMMENTS.

11:50:45 >>MAYOR ERRINGTON: WE HAVE NO MORE COMMENTS.

11:50:49 >>DEREK ROONEY: AT THIS TIME, MAYOR, UNLESS THE VILLAGE

11:50:54 ATTORNEY OR THE APPLICANT -- THE INTERVENORS HAVE ANY

11:50:56 CROSS EXAMINATION OF THE PUBLIC OR THE APPLICANT HAVE

11:50:59 ANY CROSS EXAMINATION, IT WOULD BE APPROPRIATE FOR THE

11:51:02 APPLICANT TO PRESENT ANY REBUTTAL EVIDENCE.

11:51:04 >> WE HAVE NO CROSS-EXAMINATION.

11:51:09 >>MAYOR ERRINGTON: NO CROSS-EXAMINATION, SO WE WILL

11:51:11 TURN IT OVER TO THE APPLICANT.

11:51:13 >> NEALE MONTGOMERY FOR THE RECORD.

11:51:16 I WANT TO RESPOND TO SOME OF THE THINGS THAT YOU HEARD.

11:51:19 REMIND YOU WE ARE HERE FOR VESTED RIGHT.

11:51:25 I KNOW THERE ARE A LOT OF ISSUES VERY EMOTIONAL FOR

11:51:27 PEOPLE, BUT I WANT TO BE CLEAR ON WHAT WE ARE ASKING

11:51:28 FOR.

11:51:33 ONE, THAT THE RIGHT TO THE LOW RISE RESIDENTIAL

11:51:38 MULTIFAMILY IS VESTED AND I BELIEVE THAT THE VILLAGE

11:51:40 ATTORNEY AGREES.

11:51:43 WE HAVEN'T ASKED FOR A SPECIFIC SITE PLAN TO BE VESTED.

11:51:45 I HEARD THAT SAID SEVERAL TIMES.

11:51:48 BUT THAT IS NOT WHAT WE ARE ASKING.

11:51:51 WE ARE ASKING THAT THE PROPERTY DEVELOPMENT REGULATIONS

11:51:57 THAT ARE IN THE ZONING RESOLUTION ARE VESTED AS WELL

11:52:02 THE USE.

11:52:05 AND WE WOULD SUBMIT THAT THE NUMBER OF UNITS IN THE DRI

11:52:08 DEVELOPED ARE AVAILABLE FOR THIS PARCEL AND WE ARE ONLY

11:52:13 ASKING FOR 154.

11:52:16 THERE WAS AN EXTENSIVE DISCUSSION ON TRAFFIC, BUT LET

11:52:18 ME JUST FOCUS THAT.

11:52:22 JUST SO YOU KNOW I WORKED ON 20-PLUS YEARS.

11:52:25 SO I HAVE GONE THROUGH THE TRAFFIC ANALYSIS AND

11:52:30 PROPORTIONATE SHARE ANALYSIS NUMEROUS TIMES.

11:52:34 SECTION 2-E OF THE DRI DEVELOPMENT ORDER, LET ME -- THE

11:52:35 TRAFFIC MITIGATION SESSION.

11:52:38 WHAT IS IMPORTANT TO KNOW THAT WHEN YOU ANALYZE TRAFFIC

11:52:42 WHETHER FOR A ZONING OR A DRI, YOU DON'T ANALYZE

11:52:43 EVERYTHING POTENTIAL SCENARIO.

11:52:48 WHAT YOU DO IS, YOU ANALYZE THE WORST-CASE SCENARIO.

11:52:52 WHAT -- IF YOU DEVELOP ALL OF THIS IN THE USES THAT

11:52:56 HAVE THE HIGHEST TRIP AGAIN RATION, WHAT THE NUMBER --

11:53:03 WHAT IS THE IMPACT AND FOR A DRI YOU IDENTIFY A TOTAL

11:53:05 NET NEW EXTERNAL TRIPS.

11:53:09 EXTERNAL TO THE DRI AND THOSE YOU MITIGATE.

11:53:14 JUST SO YOU KNOW THE MITIGATION IN 1997 WAS $9 MILLION

11:53:15 PLUS.

11:53:18 IMPACT FEES WERE 7.8 MILLION.

11:53:22 IF YOU EXTRAPOLATE THAT FROM TODAY'S DOLLARS, IT IS A

11:53:23 CONSIDERABLE FUND.

11:53:27 THE PROPORTION SHARE MID GATED THE TOTAL OF THE

11:53:31 WORST-CASE SCENARIO.

11:53:32 INTERNAL TRIP.

11:53:35 YOU HEAR A LOT OF INTERNAL CAPTURE.

11:53:39 AND THE FACT OF THE MATTER IS TRAFFIC ANALYSIS SHOWS A

11:53:41 REDUCTION IN TRIPS YOU GO TO RESIDENTIAL.

11:53:43 THIS IS NOT FOR TODAY'S HEARING.

11:53:46 IT HAS NOTHING TO DO WITH VESTED RIGHTS WHAT IS RESTED

11:53:50 IS THE TOTAL NUMBER OF NET EXTERNAL TRIPS.

11:53:53 PART OF THE DRI.

11:53:57 YOU RECEIVED NO TESTIMONY THAT THE PROPOSAL WILL EXCEED

11:54:01 THAT AND IGNORE THE DISCUSSING OF INTERNAL CAPTURE.

11:54:05 A LOT OF DISCUSSION OF MPD.

11:54:09 WE DON'T GO BACK TO BE CONSISTENT.

11:54:15 I HAVE TWO ACRES OF COMMERCIAL WHICH WE WOULD AND

11:54:16 30,000 SQUARE FEET.

11:54:21 TWO COMMERCIAL SITES WITHIN THE DRI AND THOSE CRITERIA

11:54:25 HAVE BEEN MET.

11:54:31 AND I APPRECIATE THE MARKING BROCHURE, BUT WHEN I LOOK

11:54:37 AT THIS, POINTS TO ROSIE SPOONBILL, THE HEALTH CENTER,

11:54:40 RICKMAN CENTER AND THE AREA WE ARE TALKING ABOUT IS

11:54:41 WITH FUTURE DEVELOPMENT.

11:54:45 NONE OF THE COMMUNITIES THAT ARE IMPACTED AT ALL, YOU

11:54:48 KNOW, THE RESTAURANTS AND FITNESS CENTER AND ALL THOSE

11:54:50 THINGS REMAIN.

11:54:57 THE QUESTION IS WHAT DO WE INVEST FOR AND WHY DO WE SAY

11:54:59 THAT.

11:55:03 VESTED FOR THE USE AND THE DEVELOPMENT CORPORATION.

11:55:07 I WOULD LIKE TO NOT DO THE FINAL PLAN APPROVAL PROCESS.

11:55:09 SOMEBODY SAID WE ARE NOT VESTED UNDER THAT PROCESS.

11:55:10 HALLELUJAH.

11:55:12 WE DON'T HAVE TO DO THAT?

11:55:14 WE CAN GO HOME?

11:55:15 I DON'T THINK THAT IS WHAT WE ARE SAYING.

11:55:17 AS LONG AS IT IS IN THE RESOLUTION WE HAVE TO FOLLOW

11:55:17 IT.

11:55:20 AND PRIOR TO THIS CASE -- IF YOU ALL DETERMINED WHAT

11:55:24 THAT PROCESS IS -- IS A STAFF REVIEW UNDER A CRITERIA

11:55:28 IN A ZONING RESOLUTION THAT COME BACK TO THE PUBLIC

11:55:31 HEARING TO THE COUNCIL FOR A FINAL DETERMINATION AND

11:55:37 THAT IS WHAT WE ARE ASKING TO BE VESTED FOR AND DON'T

11:55:41 SEE ANYTHING THAT INVESTIGATES THE STATUS OF THOSE

11:55:42 RIGHTS.

11:55:43 THANK YOU.

11:55:45 >> THANK YOU.

11:55:48 >> MADAM MAYOR, AT THIS TIME, IT WOULD BE APPROPRIATE

11:55:51 FOR THE VILLAGE COUNCIL TO ENTER INTO DELIBERATIONS.

11:55:55 BUT, YOU KNOW, YOU HEARD A LOT TODAY.

11:56:02 AND IT HAS BEEN DISCUSSED BUT I DON'T WANT IT TO BE

11:56:03 LOST.

11:56:06 RIGHTS DETERMINATION.

11:56:10 YOU HAVE THREE FACTORS IN YOUR CODE, 2-507.

11:56:13 I WILL READ THOSE OUT BECAUSE THOSE ARE ESSENTIALLY

11:56:20 WHAT YOU ARE APPLYING THE EVIDENT PROVIDED TODAY TOO.

11:56:23 THE FIRST OF THREE FACTORS THAT NEED TO BE MET.

11:56:27 THE APPLICANT IN GOOD FAITH RELIED ON THE AFFIRMATIVE

11:56:30 GOVERNMENT ACT THAT THE APPLICANT HAD A RIGHT TO RELY

11:56:31 ON.

11:56:35 SECOND FACTOR THAT THE APPLICANT MADE SUBSTANTIAL

11:56:39 EXPENDITURES RELIANCE ON THE GOVERNMENT APPROVAL.

11:56:42 AND THIRD, BALANCING THE ACTIONS OF THE APPLICANT AND

11:56:48 THE INTEREST OF GOVERNMENTAL REGULATIONS INEQUITABLE TO

11:56:52 PREVENT THE LANDOWNER PROCEEDING ON THE ACT THAT THE

11:56:55 GOVERNMENT RELIED.

11:57:02 AS THE DETERMINE THEY ARE IN THE CASE, IT IS INCUMBENT

11:57:08 TO SIFT THROUGH ALL THE EVIDENCE THE PUBLIC AND THE

11:57:11 INTERVENORS AND DETERMINE IF THOSE THREE FACTORS HAVE

11:57:12 BEEN MET.

11:57:15 IF YOU DETERMINE THEY HAVE BEEN MET AND YOU MAKE THOSE

11:57:18 FINDINGS, THAN THE APPLICANT MAY BE ENTITLED TO THE

11:57:19 APPROVAL.

11:57:23 I WANTED TO MAKE SURE THOSE WERE THE CRITERIA EVERYONE

11:57:25 UNDERSTOOD YOU WERE REVIEWING THIS AGAINST.

11:57:31 DID I SEE ANY OBJECTION -- IS THAT THE PROPER CRITERIA?

11:57:35 >>MAYOR ERRINGTON: NANCY.

11:57:37 >>NANCY STROUD: I BELIEVE THE MAYOR HAVE ASKED IN THE

11:57:42 PAST FOR A RECOMMENDED MOTION THAT I WOULD LIKE TO PUT

11:57:48 ON THE TABLE AND IT CAN BE FOLLOWED WITH THE DISCUSSION

11:57:52 IF SOMEONE MOVES THE RECOMMENDED MOTION.

11:57:54 AND THE RECOMMENDED MOTION WOULD BE THAT BASED ON THE

11:58:00 SUBSTANTIAL COMPETENT EVIDENCE AND THE APPLICABLE LAW,

11:58:06 THE COUNCIL ACKNOWLEDGES VESTING FOR THE USE OF

11:58:10 MULTIFAMILY LOW RISE FOR THE PROPERTY OWNER LONG BAY

11:58:17 PARTNERS LCC ONLY AS TO USE ONLY.

11:58:21 NO VESTED RIGHTS EXIST FOR ANY SPECIFIC PARTS IN THE

11:58:32 TOWN CENTER OR THE PROPOSED PROJECT AND NOT INVESTED

11:58:36 RIGHTS FINAL REVIEW PROCESS.

11:58:37 >>MAYOR ERRINGTON: THANK YOU.

11:58:46 SO A MOTION HAS BEEN MADE BY COUNCIL MEMBER BOESCH.

11:58:48 AND WE NEED A SECOND.

11:58:53 SECOND BY COUNCIL MEMBER LARRY FIESEL.

11:58:55 NOW WE WILL HAVE DISCUSSION.

11:59:01 YES, COUNCIL MEMBER BOESCH.

11:59:03 >>JIM BOESCH: FIRST I WOULD LIKE TO MAKE THE COMMENT

11:59:08 THAT I HAD NO IDEA YOU WERE DRESSED IN BLUE TODAY.

11:59:08 [LAUGHTER]

11:59:10 >>MAYOR ERRINGTON: ME NEITHER.

11:59:13 >>JIM BOESCH: COINCIDENCE.

11:59:15 YOU ALL LOOK VERY PRETTY.

11:59:19 THE SECOND THING IS, WHEN WE TALK OF E-MAILS, I DIDN'T

11:59:25 WANT TO BRING THIS UP UNTIL I GOT INTO DETAIL.

11:59:29 DON'T ALL SEND E-MAILS TO THE COUNCIL PEOPLE BECAUSE

11:59:32 YOU BLOCK ALL THE OTHERS COMING UP.

11:59:39 I APPRECIATE E-MAILS THAT YOU INCIDENT IS US ON --

11:59:40 PEOPLE SIGNED IT.

11:59:43 THAT HELPS OUT WITH US CONDUCTING OUR BUSINESS.

11:59:44 SO I APPRECIATE THAT.

11:59:47 SO IF YOU ARE GOING TO -- IF YOU ARE GOING TO HAVE

11:59:49 SIGNATURES, THAT IS NO PROBLEM.

11:59:53 PUT IT ON ONE E-MAIL AND SEND IT ALL TO US SO WE HAVE

11:59:56 THAT FOR THE RECORD -- THE RECORD IS THERE.

12:00:00 BUT WE CONTINUE IN OUR BUSINESS GOING WITH OTHER

12:00:05 E-MAILS THAT COME IN AS WELL.

12:00:12 REGARDING THIS -- ALL THE PROCEDURES THAT WE HAVE, THE

12:00:19 BOOK IS -- PRESUMES THAT WE ALL -- THAT COUNCIL PEOPLE

12:00:21 ARE ALL LAWYERS.

12:00:25 AND IT SEEMS TO ME THAT AFTER GOING THROUGH THIS WHOLE

12:00:30 THING TODAY, IT'S A SIMPLE MATTER THAT HAS BEEN MADE

12:00:33 COMPLICATED WITH ALL THIS STUFF THAT IS GOING ON.

12:00:38 FIRST OF ALL, THE ONE MAJOR POINT THEY BROUGHT UP --

12:00:42 THAT WAS BROUGHT UP BY THE DEVELOPER'S ATTORNEY IS

12:00:43 NOTHING HAS CHANGED.

12:00:45 NOTHING HAS CHANGED.

12:00:51 SO, FIRST OF ALL, I HAPPEN TO BE A MEMBER OF THE EECL.

12:00:54 AND I AM AT A BOARD.

12:00:56 AND DURING THE WHOLE PROCESS OF -- OF DEVELOPING

12:01:02 ESTERO, FROM THE BEGINNING.

12:01:14 SO IF YOU COULD SAY FROM THE TIME 1997 AND 2002 OR 2003

12:01:16 WHEN THEY HAD APPROVAL TO MOVE FORWARD, THAT THERE WAS

12:01:17 NOTHING CHANGED.

12:01:25 THEN I WOULD SAY JUST MOVE TO ESTERO.

12:01:28 BECAUSE FIRST OF ALL, JUST LOOK AT THE MARTINI

12:01:28 PROPERTY.

12:01:34 THAT WAS ON THE DRI GOING TO BE INTERCHANGE FOR I-75.

12:01:42 AND THEN THROUGH A MAJOR MISJUDGMENT OF A COUNCIL

12:01:48 PERSON WHO CAME FROM THE -- THE U.S. REP CAME FROM --

12:01:54 THE WASHINGTON TO MAKE THIS WHOLE THING RUN SMOOTHLY,

12:01:58 HE MISSTEPED BY OFFERING MONEY WHICH HE HAD NO RIGHT TO

12:01:59 DO.

12:02:02 AND THROUGH THAT THE WHOLE THING FELL APART.

12:02:06 AND THAT IS HOW THE BROOKS ENDS UP WITH MARTINI

12:02:07 PROJECT.

12:02:14 HAD NOTHING TO DO WITH LEGAL THINGS.

12:02:18 IT WAS JUST, IN MY OPINION, A MAJOR MISTAKE BY A

12:02:22 CONGRESSMAN AND COINCIDENCE THAT YOU ENDS UP WITH A

12:02:23 MARTINI.

12:02:26 I WON'T SAY NOTHING HAS CHANGED.

12:02:36 A LOT OF IT HAS CHANGED THEN 2015, JANUARY 1 WAS THE

12:02:37 MAJOR CHANGE.

12:02:44 AND I WOULD LIKE TO HAVE YOU THINK IN TERMS OF COUNTY

12:02:48 DEVELOPMENT AND OUT DEVELOPMENT PROGRAM.

12:02:52 COUNTY THINKS NOTHING OF 40-STORY BUILDINGS.

12:02:53 WHAT DO WE WANT.

12:02:55 JUST GO AND GET WHATEVER YOU WANT.

12:03:00 AND IT IS PROBABLY EASIEST THING IN THEIR INTEREST IN

12:03:02 MONEY AND PEOPLE.

12:03:07 AND YOU COME TO ESTERO, YOU ARE NOT GOING TO GET A

12:03:09 20-STORY BUILDING.

12:03:12 WE GO 50 FEET.

12:03:13 FOUR STORIES.

12:03:14 THAT'S IT.

12:03:18 AND JUST THINK OF THAT CONTRAST ALONE.

12:03:23 SOME OF YOU CAN COME AND SAY, WELL, ON THIS DRI AND

12:03:25 20-STORY BUILDING.

12:03:29 IF THEY WERE TO ALLOW A 20-STORY BUILDING IN ESTERO,

12:03:36 NO.

12:03:40 IN 2015, WE PUT TOGETHER FOR FIVE YEARS -- PUT TOGETHER

12:03:46 A COMPREHENSIVE PLAN AND WE PUT THAT TOGETHER -- OUR

12:03:53 PLAN ORDINANCES.

12:03:58 AND DEVELOPMENT ORGANIZATIONS.

12:04:01 THE CONCEPT THAT WE WILL HAVE TO BE ABIDING BY

12:04:08 SOMETHING THAT WAS DONE IN 1997 HERE IN OUR TOWN IS

12:04:10 CONDITION VOLUTED.

12:04:23 WE HAVE PEOPLE IN PROPER PLACE FOR THE CONCEPT WHERE

12:04:24 YOU WANT IT.

12:04:27 THE FACT YOU DON'T HAVE A RIGHT TO SAY I WANT THIS DONE

12:04:30 IN THE COMMUNITY BECAUSE SOME PEOPLE HAVE DO SOMETHING

12:04:33 WITH A DEVELOPMENT FROM A STANDPOINT YOU DESERVE TO

12:04:34 HAVE A HEARING.

12:04:40 AND THE CONFUSION TODAY WAS -- I -- WAS HOW ARE WE TALK

12:04:42 ABOUT A PROJECT, A PROPOSAL?

12:04:57 OR WE TALKING OF TWO -- THREE SPECIFIC THINGS DONE

12:05:02 CONFUSION IN MY MIND AS TO THE VILLAGE HAS WHAT TO DO

12:05:04 WITH THE 1997 VESTED RIGHT TYPE OF THING WHICH

12:05:10 APPARENTLY THERE IS REALLY NO DEFINITION OF WHAT THE

12:05:12 VESTED RIGHTS ARE.

12:05:21 SO I FIRMLY BELIEVE THAT COUNCIL -- ALL THE DECISIONS

12:05:25 ON THIS SHOULD FROM THE COUNCIL, WHICH IT IS.

12:05:35 AND I BELIEVE AND VESTED RIGHTS IN THE VILLAGE AND NOT

12:05:38 VESTED RIGHTS WE ARE TALKING ABOUT FROM 1997.

12:05:42 I FIRMLY HOPE WE ALL SUPPORT THIS RESOLUTION THAT IS

12:05:46 BEING PROPOSED BY TO OUR MAIN ATTORNEY.

12:05:53 AND WHATEVER ELSE HAPPENS, WHATEVER MAY BE THE CASE,

12:05:57 BUT WE MAKE PROMISE US TO AS RESIDENTS AND WE DON'T

12:06:01 WANT TO BE TURNING AROUND AND CHANGING THEM OR AT LEAST

12:06:06 FIGHTING FOR YOUR RIGHTS, NOT JUST VESTED RIGHTS THAT

12:06:08 TAKE PLACE NEAR ESTERO.

12:06:14 SO I SUPPORT THE RESOLUTION THAT WE ARE MOVING FORWARD.

12:06:15 >>MAYOR ERRINGTON: THANK YOU.

12:06:17 ANYONE ELSE?

12:06:20 ANYONE ELSE?

12:06:24 COUNCIL MEMBER WILSON, DO YOU HAVE ANY COMMENT?

12:06:27 >>JIM WILSON: NO, YOUR HONOR.

12:06:31 >>MAYOR ERRINGTON: OKAY.

12:06:39 ONE THING I WOULD LIKE TO SAY AND WE WILL MOVE FOR THE

12:06:44 VOTE.

12:06:46 WHEN I WAS RESEARCHING THIS INFORMATION WHICH WAS

12:06:47 VOLUMINOUS.

12:06:51 THAT THE WINN DIXIE STORE -- THE LEASE ON IT IS GOOD

12:06:53 UNTIL JULY OF 2028.

12:06:59 SO LET YOU KNOW THAT FINE MARK BANK HAVE UNTIL AT LEAST

12:07:00 2034.

12:07:04 YOU MAY WANT TO KEEP THOSE IN MIND GOING FORWARD IN

12:07:14 YOUR GOVERNANCE.

12:07:15 WE ARE READY FOR A VOTE.

12:07:19 >>JIM WILSON: WILL IT BE POSSIBLE MAYOR TO HAVE THE

12:07:23 MOTION CLEAR FOR THE COUNCIL AND THE AUDIENCE WHAT WE

12:07:24 ARE VOTING ON.

12:07:26 >>MAYOR ERRINGTON: WE WILL READ IT AGAIN AND NANCY

12:07:29 STROUD WILL READ IT.

12:07:32 >>NANCY STROUD: THE MOTION IS THAT BASED ON

12:07:35 SUBSTANTIAL, COMPETENT EVIDENCE AND THE APPLICABLE LAW,

12:07:40 THE COUNCIL ACKNOWLEDGES VESTING FOR THE USE OF

12:07:49 MULTIFAMILY LOW RISE USE FOR THE PROPERTY OWNER LCC

12:07:53 ONLY AND FOR THE USE ONLY.

12:07:56 THAT NO VESTED RIGHTS EXIST FOR ANY SPECIFIC NUMBER OF

12:08:01 UNITS IN THE TOWN CENTER OR THE PROPOSED PROJECT.

12:08:05 NO VESTED RIGHTS EXIST FOR ADMINISTRATIVE STAFF REVIEW,

12:08:10 FINAL PLAN APPROVAL PROCESS.

12:08:14 >>JIM WILSON: THANK YOU.

12:08:17 >>MAYOR ERRINGTON: PLEASE CALL THE ROLL.

12:08:19 >>JIM WILSON: AYE.

12:08:21 >>JIM BOESCH: AYE.

12:08:24 >>LARRY FIESEL: AYE.

12:08:27 >>JOANNE RIBBLE: AYE.

12:08:30 >>VICE-MAYOR MCLAIN: HI.

12:08:32 >>MAYOR ERRINGTON: AYE.

12:08:34 MOTION PASSES UNANIMOUSLY.

12:08:35 THANK YOU.

12:24:20 I HAVE HERE -- WE ARE TO TAKE A TEN-MINUTE BREAK.

12:24:24 >>MAYOR ERRINGTON: ARE WE READY?

12:24:34 THANK YOU.

12:24:37 WE ARE NOW READY TO CONSIDER THE APPEAL OF AN

12:24:41 ADMINISTRATIVE DECISION.

12:24:43 DEREK, IS THIS CORRECT?

12:24:49 I ASKED FOR COUNCILMEMBERS EX-PARTE DISCLOSURES OR

12:24:50 CONFLICTS OF INTEREST.

12:24:56 SO I WILL HAVE TO GO AROUND THE DAIS AND ASK IF ANYONE

12:24:57 HAS ANY --

12:25:00 >>DEREK ROONEY: ABOUT THE SAME.

12:25:01 >> SAME.

12:25:08 >> IF THERE ARE NO CHANGES, INDICATE NO CHANGES.

12:25:08 >> NO CHANGE.

12:25:14 >> NO CHANGE.

12:25:18 >>DEREK ROONEY: CAROL HAS RECEIVED ALL THE PRIOR

12:25:24 E-MAIL CORRESPONDENCE IN REFERRING TO THIS ITEM.

12:25:27 ARE WE GOOD WITH THAT THEN?

12:25:29 >>MAYOR ERRINGTON: THAT COVERS THE NEXT AREA OF ANY

12:25:32 LETTERS OR E-COMMENTS.

12:25:34 WE HAVE ALREADY DONE THAT.

12:25:39 NOW I WILL CALL ON MARY GIBBS TO COME FORWARD TO THE

12:25:44 PODIUM TO INTRODUCE THE ITEM TO THE COUNCIL.

12:25:46 >>MARY GIBBS: GOOD AFTERNOON --

12:25:50 >>MAYOR ERRINGTON: IS IT AFTERNOON ALREADY?

12:25:52 >>MARY GIBBS: AT LEAST IT IS NOT GOOD EVENING.

12:25:56 I AM GOING TO BE VERY QUICK BECAUSE I KNOW THE TIME IS

12:25:59 -- HAS BEEN EXTENDED AND I KNOW THAT ATTORNEYS -- A LOT

12:26:00 OF ATTORNEYS WANT TO TALK.

12:26:04 BUT BASICALLY THIS.

12:26:07 THE APPLICANT IS APPEALING MY DECISION OF HOW TO

12:26:11 APPLICATION IF THIS PROPOSAL SHOULD BE PROCESSED.

12:26:14 THEY BELIEVE IT FALLS UNDER WHAT THEY CALL THE FINAL

12:26:17 PLAN APPROVAL UNDER THAT COUNTY ZONING RESOLUTION,

12:26:20 WHICH DOES NOT GO INTO COUNCIL TYPICALLY.

12:26:23 IT WOULD BE A STAFF DECISION.

12:26:27 I KNOW IN THE LAST CASE, THEY KEEP OF CHANGED THAT A

12:26:28 LITTLE BIT.

12:26:32 BUT OUR OPINION IS THAT THIS NEEDS TO BE A ZONING

12:26:35 AMENDMENT NOT JUST A FINAL PLAN APPROVAL PROCESS THAT

12:26:37 SHOULD GO TO THE COUNCIL AND THE COUNCIL NEEDS TO MAKE

12:26:40 THE DECISION, NOT THE STAFF.

12:26:42 SO I AM GOING TO TURN IT OVER TO THE APPLICANT'S

12:26:44 ATTORNEY WHO IS GOING TO TALK AND NANCY STROUD IS GOING

12:26:50 TO EXPLAIN THE STAFF RECOMMENDATION, OUR POSITION.

12:26:53 >>MAYOR ERRINGTON: THANK YOU.

12:26:55 SO THAT WOULD BE NEALE MONTGOMERY.

12:26:57 GOOD AFTERNOON, NEALE.

12:27:00 >> GOOD AFTERNOON.

12:27:08 I'M HERE ON THE APPEAL OF AN ADMINISTRATIVE ACTION AND

12:27:15 IN YOUR PACKET UNDER THE APPLICANT INFORMATION, THERE

12:27:25 IS A DOCUMENT WHICH IS A JULY 27, 2021 LEADER FROM MARY

12:27:31 TO PAULA MCMICHAEL, AND ATTACHED TO THAT IS A LETTER

12:27:37 FROM NANCY STROUD.

12:27:42 NOW WE -- THE APPLICANT FILED FOR FINAL PLAN APPROVAL

12:27:46 -- BEFORE I DO THAT, LET ME SAY THIS.

12:27:49 WE SPENT A LOT OF TIME LOOKING AT THE BINDERS AND ALL

12:27:50 THE INFORMATION YOU HAD.

12:27:53 I JUST WANT TO MAKE SURE THAT ALL THE INFORMATION THAT

12:27:56 IS IN YOUR PACKAGES, BOTH THE VESTED RIGHTS AND THE

12:27:59 APPEAL IS ALL PART OF THE RECORD.

12:28:00 EVERYBODY AGREES?

12:28:02 THE INFORMATION WE HAVE BEEN LOOKING AT IS PART OF THE

12:28:03 RECORD?

12:28:06 >>DEREK ROONEY: CORRECT.

12:28:10 >> SO WHAT THE -- SO THE APPLICANT AS WE DISCUSSED

12:28:18 UNDER THE 970 ZONING AMENDMENT REQUIRE THAT IS A

12:28:20 APPLICANT WANTS TO DO VERTICAL DEVELOPMENT THEY HAVE TO

12:28:23 FILE FOR FINAL PLAN APPROVAL.

12:28:24 IT IS NOT OPTIONAL.

12:28:26 WE HAVE TO DO IT.

12:28:28 SO THE APPLICANT CAN FILE FOR AS REQUIRED FINAL PLAN

12:28:31 APPROVAL AND THEY FILED FOR IT ON THE VILLAGE OF ESTERO

12:28:37 FORM FOR FINAL PLAN APPROVAL.

12:28:40 THUS, STAFF REVIEWED IT AND SENT THIS LETTER.

12:28:45 IF YOU LOOK AT THE TOP OF THE STAFF REVIEW COMMENTS

12:28:48 THAT IS ATTACHED TO MARY'S LETTER, THE FIRST THING IT

12:28:53 SAYS IS, PLEASE SUBMIT CORRECT APPLICATION FORM.

12:28:55 SUBMIT AN APPLICATION FOR PLANNED DEVELOPMENT PUBLIC

12:28:56 HEARING.

12:29:00 AND THEN REFERENCES NANCY STROUD'S MEMO.

12:29:07 NOW, WHEN THE APPLICANT'S STANDPOINT, WE DIDN'T THINK

12:29:10 WE NEEDED TO SUBMIT FOR A PLANNED DEVELOPMENT REZONING

12:29:14 BECAUSE, AS WE JUST DISCUSSED, THE USE IS PERMITTED.

12:29:18 AND YOU JUST FOUND THAT LOW RISE MULTIFAMILY

12:29:20 RESIDENTIAL IS VESTED.

12:29:27 SO IF I HAVE THE USE, WHY WOULD I HAVE TO REZONE TO GET

12:29:31 THE USE?

12:29:34 IT DOESN'T MAKE SENSE TO ME SO I THINK WE ADDRESS THE

12:29:36 ISSUE.

12:29:38 I ALSO THINK WE ARE VESTED UNDER THE PROPERTY

12:29:41 DEVELOPMENT REGULATIONS WHICH AS YOU SAW WERE TWO PAGES

12:29:42 LATER IN THE SAME DOCUMENT.

12:29:46 WE ARE NOT ASKING TO CHANGE THOSE.

12:29:48 AND IF THE USE IN VESTED THAN THE PROPERTY DEVELOPMENT

12:29:51 REGULATIONS WHICH ARE IN THE SAME DOCUMENTS SHOULD BE

12:29:54 -- SHOULD APPLY AS WELL.

12:29:57 IN WHICH CASE, I DON'T NEED A REZONING.

12:30:05 NOW WHERE I THINK THE CONFUSION MAY BE IS WHAT DOES THE

12:30:08 FINAL PLAN APPROVAL PROCESS LOOK LIKE.

12:30:12 NOW ADMITTEDLY, YOUR FORM SAYS ADMINISTRATIVE

12:30:18 APPROVAL, BUT AS I DISCUSSED EARLIER, AND THE -- AND

12:30:21 THE -- AND THE WHOLE DOCUMENT IS ATTACHED HERE TOO IS

12:30:25 INCLUDED IN YOUR PACKAGE IS THE VILLAGE OF ESTERO

12:30:31 STAFF REPORT ON COCONUT SQUARE FINAL PLAN APPROVAL.

12:30:34 I SUBMITTED THAT BECAUSE THAT STRUCK ME THAT THAT WAS

12:30:38 THE PROCESS THE VILLAGE DETERMINED WAS THE APPROPRIATE

12:30:38 PROCESS.

12:30:43 AND WE WERE SUGGESTING THEN AND NOW WE WILL BE SUBJECTS

12:30:44 TO THE SAME PROCESS.

12:30:48 YOU CAN'T -- ADMITTEDLY THE FITNESS CENTER WASN'T

12:30:51 SUBJECTED TO THE RULES, BUT WE ASSUMED WE WOULD BE

12:30:54 SUBJECT TO THE SAME RULES THAT THE VILLAGE HAD

12:30:55 DETERMINED.

12:30:57 AND HERE IS HOW THAT HAPPENED.

12:31:03 WE SUBMITTED THE APPLICATION, AND THEN COUNCILMAN

12:31:10 LEVITAN SAID IN 2015-01, WE THE VILLAGE DETERMINED

12:31:13 THERE WERE NO SUCH THINGS AS ADMINISTRATIVE APPROVAL.

12:31:19 WE GOT RID OF ALL OF THEM BUT A FEW MINOR INSTANCES.

12:31:23 EVERYTHING SHOULD GO TO THE PUBLIC HEARING.

12:31:26 THAT HAPPENED IN THE PELICAN LANDING CASE.

12:31:29 THE STAFF REPORT SAID FINAL PLAN APPROVAL AND IT WENT

12:31:29 TO COUNCIL.

12:31:32 AND THE COUNCIL LOOKED AT ALL THE CRITERIA IN THE

12:31:36 ZONING RESOLUTION THAT THEY WERE REQUIRED TO FOR FINAL

12:31:38 PLAN APPROVAL.

12:31:43 AND SO OUR POSITION IS, WE HAVE TO SUBMIT FOR FINAL

12:31:46 PLAN IN APPROVAL BECAUSE ZONING RESOLUTION SAYS SO, AND

12:31:49 IF WE HAVE TO SUBMIT IT, WE HAVE TO SUBMIT IT ON YOUR

12:31:50 FORM, WHICH WE DID.

12:31:54 AND WE SHOULD BE SUBJECT TO THE SAME PROCESS THAT THE

12:31:57 OTHER PROJECT WAS SUBJECTED TO.

12:32:04 AND IT IS MY UNDERSTANDING THAT THERE WAS CONFUSION

12:32:08 THAT ADMINISTRATIVE MEANT THAT STAFF GOT TO REVIEW IT

12:32:10 AND IT DIDN'T EVER GO TO COUNCIL.

12:32:12 BUT WE COULDN'T DO THAT BECAUSE I WAS INVOLVED IN A

12:32:16 CASE THAT WENT TO COUNCIL AND I ALREADY KNEW THAT WAS

12:32:19 THE PROCESS YOU ALL VOTED ON AND ESTABLISHED, SO IT

12:32:23 SEEMED LOGICAL TO ME THAT WE WILL FOLLOW THE SAME

12:32:25 PROCESS THAT COUNCIL ALREADY ESTABLISHED.

12:32:28 DID NOT AND DOES NOT FEEL LOGICAL THAT I WILL REZONE A

12:32:32 PROPERTY FOR A USE THAT I ALREADY HAVE.

12:32:38 SO AS WE KNOW FROM THE PRIOR CASE, THE QUESTION IS,

12:32:42 WELL, BUT HOW MANY UNITS?

12:32:44 WE TOUCHED TO CONTINUE BUT DIDN'T EXACTLY DISCUSS THE

12:32:47 FACT THAT WHEN THE DRI ZONING WAS APPROVED, THEY DIDN'T

12:32:51 ASSIGN A SPECIFIC NUMBER OF UNITS OF DIFFERENT PARCELS

12:32:52 AND TRACTS.

12:32:58 SOME BUILDINGS THEY DO -- THEY SAY THIS HAS X UNITS OR

12:33:02 X OR Y SQUARE FOOTAGE THAT THAT DID NOT HAPPEN.

12:33:05 THE TOTAL NUMBER OF UNITS AND SQUARE FOOTAGE AND IT WAS

12:33:07 ALLOCATED AS IT WENT ALONG.

12:33:09 SO OBVIOUSLY WHATEVER THE NUMBER IS HAS TO BE

12:33:14 CONSISTENT WITH ALL THE THINGS -- YOU KNOW EVEN

12:33:19 COUNCILWOMAN RIBBLE SAID YOU GOT TO IDENTIFY OPEN SPACE

12:33:22 AND SETBACKS AND ALL THE ACCESS.

12:33:25 ALL THOSE REQUIREMENTS ARE STILL OUT THERE AND WE HAVE

12:33:26 TO STILL ADDRESS THOSE.

12:33:30 AND THE SITE -- THE PROPERTY -- WITH SITE SPECIFIC

12:33:36 ISSUES YOU THOROUGHLY REVIEW OR THE ZONING AND DESIGN

12:33:39 REVIEW BOARD THROUGH THE PROCESS AND IF NECESSARY THAT

12:33:40 YOU TAKE AN APPEAL.

12:33:43 WITH THAT, I ACTUALLY DIDN'T SUBMIT THE APPLICATION.

12:33:45 PAULA MCMICHAEL DID.

12:33:49 SO I AM GOING TO LET HER RUN THROUGH HER EXPERIENCE AND

12:34:03 THE FACTS.

12:34:06 >> GOOD AFTERNOON FOR THE RECORD, PAULA MCMICHAEL,

12:34:10 VICE-PRESIDENT WITH HALL MONTEZ.

12:34:18 WE HAVE A POWERPOINT PRESENTATION.

12:34:33 AND I AM GOING TO WALK YOU THROUGH THE PROCESS I WENT

12:34:35 THROUGH DETERMINING THAT THE USE WAS PERMITTED, THAT

12:34:41 THE PROPERTY DEVELOPMENT REGULATIONS WERE PERMITTED AND

12:34:43 THE PROCESS IN ORDER TO APPROVE THIS REVISED

12:34:45 DEVELOPMENT.

12:34:48 SO I KNOW WE HAVE ALREADY LOOKED AT WHERE THIS IS AND

12:34:48 EVERYBODY KNOW WHERE IS IT IS.

12:34:51 I WANTED TO REVIEW A COUPLE OF THINGS ABOUT THE

12:35:00 LOCATION THE BROOKS DEVELOPMENT REGIONAL IMPACT, 2500

12:35:01 ACRES.

12:35:05 MOST OF IT IS RESIDENTIAL GOLF COURSE, RESIDENCES AND

12:35:05 OPEN SPACE.

12:35:08 THERE IS A COMMERCIAL COMPONENT LOCATED ALONG U.S. 41

12:35:13 AS WELL.

12:35:15 SO THE SUBJECT SITE IS ABOUT TEN ACRES.

12:35:17 THIS ENTIRE AREA IS THE TOWN CENTER.

12:35:20 SO IT IS A PORTION OF THE TOWN CENTER USE.

12:35:22 THESE ARE ALL THE COMMUNITY FACILITIES.

12:35:25 THERE IS A FITNESS CENTER.

12:35:27 THERE IS A RESTAURANT LOCATED HERE.

12:35:30 THIS IS ABOUT A 40,000-SQUARE-FOOT OFFICE BUILDING AND

12:35:33 THIS IS WHERE YOUR VILLAGE COMMUNITY DEVELOPMENT

12:35:35 DEPARTMENT WAS FIRST LOCATED.

12:35:40 AND THEN THIS HERE -- THE WHITE ROOF, THAT IS THE OLD

12:35:44 WINN-DIXIE, 36,000 SQUARE FEET.

12:35:46 THERE IS A SMALL SHOPPING CENTER RETAIL USE.

12:35:51 I THINK THAT IS ABOUT 25,000 SQUARE FEET.

12:35:54 WE ARE TALKING IN ROUND NUMBERS HERE.

12:35:58 THERE IS A BANK HERE THAT IS ABOUT 5,000 SQUARE FEET.

12:36:02 AND TWO VACANT OUTPARCELS THAT TOTALED ABOUT 12,000

12:36:08 SQUARE FEET OF UNBUILT COMMERCIAL.

12:36:11 THE COMMUNITY FACILITY IS ABOUT 35,000 SQUARE FEET OF

12:36:14 COMMUNITY FACILITIES.

12:36:21 SO THE REQUEST WAS TO REPLACE JUST THE -- THE GROCERY

12:36:25 STORE PORTION OF 36,000 SQUARE FEET AND THE TWO UNBUILT

12:36:29 OUTPARCELS WITH 154 MULTIFAMILY DWELLING UNITS.

12:36:33 AND ZONING DOES NOT DIFFERENTIATE BETWEEN OWNERSHIP

12:36:38 TYPE, DOESN'T SPECIFY THAT IT NEEDS TO BE A CONDO OR

12:36:41 APARTMENT, IT IS JUST MULTIFAMILY DWELLING UNITS.

12:36:44 MARY ALREADY REVIEWED A LITTLE BIT OF THE ZONING

12:36:44 HISTORY.

12:36:49 AGAIN, THIS WAS ORIGINALLY APPROVED AS A DEVELOPMENT OF

12:36:52 REGIONAL IMPACT AND MIXED-USE PLAN AMENDMENT.

12:36:54 SUBSEQUENT AMENDMENTS IN 1999.

12:36:58 THEY ADDED 40 ACRES IN THE NORTHERN END.

12:37:02 AND 2002, THEY REDUCED THE NUMBER OF DWELLING UNITS

12:37:04 AND COMMERCIAL IN THE AREA IN THE TOWN CENTER.

12:37:08 SOME EXTENSION OF THE BUILD-OUT DATE.

12:37:12 IN 2013, INCREASED THE TOTAL NUMBER OF DWELLING UNITS

12:37:16 3800 AND REDUCED RECREATION AREAS BY FOUR ACRES.

12:37:20 AS I TRY TO SAY EARLIER IN RESPONSE TO OUR QUESTION

12:37:24 REGARDING WHICH ZONING RESOLUTION WAS IN EFFECT, IF THE

12:37:28 ZONING RESOLUTION DOES NOT AMEND THOSE PREVIOUS ZONING

12:37:33 RESOLUTIONS, THOSE REGULATIONS ARE CARRIED FORWARD.

12:37:35 YOU WILL SEE THIS I WILL REFERENCE ZONING RESOLUTION

12:37:39 FROM 1997.

12:37:44 THIS IS THE MASTER CONCEPT PLAN FOR THE BROOKS.

12:37:54 THAT IS THE SUBJECT SITE THERE WITHIN THE TOWN CENTER.

12:38:01 WE KNOW IT IS IN THE TOWN CENTER DISTRICT.

12:38:04 YOU CAN SEE THE MULTIFAMILY LOW RISE IS PERMITTED USE

12:38:07 IN THE TOWN CENTER DISTRICT SINCE THE INCEPTION OF THE

12:38:11 BROOKS.

12:38:18 AND THIS IS FROM A MUCH LONGER LIST OF PERMITTED USES.

12:38:22 REGARDING REDEVELOPMENT AND USES, I WOULD SAYS IT VERY

12:38:26 COMMON IN A CONVENTIONAL ZONING DISTRICT, FOR INSTANCE,

12:38:28 YOU HAVE A COMMERCIAL ZONING DISTRICT THAT WILL APPROVE

12:38:30 A LONG LIST OF USES.

12:38:32 MIGHT BE DEVELOPED AS A BANK.

12:38:35 SOMEONE MIGHT COME BACK LATER AND SAY THIS WORKS BETTER

12:38:36 AS A RESTAURANT.

12:38:40 NOTHING IN BUILDING THE BANK EXCLUDES THE RESTAURANT

12:38:45 USE FROM BEING PERMITTED.

12:38:47 THE PROPERTY DEVELOPMENT REGULATIONS THAT WERE

12:38:50 REFERENCED EARLIER.

12:38:55 SO WE HAVE MINIMAL LOT DIRECTIONS, MINIMUM SETBACKS

12:39:00 ESTABLISHED FOR THIS USE, MULTIFAMILY LOW RISE.

12:39:04 MAXIMUM HEIGHT, NUMBER OF STORIES, BUILDING SEPARATION

12:39:08 AND MAXIMUM LOT COVERAGE.

12:39:12 SO THE MOST RECENT ZONING APPROVAL WAS IN 2013.

12:39:16 AND THESE ARE THE DEVELOPMENT INTENSITY AND DENSITY

12:39:18 STANDARDS APPROVED AT THE TIME.

12:39:22 3800 DWELLING UNITS, 150,000 SQUARE FEET OF RETAIL

12:39:28 USES, 120,000-SQUARE-FEET OF RETAIL AND OFFICE,

12:39:32 120 HOTEL ROOMS, 55,000 SQUARE FEET OF COMMUNITY

12:39:32 FACILITIES.

12:39:37 AND THE ONE I LEFT OUT OF THERE INADVERTENTLY WERE THE

12:39:40 72 GOLF HOLES THAT WERE APPROVED.

12:39:44 THIS HAS BEEN WHAT IS CURRENTLY CONSTRUCTED WITHIN THE

12:39:45 BROOKS.

12:39:47 THERE ARE 3642 DWELLING UNITS.

12:39:51 WE DID PROVIDE BACK-UP INFORMATION TO STAFF HOW WE

12:39:53 REACHED THAT NUMBER.

12:39:59 THERE ARE 158 DWELLING UNITS REMAINING IN THE DRI.

12:40:02 THIS REMAINS A MIXED USE.

12:40:05 COMMERCIAL AND RESIDENTIAL PLAN DEVELOPMENT.

12:40:07 AS I SAID, COMMERCIAL USES REMAIN BOTH IN THE TOWN

12:40:08 CENTER.

12:40:11 THERE IS THAT SHOPPING CENTER IN THE BANK.

12:40:13 THE 40,000 SQUARE FEET OF OFFICE.

12:40:16 AND ON THE COMMERCIAL DESIGNATED AREAS THAT ARE ALONG

12:40:18 U.S. 41.

12:40:23 AS NEALE ALREADY MENTIONED HER -- HER TRANSITIONAL LDC,

12:40:27 34940, MIXED USE PLAN DEVELOPMENT MUST MEET AND EXCEED

12:40:28 TWO OF FOUR THRESHOLDS.

12:40:31 ONE IS 50 OR MORE DWELLING UNITS WHICH WE HAVE.

12:40:34 AND TWO WOULD BE COMMERCIAL DEVELOPMENT -- TWO OR MORE

12:40:37 ACRES OF AT LEAST 30,000 SQUARE FEET.

12:40:42 WE STILL MEET THE DEFINITION OF A MIXED USE PLAN

12:40:47 DEVELOPMENT.

12:40:55 GO BACK TO THE MASTER CONCEPT PLAN.

12:41:01 AGAIN AS NEALE ALREADY REFERENCED DENSITY AND INTENSITY

12:41:03 IS NOT ALLOCATED BY PARCEL.

12:41:07 I KNOW IT WAS HARD TO READ ALL THIS TINY TEXT HERE.

12:41:11 THIS IS A LIST OF DEVIATIONS THAT WERE APPROVED.

12:41:12 THERE ARE SOME GENERAL NOTES.

12:41:14 THESE ARE PROPERTY DEVELOPMENT REGULATIONS IN THE

12:41:15 TABLES.

12:41:18 BUT THERE IS NOTHING ON THERE THAT ALLOCATES DENSITY OR

12:41:20 INTENSITY BY PARCEL.

12:41:24 THIS ALLOWS FOR FLEXIBILITY IN THE PROJECT WHILE

12:41:30 ALLOWING STAFF THE PUBLIC -- THE PUBLIC BODIES TO

12:41:33 ANALYZE THE IMPACTS OF THE DEVELOPMENT AS A WHOLE AND

12:41:36 ALLOWS THE DEVELOPER TO COMPENSATE FOR THE DEVELOPMENT

12:41:38 AS A WHOLE.

12:41:41 SO, AGAIN, NOTHING IN THE MASTER CONCEPT PLAN NOR THE

12:41:43 ZONING RESOLUTION THAT ALLOCATES, LIMITS OR RESTRICTS

12:41:51 THE DWELLING UNITS TO A CERTAIN PARCEL OR AREA.

12:41:54 THE FINAL PLAN APPROVAL PROCESS WAS ESTABLISHED IN

12:41:57 ZONING Z-97-0.

12:42:01 THESE ARE THE STANDARDS FOR REVIEW FOR VERTICAL

12:42:02 DEVELOPMENT.

12:42:05 SO IT IS AN ADDITIONAL PROCESS ESTABLISHED BY THE

12:42:07 ZONING RESOLUTION IN ADDITION TO JUST RECEIVING A

12:42:12 DEVELOPMENT ORDER THAT YOU WOULD ALSO PROVIDE A FINAL

12:42:16 PLAN APPROVAL.

12:42:18 >> CAN I ASK A QUESTION?

12:42:20 >>MAYOR ERRINGTON: LET HER FINISH WITH THE

12:42:20 PRESENTATION.

12:42:22 >> I WANT TO ASK A QUESTION.

12:42:26 WE ARE MAKING A DECISION ON WHETHER STAFF CAN APPROVE

12:42:30 SOMETHING FOR THE COUNCIL, RIGHT?

12:42:34 YOU ARE GIVING US A WHOLE PROJECT.

12:42:38 HOW IS IT RELEVANT TO THE -- ARE YOU ASKING US TO

12:42:40 APPROVE THIS NOW?

12:42:42 WHAT ARE WE ASKING?

12:42:44 >> MY PURPOSE IN PRESENTING THIS SO YOU UNDERSTAND THE

12:42:48 PROCESS WE WENT THROUGH-TO-IN ORDER TO DETERMINE THE

12:42:49 CORRECT APPLICATION TO FILE.

12:42:52 I AM TRYING TO WALK YOU THROUGH WHAT I WOULD HAVE

12:42:55 LOOKED AT AS A PLANNER, AS A REPRESENTATIVE OF THE

12:42:58 OWNER OF THE PROPERTY, IN MAKING AN APPLICATION.

12:43:01 SO WHAT I WOULD LOOK AT IS WHERE IS THIS PROPERTY

12:43:02 LOCATED.

12:43:05 WHAT IS THE ZONING, WHAT IS THE MOST RELEVANT ZONING,

12:43:10 WHAT ARE THE USES THAT ARE PERMITTED ON THE SITE.

12:43:11 IS THIS A PERMITTED USE.

12:43:14 HOW MANY UNITS ARE AVAILABLE ON THE SITE.

12:43:15 WHAT I AM TRYING TO WALK YOU THROUGH.

12:43:17 >>MAYOR ERRINGTON: LET HER FINISH WITH THE

12:43:18 PRESENTATION AND THEN WE WILL HAVE THE QUESTIONS.

12:43:20 >> I AM JUST WONDERING.

12:43:23 >>MAYOR ERRINGTON: SO SHE CAN FINISH ARE THE

12:43:25 PRESENTATION.

12:43:27 >> SIMPLE THING TO BE PRESENTING.

12:43:29 >>MAYOR ERRINGTON: SHE WILL FINISH WITH THE

12:43:29 PRESENTATION.

12:43:30 >> THANK YOU.

12:43:33 THESE ARE THE CRITERIA IN THE RESOLUTION REGARDING THE

12:43:34 FINAL PLAN APPROVAL.

12:43:38 WHAT I WANTED TO NOTE HERE IS THAT WHAT WE ARE LOOKING

12:43:43 AT, LOOKING AT TYPE AND AMOUNT OF USES, TABULATION OF

12:43:48 WHAT HAS BEEN BUILT, VERSUS WHAT YOU ARE APPROVED FOR,

12:43:55 YOUR ACCESS POINTS, ROADWAYS, SETBACKS, BUILDING

12:43:55 HEIGHTS.

12:43:58 THESE ARE ALL THINGS THAT WE WOULD LOOK AT FOR NEW

12:44:00 DEVELOPMENT AS WELL AS FOR REDEVELOPMENT.

12:44:03 SO NOTHING DIFFERENT THAT WE WOULD ANALYZE FOR

12:44:11 REDEVELOPING A SELL.

12:44:15 I HAVE BEEN INVOLVED WITH OTHER DRIS WITH MULTIPLE PLAN

12:44:17 APPROVALS FOR A SINGLE PIECE OF PROPERTY.

12:44:19 ANOTHER THING I WOULD HAVE LOOKED AT IS THE

12:44:21 ADMINISTRATIVE FINAL PLAN APPROVAL THAT WAS APPROVED

12:44:24 FOR THIS SITE IN 2007.

12:44:28 AS ALREADY MENTION AID PROVED FOR 80,000 SQUARE FEET OF

12:44:35 RETAIL DEVELOPMENT.

12:44:38 RESTAURANT AND RETAIL PARCELS WERE NOT CONSTRUCTED.

12:44:40 NO CONDITIONS IN THE ADD RELATED TO LIMITING USES OR

12:44:48 PROHIBITING REDEVELOPMENT 6,000 UP TO 80,000 WAS

12:44:49 CONSTRUCTED.

12:44:58 THIS IS AN AERIAL FROM 2007 TO SHOW ALMOST ALL OF THE

12:45:03 RESIDENTIAL WAS FOR APPROVAL AND COCONUT POINT BEING

12:45:09 CONSTRUCTED OUT ON 41.

12:45:11 WE MADE A REQUEST FOR A FINAL PLAN APPROVAL TO REPLACE

12:45:17 THE 36,000-SQUARE-FOOT GROCERY STORE AND UNBUILT WITH

12:45:21 54 DWELLING UNITS LOW RISE.

12:45:23 THERE WAS A LOT OF TALK ABOUT TRAFFIC, SO I WANTED TO

12:45:28 RESPOND A LITTLE BIT.

12:45:33 THE NEW DEVELOPMENT SCENARIO REPRESENTS 69D% REDUCTION

12:45:36 OF P.M. PEAK-HOUR TRIPS.

12:45:40 P.M. PEAK-HOUR TRIPS IS A STANDARD AND WE LOOK AT

12:45:44 TRAFFIC, THE HOURS BETWEEN 4 AND 6:00, THE TRAFFIC

12:45:47 GENERATED THAT SITE DURING THESE HOURS.

12:45:53 THE REDUCTION IN TRIPS DOES NOT ELIMINATE TRIP CAPTURE.

12:45:55 TRIP CAPTURE IS A CALCULATION THAT YOU DO.

12:45:58 DO YOU ONE CALCULATION TO COME UP WITH AT NUMBER OF

12:46:01 TRIPS GENERATED BY YOUR SITE.

12:46:04 AND THEN WHEN YOU HAVE A MIX OF RESIDENTIAL AND

12:46:07 COMMERCIAL, YOU SUBTRACT TRIPS FROM THAT BECAUSE WE

12:46:12 WILL CAPTURE THOSE TRIPS INTERNALLY AND A CALCULATION.

12:46:14 THERE IS STILL COMMERCIAL WITHIN THE DRI AND THE

12:46:15 BROOKS.

12:46:16 AND ALREADY COVERED.

12:46:20 REDUCING THE NUMBER OF TRIPS DOESN'T REDUCE -- DOESN'T

12:46:21 ELIMINATE TRIP CAPTURE.

12:46:24 AND REGARDLESS OF HOW THAT CALCULATION GETS DONE, THAT

12:46:28 TRIP CAPTURE CALCULATION, TRIPS ARE REDUCED.

12:46:31 THIS IS A REDUCTION IN TRIPS FROM THE DRI.

12:46:34 AND I WILL ALSO JUST NOTE NO LEVEL OF SERVICE ISSUES ON

12:46:40 ADJACENT ROADWAYS.

12:46:45 THIS IS JUST WALKING YOU THROUGH THE STEPS THAT WE

12:46:46 TOOK.

12:46:49 I DON'T NEED TO REVIEW THIS IN DETAIL.

12:46:52 AND MY CONCLUSION WILL BE MY PROFESSIONAL PLANNING

12:46:56 POSITION THAT STAFF ERRORED THAT THE APPLICANT SHOULD

12:46:59 HAVE FILED AN APPLICATION FOR PLANNED DEVELOPMENT

12:46:59 HEARING.

12:47:03 WE DO NOT NEED TO AMEND THE PLANS DEVELOPMENT OR DRI

12:47:04 FOR THE PROPOSED DEVELOPMENT.

12:47:06 THE USE IS PERMITTED.

12:47:08 THE DWELLING UNITS REMAINED.

12:47:11 AND WE SUBMITTED THE CORRECT FORM IN REQUESTING A FINAL

12:47:11 PLAN APPROVAL.

12:47:12 >>MAYOR ERRINGTON: THANK YOU.

12:47:18 NOW WE CAN OPEN UP TO COUNCIL QUESTIONS.

12:47:19 YOU HAVE A QUESTION?

12:47:23 >> I AM ONLY DISMAYED IN THE FACT THAT WE GO THROUGH

12:47:27 THE WHOLE PROJECT.

12:47:30 IT LEADS PEOPLE TO BELIEVE THAT WE ARE IN FAVOUR OF

12:47:33 THIS PROPOSAL.

12:47:37 AND THE PROPOSAL HAS NOT EVEN BEEN SUBMITTED.

12:47:40 THE QUESTION IS, DID THEY DO RIGHT AND IN JUST FILING

12:47:48 WITH THE STAFF OR SHOULD IT WOULD GO TO THE COUNCIL.

12:47:51 THAT IS A PRETTY SIMPLE STATEMENT OF WHAT WE ARE

12:47:51 TALKING ABOUT NOW.

12:47:57 ALL THE OTHER STUFF THAT YOU GET IS -- WE HEARD BEFORE,

12:47:59 BY THE WAY, MOST OF IT.

12:48:03 BUT THE POINT IS IT LEADS PEOPLE TO BELIEVE.

12:48:06 WE WENT TO COURT AND SAID THIS IS WHAT WE SUBMITTED TO

12:48:09 THE COUNCIL AND SO ON AND SO ON.

12:48:12 THEY WILL SAY, WELL, WE PRESENT THIS TO THE COUNCIL

12:48:13 ALREADY.

12:48:18 THAT IS NOT THE POINT.

12:48:26 SO, STEVE -- IT'S CONFUSING TO US.

12:48:31 >>MAYOR ERRINGTON: LET THE ATTORNEYS RESPOND.

12:48:32 >> YOU CAN RESPOND.

12:48:34 >>MAYOR ERRINGTON: THE APPLICANT IS STILL RESPONDING.

12:48:36 >> WE ARE NOT TRYING TO MAKE THIS CONFUSING.

12:48:38 LET ME SIP POLICE PHI THIS.

12:48:40 WE SUBMITTED FOR FINAL PLAN APPROVAL BECAUSE THE

12:48:44 LANGUAGE THAT YOU SAW ON THE SCREEN SAID WE HAVE TO.

12:48:45 WE ARE FOLLOWING THE RULES.

12:48:48 WE ARE NOT FILING TO AMEND THE DRI AND THE ZONING

12:48:51 BECAUSE WE DON'T NEED AN AMENDMENT.

12:48:53 WE JUST WANT TO FOLLOW THE RULES.

12:48:56 AND WE ARE FOLLOW THE RULES FOR FINAL PLAN APPROVAL

12:48:58 THAT YOU HAVE ALREADY ESTABLISHED.

12:49:01 SO ALL I AM SAYING IS, WE ARE TRYING TO FOLLOW THE

12:49:05 RULES THAT WERE ADOPTED BY THE COUNTY, YOU INHERITED,

12:49:08 AND TRYING TO FOLLOW THE RULES AS YOU AMENDED THEM FOR

12:49:12 FINAL PLAN APPROVAL AND NOT ASKING TO REZONE BECAUSE WE

12:49:13 DON'T NEED IT.

12:49:16 SO THAT IS AS SIMPLE AS I CAN MAKE IT, THANK YOU.

12:49:23 >>MAYOR ERRINGTON: ANY OTHER QUESTIONS FROM COUNCIL?

12:49:24 OKAY.

12:49:37 NANCY.

12:49:39 >>NANCY STROUD: THANK YOU.

12:49:42 SO THE ORIGINAL APPLICATION FOR ADMINISTRATIVE APPEAL

12:49:45 SAID THAT THEY -- THAT THE APPLICANT BELIEVED THEY ONLY

12:49:48 NEEDED TO GO THROUGH A STAFF PROCESS.

12:49:52 THEY CHANGED DURING THE HEARING TO SAY, OKAY, NOW THEY

12:49:57 REALIZE THAT FOR FINAL PLAN APPROVAL, THAT FINAL PLAN

12:50:00 APPROVAL WILL HAVE TO COME TO THE COUNCIL.

12:50:04 I THINK I AM SAYING THAT CORRECTLY.

12:50:11 THAT DOESN'T END THE ISSUE.

12:50:24 IT'S -- A CASE THAT THE ZONING AND THE DEVELOPMENT

12:50:35 ORDER FOR THE DRI ASSUMED THAT THIS TOWN CENTER WAS

12:50:38 GOING TO BE A COMMERCIAL AND PUBLIC SERVICE KIND OF

12:50:42 COMMUNITY THAT CAPTURED INTERNAL TRIPS.

12:50:45 AND YOU HAVE HEARD ALL THAT TESTIMONY AND WE

12:50:51 INCORPORATE THAT TESTIMONY IN THIS PROCEEDING AS WELL.

12:50:57 THEIR REQUEST TO SIMPLY TEAR DOWN THE COMMERCIAL, A

12:51:02 SUBSTANTIAL AMOUNT OF THE COMMERCIAL AND BUILD

12:51:06 RESIDENTIAL ON THE TOWN CENTER CHANGES THE FUNCTION OF

12:51:09 THE TOWN CENTER IN A WAY THAT IS INCONSISTENT WITH THE

12:51:12 CURRENT APPROVALS.

12:51:18 SO WE SAID, COME BACK AND CHANGE THE APPROVALS, THE

12:51:22 ZONING THE DEVELOPMENT ORDER IF THAT'S WHAT YOU WANT TO

12:51:24 DO AND SEE IF YOU CAN MAKE THE CASE TO THE COUNCIL THAT

12:51:29 IS AN APPROPRIATE THING TO DO.

12:51:31 YOU ONLY ARE ABLE TO DO THAT THROUGH AN AMENDMENT TO

12:51:43 THE ZONING -- TO THE ZONING RESOLUTION AND TO THE DRI.

12:51:46 THE APPROPRIATE PROCESS IS NOT ONLY TO COME BACK WITH A

12:51:49 FINAL PLAN APPROVAL WHETHER IT GOES BACK TO COUNCIL OR

12:51:49 NOT.

12:51:50 IT IS MORE THAN THAT.

12:51:51 IT IS COME BACK.

12:51:53 BECAUSE YOU ARE CHANGING THE FUNCTION OF THE TOWN

12:51:57 CENTER -- PROPOSING TO CHANGE THAT FUNCTION, YOU ARE

12:52:00 ADDING HEIGHT TO THE EXISTING HEIGHT.

12:52:04 YOU ARE ADDING RESIDENTIAL TO THE EXIST DEVELOPMENT

12:52:05 THERE.

12:52:08 THAT THAT IS THE KIND OF DECISION THAT THE COUNCIL

12:52:10 NEEDS TO REVIEW OVER THE MINOR PLAN DEVELOPMENT

12:52:20 APPROVAL IT IS TRUE THAT IF YOU GO TO THE MINOR PLAN

12:52:24 APPROVAL PROCESS AND THEY GET A REZONING ASSUMING THAT

12:52:27 THE COUNCIL AGREES TO A RESIDENTIAL PROJECT THERE OF

12:52:30 SOME -- SOME SORT.

12:52:33 WELL, IF THEY WANT TO GO THROUGH A FINAL PLAN APPROVAL

12:52:38 PROCESS AFTER THAT, THAT'S FINE.

12:52:39 YOU KNOW.

12:52:41 YOU MAY, IN CHANGING THE RESOLUTION TO ALLOW A

12:52:44 RESIDENTIAL PROJECT THAT THEY WANT GET RID OF THE FINAL

12:52:47 PLAN APPROVAL PROCESS AND THAT -- THAT IS AN OLD LEGACY

12:52:52 FROM LEE COUNTY THAT NOBODY ACTUALLY KNOWS WHAT IT IS

12:52:55 BECAUSE THERE IS NOTHING IN THE CODE, IN THE LEE COUNTY

12:52:58 CODE, TO SAY WHAT IT IS.

12:53:00 YOU CAN ONLY READ THE CONDITION IN THE ZONING

12:53:07 RESOLUTION AND READ IT ACCORDING TO PLAIN LANGUAGE

12:53:10 COMPARED TO HOW YOU READ LAW.

12:53:14 AND LEE COUNTY HAS TO APPROVE IT AND YOU GO THROUGH

12:53:16 CERTAIN KINDS OF CRITERIA.

12:53:21 NOW THAT WE ARE A VILLAGE THE VILLAGE APPROVES IT.

12:53:26 IT IS NOT THE EXCLUSIVE -- IT DOESN'T SAY IN THE

12:53:30 RESOLUTION THAT IS THE ONLY PROCESS YOU GO THROUGH.

12:53:34 IT DOESN'T SAY THAT YOU DON'T HAVE TO GO THROUGH A

12:53:37 ZONING PROCESS IF YOU CHANGE THE WHOLE FUNCTION OF THE

12:53:37 TOWN CENTER.

12:53:43 THEY ASKED, SINCE WE HAVE VESTED USE -- THAT THE

12:53:45 COUNCIL JUST DETERMINED THAT ALL WE HAVE TO DO IS COME

12:53:57 BACK TO THE COUNCIL WITH A FINAL PLAN APPROVAL AND WE

12:54:01 GET CHECKED OFF AND WE ARE GOOD TO GO AND THAT IS NOT

12:54:02 THE CASE.

12:54:02 CERTAINLY NOT.

12:54:06 YOU CAN COME IN FOR A USE FOR MULTIFAMILY LOW RISE, AND

12:54:10 THE COUNCIL IN ITS ZONING DETERMINATION, WILL DETERMINE

12:54:13 IF THEIR PROPOSED USE CHANGES THE FUNCTION OF THE TOWN

12:54:20 CENTER SUCH THAT IT DOESN'T INTERNALLY CAPTURE THE TRIP

12:54:25 AND PERFORM THE FUNCTION THAT THE ORIGINAL ZONING DID.

12:54:29 AND IT MAY BE THAT THE COUNCIL DECIDES A SMALLER

12:54:32 RESIDENTIAL PROJECT WOULD STILL PRESERVE, YOU KNOW, THE

12:54:33 FUNCTION.

12:54:36 AND IT ISN'T 154 OPPORTUNITIES.

12:54:38 SOME OTHER NUMBER.

12:54:42 BUT THAT, AGAIN, YOU DECIDE THROUGH THE ZONING AND NOT

12:54:46 THROUGH THIS ADMINISTRATIVE OR EVEN COUNCIL FINAL PLAN

12:54:49 APPROVAL.

12:54:56 THAT IS KIND OF THE SHORT AND HOPEFULLY SWEET ANSWER.

12:55:01 NONE -- NOTHING THAT HAPPENS TODAY -- IF YOU DETERMINE

12:55:05 THAT YOU WOULD SUPPORT THE STAFF'S INTERPRETATION OF

12:55:10 HOW THE PROCESS SHOULD WORK, PRECLUDES THE DEVELOPER

12:55:13 FROM ACTUALLY COMING BACK THROUGH THE PROCESS AND

12:55:15 GETTING THE PROJECT THAT HE WANTS.

12:55:19 IT JUST IS A PROCESS QUESTION.

12:55:31 AND THE CRITERIA I WHICH YOU LOOK AT THE PROPOSAL.

12:55:34 I ALSO WANT TO MAKE SURE THAT THE RECORD REFLECTS THAT

12:55:39 MR. BISHOP'S AFFIDAVIT, WHICH I BASICALLY SUMMARIZED

12:55:42 HERE IS PART OF THE RECORD AND HE IS AVAILABLE IF YOU

12:55:44 WANT TO ASK HIM ANY QUESTIONS.

12:55:51 THANK YOU.

12:55:52 >>MAYOR ERRINGTON: ANY QUESTIONS FOR COUNCIL.

12:55:56 >>DEREK ROONEY: IF NO QUESTIONS.

12:56:02 THIS WOULD BE THE TIME FOR THE INTERVENOR TO SPEAK IF

12:56:03 THEY HAVE ANYTHING TO ADD.

12:56:08 >> MADAM MAYOR, MEMBERS OF COUNCIL, BEVERLY GRADER ON

12:56:10 BEHALF OF THE PARTY INTERVENORS.

12:56:13 WE SUPPORT THE STAFF DECISION AND THE VILLAGE

12:56:16 ATTORNEY'S ANALYSIS THAT THE APPLICATION FILED BY

12:56:23 DEVELOPER LONE BAY PARTNERS AND CANNOT BE REVIEWED A

12:56:27 ADMINISTRATIVELY OR FROM A FINAL PLAN PROCESS ARE BUT

12:56:34 REQUIRING A PUBLIC HEARING BY THE ACTION BY THIS

12:56:34 COUNCIL.

12:56:36 YOU HAVE BEFORE YOU A RECORD THAT IS THOROUGHLY

12:56:40 DOCUMENTED AND BASE ON SOUND LEGAL ANALYSIS THAT THE

12:56:44 CHANGES BEING PROPOSED BY THE DEVELOPER AND REQUESTED

12:56:47 ARE MODIFICATIONS TO PRIOR ZONING APPROVALS THAT CAN

12:56:52 ONLY BE CONSIDERED THROUGH A PUBLIC HEARING PROCESS.

12:56:55 WHETHER WE WANT TO INCORPORATE ALL EVIDENCE AND

12:56:59 TESTIMONY FROM THE RESTED RIGHTS PROCEEDING THIS

12:57:01 HEARING AND FROM THE LETTER WE FILED ON THE MOTION TO

12:57:02 INTERVENE.

12:57:06 BECAUSE IN THAT HEARING, THE FOUNDATION, THAT SET FORTH

12:57:09 OF APPROVAL OF THE BROOKS, THE LAW THAT WAS IN EFFECT,

12:57:13 THE CLEAR CHANGES THAT WERE BEING REQUESTED BY THE

12:57:21 DEVELOPER TO CHANGE THE TRIP CAPTURE THAT THEY DON'T

12:57:24 WANT TO DISCUSS, AND CLAIMING UNITS FROM ANOTHER PARCEL

12:57:28 THAT WAS NEVER OWNED BY LONG BAY PARTNERS.

12:57:31 THE CHANGE OF A PLAN DEVELOPMENT OF A SELF-SUFFICIENT

12:57:34 COMMUNITY TO ONE THAT IS GOING TO TRANSFER ITS IMPACTS

12:57:38 TO THE PUBLIC ROADS IS CONTRARY TO AND WE BELIEVE IN

12:57:41 CONFLICT WITH THE DRI DEVELOPMENT ORDER AND THE

12:57:44 EXISTING AND PD AIL APPROVAL.

12:57:52 THUS WE DISAGREE WITH LONG LEAF PARTNER'S CLAIM THIS IS

12:57:53 A FPA APPROVAL.

12:57:56 SO WE WOULD RESPECTFULLY SUPPORT THE STAFF IN

12:57:59 RECOGNIZING THIS REQUEST CHANGES DENSITY, HEIGHT,

12:58:01 DEPLETES COMMERCIAL RETAIL BY 50%.

12:58:04 CAUSES TRAFFIC IMPACTS AND, THEREFORE, CHANGES THE

12:58:06 FUNCTION OF THE TOWN CENTER.

12:58:16 SO WE RESPECTFULLY SUBMIT TO COUNCIL PLEASE APPROVE THE

12:58:19 IF THE DEVELOPER DECIDES TO MOVE FORWARD.

12:58:21 THEY HAVE THAT ABILITY TO MOVE FORWARD BY FILING THE

12:58:22 APPROPRIATE APPLICATION.

12:58:24 THANK YOU.

12:58:25 >>MAYOR ERRINGTON: THANK YOU.

12:58:33 ANYONE ELSE?

12:58:34 COUNCIL, ANY QUESTIONS.

12:58:37 >>DEREK ROONEY: PUBLIC COMMENT.

12:58:38 >> AND PUBLIC HEARING.

12:58:42 >> GOOD AFTERNOON, MARK SPAINS FROM COPPER LEAF GOLF

12:58:42 CLUB.

12:58:45 A COUPLE OF SHORT COMMENTS.

12:58:49 MY HOPE YOU SEE THINGS THE WAY IN THE BROOKS THAT WE

12:58:51 ARE SEEING THEM AT THIS POINT IN TIME.

12:58:55 WE NEED TO MAINTAIN THE ORIGINAL INTENT AND COMMITMENT

12:58:59 THAT HAS CONTINUED FOR 20 YEARS BY THE VILLAGE AND THE

12:59:00 RESIDENTS.

12:59:03 GIVE THE VOICES OF OUR COMMUNITY A CHANCE TO BE HEARD.

12:59:07 I URGE FOR YOU TO HAVE A PUBLIC HEARING FOR THIS TO

12:59:08 HAPPEN.

12:59:09 THANK YOU.

12:59:10 >>MAYOR ERRINGTON: THANK YOU.

12:59:11 WE HAVE SOMEONE ELSE?

12:59:18 THANK YOU.

12:59:23 >> AGAIN, ROB WOOLSEY FROM SHADOWWOOD.

12:59:25 I MENTIONED WHEN I SPOKE EARLIER OF THE STRONG

12:59:29 OPPOSITION ACROSS THE COMMUNITY REGARDING THE

12:59:32 DEVELOPER'S PLAN OF REDEVELOPMENT OF THE TOWN CENTER.

12:59:37 THAT OPPOSITION IS DEMONSTRATED BY A LARGE CONTINGENT

12:59:41 OF RESIDENTS WHO WERE HERE TODAY AND HUNDRED S MORE WHO

12:59:43 SIGNED THE LETTER EARLIER THIS WEEK.

12:59:47 GIVEN THE OPPORTUNITY I AM SURE THAT A LARGE NUMBER OF

12:59:49 THOSE HOMEOWNERS WOULD LIKE TO EXPRESS THEMSELVES

12:59:52 PERSONALLY ABOUT THE PROPOSED REDEVELOPMENT.

12:59:55 AND THAT COULD ONLY HAPPEN THROUGH PUBLIC HEARINGS.

12:59:59 AGAIN, JOINING WITH THESE OTHERS WHO ARE SPOKEN TODAY,

13:00:08 THE BROOKS RESIDENCE AND ASK THAT YOU FIND IN FAVOUR OF

13:00:12 YOUR STAFF'S OPINION OF A PUBLIC HEARING TO BE MADE

13:00:13 BEFORE THIS PROPOSED PROJECT.

13:00:14 THANK YOU.

13:00:15 >>MAYOR ERRINGTON: THANK YOU.

13:00:19 ANYONE ELSE?

13:00:23 IS THAT ALL?

13:00:25 NOW WE WILL GO TO THE APPLICANT'S ATTORNEY.

13:00:30 >>DEREK ROONEY: AT THIS TIME, I BELIEVE WE HAVE AT

13:00:33 LEAST ONE OF MEMBER OF THE PUBLIC SIGNED UP.

13:00:35 MR. KAVANAUGH.

13:00:38 IS THERE ANY OTHER -- IF NO MEMBERS OF THE PUBLIC, IT

13:00:43 WOULD BE AN OPPORTUNITY FOR THE APPLICANT TO REBUT.

13:00:43 >> THANK YOU.

13:00:44 AND I WILL MAKE THIS SHORT.

13:00:46 LET ME JUST TELL YOU WHY WE ARE HERE.

13:00:51 WE ARE HERE BECAUSE ESSENTIALLY IN THE ARBITRATION, THE

13:00:53 VILLAGE ASKED US TO COME BACK AND PURSUE THESE

13:00:56 APPLICATIONS TO GO TO THE VILLAGE -- TO GIVE THE

13:00:58 VILLAGE A CHANCE TO RESOLVE THESE ISSUES.

13:01:02 WHAT YOU WERE JUST TOLD IS YOU SHOULD MAKE US REZONE TO

13:01:05 GET A USE -- A PROPERTY DEVELOPMENT RESOLUTIONS THAT

13:01:08 ARE ALREADY APPROVED BECAUSE WE ARE CHANGING THE,

13:01:10 QUOTE, FUNCTION.

13:01:13 THERE IS NOTHING IN YOUR LAND DEVELOPMENT CODE OR IN

13:01:17 YOUR COMP PLAN THAT REQUIRES YOU TO REZONE IF YOU

13:01:20 CHANGE FROM ONE PERMITTED USE TO ANOTHER PERMITTED USE

13:01:24 EVEN IF THAT CHANGES THE FUNCTION.

13:01:28 THAT TURNS ZONING ON ITS HEAD.

13:01:30 AND TO BE HONEST WITH YOU, WE ARE NOT GOING TO DO

13:01:32 THAT.

13:01:36 WE ARE HERE TO AFFORD YOU AN OPPORTUNITY TO ALLOW US TO

13:01:40 DEVELOP CONSISTENT WITH THE DRI AND THE ZONING AND YOUR

13:01:43 L DC AND YOUR COMP PLAN.

13:01:47 AND SOMETHING THEY ARE NOT FOLLOWING, I AM SURE YOU

13:01:49 WILL POINT IT OUT AND WE HAVE TO FIX IT.

13:01:52 BUT WE ARE NOT HERE ASKING TO BE REZONED TO A USE YOU

13:01:56 JUST DECIDED IS VESTED.

13:01:59 WE WILL HAVE TO PROVIDE RELIEF FOR THAT IN ANOTHER

13:01:59 FORUM.

13:02:01 NOT WHAT I WANTED.

13:02:06 WE CAME HERE IN AN EFFORT TO RESOLVE THESE ISSUES, BUT

13:02:09 WE ARE GOING TO FOLLOW THE LAW BUT NOT MAKE UP NEW LAWS

13:02:10 AND FOLLOW THAT.

13:02:10 THANK YOU.

13:02:13 >>MAYOR ERRINGTON: THANK YOU.

13:02:16 ANY COUNCIL QUESTIONS?

13:02:18 YES?

13:02:21 >> I WOULD LIKE TO MAKE A STATEMENT ON THIS.

13:02:25 THIS BOILS DOWN TO WHETHER WE ARE GOING TO FOLLOW OUR

13:02:28 CHARTER.

13:02:32 I AM NOT A LAWYER, SO WE ARE GOING TO FOLLOW OUR

13:02:37 CHARTER FOR -- CHANGE OUR RULES AND LET STAFF START

13:02:41 MAKING DECISIONS ON THINGS LIKE THIS HERE THAT ARE

13:02:46 IMPORTANT TO BE REACHED AND DISCUSSED AND REVIEWED BY

13:02:47 COUNCIL.

13:02:54 THAT IS -- NOW WHERE DOES THAT LEAVE -- WELL, DON'T

13:02:58 WORRY ABOUT IT, WE WILL PUT IT ON -- BEFORE YOU KNOW

13:03:02 THINGS WILL CHANGE.

13:03:05 AND I HAVE SEEN IT HAPPEN BEFORE.

13:03:11 SO I THINK IT SHOULD BE CLEAR TO ANYBODY, THAT IF THERE

13:03:14 IS GOING TO BE A MAJOR CHANGE LIKE THIS, THIS WILL FALL

13:03:18 ULTIMATELY WHETHER ON PLANNING AN ZONING AND ULTIMATELY

13:03:23 COUNCIL FOR COUNCIL, GOING TO FALL ON THEIR HANDS

13:03:26 BECAUSE CERTAINLY MY POSITION IS, I DON'T WANT

13:03:30 SOMETHING LIKE THIS TO HAPPEN AT A STAFF LEVEL AND

13:03:41 SOMEBODY CALL ME AND THEN -- MY DOOR IS OPEN AND I AM

13:03:43 SPECIFICALLY RESPONSIBLE FOR LETTING IT HAPPEN BECAUSE

13:03:48 I AGREED TO LET STAFF APPROVE THIS KIND OF THING.

13:03:53 I DON'T KNOW WHY YOUR CLIENT IS FIGHTING AND BRINGING

13:03:56 IT TO THE COUNCIL.

13:03:58 HE IS GOING TO HAVE TO GET TO THE COUNCIL.

13:03:59 SO WHAT IS THE BIG DEAL.

13:04:01 EXPLAIN IT TO THE COUNCIL.

13:04:10 AND THEN WE WILL SAY YES OR NO ELIMINATING A STEP DONE

13:04:11 MAKE SENSE TO ME.

13:04:14 IT DOES MAKE SENSE BECAUSE SEVEN YEARS THE FIRST TIME

13:04:16 THIS EVER CAME TO THE COUNCIL.

13:04:20 NOBODY EVER OBJECTED TO THE WAY THAT STAFF WAS RUNNING

13:04:20 THE WHOLE THING.

13:04:27 NOW ALL OF A SUDDEN, YOU KNOW, FIRST THE COUNTY

13:04:36 COMMISSION PROGRAM -- AND THEIR DECISION AND YOU FIND

13:04:38 OTHER THINGS THAT ARE ALONG.

13:04:42 THE CHARTER, JUST LIKE EVERY CHARTER AND MUNICIPAL

13:04:46 CHARTER IN THE STATE OF FLORIDA SAID COUNSEL ASKED TO

13:04:53 MAKE EDITIONS ON -- ON ZONING MATTERS.

13:04:58 >> COUNCILMAN BOESCH, I HAVE BEEN BEFORE YOU A LOT, AND

13:05:01 YOU KNOW IF YOU THINK I NEED A ZONING OR DEVIATION, I

13:05:02 COME BEFORE YOU.

13:05:05 YOU PROBABLY SEE ME MORE THAN YOU WANT TO.

13:05:09 BUT I DON'T NEED A REZONING BECAUSE IT IS ALREADY

13:05:11 ZONED.

13:05:14 IT WOULD -- IT WOULD NOT BE WISE FOR ME TO ADVISE MY

13:05:16 CLIENT OTHERWISE.

13:05:19 SO DON'T BLAME MY CLIENT.

13:05:21 BLAME ME.

13:05:24 I AM TRYING TO FOLLOW THE RULES.

13:05:27 >>JIM BOESCH: NEALE, THAT IS YOUR OPINION.

13:05:29 WE HAVE A DIFFERENCE.

13:05:32 AND THE TOWN AND VILLAGE HAS A DIFFERENT OPINION.

13:05:35 SO THAT IS WHAT IT AMOUNTS TO.

13:05:37 I GUESS.

13:05:40 THE EASY THING IS, COME AND ASK THE COUNCIL.

13:05:43 BRING YOUR MESSAGE TO THE COUNCIL RATHER THAN GO TO

13:05:48 COURT AND FIGHTING IT OUT IN COURT COUNCIL WILL GIVE

13:05:51 YOU A HEARING AND MAKE A DECISION.

13:05:53 >>MAYOR ERRINGTON: LET'S PROCEED.

13:05:56 WE CAN DRAG THIS ON ALL AFTERNOON.

13:06:00 I WOULD LIKE TO PROCEED.

13:06:02 SO THE NEXT STEP, ATTORNEY?

13:06:04 >>DEREK ROONEY: AT THIS POINT YOU HAVE COMPLETED THE

13:06:05 PUBLIC HEARING PROCESS.

13:06:09 YOU ARE REALLY IN DELIBERATIONS AS TO WHETHER YOU WISH

13:06:17 TO OVERTURN ADMINISTRATIVE DECISION OF VILLAGE STAFF.

13:06:19 >>MAYOR ERRINGTON: WE HAVE HEARD FROM EVERYONE THEN?

13:06:20 WE ARE GOOD FOR THAT.

13:06:25 IF WE CAN PROCEED TO A MOTION AS CRAFTED BY NANCY

13:06:27 STROUD.

13:06:29 >>DEREK ROONEY: BEFORE YOU GET TO THAT, MAY I JUST ADD

13:06:32 A COMMENT BECAUSE, YOU KNOW -- THIS HEARING, THE LAST

13:06:35 HEARING, A SUBSTANTIAL AMOUNT OF PAPERWORK THAT IS

13:06:35 INVOLVED.

13:06:38 I WANT TO BE CLEAR THAT YOU UNDERSTANDS WHAT THE

13:06:39 REQUEST IS.

13:06:42 AND WHEN YOU ARE RESPONDING TO THE MOTION THAT WILL BE

13:06:43 PRESENTED.

13:06:52 THE EWE WAS AND MODIFIED SLIGHTLY DURING THE HEARING.

13:06:56 IS A FINAL PLAN APPROVAL AN ADMINISTRATIVE ACT?

13:06:58 IS IT AN ACT THAT GOES BEFORE THE COUNCIL?

13:07:09 OR IS IT A MINOR PD AMENDMENT AS STAFF PRESENTED.

13:07:12 THERE ARE THREE OPTIONS AND THAT IS WHAT THE EVIDENCE

13:07:14 WAS PRESENTED ON AND WEIGH THROUGH THE EVIDENCE AND

13:07:17 PROVIDE WHAT IS AN APPROPRIATE.

13:07:19 >>MAYOR ERRINGTON: CAN WE HAVE A MOTION ON ONE OF

13:07:20 THOSE.

13:07:24 >>DEREK ROONEY: STAFF CAN PROVIDE YOU THEIR MOTION ON

13:07:28 THEIR RECOMMENDATION.

13:07:31 >> SO BASED ON THE STAFF'S RECOMMENDATION, THE MOTION

13:07:35 WILL BE THAT BASED ON SUBSTANTIAL COMPETENT EVIDENCE,

13:07:41 THE COUNCIL AFFIRMS THE STAFF'S DECISION THAT A TIME

13:07:46 PLAN APPROVAL IS NOT AN ADMINISTRATIVE DECISION AND

13:07:52 THAT A MINOR PLAN DEVELOPMENT AMENDMENT IS NECESSARY

13:07:58 FOR THE PROJECT.

13:08:00 >>MAYOR ERRINGTON: IF EVERYONE.

13:08:02 >> TILL MAKE THAT MOTION.

13:08:05 >> SECOND.

13:08:08 >>MAYOR ERRINGTON: MOTION BY VICE-MAYOR MCLAIN AND

13:08:11 SECONDED BY COUNCILMEMBER JIM BOESCH.

13:08:16 CLERK, PLEASE CALL THE ROLL.

13:08:19 >>JOANNE RIBBLE: AYE.

13:08:22 >>LARRY FIESEL: AYE.

13:08:24 >>JIM BOESCH: AYE.

13:08:27 >>JIM WILSON: AYE.

13:08:29 >>VICE-MAYOR MCLAIN: AYE.

13:08:36 >>MAYOR ERRINGTON: AYE.

13:08:41 SO WE CLOSED THE PUBLIC HEARING, I GUESS.

13:08:42 >> YOU HAVE NOTHING MORE.

13:08:45 YOU MAY BE ADJOURNED.

13:08:47 >>MAYOR ERRINGTON: ARE WE FINISHED?

13:08:48 >> I AM GOING HOME.

13:08:51 [LAUGHTER]

13:08:53 >>MAYOR ERRINGTON: A MOTION.

13:08:55 ANYONE WANT TO SECOND IT.

13:08:58 THANK YOU ALL OF YOU FOR YOUR STICKING IT OUT WITH US.

13:08:59 THANK YOU FOR EVERYTHING.

13:09:01 APPRECIATE IT.

13:09:02 >> YOU ARE ADJOURNED.

13:09:05 YOU WANT A MOTION FOR ADJOURNED.

13:09:07 >> WE ALREADY DID THAT.

13:09:09 WE ARE DONE.

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ROETZEL
ROETZEL & ANDRESS, A LEGAL PROFESSIONAL ASSOCIATION

2320 First Street, Suite 1000
Fort Myers, FL 33901
Direct Dial 239.338.4207
PHONE 239.337.3850 FAX 239.337.0970
bgrady@ralaw.com

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VIA E-MAIL ONLY (nstroud@nstroudpa.com and gibbs@estero-fl.gov)

Nancy Stroud, Village Attorney
Village of Estero
c/o Nancy E. Stroud, P.A.
1875 NW Corporate Boulevard, Suite 100
Boca Raton, FL 33431

Mary Gibbs, Director of Community Development
Village of Estero
21500 Three Oaks Parkway
Estero, FL 33928

RE: Party Intervenor Request regarding The Brooks Town Center Applications

Dear Ms. Stroud and Ms. Gibbs :

This is a request that the Village of Estero recognize

-Shadow Wood Community Association, Inc., (an association of unit owners where this community is a portion of The Brooks DRI)
-Copperleaf Golf Club Community Association, Inc. , (an association of unit owners where this community is a portion of The Brooks DRI)
-Spring Run Golf Club Community Association, Inc. , (an association of unit owners where this community is a portion of The Brooks DRI)
-The Harbour Club at Lighthouse Bay, Inc., (an association of unit owners where this community is a portion of The Brooks DRI)
-The Commons Club at the Brooks, Inc., (an entity that owns The Commons Club which serves the residents of The Brooks)
-Mark Staines (a resident of The Brooks DRI)
-Rod Woolsey (a resident of The Brooks DRI)
-Jim Rock (a resident of The Brooks DRI)
-Bob Block (a resident of The Brooks DRI)
-Jim Merritt (a resident of The Brooks DRI)

as Party Intervenors in the following Estero land use cases:

- Appeal of Administrative Action or Interpretation to the Village Council by Appellant, PAC Estero Apartments, LLC, TOP-CR Associates, LLC, Long Bay Partners, LLC dated June 30, 2021 (Developers);

- Vested Rights Determination by PAC Estero Apartments, LLC, TOP-CR Associates, LLC, Long Bay Partners, LLC dated June 30, 2021 (Developers); and

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- Final Plan Application or any other application by Developers to substantially alter the approved and existing Town Center commercial uses by elimination of that commercial to Residential Multi-Family development.

Each of the Intervenors suffers a special injury from the proposed development that differs in kind, rather than just degree, from the rest of the Village of Estero residents that do not reside in The Brooks. *See Renard v. Dade County*, 261 So. 2d 832, 837 (Fla. 1972); *see also* § 286.0115(2)(b), Fla. Stat. (2021) (recognizing that party intervenors can exist in quasi-judicial proceedings on local government land use matters). Both the Supreme Court and a recent Second District case have recognized that a potential intervenor's "interest may be one shared in common with a number of other members of the community *as when an entire neighborhood is affected*…." *Id.*; *Chapman v. Town of Redington Beach*, 282 So. 3d 979, 983–84 (Fla. 2d DCA 2019). In considering the potential party's interest to support standing, the Supreme Court highlighted three non-exhaustive factors to consider, including the potential intervenor's proximity to the proposed development, the neighborhood's character, including whether common restrictive covenants and setbacks exist, and the type of change proposed. *Renard*, 261 So. 2d at 837. Ultimately, the Supreme Court and others have recognized that the special-injury test should have a liberal application. *Id.*at 837–38; *Chapman*, 282 So. 3d at 983–84; *Skaggs-Albertson's v. ABC Liquors, Inc.*, 363 So. 2d 1082, 1088 (Fla. 1978). As explained below, the Intervenors more than satisfy these factors and a more lenient application of *Renard*'s special-injury test. Therefore, to deny them status as a party intervenor would be itself a procedural due process violation. *Cf.* Zelman v. Zelman, 175 So. 3d 871, 878 (Fla. 4th DCA 2015) (finding, albeit in a different context, that "where a person has both standing and notice, a right to due process is triggered to insure that participation is meaningful").

The Brooks was approved as a Development of Regional Impact (DRI) pursuant to Chapter 380, Florida Statutes, on August 25, 1997. The Brooks was approved as a Mixed-Use Planned Development (MPD) zoning district on 2,492 acres (later increased to 2,533 acres). The Land Development Code in place at the time of incorporation of the Village of Estero defined an MPD as

> *"MPD mixed use planned development district.* To permit planned developments with a mixture of uses in accordance with subsection 34-612(2) as set forth in this chapter and Objective 4.1 of the Lee Plan in order to <u>reduce the number of vehicular trips on the County's arterial and collector road network</u>." [emphasis added] (Section 34-931(h)).

Land Development Code Section 34-612(2) in effect at the time of the incorporation of the Village of Estero provides

> (2) *PD, planned development districts.* The purpose and intent of the various planned development districts is to further implement the goals, objectives and policies of the Lee Plan while providing some degree of flexibility in planning and designing developments by:

…

c. Encouraging multiple or mixed use development strategies, including the use of several housing types, the provision of several uses in combination such as residential and neighborhood commercial, office and light industry, and other analogous combinations; [emphasis added]

d. Promoting improved and unifying design techniques that reduce dependence on vehicular movement within the development, encourage the use of joint parking and loading facilities, provide for joint access, and generally maintain adequate service and facilities while avoiding negative impacts on surrounding land use and traffic circulation; [emphasis added]

e. Encouraging patterns of land use that support more economical provision of infrastructure; [emphasis added]

…

Each Intervenor and the unit owners within those Associations requesting Intervenor status relied upon the approved and ultimately developed Brooks DRI including its Town Center. The original DRI Development Order approved on August 25, 1997 provided for a Town Center on Map H (see Exhibit 1). The Town Center was defined in the original DRI Development Order at Section E.5., Other.:

5. Other …

a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center: [emphasis added]

1) The Town Center may not exceed 100,000 square feet of office/retail/service gross floor area. Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and …

During the development of The Brooks, the commercial intensity was increased to serve the residents and the residential unit density was reduced from 5,200 units to 3,600 units and then

increased in 2013 by 200 units to 3,800 units.[1] The Fifth (and final) DRI Amendment to the DRI Development Order was adopted August 19, 2013 and reflects the continued and long-established purpose of the Town Center and reflects the increase in commercial square footage to serve The Brooks residential portion of the community:

> 5. Other …
>
> a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:
>
> 1) The Town Center may not exceed 120,000 square feet of office/retail/service gross floor area. ~~Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. When Three Oaks Parkway and Coconut Road are open to public traffic with traffic continuity from Corkscrew Road to Coconut Road and to U.S. 41, this condition will have been met.~~ The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and …

Residents and owners who live in The Brooks relied on the approved DRI that include this Town Center, relied upon the approved and constructed development resulting in an actual Town Center which directly serves the residents and owners of The Brooks. The proposed redevelopment by Developers substantially changes the character of the Town Center by substantially converting the center to a residential community. The impact will cause residents of The Brooks to travel outside of The Brooks for its commercial and other service needs resulting in an increase in traffic impact contrary to the purpose of the MPD and the DRI Development Order. The reduction of the Town Center commercial square footage and changing to a residential use changes the character of The Brooks community as this Town Center as promised and developed is integral component of the community.

The Brooks was carefully planned and designed (and sold) to include a Town Center with its commercial uses and services, which functions as a town. There are numerous developed residential communities that have no commercial center but the intervenors and the members of the Association intervenors invested in a community with a commercial town center. There is no "town" without the commercial uses and square footage. The Town Center included and later

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[1] The 200 units specifically added pursuant to Resolution Z-13-009 (Exhibit 3) was for the parcel whose legal description and legal and sketch were attached to said Resolution. Any unbuilt units approved for that parcel are not available to be relocated without approval of the Council of the Village of Estero.

increased the square footage for commercial services and included square footage for community uses. The location of the Town Center was placed adjacent to significant open space and conservation areas. The Town Center provides a place where the community gathers; the community walks; and the community accesses open space and recreational areas; the community shops and seeks non-residential services. The Town Center, as in any town, is the heart and the center of the community. Each of the Party Intervenors including residents within each Party Intervenor Association uses and receives services and has commercial needs satisfied by the Town Center. A key purpose of the Town Center was so that transportation trips were reduced on other arterial and collector roads in the Village and the County by having a Town Center that provides substantial services for its residents. That purpose is stated in the Land Development Code in the definition of an MPD, and specifically stated in the DRI Development Order. This proposal by Developers would set a precedent for even more of the Town Center to be eliminated and replaced by residential units.

Final plan approval was simply an allocation method to track the number of residential units as developed and the amount of commercial square footage as developed to confirm compliance with maximum caps in the DRI and the zoning. Final plan approval was never a redevelopment process to substantially change and alter the approved and built community including demolition of its commercial center. The commercial Town Center is the heart of the community. Any such proposed change to dramatically demolish a significant portion of the Town Center requires a public hearing.

Village of Estero Land Development Code Section 2-405.A. and Table 2-405.A. clearly require a public hearing for:

- Appeal of Administrative Official; and
- Vested Rights Application; and
- Final Plan.

The proposed Intervenors plan to present testimony and evidence to the Village Council regarding

- Vested Rights Application
- Appeal
- Any application for any substantial redevelopment of the Town Center to convert the Town Center from a commercial and service center of the community to a substantially residential community.

Although the current LDC clearly requires a public hearing for the above three Developers' request, we also incorporate our correspondence of July 22, 2020 to Mary Gibbs (see Exhibit 2) which set forth the basis that a public hearing is required pursuant to the prior Code in effect when the Final Plan Approval was originally filed.

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We respectfully submit that each of proposed Party Intervenors are entitled to Party Intervenor status in Developers' applications. There are no vested rights to 154 multi-family units in the Town Center as 110 of those units were requested, reviewed and approved for solely the property that was the subject of the zoning action in Exhibit 3. Exhibit 4 depicts locations of Shadow Wood, Copperleaf, Lighthouse Bay and Spring Run.

We also respectfully request that a copy of this letter and its enclosures be included in the quasi-judicial records for the public hearings on the Appeal of Administrative Official, the Vested Rights Application, and the Final Plan.

Very truly yours,

ROETZEL & ANDRESS, LPA

Beverly Grady

BG/ro

Enclosures:
-Exhibit 1 - Map H
-Exhibit 2 - July 22, 2020 correspondence to Mary Gibbs, Director of Community Development (5-page letter w/enclosures)
-Exhibit 3 - Resolution Z-13-009
-Exhibit 4 - The Brooks Map H depicting locations

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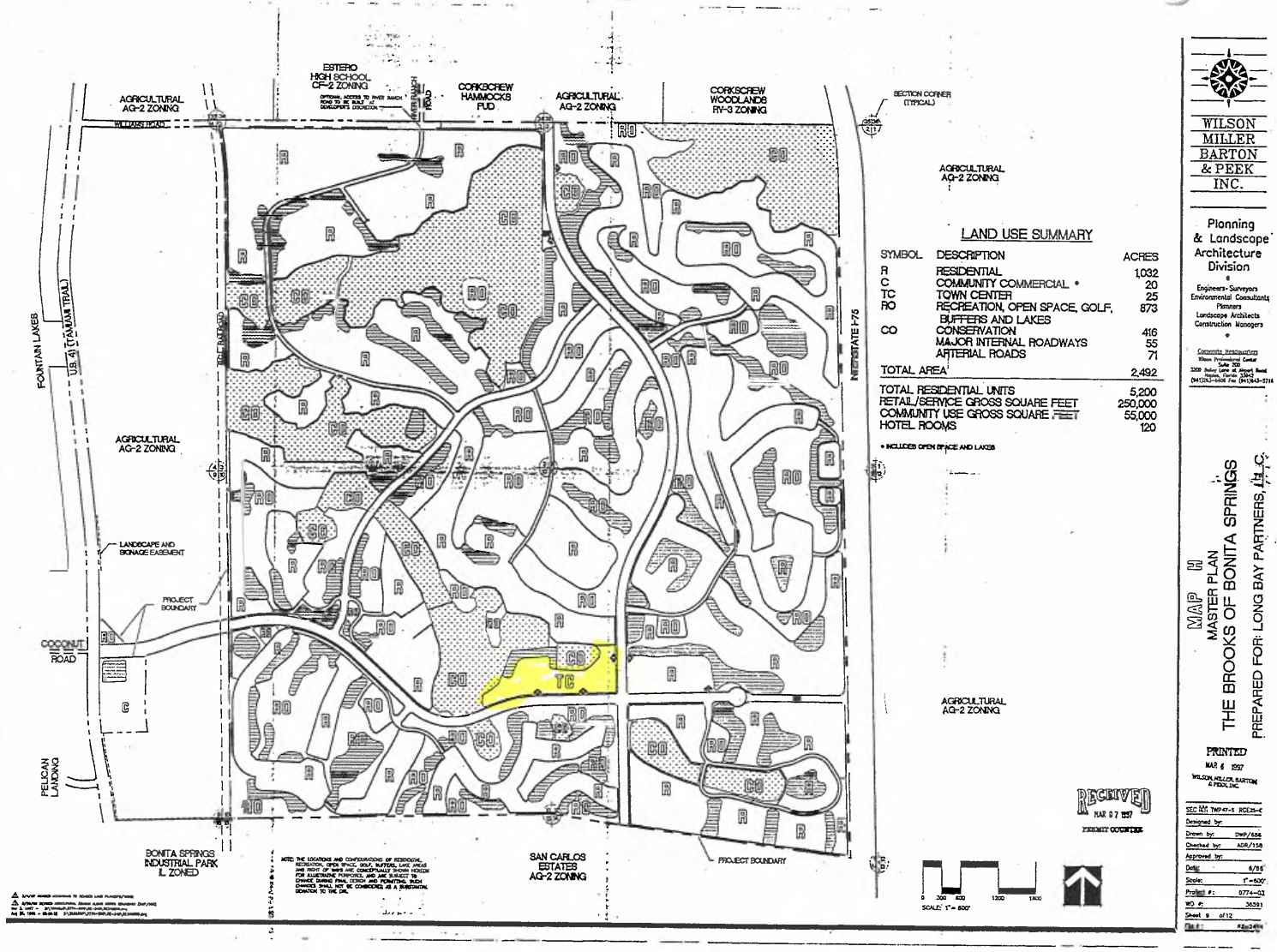
EXHIBIT 1



LAND USE SUMMARY		
SYMBOL	DESCRIPTION	ACRES
R	RESIDENTIAL	1,032
C	COMMUNITY COMMERCIAL *	20
TC	TOWN CENTER	25
RO	RECREATION, OPEN SPACE, GOLF, BUFFERS AND LAKES	873
CO	CONSERVATION	416
	MAJOR INTERNAL ROADWAYS	55
	ARTERIAL ROADS	71
TOTAL AREA		2,492
TOTAL RESIDENTIAL UNITS		5,200
RETAIL/SERVICE GROSS SQUARE FEET		250,000
COMMUNITY USE GROSS SQUARE FEET		55,000
HOTEL ROOMS		120

* INCLUDES OPEN SPACE AND LAKES

EXHIBIT 2

ROETZEL
ROETZEL & ANDRESS, A LEGAL PROFESSIONAL ASSOCIATION

2320 First Street, Suite 1000
Fort Myers, FL 33901
Direct Dial 239.338.4207
PHONE 239.337.3850 FAX 239.337.0970
bgrady@ralaw.com

WWW.RALAW.COM

July 22, 2020

VIA E-MAIL ONLY (gibbs@estero-fl.gov)

Mary Gibbs, Director of Community Development
Village of Estero
21500 Three Oaks Parkway
Estero, FL 33928

RE: The Brooks FPA application

Dear Ms. Gibbs:

Please be advised that this firm represents Shadow Wood Community Association, Inc., Copperleaf Golf Club Community Association, Inc., and Spring Run Golf Club Community Association, Inc. ("The Brooks Community") which are located within The Brooks Community Development of Regional Impact (the Brooks DRI). We have reviewed the Application for Final Plan Approval for the Residence at Brooks Town Center which purports that only administrative review and approval is required. We strongly disagree. The applicant needs to file a public hearing application pursuant to Transitional Land Development Code Section 34-377.

The Brooks Community supports the Village Land Use Counsel's memorandum of May 19, 2020, that the public hearing process as set forth in Transitional Land Development Code Section 34-377 is required for any consideration of the PAC Land Development Corporation request for a 154 multi-family unit project (The Residence at Brooks Town Center) and removal of significant commercial square footage that serves The Brooks DRI. We concur with Village counsel's analysis requiring the public hearing process as the Transitional Land Development Code and land use history could not be more clear.

We respectfully submit that the Transitional Land Development Code mandates the public hearing process for consideration of a request to modify the land use approvals to eliminate commercial square footage in the Town Center and implement residential use through the transfer of dwelling units from the 2013 zoning case approving multi-family units. Any such request would specifically impact The Brooks Community. If the Town Center parcel remains entitled to 120,000 SF of commercial and the applicant is adding 154 multi-family unit that is a substantial increase in intensity which requires the public hearing process.

In addition to Section 34-380 and 34-341 (b) 2, the Brooks DRI is a "built planned development". The process to modify a " built planned development" is defined in the Transitional

Land Development Code Section 34-373(c) *Amendments to Built Planned Development (PD)*, which states as follows:

> "Built" means that all of the roads, utilities, buffering, open space, surface water management features and structures, common space, common amenities, common landscaping, gatehouses, entrance signs, entrance ways, and other similar items identified as part of the final approved master concept plan have been constructed and acknowledged by the County (Village) as complete. In the case of residential planned developments or mixed developments that include residential structures, the term "built" does not mean that all residential structures must have been constructed on individual platted lots."

This section requires that the owner of the subject property (the parcel requesting the change) must provide notice to the owners of the remainder of the original planned development of the application <u>and the proceedings</u> (emphasis supplied). The code then requires the Village to follow the development of county impact (DCI) procedure for variances or other approvals covered by this chapter. The notice and participation of property owners within the built planned development are elevated by Section 34-373(c).

The proposed request is transferring multi-family units approved in 2013 from a specific parcel of land to the Town Center parcel and it is unclear if adding intensity (multi-family + 120,000 SF commercial) or if reducing the approved existing commercial square footage from the Town Center. (Note: the application is unclear as to the commercial square footage being eliminated – as the Request Statement cites 36,000 SF and the square footage allocated to the two unbuilt outparcels while applicant's representative's website cites 38,075 SF as the eliminated square footage.)

In 2012, Oakbrook Properties, Inc. filed an application to redesignate a parcel within The Brooks from RO to R (Residential) and requested 200 new multi-family units for that parcel - a 200 unit increase for a total of 2,200 multi-family units in The Brooks.

The subject property in zoning case DCI2012-00030 was an irregular 38 +/- acre parcel at the eastern end of Coconut Road which allocated 200 new units to that parcel. Based upon a hearing held May 15, 2013, the Hearing Examiner issued a recommendation of approval and described the request on page 5 as follows:

> "The Request is to allow the development of 200 multi-family units on an approximately 38 acre parcel in The Brooks that was originally slated for either an interchange with I-75 or a roadway to a bridge over I-75. The subject property is an irregularly shaped parcel (commonly known as the "funnel tract" or the "martini glass tract" due to its shape) at the eastern-most end of Coconut Road. "

The staff report stated at page 9 "The re-designation would allow the entire 38 acre parcel to be developed as residential. All of the proposed new 200 dwelling units would be built within this 38 acre parcel." (emphasis supplied) The application, the analysis and the approval was limited to the impact of 200 multi-family units on the funnel tract. A transfer of a portion of those units to the Town Center requires a public hearing process.

The Hearing Examiner found

> "Accordingly, the proposed multi-family use is appropriate at the subject location and the Request will be compatible with the existing and planned uses in the surrounding area." (emphasis supplied)

See pages 7 and 8 of Hearing Examiner Recommendation attached.

Members of the public supported this application which was for a residential development for the requested multi-family units on the funnel tract - the last undeveloped parcel in The Brooks. This zoning case limited the allocation of the 200 units to the funnel tract.

In DCI2012-00030, Neale Montgomery explained to the Hearing Examiner why the applicant was requesting 200 additional units

> "(a)dding units is necessary in order to actually develop the property. In Chip's (Community Development Reviewer) staff report he indicated that there's 48 units left, but, you know, when most of the property in here was sold it was sold with an allocation of units so as not to get into any kind of legal entanglement with anybody else even if we don't think those can be developed anywhere. This is just the new 200 units that will go onto the subject property." (emphasis supplied) See pages 97-98

In 2014, an Administrative Final Zoning Plan Approval was approved for "Pebble Pointe" by Taylor Morrison for 90 dwelling units on the "Request parcel" of DCI2012-00030. With approval of the final parcel, the Brooks is a built planned development as defined by the Transitional Land Development Code.

The remaining unbuilt 110 units are allocated to this "funnel tract" and a request to consider removal and transfer of any units to another property requires a public hearing process and meeting the criteria of Transitional Code Section 34- 145.

This FPA application is a dramatic change to an as-built community which requires review through the public hearing process in accordance Transitional land Development Code Section 34-377 (c) pursuant to a development of county impact process.

Therefore, consideration of a request to substantially reduce the commercial uses in the Town Center and to remove multi-family units allocated to the funnel tract by Resolution Z-13-009 at a quasi-judicial public hearing and transfer to the Town Center parcel is a major change and requires the quasi-judicial hearing process to amend The Brooks a built mixed-use planned development pursuant to Section 34-373(c). Reduction of commercial square footage in the Town Center (whether temporary or permanent) and addition of multi-family units by a transfer is a significant amendment to the approved and built zoning plan for the Town Center which requires the quasi-judicial public hearing process.

The Town Center is described within the DRI Development Order in Section E5 as

> "The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The town center is anticipated to internally capture a portion of the total trips which will help reduce the project's traffic impact on the public roadway network." (emphasis supplied)

The DRI included conditions that the Town Center may not exceed 120,000 square feet of office, retail/service gross floor area. The pertinent section of the DRI Development order describing the Town Center in DRI 2012 -00019 attached to the 2013 staff report is enclosed. In the land use history of the DRI and zoning there were no changes proposed nor analyzed to place any of new 200 units of residential use in the established and built commercial Town Center. In fact the original approval limited the Town Center to 100,000 SF. When the DRI and zoning were previously amended to substantially reduce the number of dwelling units in the Brooks, the commercial square footage was increased in the Town Center.

Substantially reducing the commercial services to the entire community has impacts to include but not limited to causing residents to travel the outside of The Brooks for its commercial needs. There is nothing in the Transitional Land Development Code that authorizes the Community Development Director to administratively approve substantive changes that have impacts external to the DRI. There is no Final Plan Approval process in the Transitional Land Development Code. There is a process for changes to a "built planned development". It requires meeting the procedure in Transitional Land Development Code Section 34-377 - the quasi-judicial public hearing process.

The FPA application should be rejected and the applicant should be advised that a public hearing application is required which must include a request to transfer units accompanied by its basis for its lawful claim to any unbuilt multi-family units.

We respectfully submit that the Director of Community Development does not have the authority to approve the changes proposed in the FPA application

Pursuant to Section 34-373(c), the owners of property within the Brooks have the right to receive notice and the right of participation as they are substantially affected by this request. This is a community that desires to participate in proposed community changes to its character and design. There are numerous substantive issues raised by this request and the applicant is attempting to circumvent addressing those issues by pursuing administrative approval. The community has a right to participate through the quasi–judicial process as set forth in Transitional Land Development Code Section 34-373(c) and we hereby request recognition by the Village of our party status in this proceeding. The Village needs to protect its citizens by requiring these substantive changes proceed through the established public hearing process.

Very truly yours,

ROETZEL & ANDRESS, LPA

Beverly Grady

Beverly Grady

BG/ro

Enclosures:
-DCI2012-00030 Hearing Examiner's recommendation - See pages 2, 5, 7-8, 15-17
-Staff report-See pages 2, 3, 5, 9, 12-13, Attachment A, MCP-changes highlighted, Exhibit A-legal
-Excerpts of transcript of Hearing Examiner hearing - DCI2012-00030 - pages 97-98
-Excerpt of DRI 5th Development Order Section E5, pages 1, 24-25

cc: Nancy Stroud, Village Land Use Counsel (via e-mail only: nstroud@nstroudpa.com)

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OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA
HEARING EXAMINER RECOMMENDATION

REZONING: DRI2012-00019 & DCI2012-00039
APPLICANT: OAKBROOK PROPERTIES, INC., in reference to THE BROOKS
HEARING DATE: MAY 15, 2013

I. **APPLICATION:**

This matter came before the Lee County Hearing Examiner as an Application for a Notice of Proposed Change to a Development of Regional Impact (DRI), and an Amendment to a Mixed Use Planned Development (MPD) pursuant to the Lee County Land Development Code (LDC).

Filed by OAKBROOK PROPERTIES, INC., c/o NED DEWHIRST, SENIOR VICE-PRESIDENT, 24880 Burnt Pine Drive #8, Bonita Springs, Florida (Applicant); and PAVESE LAW FIRM, c/o NEALE MONTGOMERY, ESQUIRE., 1833 Hendry Street, Fort Myers, Florida 33901 (Agent).

Request is for:

A. DRI2012-00019: Notice of Proposed Change (NOPC) seeking:

1. an increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;
2. removal of DRI DO conditions regarding dedication of ROW from Three Oaks Parkway to The Brooks eastern property line for the extension of Coconut Road and overpass over I-75;
3. extension of the DRI Buildout and Termination Dates;
4. revisions to the DRI Map H to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) update Land Use Summary table per requests; and iii) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

B. DCI2012-00039: Amend existing MPD zoning to:

1. increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;
2. revisions to the zoning Master Concept Plan (MCP) to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) eliminate MF (Mid-rise) from schedule of uses; iii) update Land Use Summary and Open Space Tables per requests; and iv) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

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The subject property is located East of Three Oaks Parkway/Coconut Road Extension, Estero Planning Community, Section 11, Township 47 South, Range 25 East, Lee County, FL. (District #3)

II. STAFF REPORT AND RECOMMENDATION:

The Department of Community Development Staff Report was prepared by Alvin Block, AICP, Principal Planner. The Staff Report, dated April 19, 2013, and supplement, dated May 9, 2013, are 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 for Notice of Proposed Change to DRI2012-00019, finding that the proposed amendments do not constitute a substantial deviation to the approved DRI Development Order, so as to warrant further DRI review, and **APPROVE** the Applicant's request to amend the existing MPD zoning for DCI2012-00039, for the real estate described in Section IX. Legal Description, WITH THE FOLLOWING CONDITIONS AND DEVIATIONS.

A. CONDITIONS:

DRI2012-00019:

Subject to the provisions of the revised DRI Development Order.

DCI2012-00039:

1. Development of the subject property, along with all property within The Brooks, must be consistent with the original zoning approval adopted in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006. All Administrative Approvals granted after the adoption of Zoning Resolution Z-97-037, as amended, also remain in full force and effect, except the use of multi-family mid-rise is not a permitted use and this use is removed from the approved schedule of uses and property development regulations on the Master Concept Plan.

2. Development of the subject property (an irregularly shaped 38± acre parcel at the eastern end of Coconut Road) within the existing MPD is also subject to the following:

a. Master Concept Plan

The development of the subject 38± acre tract must be consistent with the one-page Master Concept Plan entitled "The Brooks of Bonita Springs MPD, Master Concept Plan," stamped received FEB 08, 2013, last revised 1/25/2013 (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.

Uses and Site Development Regulations

All uses and property development regulations may be found in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006.

b. Solid Waste Management

As part of any Local Development Order approval for vertical development on the subject property, 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.

c. Agricultural Uses

Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:

(a) Bona fide agricultural uses consisting of the raising and cultivation of hay for livestock, that was in existence on the subject 38± acre tract when the application for this project was filed, may continue in the areas depicted on Exhibit C until a Local Development Order is approved for the area containing the agricultural uses.

(b) Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed, but those areas may not be cleared or expanded. Violations of this condition will require restoration in accordance with LDC Section 10-423. This prohibition of clearing or expansion of agricultural use is not intended to preclude County approved requests for removal of invasive exotic vegetation.

(c) Prior to issuance of a Local Development Order for the portion that contains the agricultural use, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

(1) Termination of all agricultural use on the property included in the Local Development Order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the property that specifically provides:

a) the date the agricultural uses ceased;

b) the legal description of the property subject to the Local Development Order approval;

c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow agricultural uses on the property until the property is re-zoned to permit agricultural uses; and

d) that the affidavit constitutes a covenant between the owner and the County that is binding on the owner, their assignees and successors in interest.

The affidavit must be properly recorded in the public records of the County at the owner's expense.

(2) Proof of termination of the agricultural tax exemption for the portion of the property included in the Local Development Order application/approval. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

A. **DEVIATIONS:**

All deviations granted as part of the original and subsequent amending Zoning Resolutions and all deviations granted as part of all administrative actions referred to in Condition 1 above remain in full force and effect.

As part of this application, the Applicant seeks to add the following deviation:

A deviation seeking relief from Lee County Land Development Code (LDC) Section 10-291(3) for Required Street Access, which requires that residential development of more than five acres must provide more than one means of ingress or egress for the development, to allow only one means of access to the development.

Justification - The subject property is bounded by I-75 and two developed subdivisions, both of which have no roadway connections to the subject property and are separated from the property by significant berms with landscaping and a wall. These preclude the subject property from being able to access into these communities. The only potential access to the property is from the eastern termination of Coconut Road.

The Hearing Examiner recommends **APPROVAL** of the requested Deviation.[1]

[1] No conditions were proposed for this deviation by the Staff. The Staff Report and testimony indicated, however, that the Applicant committed to meet the following plan of action and that the automatic fire sprinklers/system will be a requirement of the Fire District:

A. The Developer is required to construct the extension of Coconut Road east of the entrance to Lighthouse Bay to the proposed entry into the subject property, continuing the same existing road cross-section (2 lanes/divided median/16' (foot) lane and bikeway pavement/closed drainage/sidewalk).

B. All principal buildings within the subject property must be equipped with automatic fire sprinklers/system.

C. A notice articulating this plan will be recorded in the Lee County public records prior to issuance of a local development order allowing construction of the access to the development. A copy of this notice must be submitted as part of the local development order application seeking construction of the access to this development.

IV. HEARING EXAMINER DISCUSSION:

The Request is to allow the development of 200 multi-family units on an approximately 38 acre parcel in The Brooks that was originally slated for either an interchange with I-75 or a roadway to a bridge over I-75. The subject property is an irregularly shaped parcel (commonly known as the "funnel tract" or the "martini glass tract" due to its shape) at the eastern-most end of Coconut Road. It is included in The Brook's DRI and MPD zoning and is currently being used for hay making.

Issues

There are no outstanding issues; the few minor corrections and clarifications were addressed at the hearing. The most complex aspect of the Request – how the Request fits under the Lee Plan – was sufficiently addressed in the hearing, as discussed below.

Staff Recommendation

Staff recommended approval of the Request, with conditions. Staff found that the requested amendment to the DRI was not a substantial deviation and found that the amendment to the MPD, with the conditions and deviations proposed, is consistent with and meets all of the applicable review criteria.

Public Input

Nine members of the public spoke at the hearing. All indicated they were in support of the Request. One speaker provided the history of the transportation plans for an interchange, which was converted to a road connecting to a flyover, across the subject property and the information that neither are currently on the County's long-range transportation plan. Others addressed the support of the Request from various committees and organizations of Estero and The Brooks, indicating that the groups were glad to see this last parcel of The Brooks approved for residential development. One neighbor, although in support, asked for confirmation that the density and type of development would be consistent with Lighthouse Bay, to the south, which the Applicant's representative confirmed, and was concerned about potential drainage impacts, which the Applicant's representative also addressed.

DRI Notice of Proposed Change

The requested amendment to the existing DRI approval for The Brooks has four parts. The first is the request to add 200 multi-family units to the currently allowed 2,000 multi-family units, bringing the total number of approved dwelling units from 3,600 to 3,800. The DRI was approved in 1997 for 5,200 dwelling units. In 2002, the DRI Development Order was amended to reduce the number to 3,600 dwelling units (at least partially in exchange for an increase in the amount of allowed commercial square footage) and this smaller number became the controlling approved number of dwelling units under the DRI. Accordingly, the request to increase the dwellings triggers a review to confirm the request is not a "substantial deviation" under Section 380.06(19), Florida Statutes, meaning it would not require additional review of regional impacts.

In making the determination of whether the Request is a substantial deviation to the approved DRI, there are three potentially applicable thresholds. If any one of the thresholds are exceeded, the result is an automatic determination that the request is a substantial deviation. If the thresholds are not exceeded, however, and other requirements are met, the Request would not be a substantial deviation. In this case, the Request is considerably below those three thresholds[2] and the other applicable requirements are met. Accordingly, the addition of the 200 dwelling units does not constitute a substantial deviation to the approved DRI.

The second requested change is to clean-up the DRI Development Order conditions that addressed the dedication of the right-of-way for the extension of Coconut Road, from the current eastern end of the road, east to I-75. These dedications were part of the DRI developer's proportionate share obligation to mitigate the DRI's transportation impacts. The justification for the removal of these obligations was that, through the Development Agreement addressed under Development Order, the actual proportionate share for the development has been provided and those requirements have already been satisfied. Accordingly, as the right-of-way for the road extension and the flyover property are not necessary to meet the proportionate share, they should be removed from the Development Order.

The third change is to extend the DRI build-out and termination dates. The original DRI build-out date was December 31, 2007. In 2007, the date was extended to December 31, 2010. By extensions authorized by the Florida Statutes (one of which was reflected in Lee County Resolution 11-11-30), the build-out date was extended to March 2, 2017. The subject Request is to extend this date out to December 31, 2017. As this extension in considerably less than a five year extension, which is considered, under Section 380.06(19), Florida Statutes, to not constitute a substantial deviation, there is no required regional review of the requested extension.

The final DRI change is to amend the DRI Map H to eliminate the RO designation on the road extension right-of-way area and replace it with a Residential designation; update the Land Use Summary table to remove mid-rise multi-family as a development option and reflect the other changes; and update surrounding land use labeling. The Map H changes are not regionally impacting as they involve lessening of the potential intensity of the development types (by eliminating the potential for the taller mid-rise multi-family), reconfiguration changes that are necessary to reflect the increased number of units, and updated labeling.

MPD Amendment

The amendment to the MPD zoning involves adding the allowance of the 200 multi-family units and making changes to the Master Concept Plan (MCP) to reflect the

[2] The requested 200 additional units constitute a 5.5% increase in dwelling units rather than the threshold 10%; the amount of required open space will not be reduced because the total amount of open space actually provided in The Brooks significantly exceeds what is required by the DRI, making the loss of 4 acres of designated open space irrelevant; and the number of external vehicle trips will not exceed the threshold from the original DRI impact review.

resultant changes.[3] The largest concern about this MPD amendment was whether the additional units could be found consistent with the Lee Plan.

Compliance with the Lee Plan

The Brooks is located in the Rural Future Land Use category with, apparently, the only Planned Development District Option (PDDO) ever approved. The PDDO was a "floating" performance standard-based district, allowed under the Lee Plan in 1997, that allowed urban densities in the Rural Future Land Use category for projects that demonstrated they would not be impacting and would be self-sufficient.

The testimony provided was that, in the placement of the PDDO, there were significant commitments by the Applicant and that those commitments were met by substantial up-front expenditures by the Applicant. It was stressed that these commitments and expenditures were based on the originally approved higher number of dwelling units (5,200), rather than the currently approved 3,600. Even though the PDDO process was removed from the Lee Plan, the PDDO approved for The Brooks is still in place, valid, and controls the allowed density and intensity of The Brooks development. The testimony was that the requested 200 additional dwelling units, even when added to the increased amount of commercial development approved in 2002, will not exceed the density/intensity of development approved under the PDDO. Consequently, the requested addition of 200 dwelling units is consistent with the applicable Future Land Use category (Rural with a PDDO overlay).

There were no other issues raised about the compliance of the Request with the Lee Plan. Therefore, the undersigned Hearing Examiner finds that, for the reasons indicated in the Staff Report, the Applicant has adequately demonstrated that the Request, as conditioned, is in compliance with the Lee Plan and is consistent with the applicable goals, objectives, policies, intent, intensities, and general uses addressed by the Lee Plan.

Compliance with the LDC

The evidence provided demonstrates the Request is in compliance with the LDC, with the exception of Section 10-291(3). The Request includes a proposed deviation to this section, which the Staff and the Hearing Examiner recommend be approved. With the approval of the recommended deviation, the Applicant has proven entitlement to the rezoning by demonstrating compliance with the LDC.

Compatibility

The Request is for the same type and density of uses currently approved and built in The Brooks. The Request also improves the compatibility potential by eliminating the option of the taller "mid-rise" type of multi-family currently allowed. Accordingly, the

[3] The revisions to the zoning MCP are to 1) eliminate the RO (Recreation/Open Space) designation at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R (Residential) designation; 2) eliminate MF (Mid-rise) from schedule of uses; 3) update the Land Use Summary and Open Space Tables and MCP notes to reflect the requests; and 4) update the surrounding land use labeling.

proposed multi-family use is appropriate at the subject location and the Request will be compatible with the existing and planned uses in the surrounding area.

Public Facilities and Infrastructure

The testimony provided demonstrated that, although The Brooks is in a Rural Future Land Use category, urban services are available and adequate to serve the Request. The testimony also indicated that neither the proposed interchange nor the road flyover were included in the original transportation calculations, so the removal of both options would not change the transportation evaluation for the MPD. Additionally, the testimony provided demonstrated that the trips projected to be generated by the Request were already addressed in the original zoning approval and, even absent that, the Request will not unduly burden the existing transportation system or planned infrastructure facilities, will be served by streets with the capacity to carry traffic generated by the Request, and the level of traffic flow is sufficient to support the proposed Request. The recommended deviation addresses the adequacy of the level of access.

Environmentally Sensitive Areas

The testimony confirms that the subject property does not include any environmentally critical areas or natural resources and that, as long as the existing conditions on The Brooks remain in place, the Request will not negatively impact surrounding environmentally sensitive areas.

Recommended Conditions

With one exception, the proposed conditions are specific to the Request and are in addition to the existing conditions; all of the existing conditions restricting The Brooks will remain in place. The proposed conditions largely address the continued use of the property for hay production until ready for development, which applies only to the subject property. The change to remove mid-rise multi-family as a use, however, affects the entire MPD. The testimony confirms that the recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

V. FINDINGS AND CONCLUSIONS:

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

A. For the DRI Amendment

1. The requested amendment to the existing DRI approval for The Brooks to add 200 multi-family units to the currently allowed 2,000 multi-family units, bringing the total number of approved dwelling units from 3,600 to 3,800, is not a "substantial deviation" under Section 380.06(19), Florida Statutes because the Request is

considerably below any applicable statutory substantial deviation thresholds and all other applicable statutory requirements for such a determination are met.

2. The changes to the DRI Development Order to remove the requirements to dedicate the right-of-way for the extension of Coconut Road and to provide an approach for a flyover bridge are consistent with the requirements of the DRI, and do not trigger additional review, because the actual proportionate share for the development has been provided and those requirements have already been satisfied.

3. The amendments to the DRI Map H are not regionally impacting or significant enough to require additional DRI review.

4. The amendments to the DRI Development Order to extend the DRI build-out and termination dates do not require additional regional review because the extensions are less than the five year extension considered under Section 380.06(19), Florida Statutes, to not constitute a substantial deviation.

B. For the MPD Amendment:

1. The Applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan and that the Request is consistent with the densities, intensities and general uses set forth in the Lee Plan by demonstrating that the Planned Development District Option (PDDO) approved with the original rezoning is still in place, valid, and controlling of the allowed density and intensity of The Brooks development and allows the requested additional 200 dwelling units.

2. With the approval of the recommended deviation, the Applicant has proven entitlement to the rezoning by demonstrating compliance with the Land Development Code and any other applicable code or regulation.

3. The Applicant has demonstrated that the Request is compatible with existing or planned uses in the surrounding area and the proposed use is appropriate at the subject location in that the Request is for the same type and density of uses currently approved and built in The Brooks and the Request improves the compatibility potential by eliminating the option of the taller "mid-rise" type of multi-family currently allowed.

4. Approval of the Request will not place an undue burden upon existing transportation or planned infrastructure facilities, will be served by streets with the capacity to carry traffic generated by the Request, and the level of access and traffic flow is sufficient to support the proposed Request.

5. Although The Brooks is in a Rural Future Land Use category, rather than an urban category, urban services, as defined in the Lee Plan, are available and adequate to serve the Request.

6. The subject property does not include any environmentally critical areas or natural resources and, as long as the existing conditions on The Brooks remain in place, the Request will not negatively impact surrounding environmentally sensitive areas.

7. The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest created by or expected from the Request.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

1. A 2012 aerial photograph depicting the subject property and surrounding area, prepared by Lee County DCD, mapped October 2012 (1 page 24"x36")[color]

2. A Master Concept Plan prepared by Hole Montes, sheet 1 of 1, dated 09/11, stamped RECEIVED FEB 08 2013 COMMUNITY DEVELOPMENT (1 page – 24"x36")

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

APPLICANT'S EXHIBITS

1. An aerial photograph depicting "The Funnel Parcel & The Brooks," and surrounding area, prepared by Hole Montes, Sheet No. 1 of 3 (1 page 11"x17")[color]

2. An aerial photograph depicting "The Funnel Parcel," prepared by Hole Montes, Sheet No. 2 of 3 (1 page 11"x17")[color]

3. Site photographs, prepared by Hole Montes, Sheet No. 3 of 3 (1 page – 11"x17")[color]

4(a). Existing Master Concept Plan, prepared by Wilson Miller, PRINTED JUN 21 2001 by Wilson Miller, stamped RECEIVED JUN 21 2001 PERMIT COUNTER, last revised 6/15/01, Sheet No. 1 of 4 (1 page – 24"x36")

4(b). Proposed Master Concept Plan, prepared by Hole Montes, last revised 1/25/2013, Sheet No. 1 of 1 (1 page – 24"x36")

5. Proposed Master Concept Plan – Map H, prepared by Hole Montes, last revised 09/27/12, Sheet No. 1 of 1 (1 page – 24"x36")

6. The Brooks Fiscal Monitoring Property Valuation (multiple pages – 8.5"x11")

7(a). The Estero Council of Community Leaders Resolution of Support for Oakbrook Properties, Proposed Development of the Martini Glass Parcel of Land Located within the Brooks DRI, signed by Donald Eslick, the President of Estero Council of Community Leaders, on the 9th day of March, 2012 (1 page – 8.5"x11")

7(b). The Estero Community Planning Panel Minutes of Public Meeting #135 – January 23, 2012, Estero Community Park, Estero, Florida (2 pages – 8.5"x11")

8. The Urban Area Map of Lee County prepared by the Florida Department of Transportation (FDOT), February 2009 (1 page – 8.5"x11")[color]

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

OTHER EXHIBITS

DOUGLAS

1. Resolution of Support for Oakbrook Properties' Proposed Development of the Martini Glass Parcel of Land within the Brooks DRI, signed by the President of the Harbout Club Board of Director for Lighthouse Bay, on the 2nd day of March, 2012 (1 page – 8.5"x11")

VII. PRESENTATION SUMMARY:

See Official Court Reporting Transcript

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Ted Treesh, c/o TR Transportation Consultants, 2726 Oak Ridge Court, Fort Myers, Florida 33901

2. Tom McLean, c/o Hole Montes, 6200 Whiskey Creek Drive, Fort Myers, Florida 33919

ADDITIONAL COUNTY STAFF:

NONE

PUBLIC PARTICIPATION:

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

For:

1. Nicholas Batos, 9165 Hollow Pine Drive, Estero, Florida 34135

2. Phil Douglas, 10304 Cape Roman Road, Bonita Springs, Florida 34135-1712

3. Marilyn Edwards, 9240 Spring Run Boulevard, Bonita Springs, Florida 34135

4. Donald Eslick, 1001 Arbor Lake Drive, #202, Naples, Florida 34110

5. John Goodrich, 20877 Pinehurst Greens Drive, Estero, Florida 33928

6. Jack Lienesch, 23640 Peppermill Court, Bonita Springs, Florida 34134

7. Jack Meeker, 23701 Copperleaf Boulevard, Bonita Springs, Florida 34135

8. Jim Merritt, 23203 Foxberry Lane, Bonita Springs, Florida 34135

9. Roger Strelow, 24151 Copperleaf Boulevard, Bonita Springs, Florida 34135

Against: NONE

General: NONE

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

For: NONE

Against: NONE

General: NONE

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 29th day of May, 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.

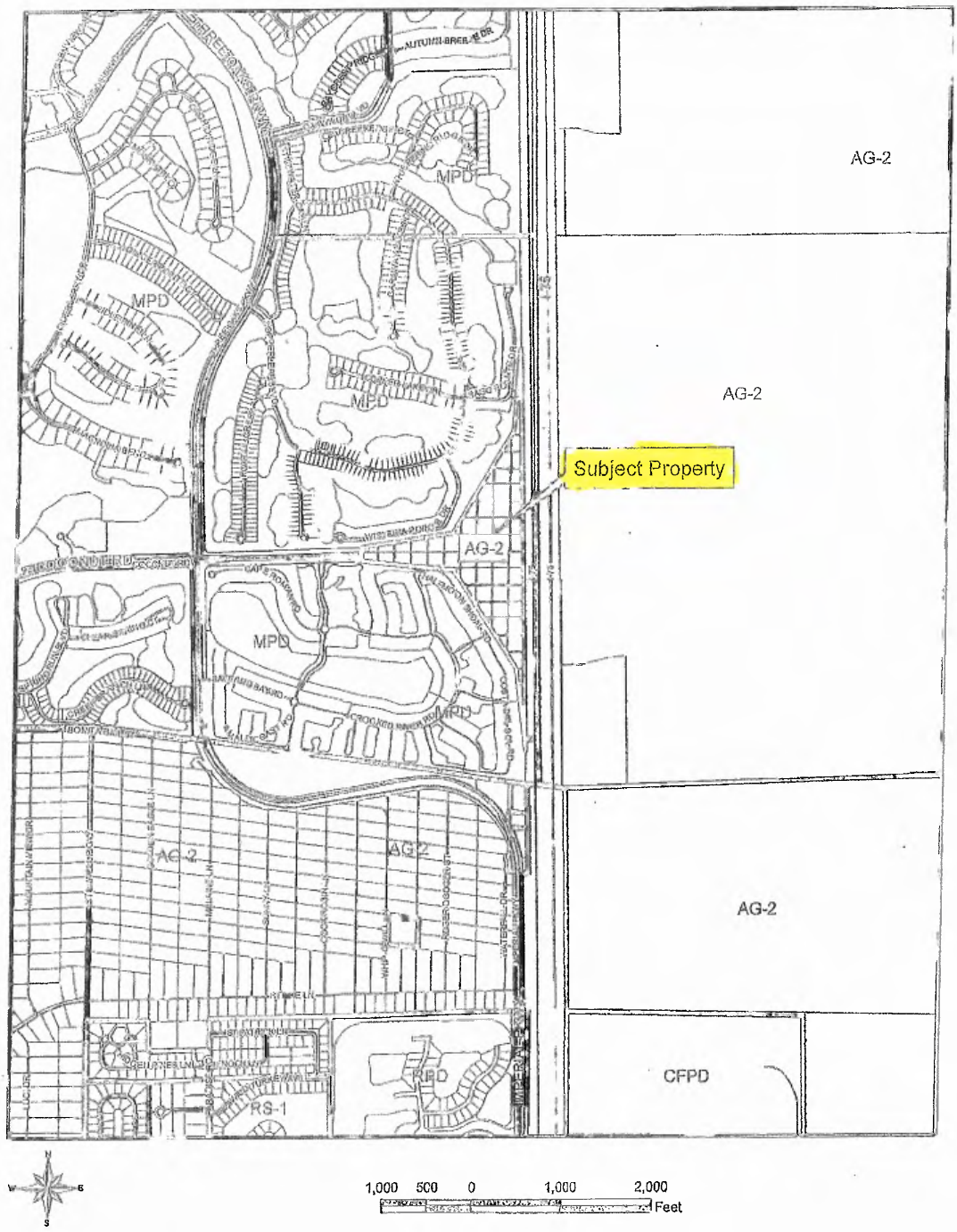
LAURA B. BELFLOWER
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/533-8100
Facsimile: 239/485-8406

ATTACH MAP A
ATTACH SITE PLAN (if approved)

Attachment "A"
Zoning Map

DRI2012-00019 & DCI2012-00039

3/14/2013



15

DRI 2012-00019

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS
LANDSCAPE ARCHITECTS

RECEIVED
SEP 28 2012
COMMUNITY DEVELOPMENT

950 Encore Way · Naples, Florida 34110 · Phone: 239.254.2000 · Fax: 239.254.2099

HM PROJECT #2011062
9/27/2012
REF. DWG. #B-6792
Page 1 of 1

LEGAL DESCRIPTION:

A PORTION OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°52'50" W., ALONG THE NORTH LINE OF SAID SECTION 11, FOR A DISTANCE OF 520.13 FEET TO A POINT ON THE WESTERLY RIGHT- OF-WAY LINE OF INTERSTATE HIGHWAY 75, A 410 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,238.06 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,748.29 FEET; THENCE CONTINUE S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2,651.71 FEET; THENCE RUN N.7°35'29 W. FOR A DISTANCE OF 905.00 FEET; THENCE RUN N.34°02'13" W. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 84°26'27" W. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N.01°33'57" W. FOR A DISTANCE OF 150.00 FEET; THENCE RUN N.81°18'33" E. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N.30°54'19" E. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N.04°27'35" E. FOR A DISTANCE OF 905.00 FEET TO THE POINT OF BEGINNING, CONTAINING 38.051 ACRES, MORE OR LESS.

BEARINGS REFER TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S.89°52'20" W.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy
THOMAS M. MURPHY

P.S.M. #5628
STATE OF FLORIDA

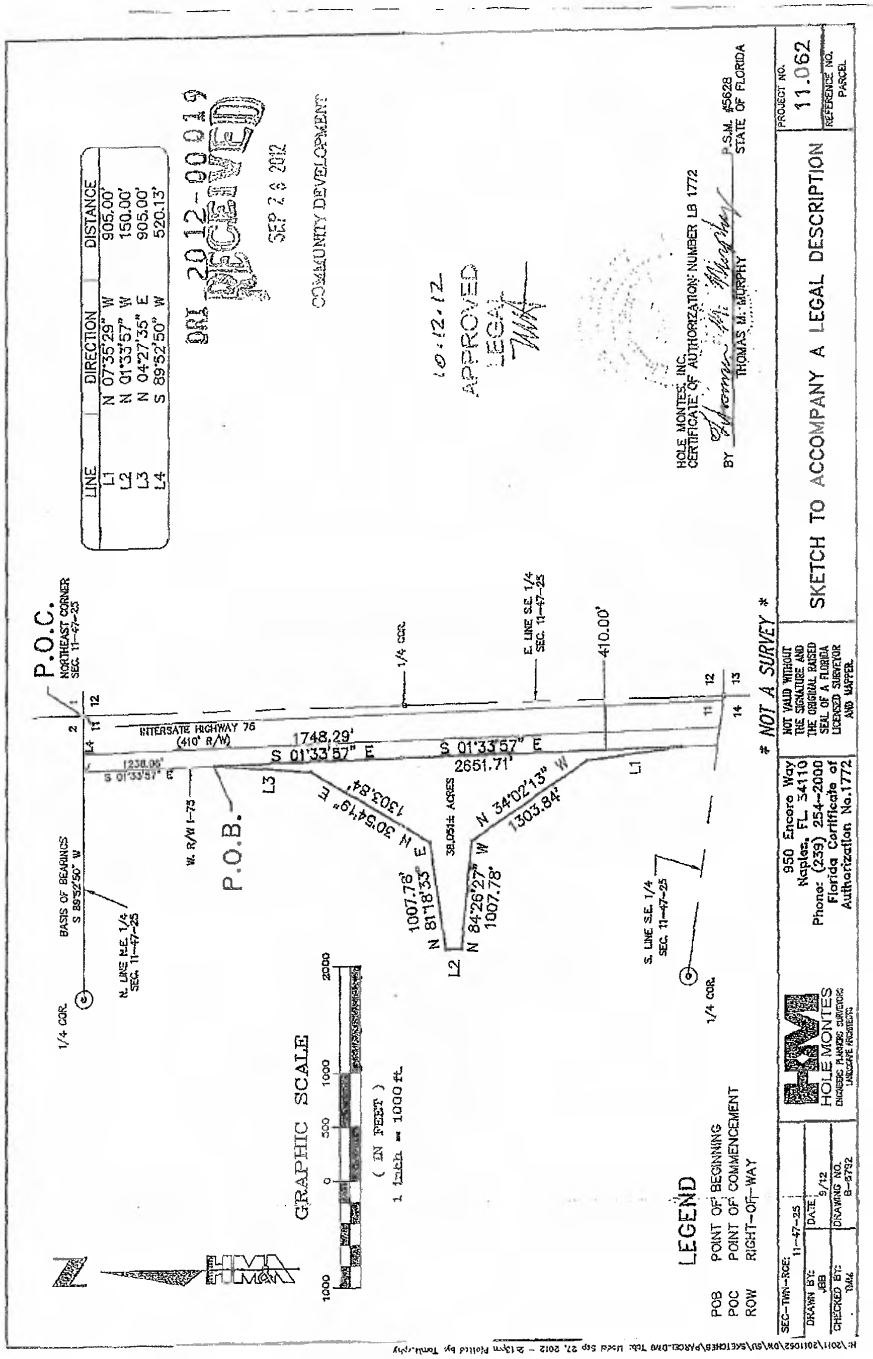
10.12.12
APPROVED
LEGAL
WH

EXHIBIT A

H:\2011\2011062\WP\SULEGAL\legal B-6792.doc

Naples · Fort Myers

16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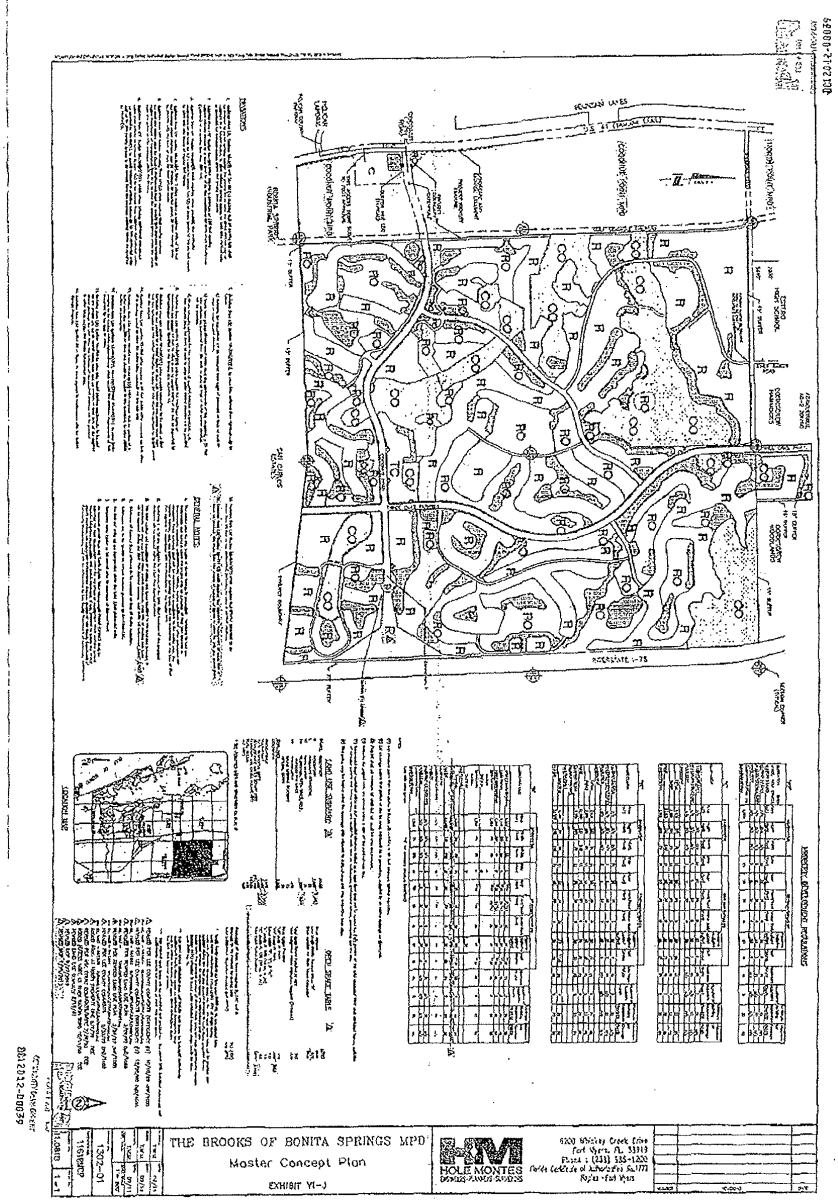
L1 N 07°35'29" W 905.00'
L2 N 01°33'57" W 150.00'
L3 N 04°27'35" E 905.00'
L4 S 89°52'50" W 520.13'
DRL 2012-00019
RECEIVED
SEP 28 2012
COMMUNITY DEVELOPMENT
10-12-12
APPROVED
LEGAL
HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION: NUMBER LB 1772
BY THOMAS M. MURPHY
P.S.M. #5628
STATE OF FLORIDA
P.O.C.
NORTHEAST CORNER
SEC. 11-47-25
INTERSTATE HIGHWAY 75
(410' R/W)
1748.29'
S 01°33'57" E
S 01°33'57" E
2651.71'
1238.06'
S 01°33'57" E
W. R/W I-75
P.O.B.
L3
N 30°44'19" E
1303.84'
38.0514± ACRES
N 34°02'13" W
1303.84'
1007.78'
N 81°18'33" E
L2
N 84°26'27" W
1007.78'
L1
1/4 COR.
E. LINE S.E. 1/4
SEC. 11-47-25
410.00'
BASE OF BEARINGS
S 89°52'50" W
N. LINE N.E. 1/4
SEC. 11-47-25
S. LINE S.E. 1/4
SEC. 11-47-25
1/4 COR.
1/4 COR.
GRAPHIC SCALE
(IN FEET)
1 inch = 1000 ft.
LEGEND
POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
ROW RIGHT-OF-WAY
* NOT A SURVEY *
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION
PROJECT NO. 11.062
REFERENCE NO.
PARCEL
HOLE MONTES
ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS
950 Encore Way
Naples, FL 34110
Phone: (239) 254-2000
Florida Certificate of Authorization No.1772
SEC-TWN-RGE: 11-47-25
DRAWN BY: JBB
DATE: 9/12
CHECKED BY: TMM
DRAWING NO. B-3752

17


THE BROOKS OF BONITA SPRINGS MPD
Master Concept Plan
EXHIBIT VI-J
HOLE MONTES
NAPLES · FORT MYERS · SARASOTA
6200 Whiskey Creek Drive
Fort Myers, FL 33919
Phone : (239) 334-1200
Naples Collier & Lee Counties Sub 1773
Bonita - Fort Myers
RIDGEWOOD AVE
RIDGEWOOD AVENUE
RIDGEWOOD AVENUE EXTENSION
RIDGEWOOD AVENUE EXTENSION
RIDGEWOOD AVENUE EXTENSION

BONA FIDE AGRICULTURAL USE AT THE TIME
OF ZONING APPLICATION AFFIDAVIT

WHEREAS, Section 34-202(b)(7), Lee County Land Development Code, requires property located in an agricultural zoning district at the time a zoning application is filed to include an existing agricultural use affidavit; and

WHEREAS, the affidavit, pursuant to the Land Development Code, must identify the property in question with specificity, and the affidavit must identify whether or not a bona fide agricultural use is in existence on the property at the time the application was filed.

STATE OF FLORIDA
COUNTY OF LEE

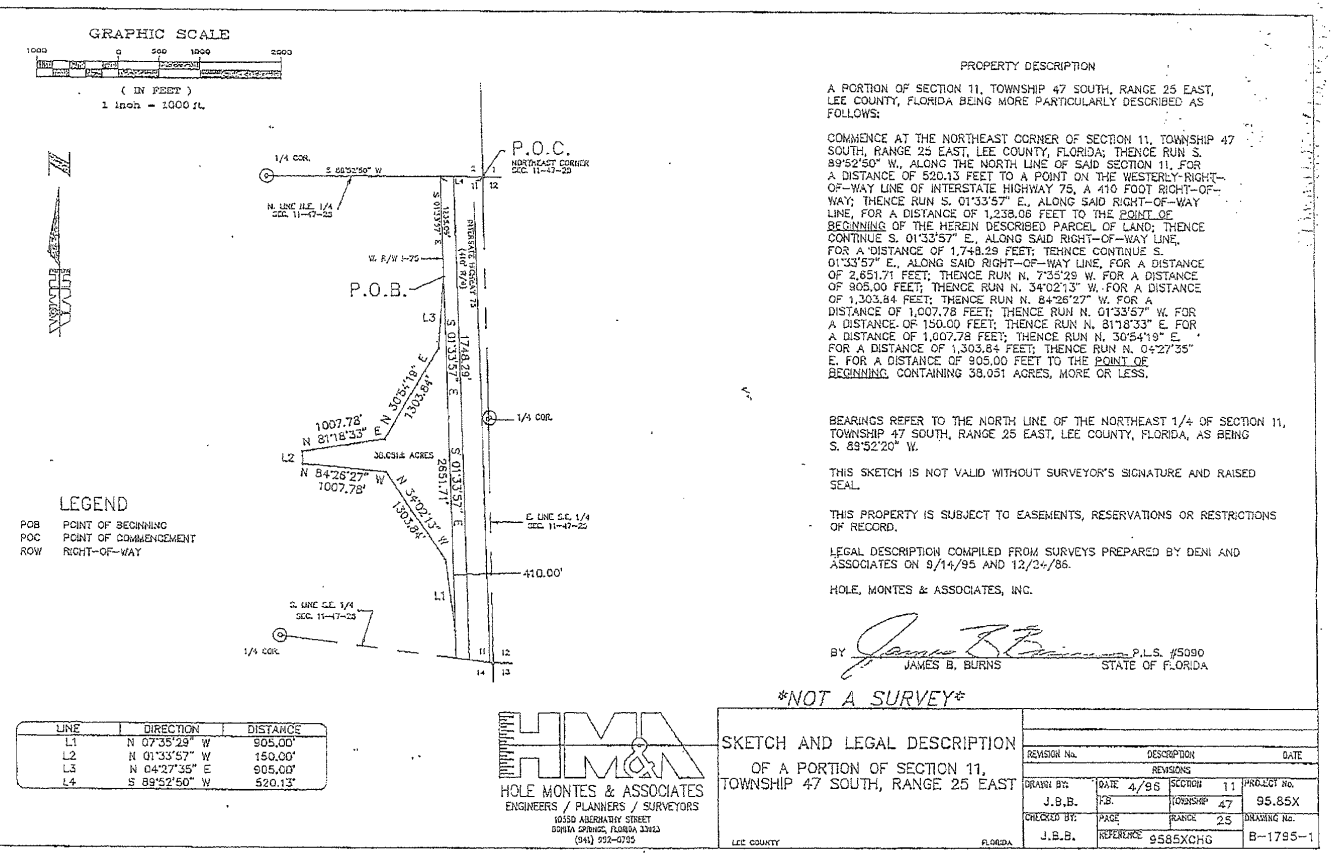
BEFORE ME, the undersigned notary public on this 24th day of JANUARY, 2013, personally appeared **Ned Dewhirst**, who is personally known to me or who produced a Drivers License as identification and who, after first being duly sworn, deposes and says that:

1. The property that is subject of the zoning application is described more completely on the attached Exhibit "A".
2. That I am the authorized representative of the **Funnel Land Investment, LLC** that owns the property described in Exhibit "A".
3. The property in question has planned development zoning. The property was in agricultural use prior to the approval of the Brooks DRI and associated zoning.
4. The property is in agricultural use and the use is a legal non-conforming use.
5. The agricultural use of the subject property is the raising and cultivation of hay for livestock.
6. The agricultural activity is occurring entirely within the area identified on the attached Exhibit "A".
7. The affiant intends to continue the existing agricultural activity subsequent to the amendment to the zoning and the DRI DO.

FURTHER AFFIANT SAYETH NAUGHT.

EXHIBIT C

DCI2012-00039



LEGEND

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
ROW	RIGHT-OF-WAY

LINE	DIRECTION	DISTANCE
L1	N 07°35'29" W	905.00'
L2	N 01°33'57" W	150.00'
L3	N 04°27'35" E	905.00'
L4	S 89°52'50" W	520.13'

PROPERTY DESCRIPTION

A PORTION OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S. 89°52'50" W., ALONG THE NORTH LINE OF SAID SECTION 11, FOR A DISTANCE OF 520.13 FEET TO A POINT ON THE WESTERLY-RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 75, A 410 FOOT RIGHT-OF-WAY; THENCE RUN S. 01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,238.08 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S. 01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,748.29 FEET; TEHNCE CONTINUE S. 01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2,651.71 FEET; THENCE RUN N. 7°35'29 W. FOR A DISTANCE OF 905.00 FEET; THENCE RUN N. 34°02'13" W. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 84°26'27" W. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N. 01°33'57" W. FOR A DISTANCE OF 150.00 FEET; THENCE RUN N. 81°18'33" E. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N. 30°54'19" E. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 04°27'35" E. FOR A DISTANCE OF 905.00 FEET TO THE POINT OF BEGINNING. CONTAINING 38.051 ACRES, MORE OR LESS.

BEARINGS REFER TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S. 89°52'20" W.

THIS SKETCH IS NOT VALID WITHOUT SURVEYOR'S SIGNATURE AND RAISED SEAL.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

LEGAL DESCRIPTION COMPILED FROM SURVEYS PREPARED BY DENI AND ASSOCIATES ON 9/14/95 AND 12/24/86.

HOLE, MONTES & ASSOCIATES, INC.

BY JAMES B. BURNS P.L.S. #5090 STATE OF FLORIDA

NOT A SURVEY

HOLE MONTES & ASSOCIATES
ENGINEERS / PLANNERS / SURVEYORS
10550 ABERNATHY STREET
BONITA SPRINGS, FLORIDA 33923
(941) 992-0705

SKETCH AND LEGAL DESCRIPTION
OF A PORTION OF SECTION 11,
TOWNSHIP 47 SOUTH, RANGE 25 EAST

LEE COUNTY FLORIDA

REVISION No.	DESCRIPTION	DATE
	REVISIONS	

DRAWN BY: J.B.B.	DATE 4/96	SECTION 11		PROJECT No. 95.85X
	F.B.	TOWNSHIP 47		
CHECKED BY: J.B.B.	PAGE	RANGE 25		DRAWING No. B-1795-1
	REFERENCE 9585XCHG			

Exh. "A"

LEE COUNTY, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING DIVISION
STAFF REPORT

TYPE OF CASE: **PLANNED DEVELOPMENT/DRI & DCI**

CASE NUMBER: **DRI2012-00019 & DCI2012-00039**

HEARING EXAMINER DATE: **MAY 15, 2013**

I. APPLICATION SUMMARY

A. Applicant: Oakbrook Properties, Inc. in reference to The Brooks

B. Requests:
DRI2012-00019: Notice of Proposed Change (NOPC) seeking:
1) an increase in residential MF units (from 2000 to 2200 MF units) resulting in a total of 3800 SF/MF units;
2) removal of DRI DO conditions regarding dedication of ROW from Three Oaks Parkway to The Brooks eastern property line for the extension of Coconut Road and overpass over I-75;
3) extension of the DRI Buildout and Termination Dates;
4) revisions to the DRI Map H to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) update Land Use Summary table per requests; and iii) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

DCI2012-00039: Amend existing MPD zoning to:
1) increase in residential MF units (from 2000 to 2200 MF units) resulting in a total of 3800 SF/MF units;
2) revisions to the zoning Master Concept Plan (MCP) to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) eliminate MF (Mid-rise) from schedule of uses; iii) update Land Use Summary and Open Space Tables per requests; and iv) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

C. Location: The subject property is located East of Three Oaks Parkway/Coconut Road Extension, Estero Planning Community, Lee County, FL. (District #3)

D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property and Road Classification:
Land Use Designation: Rural
Current Zoning: Mixed Use Planned Development, MPD

Current Use:	Residential, with a 38 acre vacant tract
Road Classification:	Three Oaks Parkway - arterial Coconut Road - collector

E. Surrounding Land Use (to entire The Brooks MPD):

Existing Zoning & Land Use	Future Land Use Map
North: RV-3, recreational vehicles RPD, vacant PUD, residential and vacant CPD, driving range & vacant parcel CF-2, high school AG-2, park and vacant land	Suburban, Urban Community, and Public Facilities
East: I-75, then AG-2 vacant	Wetlands and Density Reduction/Groundwater Resource
South: City of Bonita Springs AG-2, large lot residential and vacant	City of Bonita Springs Rural Agriculture Overlay
West: Railroad, then MPD, mixture of retail, office and residential	Urban Community

F. Size of Property: 38.1 ± Acres (The Brooks total acreage is 2,533± acres)

II. RECOMMENDATIONS:

DRI:
Staff recommends APPROVAL of the applicant's request for a Notice of Proposed Change subject to the conditions in the draft DRI Development Order. The proposed changes do not cause the need for a reassessment of the DRI. The revised DRI Development Order will be submitted under separate cover.

Staff also recommends that the Hearing Examiner find the proposed amendments do not constitute a substantial deviation from the original development approvals thereby warranting further development of regional impact review.

DCI Amendment:
Staff recommends APPROVAL of the applicant's request to amend the existing Mixed Use Planned Development (MPD) zoning with the following conditions and deviations:

A. Conditions:

1. Development of the subject property along with all property within The Brooks, must be consistent with the original zoning approval adopted in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006. All Administrative Approvals granted after the adoption of Zoning Resolution Z-97-037, as amended, also remain in full force and effect.

2. Development of the subject property (an irregularly shaped 38± acre parcel at the eastern end of Coconut Road) within the existing MPD is also subject to the following:

a. Master Concept Plan

The development of the subject 38± acre tract must be consistent with the one-page Master Concept Plan entitled "The Brooks of Bonita Springs MPD, Master Concept Plan," stamped received FEB 08, 2013, last revised 1/25/2013, 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 pursed, appropriate approvals will be necessary.

Uses and Site Development Regulations

All uses and property development regulations may be found in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006.

b. Solid Waste Management

As part of any local development order approval for vertical development on the subject property, 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.

c. Agricultural Uses

Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:

(a) Bona fide agricultural uses consisting of the raising and cultivation of hay for livestock, that was in existence on the subject 38± acre tract when the application for this project was filed, may continue in the areas depicted on Attachment J until a local development order is approved for the area containing the agricultural uses.

[Note: The referenced exhibit must consist of existing bona fide uses documented in a sworn affidavit from the property owner describing the type and intensity of bona fide agricultural uses in existence on the date of the zoning application, i.e., livestock grazing or crop production. The affidavit must include acreage figures for each use as part of the sworn affidavit. The affidavit must include an exhibit depicting the location of the uses on a copy of the boundary sketch. The exhibit should be entitled "Bona Fide Agricultural Uses at the time of Zoning Application."]

(b) Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide

agricultural use that include existing grass pasture(s) may be mowed but those areas may not be cleared or expanded. Violations of this condition will require restoration in accordance with LDC 10-423. This prohibition of clearing or expansion of agricultural use is not intended to preclude County approved requests for removal of invasive exotic vegetation.

(c) Prior to issuance of a local development order for the portion that contains the agricultural use, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

(1) Termination of all agricultural use on the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the property that specifically provides:

a) the date the agricultural uses ceased;

b) the legal description of the property subject to the development order approval;

c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the county that they will not allow agricultural uses on the property until the property is re-zoned to permit agricultural uses; and ,

d) that the affidavit constitutes a covenant between the owner and the county that is binding on the owner, their assignees and successors in interest.

The affidavit must be properly recorded in the public records of the county at the owner's expense.

(2) Proof of termination of the agricultural tax exemption for the portion of the property included in the development order application/approval. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

B. Deviations

All deviations granted as part of the original and subsequent amending Zoning Resolutions and all deviations granted as part of all administrative actions referred to in Condition 1 above remain in full force and effect.

As part of this application, the applicant seeks to add the following deviation:

A deviation seeking relief from LDC Section 10-291(3) for Required Street Access requiring residential development of more than five acres must provide more than one means of ingress or egress for the development; to allow only one means of access to the development. Staff recommends this deviation be APPROVED subject to the following conditions:

- The Developer is required to construct the extension of Coconut Road east of the entrance to Lighthouse Bay to the proposed entry into the subject property, continuing the same existing road cross-section (2 lanes/divided median/16' (foot) lane and bikeway pavement/closed drainage/sidewalk).

- All principal buildings within the subject property must be equipped with automatic fire sprinklers/system.

- A notice articulating this plan will be recorded in the Lee County public records prior to issuance of a local development order allowing construction of the access to the development. A copy of this notice must be submitted as part of the local development order application seeking construction of the access to this development.

Applicant's Justification:
The Funnel Parcel within The Brooks DRWD consists of approximately 38 acres and is located just east of the Lighthouse Bay entrance on the Coconut Road Extension east of Three Oaks Parkway. The subject parcel is bounded by the Copperleaf project, 1-75, and the Lighthouse Bay project. The project site will consist of approximately 200 single or multi-family residential units.

An in-fill parcel within The Brooks, the subject parcel is isolated from the two neighboring developments by extensive landscaped berms with walls and is bounded by 1-75 ROW. Therefore there are no viable options for a second means of ingress/egress or access point as required by the Lee County Land Development Code (LDC) Sec. 10-291(3) for Required Street Access. A deviation from the access point requirements is allowed to be requested through the public hearing process if a notice to all future property owners is recorded articulating an emergency access plan. This plan was presented to Estero Fire & Rescue and was approved.

Plan

1. Developer/Applicant will construct the extension of Coconut Road east of the entrance to Lighthouse Bay to the proposed entry into the subject property, continuing the same existing road cross-section (2 lanes/divided median/16' (foot) lane and bikeway pavement/closed drainage/sidewalk).

2. All principal buildings for single family and multi-family residential units and accessory recreational uses will be equipped with automatic fire sprinklers/system.

3. A notice articulating this plan will be recorded in the Lee County public records prior to issuance of a local development order allowing construction of the access to the development.

Staff Analysis:
The subject property is the last remaining undeveloped tract within The Brooks. The property has access at the eastern termination of Coconut Road and shares a boundary line with I-75 on the east. The site has no other frontage along a road. Wisteria Pointe (to the north) and Lighthouse Bay (to the south) border the subject property. Both are developed and along the shared boundaries of both there is a significant berm with landscaping and a wall. These preclude the subject property from being able to access into these communities. Staff recommends APPROVAL of this requested deviation.

C. Findings and Conclusions:
DRI:
Analysis and findings under Florida Statutes 380.06(19)(b):

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 15 percent or 500 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 15 percent or 1,500 spectators, whichever is greater.

   Staff: The development has not been approved for, nor is the applicant seeking, development of an attraction or recreational facility.

2. A new runway, a new terminal facility, a 25 percent lengthening of an existing runway, or a 25 percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

   Staff: The development has not been approved for, nor is the applicant seeking, development or expansion of a runway or terminal facility.

3. An increase in land area for office development by 15 percent or an increase of gross floor area of office development by 15 percent or 100,000 gross square feet, whichever is greater.

   Staff: The development has been approved for the development of office. The request does not seek an increase in land area or gross floor area.

4. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.

   Staff: The development is seeking approval of an additional 200 dwelling units. The increase represents a less than 6% increase over the existing maximum of 3,600 units currently allowed within the development.

5. An increase in the number of dwelling units by 50 percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are

dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced prior to the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this subparagraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

Staff: The proposed amendments do not increase dwelling units dedicated to affordable workforce housing. The current approvals did not include affordable workforce housing.

6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for customers for 425 cars or a 10 percent increase, whichever is greater.

   Staff: Commercial development has been approved as part of this development. The amendments do not increase the gross floor area or parking spaces for customers of the commercial development.

7. An increase in a recreational vehicle park area by 10 percent or 110 vehicle spaces, whichever is less.

   Staff: The development has not been approved nor is the applicant seeking approval for a recreational vehicle park.

8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

   Staff: The applicant has not proposed a decrease in the area set aside or conditioned for open space.

9. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.

   Staff: This is an amendment to an approved mixed use development. The sum of the increases is significantly less than 110 percent. There is no change proposed to the open space within the development.

10. A 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

    Staff: The proposal to increase the number of dwelling units is only 200 units. The total if this request is approved would increase to 3,800 units. This remains less than the original DRI review and approval of 5,300 units.

11. Any change that would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.

    Staff: The change from RO to R on Map H does not result in development of any area set aside for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State

The substantial deviation numerical standards in subparagraphs 3., 6., and 9., excluding residential uses, and in subparagraph 10., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Department of Economic Opportunity as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3, 4, 5, 6, 9, and 10 are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

DCI Amendment:
Based upon an analysis of the application and the standards for approval of planned development amendments, staff offers the following findings and conclusions in support the recommendation of APPROVAL with conditions:

1. The applicant has proved entitlement to the amendment to the Mixed Use Planned Development (MPD) zoning by demonstrating compliance with the Lee Plan, the Land Development Code (LDC), and other applicable codes and regulations. (Lee Plan Chapter XIII, Section D.)

2. The requested amendment of the MPD zoning:
   a) remains consistent with the densities, intensities and general uses set forth in the previously adopted Lee Plan; (previous Objective 1.8 of the Lee Plan and Chapter XIII of the Lee Plan)

b) is compatible with existing or planned uses within The Brooks. No changes in the approved uses by category is sought as part of this amendment; and

c) will not adversely affect environmentally critical areas or natural resources.

3. Approval of the requested amendment will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development. Development of this site will be accessed from Three Oaks Parkway and existing utilities in the area will be extended to serve the development.

4. Urban services, as defined in the Lee Plan, are available and adequate to serve the proposed land use. Access would be from a connection to an existing arterial road and potable water and sanitary sewer exist and will be extended to serve this development.

5. The proposed continued mix of uses remains appropriate at the subject location.

6. The recommended conditions to the master concept plan and maintaining the existing conditions within The Brooks, along with other applicable regulations provide sufficient safeguards to the public interest.

7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

8. The deviations previously granted and conditioned and the new deviation recommended for approval and conditioned have been found to enhance the planned development; preserve and promote the general intent of the LDC to protect the public health, safety and welfare; and found to not adversely impact the health, safety, and welfare of the public.

III. BACKGROUND INFORMATION AND ANALYSIS:

Introduction/Synopsis

The applicant has filed for an amendment of the DRI Development Order and MPD zoning to allow for development within the remaining undeveloped parcel within The Brooks. The parcel is commonly known as the "Funnel Tract" or "Martini Tract" due to its unusual shape. The parcel is at the easternmost end of Coconut Road, east of Three Oaks Parkway, and contains approximately 38 acres.

The amendment seeks to add 200 residential dwelling units to the approved planned development and re-designate on the Master Concept Plan a strip of property from RO (Recreation/Open Space) to R (Residential). The designated strip of land runs through the center of the 38 acre parcel from east to west. Approval would increase the number of multiple family dwelling units within The Brooks from 2,000 to 2,200 and increase the number of overall dwelling units from 3,600 to 3,800 units. The re-designation would allow the entire 38 acre parcel to be developed as residential. All of the proposed new 200 dwelling units would be built within this 38 acre parcel.

In response to staff's request for additional details on the Master Concept Plan, the applicant has suggested conditions to address the comments. Staff requested additional detail on the Master Concept Plan providing for internal design for access, conceptual lot configuration, internal design details, and potential development of recreation/clubhouse facility within the subject property. The applicant's response suggested the more detailed development plans be reviewed by the Estero Community Planning Panel prior to final plan approval. Staff has not included the suggested conditions because LDC Section 33-54 already provides for community review of planned development zoning actions and development orders. The suggested conditions serve no added purpose but to restate the existing requirements. Also, the developer is required to conduct one public informational session prior to submitting for Final Plan Approval, since the Final Plan Approval is a planned development zoning action.

The Brooks Zoning and DRI History

DRI:

The Development of Regional Impact (DRI) development was originally approved by the Board of County Commissioners on August 25, 1997. At that time, the development consisted of 5,200 residential units; 250,000 square feet of retail/service/office floor area; 120 hotel units; and a maximum of 55,000 square feet of floor area of community facilities.

The 1st amendment was adopted on December 6, 1999. This amendment added about 40 acres of land to the development, and there was no change to the allowed intensity of development approved in the original approval in 1997.

The 2nd amendment was adopted on April 1, 2002. This amendment sought to reduce the number of dwelling units by 1,600 units and increase the commercial square footage by 20,000 square feet. The resulting action allowed a development consisting of 3,600 residential units; 150,000 square feet of commercial center retail/service/office floor area; 120,000 square feet of Town Center retail/service/office floor area; 120 hotel units; and a maximum of 55,000 square feet of floor area for community facilities.

The 3rd amendment was adopted on August 21, 2007. This amendment allowed a three year extension statutory extension of all phase, build out, and expiration dates as provided for by House Bill 7203.

The 4th amendment was adopted on November 29, 2011. This amendment allowed a four year extension of all commencement, phase, buildout and expiration dates within the DRI Development Order as provided for by House Bill 7207.

DCI – Mixed Use Planned Development:

The Mixed Use Planned Development (MPD) zoning was originally adopted on August 25, 1997 at the same time the DRI was approved. The intensity of development within the planned development matched that approved as part of the DRI approval.

A change to the MPD zoning was adopted by the Board on December 6, 1999 corresponding to the 1st amendment to the DRI that added about 40 acres of land to the overall development. No changes to the development intensities were sought.

The second change to the MPD zoning was adopted by the Board on April 1, 2002 at the same time the 2nd DRI amendment was adopted. The same changes granted in the DRI

amendment were made to the MPD zoning, which reduced the number of dwelling units and increased the commercial floor area.

County records reveal a large number of approved administrative actions within this planned development. The vast majority of these are Final Plan Approvals, an administrative approval conditioned within the zoning action requiring the developer to obtain staff approval for specific development within each development tract prior to local development order. Each Final Plan Approval has the proposed number of units, a set of deviations, and conditions of approval for development on the individual tract.

Current Residential Development
The Brooks, as noted above, includes a condition requiring Final Plan Approval. In research of County records, staff finds that these Final Plan Approvals have permitted 3,552 of the 3,600 total dwelling units within the planned development. This leaves, in staff's estimation, 48 units to be developed.

Map H and Master Concept Plan
Both Map H and the Master Concept Plan proposed by the applicant may be found as Exhibit B to this report.

The applicant advises the changes to the DRI and Zoning would increase the maximum number of residential units, updates the open space table, eliminates the mid-rise multiple family use, and eliminates the RO designation through the 38 acre subject property.

Lee Plan Considerations
The Division of Planning has reviewed this application and concludes that the requests are consistent with the Lee Plan. Attachment K provides their complete analysis.

As part of the subject application, the applicant provided a narrative and fiscal analysis found in Attachment E to this staff report.

The original approval in 1997, which included 5,300 dwelling units, was found consistent with the Lee County Comprehensive Plan, including the Planned Development District Option (PDDO) found in former Objective 1.8. Staff has attached (Attachment C) the May, 1997 Lee Plan title cover, chronology of amendments, and former Objective 1.8 with related Policies.

On May 27, 1998, the Board amended the Lee Plan approving PAT 96/21 deleting the PDDO and attendant policies from the Lee Plan.

In 2002, amendments of the DRI and MPD zoning (DRI2001-00006 and DCI2001-00043) were reviewed and found consistent with Lee Plan and PDDO. These applications sought to increase retail/service/office floor area in the Town Center from 100,000 square feet to 120,000 square feet; decrease the total number of dwelling units from 5,200 to 3,600; revise the single family and multiple family approved dwelling unit mix; and to amend various sections of Condition II.E. pertaining to Transportation.

When these 2002 amendments were considered, Lee County staff noted that the PDDO option had been deleted in 1988, and the proposed reduction in intensity was still consistent with the former Objective 1.8. The applicant had undertaken an analysis that

demonstrated the reduction in the number of residential units and increase in commercial square footage did comply with the former Objective of the Lee Plan.

Planning Community Map and Allocation Table
The subject property is within the Estero Planning Community. The Planning Division notes that within the Estero Planning Community a total of 635 acres of Rural land is allocated for residential land use. Currently, 538 acres has been developed, leaving 97 acres left available for residential development. Since the site is only 38 acres, there is currently enough land left in the allocations to allow for development.

Smart Growth Principles
Staff has reviewed the application with the Smart Growth principles. The overall Brooks development consists of a mix of residential, retail, and office development. Compact site planning and development has been used to maintain open space and providing community elements for the use of all residents in the community. The overall project has a number of housing choices developed within the community. Individually, each neighborhood within The Brooks is walkable. Also sidewalks are provided along Coconut Road and Three Oaks Parkway. In summary, staff finds that the existing development and the future development of the 38 acre tract will comply with the Smart Growth principles.

Neighborhood Compatibility
The development of the proposed tract with any one or combination of existing allowed dwelling unit types will be compatible with the surrounding land uses. Also existing landscaped and walled berms to the north and south separating this tract from the other existing tracts will ensure that the development of this site is compatible with the surrounding land uses.

Environmental Issues
The Division of Environmental Sciences (ES) staff has reviewed (see Attachment G) the proposed amendment to The Brooks Development of Regional Impact (DRI) and Mixed Planned Development (MPD). Provided all Vegetation and Wildlife/Wetlands conditions as required by the current approved DRI DO and environmental conditions as required by current zoning approvals remain in full force and in effect, ES staff recommends approval of the request with no additional conditions.

The application is to allow an increase in 200 residential units, removal of the proposed extension of Coconut Road, extension of the buildout date and termination date, and revise the Master Concept Plan (MCP) and Map H to remove 4.0 acres of recreational open space (RO) designation within the 38.1 acre Parcel Strap #11-47-25-00-00001.0000 and replace it with residential (R) designation.

The Brooks development requires a minimum of 743 acres of RO area and 419 acres of conservation area (CO). The proposed MCP and Map H continue to identify the required 419 acres of the conservation areas as per previous approvals. The Land Use Summary and Open Space tables on these Maps reflect a decrease in the RO area from 890 to 886 acres and an increase in the R area from 1,048 to 1,052 acres. This proposed 4.0 acres reduction in RO area does not reduce it below minimum 743 acre open space requirement. This 4.0 acre RO area was reserved for right-of-way for the potential I-75 interchange and would have not met the definition of open space as

required by the land development code (LDC) if developed as permitted. There is no objection to the 4.0 acre reduction of RO area.

Transportation
Lee County DOT has reviewed both requests and their complete report may be found as Attachment H to this staff report. Lee County DOT reports that they concur with the applicant's analysis that none of the roadway links are anticipated to be significantly and adversely impacted by the proposed development. They also report that they have no objection to the development of a single driveway connection to Coconut Road to serve as access to the development.

FEMA/Floodway
Lee County Natural Resources staff has reported that they have reviewed the application and they have no comments to provide related to these applications.

Availability of Utilities
The development currently is connected to existing public utilities in the area. Lee County records indicate the subject property is within the potable water and sanitary sewer franchise area for Bonita Springs Utilities. Other development in The Brooks is currently served by potable water and sanitary sewer.

Proximity to Adjoining Jurisdictions
The subject property is proximate to the City of Bonita Springs. Lee County staff has shared these applications with the City. They report that they have no objections to the proposed changes.

IV. **SUBJECT PROPERTY:**
The applicant indicates that STRAP number is: 11-47-25-00-00001.0000

V. **ATTACHMENTS:**
A. Map of surrounding zoning
B. Expert Witness Information
C. 1997 Lee Plan, Planned Development District Option (PDDO)
D. Estero Public Information Meeting information
E. Applicant's Lee Plan Narrative
F. Traffic Impact Statements for NOPC and Brooks Rezoning
G. Environmental Sciences memorandum
H Lee County DOT memoranda
I. Letter from the School District of Lee County
J. Agricultural Use affidavit, Schedule of Deviations, and Notice of Proposed Change Application
K. Division of Planning memorandum
L. DRAFT - Fifth Development Order Amendment State DRI # 07-9697-133

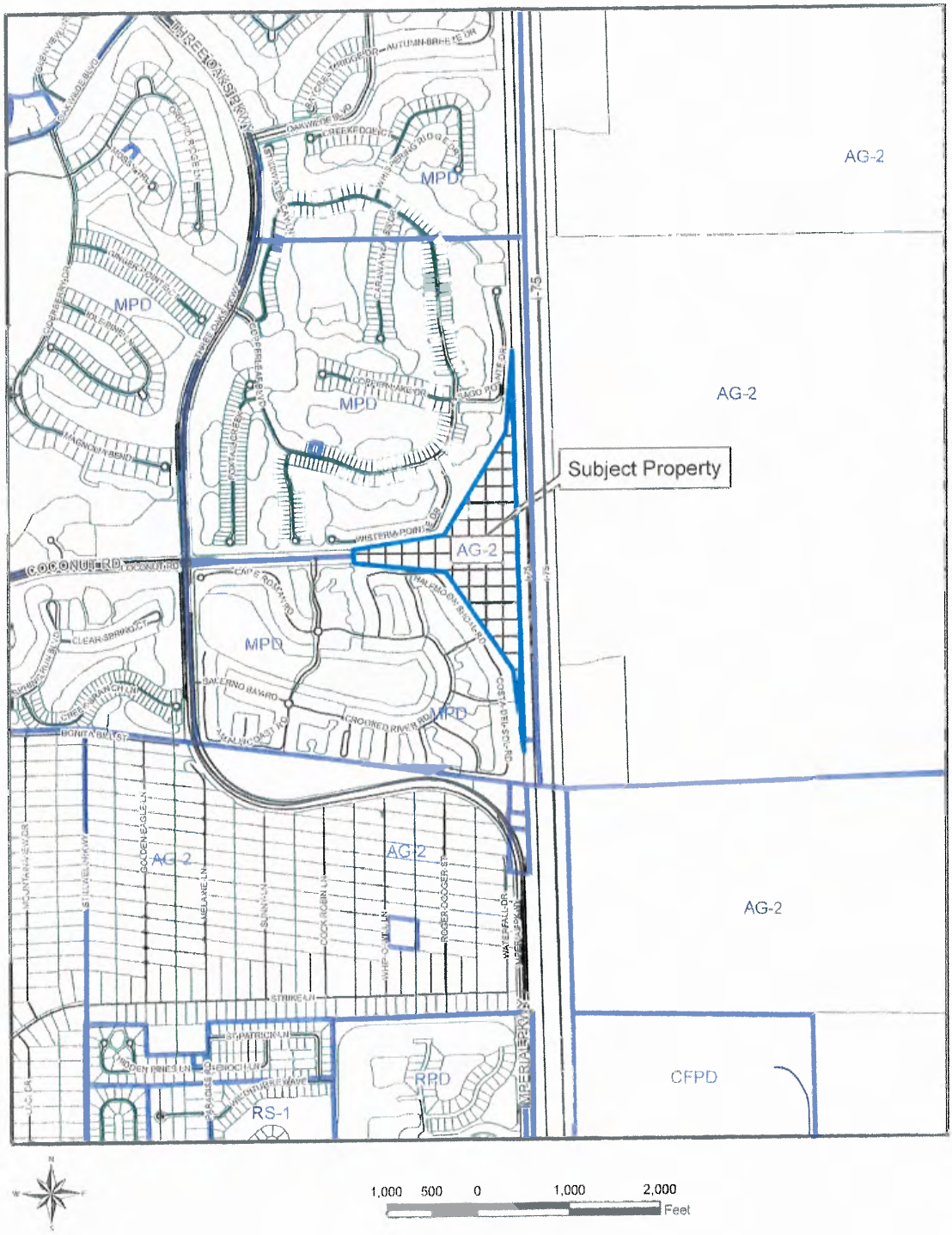
VI. **EXHIBITS:**
A. Legal Description and Sketch
B. Map H and Master Concept Plan

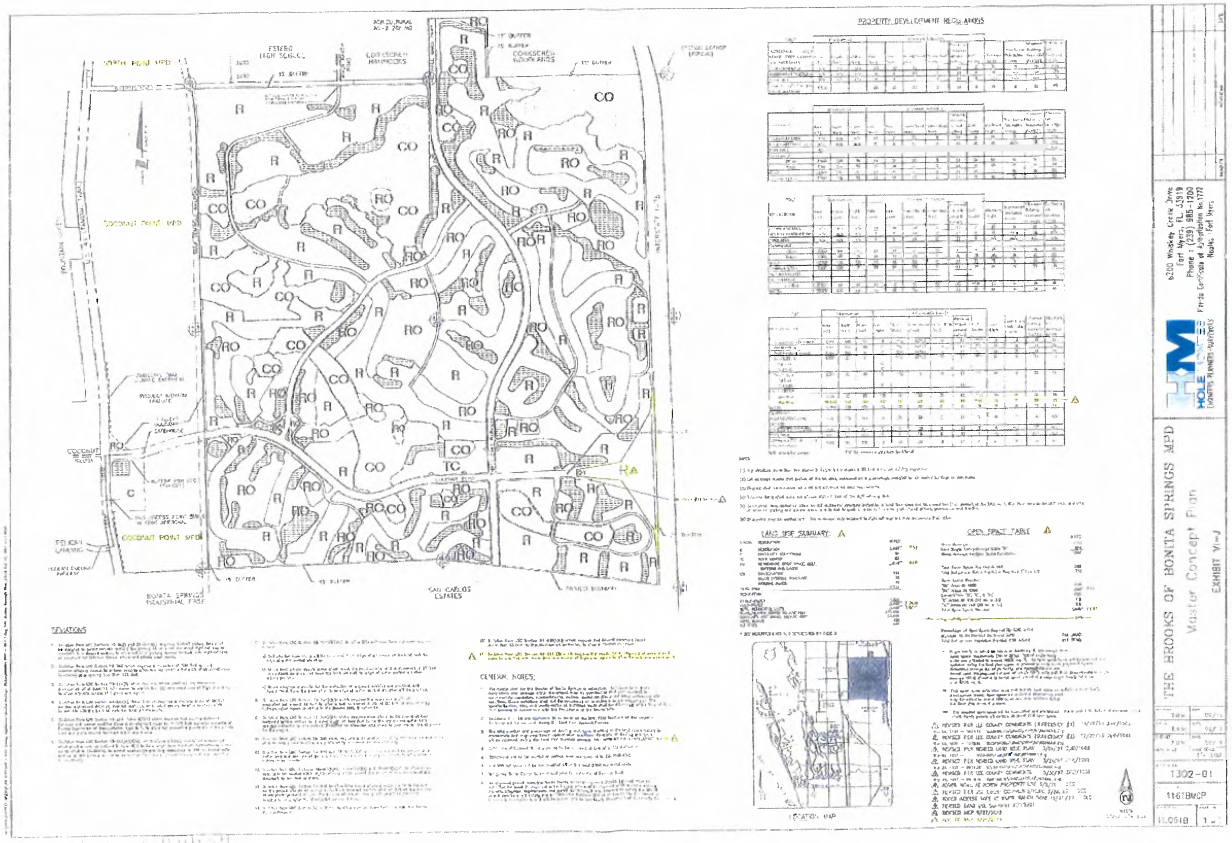
cc: Applicant
County Attorney
Zoning File

Attachment "A"
Zoning Map

DRI2012-00019 & DCI2012-00039

3/14/2013




PROPERTY DEVELOPMENT REGULATIONS
LAND USE SUMMARY
OPEN SPACE TABLE
GENERAL NOTES
LOCATION MAP
THE BROOKS OF BONITA SPRINGS MPD
Master Concept Plan
EXHIBIT V-J
1302-01

DRI 2012-00019

HOLE MONTES
ENGINEERS PLANNERS SURVEYORS
LANDSCAPE ARCHITECTS

RECEIVED

950 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2099

HM PROJECT #2011062
9/27/2012
REF. DWG. #B-6792
Page 1 of 1

LEGAL DESCRIPTION:

A PORTION OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°52'50" W., ALONG THE NORTH LINE OF SAID SECTION 11, FOR A DISTANCE OF 520.13 FEET TO A POINT ON THE WESTERLY RIGHT- OF-WAY LINE OF INTERSTATE HIGHWAY 75, A 410 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,238.06 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,748.29 FEET; THENCE CONTINUE S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2,651.71 FEET; THENCE RUN N.7°35'29 W. FOR A DISTANCE OF 905.00 FEET; THENCE RUN N.34°02'13" W. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 84°26'27" W. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N.01°33'57" W. FOR A DISTANCE OF 150.00 FEET; THENCE RUN N.81°18'33" E. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N.30°54'19" E. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N.04°27'35" E. FOR A DISTANCE OF 905.00 FEET TO THE POINT OF BEGINNING, CONTAINING 38.051 ACRES, MORE OR LESS.

BEARINGS REFER TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S.89°52'20" W.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy
THOMAS M. MURPHY

P.S.M. #5628
STATE OF FLORIDA

10-12-12
LEGAL

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Naples • Fort Myers

EXHIBIT A

MS. MONTGOMERY: It just so happens that the one picture to the north is the one you can see the roof. But when you go out there and you go on the property you're going to realize it's heavily buffered on both sides. And the entryway, you know, is going to be gated and secure. So it's not really going to have any noticeable impact on them whatsoever but it will be consistent in terms of what you see to the south.

THE HEARING EXAMINER: Okay, okay. All right. Whatever summation you would like to do.

MS. MONTGOMERY: Okay. Well, this is a fairly simple request. What we're doing is amending both Map H and the MCP to add 200 units. And as we have discussed, that is consistent with the PDDO option, and it does not create new or additional transportation impacts, so those 200 units don't have an impact. Now, I did hear the concern that they didn't want to add the units, but adding the units is necessary in order to actually develop the property. In Chip's staff report he indicates that there's 48 units left, but, you know, when most of the property in here was sold it was sold with an allocation of units so as not to get into any kind of legal entanglement with anybody else even if we don't think those can be developed anywhere. This is just the

new 200 units that will go on the subject property. And as we already talked about, we're going to do a minor extension of the build-out date. Map H and the Master Concept Plan has to be amended to remove that four-acre RO that was going to be right-of-way and make it all R. So that is, you know, essentially a minor change to both the Map H and to the Master Concept Plan. I agree with the staff, I do not think it is a substantial deviation. It doesn't trigger any of the substantial deviation thresholds. It is the use that actually is most compatible with what surrounds it. And as you hear from the community -- we tried to keep you from a long history, but there's a long history of this and what was originally envisioned, and I think the community has vigorously worked for a long period of time to not have the flyover and the interchange there. So if you're not going to have a flyover and interchange you get to, from a legal standpoint, what's the reasonable use of the property. Well, reasonable use of the property given its location and configuration and the adjacent uses is a similar use to what's there. And as you have heard, it is a developed area. It's an essentially built-out DRI and all the urban infrastructure that's required is there. And it was

~~FOURTH~~ FIFTH DEVELOPMENT ORDER AMENDMENT
FOR
THE BROOKS OF BONITA SPRINGS
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #07-9697-133

LET IT BE KNOWN THAT, PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, HEARD AT A PUBLIC HEARING CONVENED ON AUGUST 25, 1997, THE APPLICATION FOR DEVELOPMENT APPROVAL FOR THE BROOKS OF BONITA SPRINGS (HEREAFTER REFERRED TO AS THE BROOKS) DRI, A MIXED USE DEVELOPMENT IN LEE COUNTY WHICH INCLUDED APPROXIMATELY 2,492± ACRES TO BE DEVELOPED IN ACCORDANCE WITH THE APPLICATION SUBMITTED TO LEE COUNTY ON July 3, 1996 BY THE OWNER/APPLICANT, LONG BAY PARTNERS, L.L.C.

WHEREAS, the Brook DRI development order was amended: 1) on December 6, 1999 to increase the project acreage by 40 acres and to amend Map H, 2) on April 1, 2002 to reduce the number of dwelling units by 1,600 units and increase the commercial square footage by 20,000 square feet, ~~and~~ 3) on August 21, 2007 amending the Brooks of Bonita Springs DRI Development Order in compliance with House Bill 7203 to extend the phase-end, build out, and termination dates of the DRI Development Order, 4) on February 24, 2012 amending the Brooks of Bonita Springs DRI DO in compliance with Senate Bill 2156 to extend the phase-end, build out, and termination dates of the DRI DO; and

WHEREAS, an extension and tolling of time is permitted pursuant to Section 252.363, F.S. if the Governor declares a state of emergency. A tolling of time and extension of the build out date occurred in February of 2012, and an additional tolling will occur for the State of Emergency for Tropical Storm Debby and the subsequent extension of the State of Emergency, and for the State of Emergency for Tropical Storm Isaac,~~on June 2, 2011, House Bill 7207 (HB7207) was signed into law by the Governor of the State of Florida. HB7207, as codified in Chapter 2011-139, Laws of Florida, authorizes a four-year extension for all valid DRI Development Orders. At the option of the developer, all commencement, phase, buildout and expiration dates for valid Developments of Regional Impacts may be extended by four years regardless of previous extensions issued in the past~~, and,

~~WHEREAS, on July 6, 2011, Lee County received a request to extend the DRI compliance dates as contemplated under HB7207,~~; and,

WHEREAS, The Brooks of Bonita Springs DRI build out and termination dates in this Development Order will reflect the extensions and tolling of time that have occurred by operation of law. The statutory extensions and tolling are not and will not be considered in any present or future substantial deviation determinations ~~qualifies~~ for ~~the extension of the DRI compliance dates~~, and,

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ATTACHMENT L

Pg 1

adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program, unless an alternative concurrency system has been established for all or part of Lee County. The Brooks will comply with the County's concurrency management system in effect at the time.

5. Other

a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:

1) The Town Center may not exceed 120,000 square feet of office/retail/service gross floor area. ~~Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. When Three Oaks Parkway and Coconut Road are open to public traffic with traffic continuity from Corkscrew Road to Coconut Road and to U.S. 41, this condition will have been met.~~ The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and

2) The uses within the Town Center will be governed by the planned development zoning; and

3) Single use retail buildings may not exceed 30,000 square feet of gross leasable area. Single use office buildings are not subject to the 30,000 square foot limitation.

b. The Brooks includes a Community Commercial Center located at the southeast quadrant of the proposed intersection of the Coconut Road extension and U.S. 41. ~~The Community Commercial Center is limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet) until such time as the Coconut Road extension is designed and open as an arterial roadway~~.

c. The Developer will provide for efficient pedestrian and bicycle movement within The Brooks through the provision of a system of interconnecting sidewalks and bike paths that link the various pods of development.

d. If routes are established by Lee County, the Developer will accommodate local or express transit service with bus stops on public roadways and reasonably sized and located in commercial areas.

e. Parcel 4 was added to the DRI as part of the First Development Order Amendment. Parcel 4 includes a portion of the right-of-way for Three Oaks Parkway. Since the property was acquired subsequent to the approval of the Brooks DRI, the

Developer, at its option, can dedicate the property to the County for road impact fee credits or an offset against the proportionate share assessment. The property will be valued as of the day of dedication consistent with the terms of the Development Agreement.

F. VEGETATION AND WILDLIFE/WETLANDS

1. Where practical, and where consistent with the permit issued by the SFWMD, the Developer will construct shallow lakes with wetland plantings in an effort to create additional wildlife habitat value.

2. The Developer will incorporate a 24-inch-diameter wildlife crossing under each arterial roadway crossing of wetlands by placing a culvert adjacent to the upland/wetland boundary. In addition to the wildlife crossing, the Developer will place additional culvert(s) under the roadway crossing, as needed, to provide a hydraulic connection between wetlands pursuant to the SFWMD regulations. There is currently a lime rock farm road at the roadway crossing between Wetlands 8 and 10, and the Developer will install approximately .9 acres of wetland herbaceous plants and shrubs in this area. The plantings will extend from the current northern/southern wetland boundaries up to the edge of the new east/west road.

3. There will be a total of 419 conservation acres; post development.

4. Approximately 300 of the 419 conservation acres will be wetland enhancement. The Developer will implement the enhancement of wetlands in phases in accordance with the permits issued by the ACOE and SFWMD. A portion of the wetland enhancement is intended to mitigate the project's impacts to approximately 33.5 acres of ACOE and SFWMD jurisdictional wetlands.

5. The Developer will eradicate invasive exotic vegetation from the site on a phased basis, in accordance with the local Development Order approvals and ACOE and SFWMD permit requirements. Invasive exotics are those species identified in the Lee County Land Development Code and tropical soda apple (*Solanum viarum)*. Once the invasive exotics have been eradicated, the site must be maintained in accordance with County regulations to prevent the return of invasive exotics.

6. Where feasible, the surface water management system will incorporate the wetlands to assure appropriate hydroperiods and seasonal water elevations. Hydroperiods, seasonal water elevations, and the incorporation of wetlands into the surface water management system will be evaluated by the SFWMD during the review of the District permit application(s).

7. In addition to the conservation areas identified in the open space table, the Developer will, to the extent possible, retain the existing native plant communities located in the areas designated as open space on Map H. This condition will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

EXHIBIT 3

RESOLUTION NUMBER Z-13-009

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Oakbrook Properties, Inc., filed an application on behalf of the property owner, Funnel Land Investment, LLC., to amend the Brooks DRI Development Order; and

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner, Laura B. Belflower, was advertised and held on May 15, 2013; and

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case #DRI2012-00019 and DCI2012-00039 and recommended APPROVAL of the Request; and

WHEREAS, a second public hearing was advertised and held on August 19, 2013 before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request for:

1. DRI2012-00019: Notice of Proposed Change (NOPC) seeking:

   a. an increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;

   b. removal of DRI DO conditions regarding dedication of ROW from Three Oaks Parkway to The Brooks eastern property line for the extension of Coconut Road and overpass over I-75;

   c. extension of the DRI Buildout and Termination Dates;

   d. revisions to the DRI Map H to:

      i. eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential);

      ii. update Land Use Summary table per requests; and

081913Z

iii. update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

2. DCI2012-00039: Amend existing MPD zoning to:

a. increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;

b. revisions to the zoning Master Concept Plan (MCP) to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) eliminate MF (Mid-rise) from schedule of uses; iii) update Land Use Summary and Open Space Tables per requests; and iv) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

The property is located in the Rural Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

DRI2012-00019:

Subject to the provisions of the Fifth Amendment to the DRI Development Order attached hereto as Exhibit E.

DCI2012-00039:

1. Development of the subject property, along with all property within The Brooks, must be consistent with the original zoning approval adopted in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006. All Administrative Approvals granted after the adoption of Zoning Resolution Z-97-037, as amended, also remain in full force and effect, except the use of multi-family mid-rise is not a permitted use and this use is removed from the approved schedule of uses and property development regulations on the Master Concept Plan (MCP).

2. Development of the subject property (an irregularly shaped 38± acre parcel at the eastern end of Coconut Road) within the existing MPD is also subject to the following:

a. Master Concept Plan

The development of the subject 38± acre tract must be consistent with the one-page Master Concept Plan entitled "The Brooks of Bonita Springs MPD, Master Concept Plan," stamped received FEB 08, 2013, last revised 1/25/2013 (Exhibit C), except as modified by the conditions below. This development must comply with all requirements of the Lee County 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 MCP are subsequently pursued, appropriate approvals will be necessary.

b. Uses and Site Development Regulations

All uses and property development regulations may be found in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006.

c. Solid Waste Management

As part of any local development order approval for vertical development on the subject property, the development order plans must include facilities in compliance with LDC §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.

d. Agricultural Uses

Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:

i. Bona fide agricultural uses consisting of the raising and cultivation of hay for livestock, that was in existence on the subject 38± acre tract when the application for this project was filed, may continue in the areas depicted on Exhibit D until a local development order is approved for the area containing the agricultural uses.

ii. Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed, but those areas may not be cleared or expanded. Violations of this condition will require restoration in accordance with LDC §10-423. This prohibition of clearing or expansion of agricultural use is not intended to preclude County approved requests for removal of invasive exotic vegetation.

iii. Prior to issuance of a local development order for the portion that contains the agricultural use, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

(1) Termination of all agricultural use on the property included in the local development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the property that specifically provides:

(a) the date the agricultural uses ceased;

(b) the legal description of the property subject to the local development order approval;

(c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow agricultural uses on the property until the property is re-zoned to permit agricultural uses; and

(d) that the affidavit constitutes a covenant between the owner and the County that is binding on the owner, their assignees and successors in interest.

The affidavit must be properly recorded in the public records of the County at the owner's expense.

(2) Proof of termination of the agricultural tax exemption for the portion of the property included in the local development order application/approval. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

SECTION C. DEVIATIONS:

All deviations granted as part of the original and subsequent amending Zoning Resolutions and all deviations granted as part of all administrative actions referred to in Condition 1 above remain in full force and effect.

As part of this application, the applicant seeks to add the following deviation:

Deviation (1) seeks relief from the LDC §10-291(3) requirement to provide residential development of more than five acres must provide more than one means of ingress or egress for the development, to allow only one means of access to the development. This deviation is APPROVED.

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

Exhibit A: Legal description of the property
Exhibit B: Zoning Map (with the subject parcel indicated)
Exhibit C: The Master Concept Plan
Exhibit D: Bona Fide Agricultural Uses
Exhibit E: Fifth Amendment to the Brooks DRI Development Order

SECTION E. FINDINGS AND CONCLUSIONS:

For the DRI Amendment:

1. The requests, as conditioned, do not create new or additional unreviewed regional impacts, and do not constitute a Substantial Deviation, as that term is defined in §380.06(19) of the Florida Statutes.

2. The changes to the DRI Development Order to remove the requirements to dedicate the right-of-way for the extension of Coconut Road and to provide an approach for a flyover bridge are consistent with the requirements of the DRI, and do not trigger additional review, because the actual proportionate share for the development has been provided and those requirements have already been satisfied.

3. The amendments to the DRI Map H are not regionally impacting or significant enough to require additional DRI review.

4. The amendments to the DRI Development Order to extend the DRI build-out and termination dates do not require additional regional review because the extensions are less than the five year extension considered under §380.06(19), Florida Statutes, to not constitute a substantial deviation.

For the MPD Amendment

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.

2. The rezoning, as approved:

   a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;

   b. is consistent with the densities, intensities and general uses set forth in the Lee Plan;

   c. is compatible with existing or planned uses in the surrounding area;

   d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and

   e. will not adversely affect environmentally critical areas or natural resources.

3. The rezoning satisfies the following criteria:

   a. the proposed use or mix of uses is appropriate at the subject location;

   b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and

c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

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

5. The approved deviation, as conditioned, enhances achievement of the planned development objectives, and preserves and promotes the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

Commissioner Manning made a motion to adopt the foregoing resolution, seconded by Commissioner Hall. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of August, 2013.

ATTEST:
LINDA DOGGETT, CLERK

BY: Joyce Townsend
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:
Cecil L Pendergrass, Chair

Approved as to form by:

Michael D. Jacob
Assistant County Attorney
County Attorney's Office

BOARD OF COUNTY COMMISSIONERS SEAL LEE COUNTY, FLORIDA

RECEIVED
AUG 26-2013
mw
MINUTES OFFICE

Case No. DRI2012-00019 & DCI2012-00039

Z-13-009
Page 6 of 6

DRI 2012-00019

HOLE MONTES
ENGINEERS • PLANNERS • SURVEYORS
LANDSCAPE ARCHITECTS

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SEP 28 2012
COMMUNITY DEVELOPMENT

950 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2099

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CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy
THOMAS M. MURPHY

P.S.M. #5628
STATE OF FLORIDA

10.12.12
APPROVED
LEGAL
MH

EXHIBIT A

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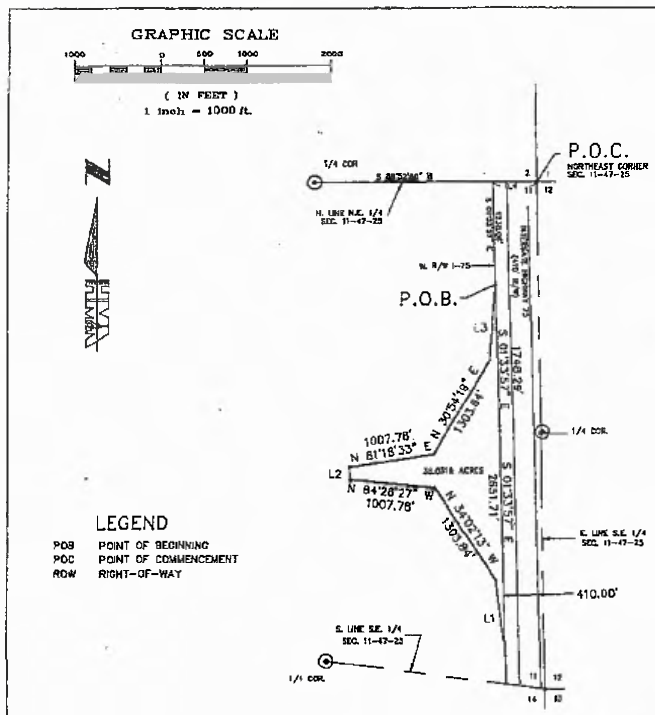
Naples • Fort Myers

DCI2012-00039
COMMUNITY DEVELOPMENT
FEB 08 2013



LEGEND

POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
ROW	RIGHT-OF-WAY

LINE	DIRECTION	DISTANCE
L1	N 07°35'29" W	905.00'
L2	N 01°33'57" W	150.00'
L3	N 04°27'35" E	905.00'
L4	S 89°52'50" W	520.13'

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THIS SKETCH IS NOT VALID WITHOUT SURVEYOR'S SIGNATURE AND RAISED SEAL.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

LEGAL DESCRIPTION COMPILED FROM SURVEYS PREPARED BY DENI AND ASSOCIATES ON 9/14/95 AND 12/24/86.

HOLE, MONTES & ASSOCIATES, INC.

BY JAMES B. BURNS P.L.S. #5090 STATE OF FLORIDA

NOT A SURVEY

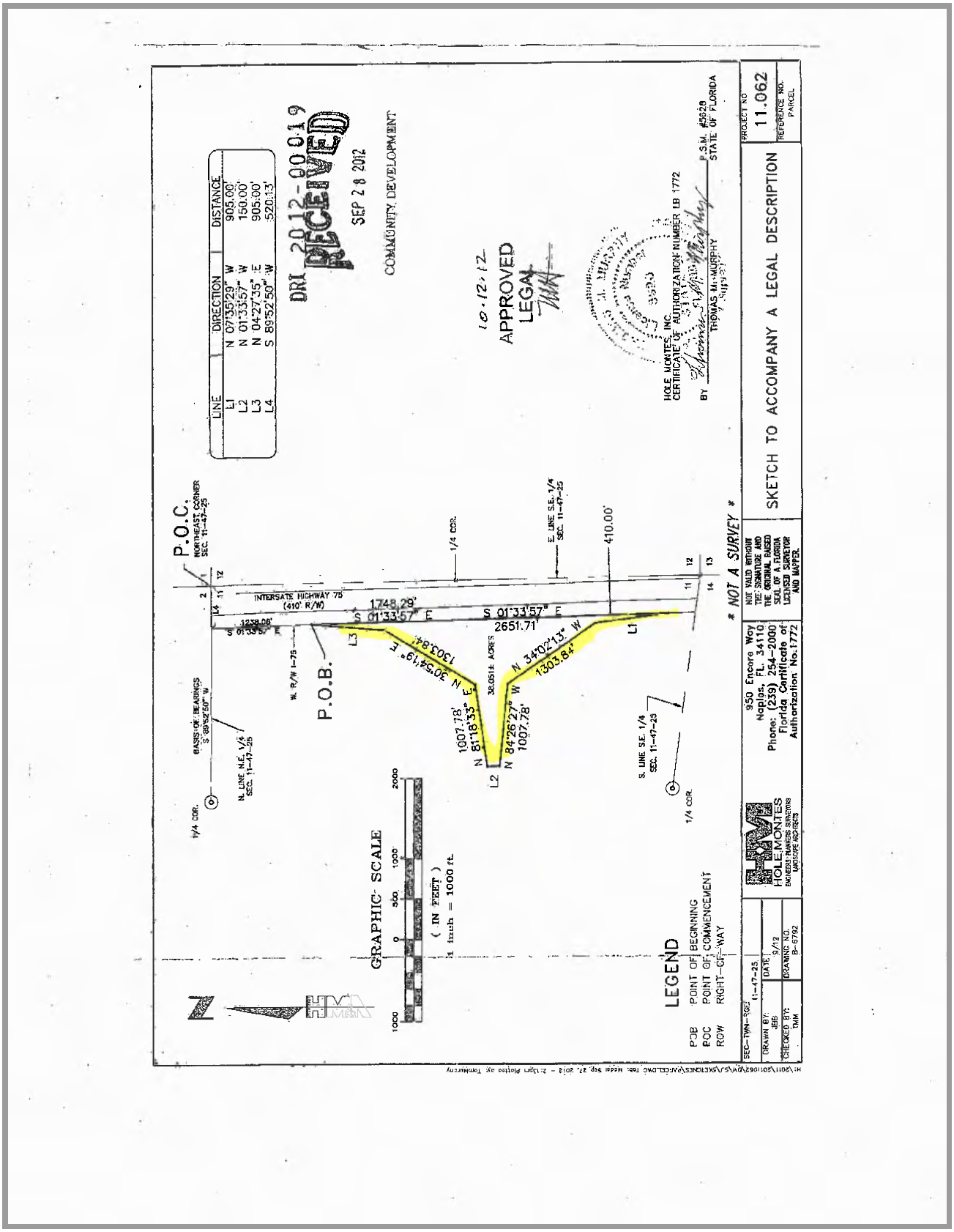
HOLE MONTES & ASSOCIATES
ENGINEERS / PLANNERS / SURVEYORS
10550 ABERNATHY STREET
BONITA SPRINGS, FLORIDA 33923
(941) 992-0995

SKETCH AND LEGAL DESCRIPTION
OF A PORTION OF SECTION 11,
TOWNSHIP 47 SOUTH, RANGE 25 EAST
LEE COUNTY FLORIDA

REVISION No.	DESCRIPTION	DATE
	REVISIONS	

DRAWN BY: J.B.B.	DATE 4/96	SECTION 11	PROJECT No. 95.85X
	F.B.	TOWNSHIP 47	
CHECKED BY: J.B.B.	PAGE	RANGE 25	DRAWING No. B-1795-1
	REFERENCE 9585XCHG		

Exh. "A"


LINE | DIRECTION | DISTANCE
L1 | N 07°35'29" W | 905.00'
L2 | N 01°33'57" W | 150.00'
L3 | N 04°27'35" E | 905.00'
L4 | S 89°52'50" W | 520.13'
DRI 2012-00019
RECEIVED
SEP 28 2012
COMMUNITY DEVELOPMENT
10-12-12
APPROVED
LEGAL
HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION NUMBER LB 1772
BY
THOMAS M. MURPHY
P.S.M. #5628
STATE OF FLORIDA
P.O.C.
NORTHEAST CORNER SEC. 11-47-25
INTERSATE HIGHWAY 75 (410' R/W)
1748.29'
S 01°33'57" E
S 01°33'57" E
2651.71'
1238.06'
S 01°33'57" E
W. R/W I-75
P.O.B.
L3
L4
L1
L2
1/4 COR.
E. LINE S.E. 1/4 SEC. 11-47-25
410.00'
BASIS OF BEARINGS S 89°52'50" W
N. LINE N.E. 1/4 SEC. 11-47-25
1/4 COR.
S. LINE S.E. 1/4 SEC. 11-47-25
1/4 COR.
N 30°54'19" E
1303.84'
N 34°02'13" W
1303.84'
1007.78'
N 81°18'33" E
38.051± ACRES
1007.78'
N 84°26'27" W
* NOT A SURVEY *
GRAPHIC SCALE
(IN FEET)
1 inch = 1000 ft.
1000 0 500 1000 2000
LEGEND
POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
ROW RIGHT-OF-WAY
SEC-TWN-RGE 11-47-25
DRAWN BY: JBB
DATE 9/12
CHECKED BY: TMM
DRAWING NO. B-6792
HOLE MONTES
ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS
950 Encore Way
Naples, FL 34110
Phone: (239) 254-2000
Florida Certificate of Authorization No.1772
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION
PROJECT NO 11.062
REFERENCE NO. PARCEL

DRI2012-00019 & DCI2012-00039

Zoning Map

3/14/2013

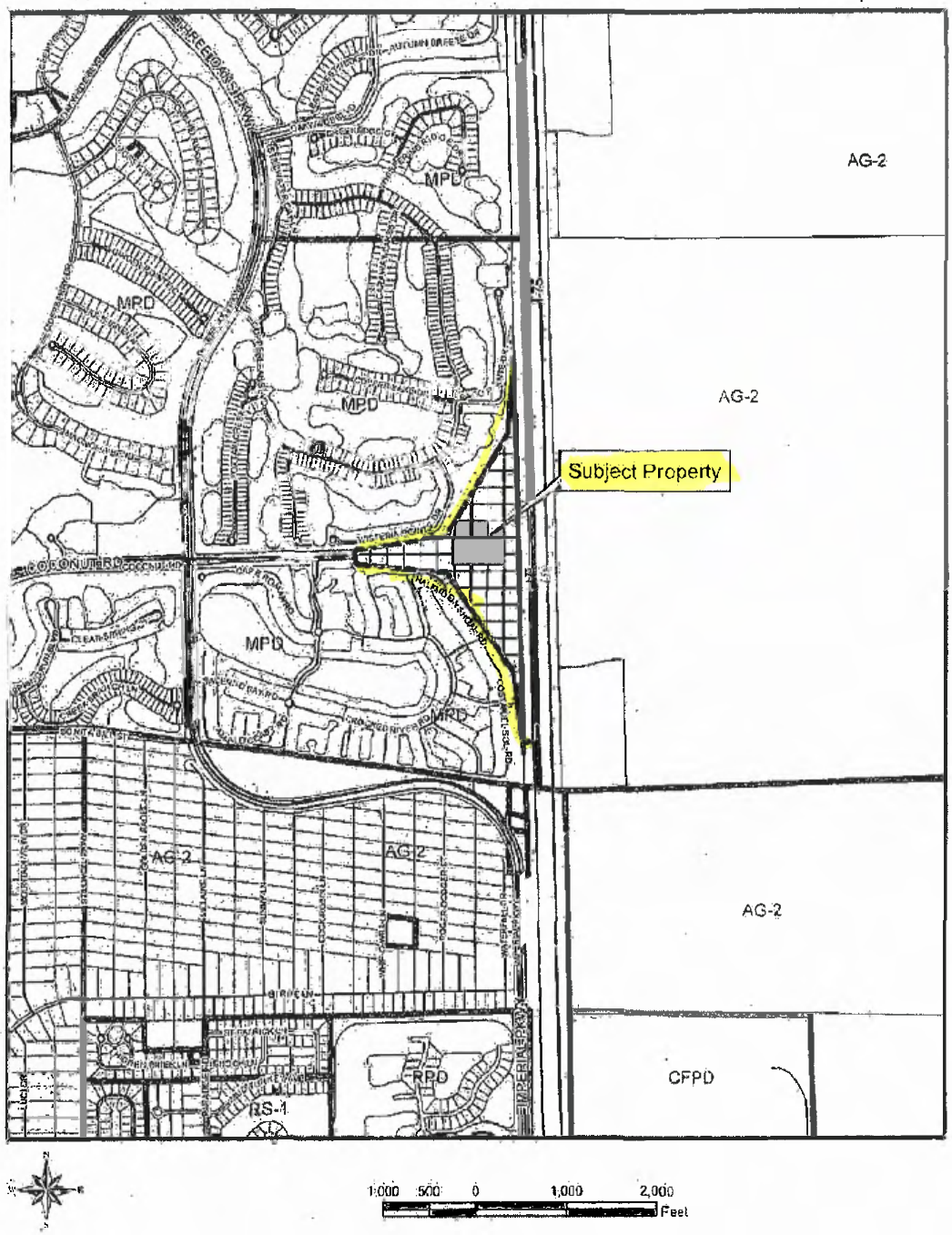
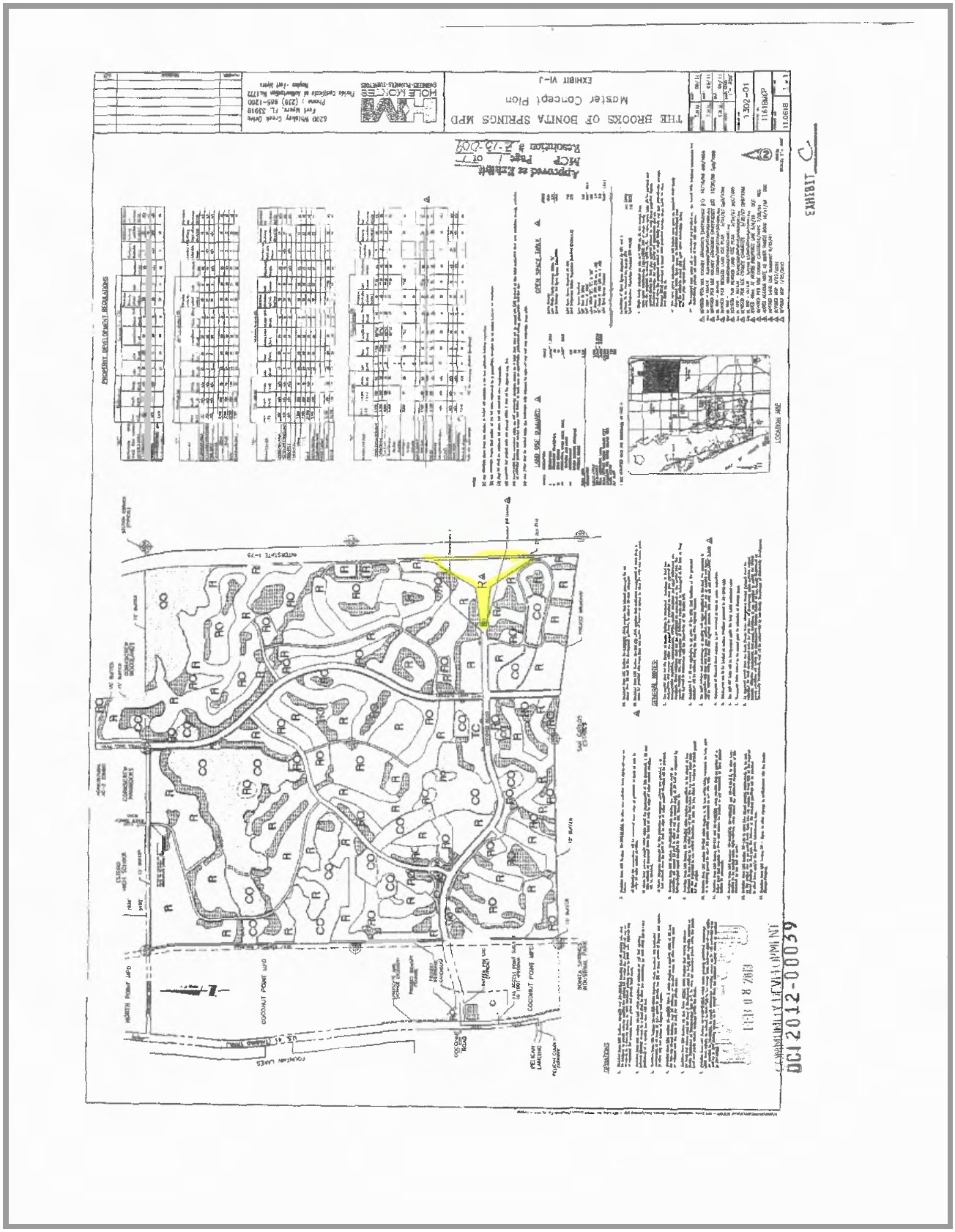


EXHIBIT B


THE BROOKS OF BONITA SPRINGS MPD
Master Concept Plan
EXHIBIT VI-J
HOLE MONTES
6200 Whitney Circle Drive
Fort Myers, FL 33919
Phone : (239) 985-1200
Florida Certificate of Authorization No.1772
Naples · Fort Myers
1302-01
11/13/04CP
11/05/18
1 = 1
Approved as Exhibit
MCP Page 1 of 7
Resolution # Z-13-009
EXHIBIT C
PROPERTY DEVELOPMENT REGULATIONS
OPEN SPACE TABLE
LAND USE SUMMARY
LOCATION MAP
GENERAL NOTES
OPERATIONS
INTERSTATE I-75
COCONUT POINT MPD
NORTH POINT MPD
US 41 (TAMIAMI TRAIL)
COCONUT ROAD
PELICAN LANDING
DCI2012-00039
OCT 08 2013

BONA FIDE AGRICULTURAL USE AT THE TIME
OF ZONING APPLICATION AFFIDAVIT

WHEREAS, Section 34-202(b)(7), Lee County Land Development Code, requires property located in an agricultural zoning district at the time a zoning application is filed to include an existing agricultural use affidavit; and

WHEREAS, the affidavit, pursuant to the Land Development Code, must identify the property in question with specificity, and the affidavit must identify whether or not a bona fide agricultural use is in existence on the property at the time the application was filed.

STATE OF FLORIDA
COUNTY OF LEE

BEFORE ME, the undersigned notary public on this 29th day of January, 2013, personally appeared **Ned Dewhirst**, who is personally known to me or who produced a Drivers License as identification and who, after first being duly sworn, deposes and says that:

1. The property that is subject of the zoning application is described more completely on the attached Exhibit "A".
2. That I am the authorized representative of the **Funnel Land Investment, LLC** that owns the property described in Exhibit "A".
3. The property in question has planned development zoning. The property was in agricultural use prior to the approval of the Brooks DRI and associated zoning.
4. The property is in agricultural use and the use is a legal non-conforming use.
5. The agricultural use of the subject property is the raising and cultivation of hay for livestock.
6. The agricultural activity is occurring entirely within the area identified on the attached Exhibit "A".
7. The affiant intends to continue the existing agricultural activity subsequent to the amendment to the zoning and the DRI DO.

FURTHER AFFIANT SAYETH NAUGHT.

FEB 08 2013
COMMUNITY DEVELOPMENT
DCI2012-00039

EXHIBIT D

Funnel Land Investment, LLC

By: _____
Name: Ned Dewhirst
Title: SR VP Oakbrook Properties, Inc.

SWORN TO and subscribed before me on the date and year first above written.

(Notary Seal)

Vicki Pierson
Signature of Notary Public

VICKI PIERSON
(Print, type of stamp commissioned name of Notary Public)

Commission No.

VICKI PIERSON
MY COMMISSION # EE 068963
EXPIRES: March 6, 2015
Bonded Thru Notary Public Underwriters

FEB 08 2012
COMMUNITY DEVELOPMENT

DCI 2012-00039

FIFTH DEVELOPMENT ORDER AMENDMENT
FOR
THE BROOKS OF BONITA SPRINGS
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #07-9697-133

LET IT BE KNOWN THAT, PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, HEARD AT A PUBLIC HEARING CONVENED ON AUGUST 25, 1997, THE APPLICATION FOR DEVELOPMENT APPROVAL FOR THE BROOKS OF BONITA SPRINGS (HEREAFTER REFERRED TO AS THE BROOKS) DRI, A MIXED USE DEVELOPMENT IN LEE COUNTY WHICH INCLUDED APPROXIMATELY 2,492± ACRES TO BE DEVELOPED IN ACCORDANCE WITH THE APPLICATION SUBMITTED TO LEE COUNTY ON July 3, 1996 BY THE OWNER/APPLICANT, LONG BAY PARTNERS, L.L.C.

WHEREAS, the Brook DRI development order was amended: 1) on December 6, 1999 to increase the project acreage by 40 acres and to amend Map H, 2) on April 1, 2002 to reduce the number of dwelling units by 1,600 units and increase the commercial square footage by 20,000 square feet, 3) on August 21, 2007 amending the Brooks of Bonita Springs DRI Development Order in compliance with House Bill 7203 to extend the phase-end, build out, and termination dates of the DRI Development Order, and 4) on February 24, 2012 amending the Brooks of Bonita Springs DRI DO in compliance with Senate Bill 2156 to extend the phase-end, build out, and termination dates of the DRI DO; and

WHEREAS, an extension and tolling of time is permitted pursuant to Section 252.363, F.S. if the Governor declares a state of emergency. A tolling of time and extension of the build out date occurred in February of 2012, and an additional tolling will occur for the State of Emergency for Tropical Storm Debby and the subsequent extension of the State of Emergency, and for the State of Emergency for Tropical Storm Isaac; and,

WHEREAS, The Brooks of Bonita Springs DRI build out and termination dates in this Development Order will reflect the extensions and tolling of time that have occurred by operation of law. The statutory extensions and tolling are not and will not be considered in any present or future substantial deviation determinations; and,

WHEREAS, on September 28, 2012, Lee County received a request to amend the Brooks DRI DO and Map H; and

WHEREAS, the Board of County Commissioners finds and determines that based on the evidence in the record, the proposed change does not constitute a substantial deviation for the original development order approvals warranting further DRI review.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Brooks is a master planned community located in unincorporated south Lee County west of I-75, north of San Carlos Estates, east of U.S. 41 and south of Corkscrew Road. The property includes 2,533± acres. The Brooks is a mixed use development that will consist of: ~~3,600~~ 3800 residential units, 150,000 square feet of commercial center retail/service/office gross floor area, 120,000 square feet of Town Center retail/service/office gross floor area, 120 hotel units, and a maximum of 55,000 square feet of gross floor area of community facilities; the community facilities may include community association meeting space, education and training facilities oriented toward the residents' daily needs, dining, recreation, entertainment, civic and community uses. In addition, there will be ~~890~~ 886 acres of active and passive recreation areas that include open space, buffer, golf, tennis, swimming and lakes. At buildout, the development will provide approximately 419 acres of conservation lands (forested and open wetlands and wetland flow-way restoration) and 130 acres of internal and public arterial road rights-of-way.

The phasing schedule includes two 5-year phases. Site preparation will commence in 1997. Residential construction is scheduled to commence in 1998. The buildout date is December 31, ~~2010~~ 2017.

Water supply and wastewater treatment will be provided by Bonita Springs Utilities, Inc.

B. The factual findings, conclusions of law, conditions and other terms of this Development Order apply to the property described more completely below:

PARCEL 1

A PORTION OF THE SOUTH HALF OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN N.00°57'23"W., ALONG THE EAST LINE OF SAID SECTION 9, FOR A DISTANCE OF 2542.33 FEET; THENCE RUN S.88°02'34"W. FOR A DISTANCE OF 1221.61 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE N.00°15'56"W. FOR A DISTANCE OF 47.18 TO A POINT ON A NON-TANGENTIAL CURVE AND THE SOUTH RIGHT-OF-WAY LINE OF COCONUT ROAD; THENCE ALONG SAID RIGHT-OF-WAY AND CURVE, CONCAVE NORTHERLY; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 2024.96 FEET, THROUGH A CENTRAL ANGLE OF 08°29'00", SUBTENDED BY A CHORD OF 299.55 FEET AT A BEARING OF S.83°48'03"W., FOR A DISTANCE OF 299.82 FEET; THENCE RUN

S88°02'34"W, ALONG THE SOUTH RIGHT-OF-WAY OF COCONUT ROAD FOR A DISTANCE OF 452.27' TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 (STATE ROAD NO. 45, A 200 FOOT RIGHT-OF-WAY); THENCE RUN S.00°15'56"E., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 577.74 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE EASTERLY; THENCE RUN SOUTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 5605.39 FEET, THROUGH A CENTRAL ANGLE OF 06°12'58", SUBTENDED BY A CHORD OF 607.83 FEET AT A BEARING OF S.03°22'24"E., FOR A DISTANCE OF 608.13 FEET; THENCE RUN N.88°07'51"E. FOR A DISTANCE OF 747.23 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENTIAL CIRCULAR CURVE, CONCAVE EASTERLY; WHOSE RADIUS POINT BEARS N.82°31'42"E. A DISTANCE OF 3909.60 FEET THEREFROM; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 3909.60 FEET, THROUGH A CENTRAL ANGLE OF 08°29'31", SUBTENDED BY A CHORD OF 578.92 FEET AT A BEARING OF N.03°13'32"W., FOR A DISTANCE OF 579.45 FEET TO THE END OF SAID CURVE; THENCE RUN N.00°15'56"W. FOR A DISTANCE OF 583.09 FEET TO THE POINT OF BEGINNING. CONTAINING 20.43 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS, AND RESTRICTIONS OF RECORD.

BEARINGS BASED ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, AS BEING N.00°57'23"W.

NOTE: Based on Property Description provided by Stephen P. Erek, Professional Surveyor & Mapper, Wilson Miller Inc. dated 8/18/2001.

PARCEL 2

A PORTION OF THE NORTH HALF OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE RUN N.00°57'23"W. ALONG THE EAST LINE OF SAID SECTION 9, FOR 2542.33 FEET; THENCE LEAVING SAID EAST LINE OF SECTION 9, S.88°02'34"W., FOR OF 1221.61 FEET; THENCE CONTINUE, S.88°02'34"W. FOR 750.33 FEET TO THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 41 (STATE ROAD NO. 45, A 200' RIGHT-OF-WAY); THENCE N.00°15'56"W. FOR 175.08 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED, SAID

POINT ALSO BEING ON THE NORTH RIGHT-OF-WAY LINE OF COCONUT ROAD (A 150 FOOT ROAD RIGHT-OF-WAY) AS DESCRIBED IN OFFICIAL RECORD BOOK 3090, PAGE 729, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE CONTINUE N.00°15'56"W. FOR 440.00 FEET; THENCE S.46°02'16"E. FOR 577.45 FEET; THENCE S.01°57'26"E. FOR 25.00 FEET; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE S.88°02'34"W. FOR 414.72 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2.21 ACRES MORE OR LESS.
SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHEAST ¼ (QUARTER) OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING N.00°57'23"W.

NOTE: Based on Property Description provided by Stephen P. Erek, Professional Surveyor & Mapper, Wilson Miller Inc. dated 8/16/2001.

PARCEL 3

SECTIONS 2, 3, 10 AND 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST AND SECTION 35, TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

A PARCEL OF LAND LOCATED IN SECTIONS 2, 3, 10 AND 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA AND LOCATED IN SECTION 35, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.00°46'22"E. ALONG THE WEST LINE OF THE NORTHWEST ¼ OF SAID SECTION 3, FOR A DISTANCE OF 100.02' TO A POINT 100.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 3; THENCE RUN N.89°51'03"E. PARALLEL WITH THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 3, FOR A DISTANCE OF 23.35 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF WILLIAMS ROAD, A 100.00 FOOT RIGHT-OF-WAY, THE SAME BEING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE N.89°51'03"E., ALONG SAID PARALLEL LINE AND ALONG SAID SOUTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2623.11 FEET; THENCE RUN N.89°51'33"E. PARALLEL WITH THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3 AND ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 975.29 FEET; THENCE RUN N.00°08'27"W. ALONG SAID RIGHT-OF-WAY

LINE, FOR A DISTANCE OF 100.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3; THENCE RUN N.89°51'33"E. ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 3, FOR A DISTANCE OF 1664.48 FEET TO THE NORTHEAST CORNER OF SAID SECTION 3, THE SAME BEING THE NORTHWEST CORNER OF SECTION 2, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE RUN N.00°35'46"W. FOR A DISTANCE OF 1320.30 FEET; THENCE RUN N.89°55'37"E. FOR A DISTANCE OF 1317.26 FEET; THENCE RUN S.00°44'07"E. FOR A DISTANCE OF 1318.66 FEET; THENCE RUN N.89°51'16"E. ALONG THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 2, FOR A DISTANCE OF 1321.48 FEET; THENCE RUN N.89°50'12"E. ALONG THE NORTH LINE OF THE NORTHEAST ¼ OF SAID SECTION 2, FOR A DISTANCE OF 2026.48 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE 75, A 410 FOOT RIGHT-OF-WAY, THE SAME BEING A POINT ON A CIRCULAR CURVE CONCAVE WESTERLY, WHOSE RADIUS POINT BEARS S.79°55'57"W. A DISTANCE OF 5567.58 FEET THEREFROM; THENCE RUN SOUTHERLY, ALONG SAID RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 5567.58 FEET, THROUGH A CENTRAL ANGLE OF 08°30'06", SUBTENDED BY A CHORD OF 825.37 FEET AT A BEARING OF S.05°49'00"E., FOR A DISTANCE OF 826.13 FEET TO THE END OF SAID CURVE; THENCE RUN S.01°33'57"E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 4512.58 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST ¼ OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE CONTINUE S.01°33'57"E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 5977.28 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 11; THENCE RUN N.82°32'38"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 11, FOR A DISTANCE OF 2165.51 FEET; THENCE RUN N.82°29'27"W., ALONG THE SOUTH LINE OF THE SOUTHWEST ¼ OF SECTION 11, FOR A DISTANCE OF 2698.44 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 11, THE SAME BEING THE SOUTHEAST CORNER OF SECTION 10, TOWNSHIP 47 SOUTH, RANGE 25 EAST; THENCE RUN S.88°50'19"W., ALONG THE SOUTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 10, FOR A DISTANCE OF 2664.18 FEET; THENCE RUN S.88°50'37"W., ALONG THE SOUTH LINE OF THE SOUTHWEST ¼ OF SAID SECTION 10, FOR A DISTANCE OF 2540.14 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY, A 130.00 FOOT RIGHT-OF-WAY; THENCE RUN N.00°59'47"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 5341.51 FEET TO A POINT ON THE NORTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 10; THENCE CONTINUE N.00°59'47"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2692.12 FEET; THENCE RUN N.00°56'59"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A

DISTANCE OF 1590.73 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE, CONCAVE WESTERLY; THENCE RUN NORTHERLY, ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING RADIUS OF 5771.38 FEET, THROUGH A CENTRAL ANGLE OF 09°31'27", SUBTENDED BY A CHORD OF 958.27 FEET AT A BEARING OF N.05°42'43"W., FOR A DISTANCE OF 959.37 FEET TO THE END OF SAID CURVE; THENCE RUN N.10°28'26"W., ALONG SAID EASTERLY RIGHT-OF-WAY LINE, FOR A DISTANCE OF 77.72 FEET TO THE POINT OF BEGINNING.

CONTAINING 2510.333 ACRES, MORE OR LESS.
SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
BEARINGS REFER TO THE NORTH LINE OF THE NORTHWEST ¼ OF SECTION 3, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING N.89°51'03"E.

NOTE: Based on Property Description provided by Stephen P. Erek, Professional Surveyor & Mapper, Wilson Miller Inc. dated 10/13/2001.

C. The property was zoned AG-2, and coincident with the approval of this Development Order the property will be rezoned to Mixed Use Planned Development. The property is currently in active agricultural use. Agricultural uses may continue on those portions of the site not under development.

D. The Application for Development Approval (ADA) for The Brooks is consistent with the requirements of Section 380.06, Florida Statutes, and was found sufficient by the Southwest Florida Regional Planning Council on March 20, 1997.

E. The development is not located in an area designated as an Area of Critical State Concern under the provision of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development plan. The development is consistent with the State Comprehensive Plan if developed in accordance with the conditions set forth herein.

G. The proposed Development Order Amendment has been reviewed by the Southwest Florida Regional Planning Council (SWFRPC) and is the subject of the report and recommendations adopted by that body and subsequently forwarded to Lee County pursuant to Section 380.06, Florida Statutes. The development, as proposed in the ADA, subsequently amended by Notice of Proposed Change and modified by this Development Order Amendment, is generally consistent with the report and recommendations of the SWFRPC pursuant to Section 380.06(11), Florida Statutes.

H. The development is located in the Rural, Wetlands, and Suburban future land use categories and the development, as proposed, is consistent with the Planned Development District Option set forth in the Lee Plan for the Rural future land use category. The project, as conditioned herein, is consistent with the Lee County Comprehensive Plan, and Lee County's Land Development Code.

I. The conditions set forth below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

J. The build out date of 2007 set forth in the Second DRI Development Order was extended by operation of law by three years to December 31, 2010.

K. HB7207 was signed into law by the Governor of the State of Florida on June 2, 2011 (as codified in Chapter 2011-139, Laws of Florida) and authorized a four year extension for all valid DRI Development Orders. At the option of the developer, all commencement, phase, buildout and expiration dates for valid Developments of Regional Impacts may be extended by four years regardless of previous extensions issued in the past.

In accord with HB 7207, The Brooks of Bonita Springs DRI qualified for the extension of the DRI's compliance dates. Under HB 7207, the extension of the DRI's compliance dates does not constitute a substantial deviation of the original development order approvals warranting further DRI review.

In accord with Section 252.363, F.S. the time was tolled and the build out time was extended by operation of law for three different State of Emergency Declaration~~-~~. Therefore the build out date of 2010 was extended by operation of law and it is now March 2, 2017.

II. ACTION ON THE REQUEST AND THE CONDITIONS OF APPROVAL.

NOW THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting duly advertised, constituted and assembled ~~November 29, 2011~~August 19, 2013, that the Development of Regional Impact request for Amendment to the DRI DO ~~pursuant to HB7207~~ submitted by ~~Long Bay Partners, L.L.C.~~ Oakbrook Properties, Inc., for the project known as The Brooks of Bonita Springs (The Brooks), originally approved August 25, 1997, is hereby amended subject to the following conditions, restrictions and limitations. For the purpose of this Development Order, the term "Developer" refers to Long Bay Partners, L.L.C., and includes all of its successors or assigns, and all references to County Ordinances or other regulations, includes future amendments.

A. AFFORDABLE HOUSING

1. The Developer surveyed whether there was a sufficient number of housing units available to meet the demands of 747 employees at buildout (~~2014~~ 2017). Based on this survey, found to be sufficient, The Brooks has no regionally significant impact on low and moderate income housing.

2. If the Developer files a Notice of Proposed Change that extends the buildout date of the DRI beyond ~~2014~~ 2017~~,~~ the Developer must reanalyze its impacts on low and moderate income housing, if the development subject to the extension includes commercial development. The analysis is limited to the low and moderate housing impact of the total commercial development. If the analysis indicates that there will be regionally significant impacts, the Developer must mitigate those impacts in accordance with applicable regulations.

B. ENERGY

The Developer will utilize the energy conservation measures outlined in the ADA.

C. HURRICANE PREPAREDNESS

1. The Brooks, at its current elevation, is located in a Category Three area pursuant to the SLOSH model. This is not a high hazard hurricane impact area, and the impacts to hotel/motels are only considered in high hazard areas. The DRI is in a "Hurricane Vulnerability Zone" (9J-2.0256(2)(c), F.A.C.). Due to the project's location in a category three area of Lee County, the Developer has the option of mitigating its impacts under Rule 9J-2.0256, F.A.C., or Rule 9J-2.0257, F.A.C. The Developer has chosen to mitigate the regional hurricane preparedness impacts by selecting the option of elevating the first floor of all residential units above the category three flood level, pursuant to Rule 9J-2.0257(6)(b), F.A.C. The units must be elevated at or above 16.6 feet, NGVD, the level designated for a Category Three area. If they are not so elevated, the Developer may not use the 9J-2.0257, F.A.C. option to mitigate its impacts. If they are elevated at or above 16.6 feet, NGVD, they will be treated as if they were in a Category Four flood level, and they will be considered to be outside of the hurricane vulnerability zone as defined by Rule 9J-2.0256, F.A.C.

2. The Developer will provide 20,000 square feet of on-site shelter space. Ten thousand square feet will be constructed in Phase I, and ten thousand square feet will be constructed in Phase II. The on-site shelter space will be used exclusively by residents of The Brooks and their guests, and they will be located within the club house(s) and must meet the following criteria:

(a) All shelter buildings must be elevated at or above the 16.6 feet, NGVD;

(b) All shelter buildings must be constructed in accordance with the requirements in Rule 9J-2.0257(6)(e), F.A.C., to withstand winds of at least one hundred twenty (120) miles per hour;

(c) All windows in shelter buildings must be shuttered;

(d) All shelter buildings must be equipped with an emergency power generator with adequate capacity to handle the following:

(1) ventilation fans;

(2) emergency lighting;

(3) life safety equipment (i.e., intercom, fire and smoke alarms);

(4) refrigeration and cooking equipment;

(e) All shelters must have an auxiliary potable water supply.

3. Pursuant to Policy 79.2.2 of the Lee Plan, all landowners within The Brooks must pay an All-Hazards Tax for hurricane shelters.

4. The Developer must establish a public information program with the Property Owners' Association for the purpose of educating the development's residents regarding the potential hurricane threat. The Developer will do the following:

a. The various Property Owners' Associations must host an annual educational seminar, and will be responsible for obtaining the place for the seminar and for the provision of invitations to the homeowners. The time will be coordinated with the Lee County Emergency Services staff, who will provide the education and information at the program. The public information program will advise the residents of the location of The Brooks in a Special Hurricane Preparedness District and of the difficulty of evacuation in the event of an impending hurricane, the availability and location of hurricane shelters and the identification of steps to minimize property damage and to protect human life. Lee County Emergency Services staff will provide additional information regarding natural disasters if appropriate.

b. The Developer will also provide one, or more, coordinated preparedness plan(s) for the residential areas within the DRI. The hurricane preparedness plan(s) must address and include: a) operational procedures for the warning and notification of residents and visitors prior to and during a hurricane watch and warning period; b) a public information program, described above; c) identification of who is

responsible for the implementation of the approved evacuation plan; d) identification of the County's hurricane evacuation routes and shelters; and e) how the private security force, if any, will be integrated with the local Sheriff's personnel and the Division of Public Safety. The preparedness plan(s) must be developed in cooperation with the Lee County Emergency Management officials and must be found sufficient by those officials prior to the issuance of the first residential certificate of occupancy. Lee County Emergency Management Services will review the preparedness plan(s), and any revisions or addendums thereto, and will provide written objections or a verification of approval within fifteen (15) days.

5. Prior to the issuance of a local Development Order, the Developer of the hotel must submit a hurricane preparedness plan for the hotel to Lee County. Prior to the issuance of the Certificate of Occupancy for the hotel, the written preparedness plan(s) must be approved by Lee County Emergency Management. Lee County Emergency Management will review the preparedness plan(s), and any resubmittals and addendums, and will provide written comments that identify the deficiencies in the plan(s), resubmittals or addenda within 15 days. If no deficiencies are identified, Lee County Emergency Management will issue a written approval within 15 days.

6. When property is conveyed, the Developer must include a disclosure statement in the form of a covenant in the deed which states that the property is located in a hurricane vulnerability zone, that the hurricane evacuation clearance time for the County is high, and that shelter space is limited.

D. STORMWATER MANAGEMENT

1. The Developer must modify the existing agricultural construction and operation permit (#36-00288-5), to address the construction and operation of the surface water management system for the development approved by this Development Order and the project's proposed impacts to isolated wetlands, "waters of the state" and "other surface waters." Review and approval of the application will be in accordance with Chapter 40E, F.A.C. and the South Florida Water Management District (SFWMD) Basis of Review. The Developer will provide the County with copies of the modified permit.

2. The Developer must also obtain a SFWMD water use permit for certain dewatering activities proposed for the construction of project lakes, roads and building foundations. The Developer will provide the County with copies of the water use permit.

3. If needed, the Developer must obtain a consumptive use permit, in accordance with Chapter 40E, F.A.C., and the SFWMD Basis of Review. The Developer will provide the County with copies of the consumptive use permit.

4. At the time of permit application, the Developer and the SFWMD will determine whether the surface water management system must comply with discharge criteria for Outstanding Florida Waters.

5. An analysis of the method and routes proposed for off-site discharges will be required at the time of permit application. The analysis must include particular emphasis on control elevations, on-site storage, delineation of watershed boundaries, and the adequacy of off-site conveyances to accommodate the anticipated discharges from the project site. The analysis must include construction level detail. In order for District staff to determine whether the proposed discharges to Outstanding Florida Waters are classified as "direct" or "indirect," the Developer must submit construction level drawings showing the proposed conveyance methods at the time of permit application.

6. The Developer will establish a legal operating entity in accordance with the SFWMD Basis of Review and Lee County Land Development Code (LDC), to maintain all internal storm water management lakes, ditches and wetlands. Easements, common areas or other legal mechanisms may be utilized to ensure there is sufficient access to the storm water management areas.

7. The Developer must remove all silt barriers, hay bales, anchor soil, and accumulated silt, upon completion of construction, and stabilization of slide slopes.

8. Where applicable, the final stormwater management plan must consider measures to reduce runoff rates and volumes, including, but not limited to, fixed control structures, perforated pipes, and grass swale conveyances. The Developer must use swales rather than closed systems whenever practical.

9. On-site stormwater management lakes must include littoral zones. The location and extent of the littoral zones must be consistent with the requirements set forth in the surface water management permit issued by the SFWMD, as well as the local Development Order issued by Lee County. The SFWMD Basis of Review and County planned development resolution will dictate the required type, massing, and survival rate of vegetation in the littoral zones.

10. The Developer must conduct annual inspections of the Master Stormwater Management System and the on-site preserved/enhanced wetland areas to ensure that these areas are maintained in keeping with the final approved designs, and that the water management system is capable of accomplishing the level of stormwater storage and treatment for which it was intended.

11. If the stormwater management system impacts the habitats of state or federally listed plant and animal habitats on-site, these impacts will be evaluated during the review of any surface water management or ERP permit issued by the SFWMD, any dredge and fill permit issued by the Army Corps of Engineers (ACOE) and any local Development Order issued by Lee County. Impacts will be evaluated and mitigated in accordance with ACOE, SFWMD/DEP, and Lee County regulations.

12. The Developer, the UCDD, or the successors and assigns, must regularly vacuum sweep all privately owned internal streets and parking areas. The Developer will also encourage private parcel owners to regularly vacuum sweep their respective streets and parking areas.

13. The Developer must provide dry detention or retention pretreatment in the areas adjacent to commercial uses unless the Developer can provide reasonable assurances to the SFWMD that hazardous materials will not enter the project's surface water management system. The assurances may be in the form of deed restrictions, recorded lease agreements, or other legal instrument acceptable to SFWMD and the County.

E. TRANSPORTATION

1. Significant Impact

a. The original traffic impact assessment for the project assumed the development parameters set forth below:

	Phase I (2002)	Buildout (2007)[1]
Residential		
--Single Family	600 D.U.	1,140 D.U.
--Multi Family/Single Family-Attached	2,000 D.U.	4,060 D.U.
Non-Residential		
--Service/Retail/Office (Town Center)	10,000 sq. ft.	100,000 sq. ft.
--Community Use (Town Center)	15,000 sq. ft.	50,000 sq. ft.
--General Retail (Community Center)	100,000 sq. ft.	150,000 sq. ft.
--Community Use (Community Center)	5,000 sq. ft.	5,000 sq. ft.
--Hotel	0 Rooms	120 Rooms
--Golf Course	36 Holes	72 Holes

Based on the ~~proposed~~ Second DRI Development Order Amendment, the revised development parameters at buildout will be as follows:

Summary Development Parameters - Buildout

[1] The build out date was extended by operation of law by three years to December 31, 2010 on August 21, 2007 and another four years pursuant to HB7207 under the Fourth Amendment to the DRI DO. The build out date was also extended thru SB 2156 and State of Emergency for Tropical Storms Debbie and Isaac to March 2, 2017. The applicant submitted a traffic analysis (that included an additional 200 MF units and a 12/31/17 build out scenario) which demonstrated that the DRI will not significantly or adversely impact any relevant road segments. Based on this analysis, concurrency vesting rights for the additional residential units (3800 total SF/MF) are extended to December 31, 2017. ~~However, the Transportation Impact Assessment assumed build out in 2007. For this reason, the build out date was not altered in this paragraph.~~

Land Use	~~Proposed~~ DRI
Residential	
Single Family	1,600 d.u.
Multi Family	2,000 d.u.
Total	3,600 d.u.
Town Center	
Service/Retail/Office	120,000 sq. ft.
Community Use	50,000 sq. ft.
Total	170,000 sq. ft.
Community Center	
Retail	150,000 sq. ft.
Office	5,000 sq. ft.
Total	155,000 sq. ft.
Hotel	120 rooms
Golf Course	72 holes

b. The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at project Build out (2007)[2]. The Brooks DRI is projected to significantly and adversely impact the following roadways and intersections:

Roadways:

	Needed Improvement
Corkscrew Road	
--Sandy Lane to Three Oaks Parkway	Widen to 4 lanes
--Three Oaks Parkway to I-75	Widen to 4 lanes
U.S. 41	
--Bonita Beach Road to W. Terry Street	Widen to 6 lanes
--Corkscrew Road to Koreshan Boulevard	Widen to 6 lanes
--Koreshan Boulevard to San Carlos Boulevard	Widen to 6 lanes
--San Carlos Boulevard to Alico Road	Widen to 6 lanes

[2] The build out date was extended by operation of law by three years to December 31, 2010 on August 21, 2007 and another four years pursuant to HB7207 under the Fourth Amendment to the DRI DO. The build out date was also extended thru SB 2156 and State of Emergency for Tropical Storms Debbie and Isaac to March 2, 2017. The applicant submitted a traffic analysis (that included an additional 200 MF units and a 12/31/17 build out scenario) which demonstrated that the DRI will not significantly or adversely impact any relevant road segments. Based on this analysis, concurrency vesting rights for the additional residential units (3800 total SF/MF) are extended to December 31, 2017. ~~However, the initial Transportation Impact Assessment assumed build out in 2007. For this reason, the reference to the 2007 build out date was not altered in this paragraph~~.

--Alico Road to Island Park Road	6 lanes plus alternate facility*
--Island Park Road to Jamaica Bay West	6 lanes plus alternate facility*
--Jamaica Bay West to Six Mile Parkway	6 lanes plus alternate facility*
Bonita Beach Road	
--Imperial Street to I-75	Widen to 6 lanes

* *Metro Parkway Extension (6 lanes)*

Intersections:

US 41/Six Mile Cypress Parkway	Intersection Improvements
US 41/Island Park Road	Intersection Improvements
US 41/Alico Road	Intersection Improvements
US 41/San Carlos Boulevard	Intersection Improvements
US 41/Koreshan Boulevard	Intersection Improvements
US 41/Corkscrew Road	Intersection Improvements
US 41/Williams Road	Intersection Improvements
US 41/Coconut Road (Partially site-related)	Intersection Improvements
US 41/Old 41/Pelican Landing Parkway	Intersection Improvements
US 41/W. Terry Street	Intersection Improvements
US 41/Bonita Beach Road	Intersection Improvements
Corkscrew Road/Three Oaks Parkway	Intersection Improvements
Corkscrew Road/I-75 West Ramps	Intersection Improvements
Corkscrew Road/I-75 East Ramps	Intersection Improvements

2. Mitigation

a. The total proportionate share obligation to mitigate The Brooks DRI's transportation impacts on the non-site related roads and intersections set forth in Section E.1.b. above is estimated to be $9,198,000, and the total estimated road impact fees to be generated by the project are $7,863,240. To satisfy the proportionate share obligation, the developer must choose one of the two mitigation options identified below[3]. The Developer must select one mitigation option and notify the County in writing prior to the granting of the first building permit for the first permanent residential or commercial structure, except for the sales center. The selection of Option 2 must be accompanied by a Local Government Development Agreement pursuant to Section 163.3220, Florida Statutes, and Chapter 2, Article III of the Lee County Land Development Code. Once an option has been selected, any request to change the mitigation option, including changing from one option to the other, must be accompanied by the filing of a Notice of Proposed Change and an analysis as to whether the change constitutes a substantial deviation.

[3]The Developer chose mitigation option 2. A copy of the required Development Agreement is recorded in Lee County Public Official Records Book 3020, Page 2333.

b. Mitigation Option 1

1) Within 150 days of adoption of this DRI Development Order, but no later than January 1, 1998, the Developer must provide to the County a schedule for the dedication of certain right of way to the County. The schedule must reflect the Developer's acquisition of the property. Right of way to be dedicated includes the following: 150 feet of right-of-way for the extension of Coconut Road from U.S. 41 to ~~the eastern property line~~ Three Oaks Parkway, 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway, and 150 feet of right-of-way for the establishment of the Three Oaks Parkway extension from the south property line to the north property line, following the general alignments identified in the Master Plan (Map H attached Exhibit A). The actual alignments will need to be reviewed and approved by Lee County DOT prior to dedication. ~~The Developer must also dedicate the expanded right of way (3.5 acres) at the eastern property line to allow for an eventual Coconut Road overpass over I 75.~~ If the identified right-of-way is not provided as specified in the schedule, further building permits will be suspended until that dedication occurs.

Although the appraisals will be completed at the time of dedication, the value of the right-of-way will be based on its appraised value at the time of DRI approval, without the enhanced value created by DRI and zoning approval. The Developer's proposed mitigation plan dated April 22, 1997 estimates the value to be 80 cents per square foot. The value of the Coconut Road right-of-way will be based on the following:

a) U.S. 41 to Three Oaks Parkway, (9,000 ± feet), 80 feet non-creditable and 70 feet creditable.

b) Three Oaks Parkway to Southeast Parcel Entrance, (2,000± feet), 80 feet non-creditable and 70 feet creditable.

~~c) Southeast Parcel Entrance to I 75 (1,600± feet), 150 feet creditable.~~

~~d) I 75 overpass quadrants at a total of 3.5 acres, creditable.~~

Consistent with the Land Development Code, there will be no impact fee credits or credits against the proportionate share obligation for the non-creditable component of these right-of-way dedications. The 150-foot right-of-way dedicated for Three Oaks Parkway and the 100-foot right-of-way dedicated for Williams Road are fully creditable; any additional right-of-way required for site-related improvements, as determined by the Lee County Engineer, is not creditable.

2) The total estimated value of the rights-of-way for the three roads, factoring out the non-creditable portion of Coconut Road, is $2,842,000 (assuming

DRI approval and right-of-way dedication in 1997). The precise value will be verified through proper appraisals. The value of the creditable (non site-related) portion of the right-of-way will be subtracted from the $9,198,000 proportionate share obligation. Subtracting the estimated $2,842,000 right-of-way value from the $9,198,000 proportionate share obligation equals $6,356,000, or $1,507,240 less than the estimated impact fee revenue projected through project buildout ($7,863,240). The estimated $1,507,240 difference will be issued to the Developer in the form of road impact fee credits. These credits may be used to defray the estimated $7,863,240 in impact fees or transferred in accordance with the Land Development Code. In any event, the remaining proportionate share obligation will be addressed at the time of building permit issuance for each unit of development. At that time, the Developer may pay the impact fees in cash or redeem whatever impact fee credits he may have.

3) All development within The Brooks DRI will be subject to the County's Concurrency Management System in effect at the time building permits are requested.

4) If the Land Development Code Chapter governing roads impact fees is repealed, reduced or made unenforceable by court petition, The Brooks DRI will continue to pay, per individual permit, an amount equivalent to roads impact fees in effect prior to such repeal, reduction or court petition. If the Developer submits an independent fee study in accordance with Chapter 2 of the Land Development Code in an effort to reduce impact fees, he must file a Notice of Proposed Change to the DRI Development Order and conduct an analysis of whether the requested change in anticipated revenues constitutes a substantial deviation. In any case, the overall $9,198,000 obligation must be met, unless the scope of development is reduced. If road impact fees are increased, the Developer will get credit for those increases against the total $9,198,000 obligation.

5) The County will apply the roads impact fees paid by The Brooks DRI under Mitigation Option 1 toward the non-site related improvements identified in Section E.1.b. In the alternative, the County will apply the fees toward improvements that relieve those roadways, provided those improvements are deemed necessary to maintain the County's adopted level of service standards. If the improvements identified in Section E.1.b. are ultimately funded through other sources, in whole or in part, or deemed unnecessary to maintain the adopted level of service standards, Lee County may apply the impact fees paid by The Brooks to other improvements consistent with the requirements of Chapter 2 of the Lee County Land Development Code.

c. Mitigation Option 2

Phase I

1) Within 180 days of adoption of this DRI Development Order, but no later than February 1, 1998, the Developer must provide to the County a Development Agreement specifying the schedule for certain right-of-way dedication and roadway construction in lieu of the payment of road impact fees. Building permits for

permanent residential or commercial structures (except for the sales center) within The Brooks cannot be issued until this Development Agreement is executed by both parties. The right-of-way dedication and construction schedule must reflect the Developer's acquisition of the property, design of the improvements and construction of those improvements, as well as commitments made in this Development Order. On-site right-of-way to be dedicated includes the following: 150 feet of right-of-way for the extension of Coconut Road from U.S. 41 to ~~the eastern property line~~ Three Oaks Parkway, 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway, and 150 feet of right-of-way for the establishment of the Three Oaks Parkway extension from the south property line to the north property line, following the general alignments identified in the Master Plan (Map H). The actual alignment will need to be reviewed and approved by Lee County DOT prior to dedication. ~~The Developer must also dedicate the expanded right-of-way (3.5 acres) at the eastern property line to allow for an eventual Coconut Road overpass over I-75.~~

Off-site right-of-way to be dedicated includes all or part of the Developer-owned land between Williams Road and Corkscrew Road along the general alignment of the Three Oaks Parkway extension. As part of the Development Agreement submittal the Developer must provide to Lee County the necessary documentation identifying the property he is offering for the Three Oaks extension. The Lee County Division of Transportation will then make a determination as to how much of the property is usable for the extension.

2) As part of the submittal of the proposed Development Agreement, the Developer must provide an appraiser's estimate of value or range of value for the rights-of-way to be dedicated, including the off-site right-of-way for the Three Oaks extension from Williams Road to Coconut Road. These values will be based on the value at the time of DRI approval, without the enhanced value created by the DRI and zoning approval, and will be used to determine the amount of cash payment that may be required to complete the mitigation requirements for Phase I.

Actual value of the rights-of-way will be determined at the time of dedication through proper appraisals using the following parameter: the value of the right-of-way will be based on its appraised value at the time of DRI approval, without the enhanced value created by DRI and zoning approval. The Developer's proposed mitigation plan dated April 22, 1997 estimates the value to be 80 cents per square foot. The value of the Coconut Road right-of-way will be based on the following:

a) U.S. 41 to Three Oaks Parkway, (9,000± feet), 80 feet non-creditable and 70 feet creditable.

b) Three Oaks Parkway to Southeast Parcel Entrance, (2,000± feet) 80 feet non-creditable and 70 feet creditable.

~~c) Southeast Parcel Entrance to I-75 (1,600± feet) 150 feet creditable.~~

~~d) I-75 overpass quadrants at a total of 3.5 acres, creditable.~~

Consistent with the Land Development Code, there will be no impact fee credits or credits against the proportionate share obligation for the non-creditable component of these right-of-way dedications. The 150-foot right-of-way dedicated for Three Oaks Parkway and the 100-foot right-of-way dedicated for Williams Road are fully creditable; any additional right-of-way required for site-related improvements, as determined by the Lee County Engineer, is not creditable. The total estimated value of the rights-of-way for the three on-site roads, factoring out the non-creditable portion of Coconut Road, is $2,842,000 (assuming DRI approval and right-of-way dedication in 1997).

3) Coincident with the acceptance by Lee County of the Development Agreement but no later than February 1, 1998 or the issuance of the first building permit for the first permanent residential or commercial structure (except for the sales center), the Developer must do the following:

a) Dedicate to the County 150 feet of right-of-way for Coconut Road from U.S. 41 to future Three Oaks Parkway.

b) Dedicate to the County all, or a portion, of the property owned by the Developer along the general alignment of the Three Oaks Parkway Extension from Williams Road to Corkscrew Road. The amount of land to be dedicated will be based on the Lee County determination referenced in Section E.2.c.(1).

c) Utilizing the values provided by an appraiser, estimate the total value of all right-of-way dedications to be made during Phase I, both on-site (Coconut Road from U.S. 41 to ~~the east property line including the expanded right of way at I-75~~ Three Oaks Parkway, Three Oaks Parkway from the south property line to Williams Road, and Williams Road from River Ranch Road to Three Oaks Parkway) and off-site (Three Oaks Parkway from Williams Road to Corkscrew Road). The Developer will then submit a cash payment for the difference between estimated Phase I impact fees ($3,777,270) and the value of the right-of-way dedications (estimated at $3,381,000 if all of the off-site Three Oaks property is utilized). At the time of dedication, the actual value for the rights-of-way will be based on an appraisal using certain valuation parameters noted in Section E.2.c.(2). If, upon completion of the right-of-way dedications and establishment of actual value, it is determined that the initial cash payment made by the Developer was insufficient to equal a total mitigation value of $3,777,270, then: 1) an additional cash payment must be made to reach the $3,777,270 total, or 2) design plans as specified under Phase II for one or more of the identified roads (i.e., Williams Road, Coconut Road or Three Oaks Parkway) will be provided in lieu of all or a portion of the difference; or 3) no further building permits will be issued. If the initial cash payment results in a total Phase I

mitigation value in excess of $3,777,270, then the difference will be applied to the Phase II mitigation requirements or reimbursed in the form of road impact fee credits, whichever is agreed upon by both Lee County and the Developer.

This cash payment will be applied by Lee County toward the improvements to be mutually agreed upon and specified in the Development Agreement.

4) Coincident with the 650th residential building permit, the Developer will dedicate to the County 150 feet of right-of-way for Three Oaks Parkway from the south property line to the north property line.

5) Coincident with the 1300th residential building permit, the Developer will dedicate to the County the balance of the right-of-way as described above.

6) If the right-of-way dedications and payments specified in Sections E.2.c.(1) through c.(5) above are made as described, in the time frames noted, The Brooks will not pay road impact fees and the level of development for Phase I of The Brooks DRI as identified in Section E.1.a. will be exempt from the County's concurrency management requirements. If the dedications and payments are not made as described, then no further building permits will be issued until the Developer makes those dedications and payments. All of the right of way dedications and cash payments were made in accordance with this DRI DO.

Phase II

7) Before the end of calendar year 2002 or the initiation of any Phase II residential or commercial building permits, whichever is earlier, the Developer must provide to Lee County for review and approval design plans consistent with County standards for the following improvements:

a) Three Oaks Parkway as a 4-lane urban arterial expandable to six lanes from the south property line to the north property line.

b) Williams Road as a 2-lane rural collector from River Ranch Road to Three Oaks Parkway.

The design work will include any necessary permitting. The value of the designs and permitting must be verified and approved by Lee County, through the submittal of billing documents from the Developer's design consultant. The value is currently estimated at a total of $614,000 ($526,000 for Three Oaks Parkway, and $88,000 for Williams Road). The actual value is creditable against the total proportionate share amount of $9,198,000.

8) Within twelve months after design approval by Lee County and permit approval, the Developer will initiate construction of the extension of Three Oaks Parkway from the project's southern property line to the northern property line. The

Developer must construct this roadway consistent with the approved design plans. The estimated construction cost of this improvement is $4,556,000 (excluding design, permitting and right-of-way costs) which is creditable against the proportionate share amount.

9) Within twenty-four months after design approval by Lee County and permit approval, the Developer must also initiate construction of the extension of Williams Road from River Ranch Road east to Three Oaks Parkway. The Developer must construct the Williams Road extension consistent with the approved design plans. The estimated construction cost of this improvement is $281,000 (excluding design, permitting and right-of-way costs) which is creditable against the proportionate share amount.

10) Upon completion of the Three Oaks Parkway and Williams Road extensions, the Developer must calculate the actual construction costs of the improvements to those roadways (including design and permitting) and add those costs to the value of the Phase I non site-related right-of-way dedications and cash payments. The Developer must then pay the balance, if any, of the proportionate share assessment in cash. (This is the difference between the total proportionate share obligation and the mitigation to date). This cash payment will be applied toward the improvements to be mutually agreed upon and specified in the Development Agreement.

If the actual costs and payments identified above exceed the proportionate share amount, the Developer would get the difference in road impact fee credits. In lieu of the cash payment, if any, as described above, the Developer may reduce the scope of the development within The Brooks.

11) If the construction and payments specified in Sections E.2.c.(7) through c.(10) above are made as described in the time frames noted, and the development schedule and impact levels remain consistent with the Development Order and substantial deviation criteria, the level of development for buildout identified in Section E.1.a. will be exempt from the County's concurrency management requirements. If the Developer does not complete the referenced construction and does not make the payments as described, then no further building permits will be issued until the Developer completes the construction and makes the payments identified. All of the right of way dedication and cash payments were made in accordance with the requirements of this DRI DO.

12) A 2-lane road extending Coconut Road from U.S. 41 to Three Oaks Parkway is required by the development for site-related purposes. Four lanes on that corridor were identified as needed by 2020 in a recent County planning study, in conjunction with an extension of that corridor east over the interstate, but that need would not likely exist before 2010 (except as may be created by development of The Brooks). The Developer has proposed building at least part of the Coconut Road extension as four lanes as part of his mitigation plan, for credit against the proportionate share obligation (after subtracting the non-creditable portion). The estimated differential cost of building four lanes instead of two (excluding right-of-way) from U.S. 41 to Three Oaks Parkway is

$1,307,000. This represents the amount potentially creditable against the proportionate share obligation. However, the premature nature of the improvement requires a reduction in the amount creditable. If credit against the proportionate share obligation for the 4-lane improvement is requested prior to 2010, then the amount creditable against the proportionate share obligation will be reduced at a rate of 2.5 percent compounded per year for every year before 2010 the request is made. Any credits issued will be deducted from the cash payment obligations identified to vest the project from concurrency for Buildout. The referenced segment of Coconut Road must be constructed to County standards, with design plans submitted to the County for review and approval.

13) Due to concerns regarding the effect of construction traffic, Lee County will not accept for maintenance any roads constructed by the Developer under Mitigation Option 2 until the overall development is 80 percent complete, as estimated from the entire development mix. Acceptance of Coconut Road includes the railroad crossing. The roadways must meet the County's standards in effect at the time the roadways were designed.

3. Access and Site-Related Improvements

a. The Developer is fully responsible for the following site-related roadway and intersection improvements: all intersection improvements, including signalization, turn lanes and deceleration lanes, deemed necessary by the County Engineer and consistent with the Lee County Land Development Code for the project's access points onto U.S. 41, Williams Road, Coconut Road, and Three Oaks Parkway. As site-related improvements, they are not eligible for credit against impact fees or the project's proportionate share obligation.

b. The Developer is also required to make any improvements, including signalization, turn lanes and deceleration lanes, deemed necessary by FDOT and the County Engineer at the intersection of Coconut Road and U.S. 41. The County Engineer, consistent with the Lee County Land Development Code, will determine the percentage of costs of these improvements that are site-related and, therefore, the obligation of the Developer. That percentage deemed site-related will not be eligible for credit against impact fees or for credit against the project's proportionate share obligation.

c. The access point onto U.S. 41 for the Community Center must be located and developed consistent with FDOT's access management classification for U.S. 41, unless otherwise approved by the FDOT.

d. The Brooks' access onto Williams Road will be aligned with River Ranch Road. Once the Developer applies to connect to Williams Road, the School District of Lee County will be included in the review process, and their comments and concerns will be considered by the County's Department of Community Development.

4. Biennial Monitoring Report

a. The Developer must submit a biennial monitoring report to the following entities for review and approval: Lee County Division of Transportation, the Florida Department of Transportation (FDOT), the Florida Department of Community Affairs (FDCA), and the Southwest Florida Regional Planning Council (SWFRPC). The first monitoring report will be submitted one year after the approval of the DRI Development Order unless no buildings have been occupied. If the Developer contends that a traffic monitoring report is not required because no traffic impacts have been created, he must indicate so in writing to the above review agencies. Once the development is required to submit a traffic monitoring report, it must be submitted biennially thereafter.

b. The monitoring program will measure the project's actual external roadway impacts, the level of service condition on the impacted roads and intersections, and determine the timing for needed improvements. The monitoring program will be designed in cooperation with the Lee County Division of Transportation, FDOT, the SWFRPC and FDCA prior to submittal of the first report. The methodology of the biennial traffic monitoring report may be revised if agreed upon by all parties.

c. The biennial traffic monitoring report must contain the following information:

1) P.M. peak hour traffic counts with turning movements at the project's access points onto U.S. 41, Williams Road, Coconut Road, and Three Oaks Parkway, and on the external road segments and intersections identified in Section E.1.b.

2) A comparison of field measured project traffic volumes to the project trip generation assumed in the DRI analysis. The Developer will need to specify in the methodology how the internal interaction will be measured, particularly for the Town Center.

3) Estimated existing levels of service and needed improvements for the roads and intersections specified in Section E.4.c.(1) above.

4) Estimated future levels of service and needed improvements, based on a one-year projection of future volumes, for the roads and intersections specified in Section E.4.c.(1) above.

5) A summary of the status of road improvements assumed in the ADA to be committed by Lee County and FDOT as set forth below:

Roadways	Improvement	Construction Schedule
Corkscrew Road --I-75 to Treeline Ave.	4 lanes	FY 95/96

Alico Road		
--US 41 to I-75	4 lanes	FY 97/98
--I-75 to Treeline Ave.	4 lanes	FY 95/96
Treeline Ave.		
--Corkscrew Road to Alico Road	4 lanes	FY 95/96
US 41		
--Alico Rd. to Daniels Parkway	6 lanes	FY 96/97

Intersection	Improvement	Construction Schedule
US 41/Corkscrew Road	Turn lanes	FY 96/97
Corkscrew Road/Three Oaks Pkwy.	Turn lanes/Signalization	FY 96/97

d. If the biennial monitoring report reveals that the project trip generation exceeds the thresholds identified in 380.06(19)(b)15, Florida Statutes, then the provisions regarding substantial deviations will take effect under either mitigation option. If the project is deemed to be a substantial deviation, the Developer must then undergo additional DRI review. This review, if required, must reanalyze the project impacts on the County road network and specifically evaluate the potential project impacts on I-75 from Alico Road to Daniels Parkway and on Old U.S. 41 from Rosemary Drive to U.S. 41.

Under Mitigation Option 1, if the biennial monitoring report confirms that the peak season, p.m. peak hour traffic on the significantly impacted roadways exceeds the level of service standards adopted by Lee County, and the project is utilizing five percent or more of the adopted level of service standard service volume, then further local Development Orders, building permits and certificates of occupancy will not be granted until the standards of the County's concurrency management system have been met. Through the end of 1999, this means that adequate district-wide level of service capacity must be available. After 1999, this means that significantly impacted individual links must be operating at the adopted level of service or an improvement to achieve the adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program, unless an alternative concurrency system has been established for all or part of Lee County. The Brooks will comply with the County's concurrency management system in effect at the time.

5. Other

a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:

1) The Town Center may not exceed 120,000 square feet of office/retail/service gross floor area. ~~Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. When Three Oaks Parkway and Coconut Road are open to public traffic with traffic continuity from Corkscrew Road to Coconut Road and to U.S. 41, this condition will have been met~~. The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and

2) The uses within the Town Center will be governed by the planned development zoning; and

3) Single use retail buildings may not exceed 30,000 square feet of gross leasable area. Single use office buildings are not subject to the 30,000 square foot limitation.

b. The Brooks includes a Community Commercial Center located at the southeast quadrant of the proposed intersection of the Coconut Road extension and U.S. 41. ~~The Community Commercial Center is limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet) until such time as the Coconut Road extension is designed and open as an arterial roadway~~.

c. The Developer will provide for efficient pedestrian and bicycle movement within The Brooks through the provision of a system of interconnecting sidewalks and bike paths that link the various pods of development.

d. If routes are established by Lee County, the Developer will accommodate local or express transit service with bus stops on public roadways and reasonably sized and located in commercial areas.

e. Parcel 4 was added to the DRI as part of the First Development Order Amendment. Parcel 4 includes a portion of the right-of-way for Three Oaks Parkway. Since the property was acquired subsequent to the approval of the Brooks DRI, the Developer, at its option, can dedicate the property to the County for road impact fee credits or an offset against the proportionate share assessment. The property will be valued as of the day of dedication consistent with the terms of the Development Agreement.

F. VEGETATION AND WILDLIFE/WETLANDS

1. Where practical, and where consistent with the permit issued by the SFWMD, the Developer will construct shallow lakes with wetland plantings in an effort to create additional wildlife habitat value.

2. The Developer will incorporate a 24-inch-diameter wildlife crossing under each arterial roadway crossing of wetlands by placing a culvert adjacent to the upland/wetland boundary. In addition to the wildlife crossing, the Developer will place

additional culvert(s) under the roadway crossing, as needed, to provide a hydraulic connection between wetlands pursuant to the SFWMD regulations. There is currently a lime rock farm road at the roadway crossing between Wetlands 8 and 10, and the Developer will install approximately .9 acres of wetland herbaceous plants and shrubs in this area. The plantings will extend from the current northern/southern wetland boundaries up to the edge of the new east/west road.

3. There will be a total of 419 conservation acres; post development.

4. Approximately 300 of the 419 conservation acres will be wetland enhancement. The Developer will implement the enhancement of wetlands in phases in accordance with the permits issued by the ACOE and SFWMD. A portion of the wetland enhancement is intended to mitigate the project's impacts to approximately 33.5 acres of ACOE and SFWMD jurisdictional wetlands.

5. The Developer will eradicate invasive exotic vegetation from the site on a phased basis, in accordance with the local Development Order approvals and ACOE and SFWMD permit requirements. Invasive exotics are those species identified in the Lee County Land Development Code and tropical soda apple (*Solanum viarum).* Once the invasive exotics have been eradicated, the site must be maintained in accordance with County regulations to prevent the return of invasive exotics.

6. Where feasible, the surface water management system will incorporate the wetlands to assure appropriate hydroperiods and seasonal water elevations. Hydroperiods, seasonal water elevations, and the incorporation of wetlands into the surface water management system will be evaluated by the SFWMD during the review of the District permit application(s).

7. In addition to the conservation areas identified in the open space table, the Developer will, to the extent possible, retain the existing native plant communities located in the areas designated as open space on Map H. This condition will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

8. The design for the golf course and residential areas will incorporate the retention of large slash pines for utilization as perch trees for bald eagles. This requirement will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

9. The Brooks enhancement area will include the following items to enhance wildlife habitat: a meandering flow-way interconnecting wetlands, shallow ponds with littoral shelves for wading birds and birds of prey, enhancement of existing herbaceous wetlands, osprey platforms in hammocks, establishment of willow areas and flag ponds, and vegetated upland buffers along portions of the wetland system.

G. WASTEWATER MANAGEMENT/WATER SUPPLY

1. The Developer will obtain a SFWMD permit for groundwater withdrawals for landscape irrigation, and for dewatering needed to construct the project lakes, roads or building foundations.

2. The Developer will utilize water conserving devices and methods necessary to meet the criteria established in the water conservation plan of the public water supply permit issued to Bonita Springs Utilities (BSU). If the Developer obtains potable water from a different provider, then the Developer must conform to the water conservation plan of the alternate provider.

3. The Developer will coordinate with BSU or other water supplier to ensure that adequate potable water is available to meet the demands of the project.

4. The Developer will provide verification to the SFWMD that the Developer's plumbing and irrigation designs are consistent with the District rules.

5. The Brooks will be served by BSU with potable water and wastewater treatment. If BSU cannot provide potable water or wastewater treatment, then the Developer must obtain service from an alternate provider with capacity or construct on-site interim facilities. Interim facilities constructed on-site must be built to DEP standards. Any interim facilities constructed by the Developer must be dismantled at the Developer's expense when service by BSU facilities is available. In any event the Developer must demonstrate at the time of final local Development Order approval, that sufficient potable water and wastewater treatment capacity is available.

6. If the Developer uses treated effluent for irrigation, the Developer must buffer the on-site lakes, preserved wetlands and stormwater management system from possible effluent contamination in accordance with applicable SFWMD regulations. The Developer must isolate the effluent containment ponds from the on-site wetlands and water management lakes if it cannot be demonstrated that the water quality in these ponds is as good as the quality of water in its natural condition.

7. Septic systems utilized in conjunction with construction trailers, sales offices and model homes will be temporary. Except for golf course or recreational rest stations, permanent septic systems are prohibited. When it is feasible to connect the temporary uses to the regional wastewater treatment facilities all temporary septic systems will be abandoned or removed by a licensed septic system firm, in accordance with all applicable regulations.

8. The Developer must submit copies of all local Development Order plans that include potable water or wastewater distribution systems, to BSU (or alternate provider). BSU will review the plans for compliance with the BSU specifications manual. The Developer must also submit all construction plans for irrigation facilities to Resource Conservation Systems for review and approval prior to the commencement of construction.

9. Lee County will evaluate all potable water facilities, to ensure that the facilities are properly sized to meet average, peak day, and fire flow demands in accordance with the LDC. Lee County will consult with the appropriate Fire Protection District to confirm that the fire flow demands will be satisfied by the proposed potable water facility.

10. For all non-potable water purposes, the Developer must use the lowest quality of water available that is acceptable for the intended purpose.

11. This Development Order specifically incorporates the Developer's commitments set forth in the ADA and subsequent sufficiency road information relating to Questions 10, 14, 17 and 18 (General Project Description, Water, Water Supply and Wastewater Management respectively).

H. FIRE

The Developer will pay fire/EMS impact fees in accordance with the Fire and Emergency Service Impact fee ordinance.

I. FISCAL

1. Internal improvement capital costs will be borne by the Developer, a UCDD, a private utility or some other legal entity that has the ability to levy an assessment or otherwise raise revenues to pay the internal improvement capital costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure must be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity that has the ability to levy an assessment or otherwise raise revenue to pay the capital cost internal improvements.

2. The operating and maintenance costs of the water and sewer will be addressed by payment of the required assessments, charges, and fees to BSU. BSU, through its rate structure, charges the user for its share of the maintenance costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure must be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity that has the ability to levy an assessment or otherwise raise revenue to pay the cost of operation and maintenance.

3. The Developer must provide the County with fiscal monitoring reports that identify the taxable value of the development by use codes. Taxable value means the actual taxable value assigned to the property in the development by the Lee County Property Appraisers Office. The report must be submitted when the certificate of occupancy of the 2600th unit is issued. A second report must be submitted at the end of the second 5-year period, which is the end of second phase, if the fiscal monitoring report at the end of the first phase indicates that the project is not fiscally positive and a second report is required as part of the mitigation condition.

These reports are intended to allow the County to determine whether the total taxable value is 25% less than, equal to, or exceeds the total taxable value of $510,180,000.00, which was contained in the fiscal analysis tables that were attached to the June 2, 1997 letter from Fishkind & Associates, to the Division of Budget Services, Lee County. [Table 2, attached Exhibit B]

If these reports demonstrate that the taxable values are 25% less than, equal to or exceeded, no further action is required. If these reports indicate that the actual taxable values are more than 25% below the taxable values projected in the tables, the Developer must conduct a new fiscal impact analysis (using the actual budgets of Lee County, including the Sheriff's budget, the Lee County District School Board, and the Estero Fire and Rescue District) utilizing the methodology of the modified per capita approach as outlined in the applicant's document "Revised Fiscal Impacts of The Brooks of Bonita Springs" dated May 19, 1997. [Applicant's Exhibit 59 to the Hearing Examiner Recommendation] The fiscal reports indicated that the development was fiscally positive and this condition is of no further force and effect.

If this new analysis indicates that the fiscal impact to the County is positive or neutral, no further action is required. If this new analysis indicates that the fiscal impact to the County is negative, the County, the applicant and other affected parties will try to reach a mutually agreed upon fiscal mitigation plan that fully mitigates the negative fiscal impacts at the sole cost of the Developer and the Property Owners within the development. If the Developer or the Property Owners do not concur with the County staff fiscal mitigation plan, then they have the right to avail themselves of any remedy allowed them under the County's LDC. No additional Development Orders will be issued to those portions of the project located within the Rural land use category, by the County, until the fiscal mitigation plan is implemented. If such a plan cannot be mutually agreed upon, the County reserves the right to create a taxing entity on the development, such as a Municipal Services Taxing Unit (MSTU) or Municipal Services Benefit Unit (MSBU), to address the identified negative fiscal impacts.

III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

1. This Development Order constitutes a resolution of Lee County adopted by the Board of County Commissioners in response to the DRI ADA filed for The Brooks of Bonita Springs DRI and subsequently amended pursuant to the Notice of Proposed Change filed June 1999.

2. All commitments and impact mitigating actions volunteered by the Developer in the ADA and supplementary documents that are not in conflict with conditions or stipulations specifically enumerated above are incorporated by reference into this Development Order. These documents include, but are not limited to the following:

(a) The Brooks of Bonita Springs Application for Development Approval, stamped received on July 3, 1996.

(b) The Brooks of Bonita Springs DRI sufficiency responses, stamped received on October 1996, December 1996, and January 1997.

3. Map H, stamped received on ~~June 21, 2001~~ September 28, 2012 is attached hereto as Exhibit "A," and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and the location of internal roadways may be modified by the Developer to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. However, this provision may not be used to reduce the size of wetland preserve areas. It is understood that the precise wetland boundaries are determined by the South Florida Water Management District, as delegated by the Department of Environmental Protection.

4. The Development Order is binding upon the Developer(s), and its assignees or successors in interest. Where the Development Order refers to lot owners, business owners or other specific reference, those provisions are binding on the entities or individuals referenced. Those portions of this Development Order that clearly apply only to the project developer are binding upon any builder/developer who acquires a tract of land within the DRI.

5. The terms and conditions set out in this Development Order constitute a basis upon which the Developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Development Order.

6. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party by action at law or equity. All costs of those proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

7. During the ~~next two~~ years (2000-2001), Lee County undertook~~will undertake~~, to the extent legally permissible, any amendment to the Planning Communities Map and Acreage Allocation Table, necessary to accommodate the buildout of The Brooks as set forth in the DRI phasing schedule. Lee County will cause these amendments to occur in a timely manner so development of The Brooks will not be impeded by the Planning Communities Map and Acreage Allocation Table. Nothing in this condition will be interpreted to cause the county to be liable for a failure to accomplish these amendments if the failure is the result of a refusal by any state or regional agency to approve such a charge.

8. At the time of local Development Order approval, the development outlined in the Local Development Order application will be evaluated for consistency with the Lee County Concurrency Management Plan, except for transportation concurrency. Transportation concurrency is addressed by condition II.E.6.

9. References to governmental agencies will be construed to mean future instrumentalities that may be created and designed as successors in interest to, or which

otherwise possesses the powers and duties of the referenced governmental agencies in existence on the effective date of this Development Order.

10. If any portion or section of this Development Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, that decision will not affect the remaining portions or sections of the Development Order, which will remain in full force and effect.

11. This Development Order does not negate the Developer's responsibility to comply with all applicable federal, state, regional and local regulations.

12. Subsequent requests for local development permits do not require further review pursuant to Section 380.06, Florida Statutes, unless the Board of County Commissioners, after due notice and hearing, make the following findings:

(a) There is a substantial deviation from the terms or conditions of this Development Order; or

(b) The period of effectiveness of this Development Order has expired. Any request to extend the effectiveness of this Development Order will be evaluated based on the criteria for the extension of the buildout date set forth in Section 380.06(19), Florida Statutes.

Upon a finding that either of the above has occurred, the Board must order a termination of all development activity in the development affected by the substantial deviation or expiration of the Development Order until such time as a new DRI Application for Development Approval, Notice of Substantial Deviation or Notice of Proposed Change has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes.

13. The project has a buildout date of December 31, ~~2014~~ 2017 and a termination date of December 31, ~~2019~~ 2023. This term is based on a 10-year buildout and the recognition that a local Development Order, which is valid for five years, may be obtained in the tenth year. The build out and termination dates of this paragraph were extended to December 31, ~~2014~~ 2017 and ~~2015~~ December 31, ~~2019~~ 2023, respectively, by operation of law.

14. The administrative director of the Lee County Department of Community Development, or their designee, will be the local official responsible for assuring compliance with this Development Order.

15. The project will not be subject to down-zoning, unit density reduction, intensity reduction or prohibition of development until December 31, ~~2019~~ 2023. If the County demonstrates that substantial changes have occurred in the conditions underlying the approval of the Development Order, then a down-zoning, unit density reduction or prohibition of development may occur. No down-zoning, density or intensity reduction can occur without sufficient notice to the Developer and an opportunity to be heard. These

changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the Developer, or that the change is clearly established by Lee County to be essential to the preservation of the public health, safety and welfare.

16. The Developer or its successor(s) in title will submit a report biennially to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06(18), Florida Statutes. The Developer must inform successors in title to the undeveloped portion of the real property covered by the Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

17. The County ~~will~~ forwarded certified copies of this Development Order to the SWFRPC, the Developer and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the Developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

Commissioner Manning made a motion to adopt the Fifth Development Order Amendment, seconded by Commissioner Hall. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of August, 2013.

ATTEST:
LINDA DOGGETT, CLERK

BY: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

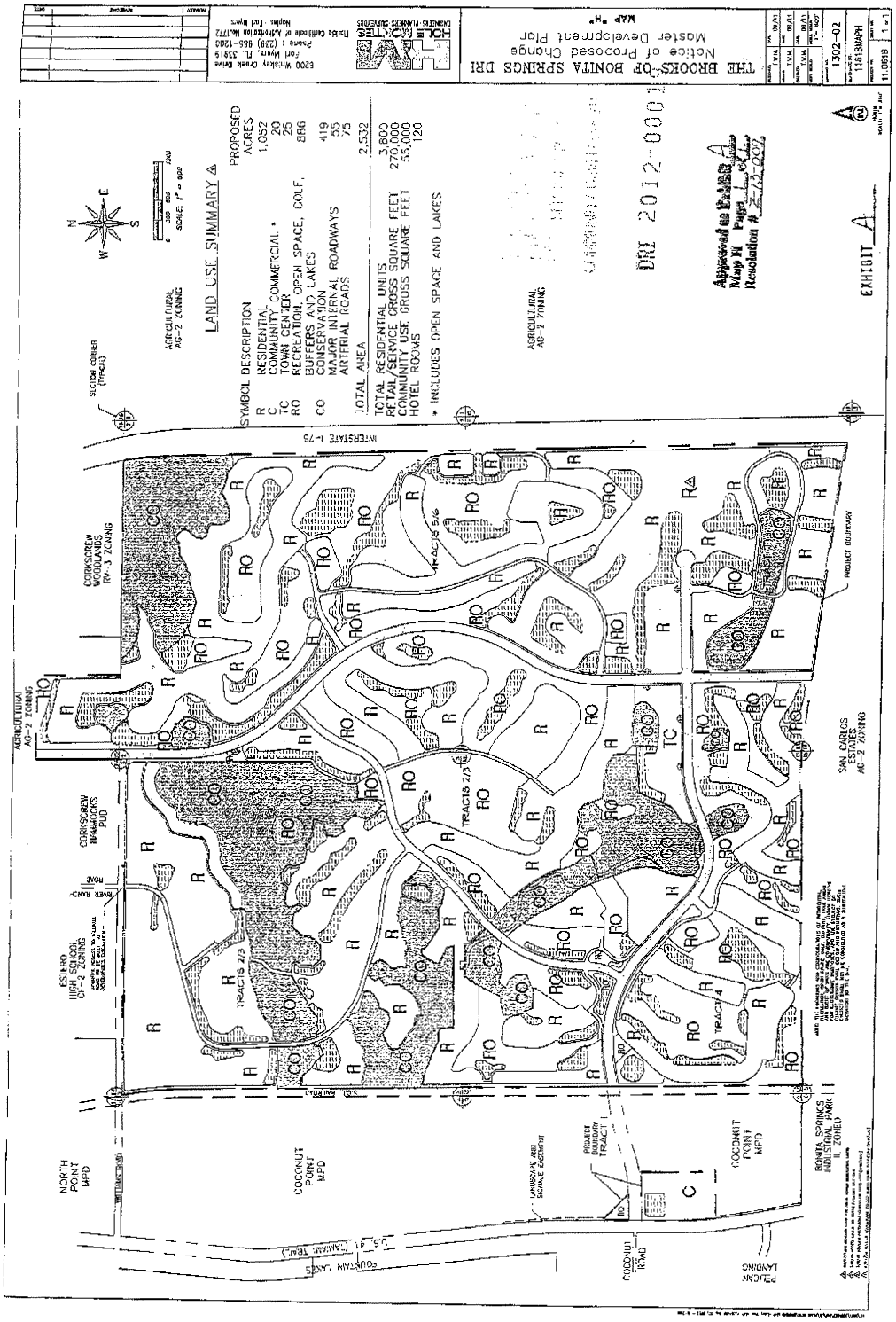
BY: _____
Cecil L Pendergrass, Chair

Approved as to form by:

_____
Michael D. Jacob
Assistant County Attorney
County Attorney's Office

Exhibits:

A. Map H dated ~~June 12, 2001~~ September 11, 2012, stamped received by Community Development ~~June 21, 2001~~ September 28, 2012
B. June 2, 1997 correspondence from Fishkind & Associates [Table 2]
C. Biennial Monitoring Report Requirements


THE BROOKS OF BONITA SPRINGS DRI
Notice of Proposed Change
Master Development Plan
MAP "H"
LAND USE SUMMARY
SYMBOL DESCRIPTION
R RESIDENTIAL
C COMMUNITY COMMERCIAL *
TC TOWN CENTER
RO RECREATION, OPEN SPACE, GOLF, BUFFERS, AND LAKES
CO CONSERVATION
MAJOR INTERNAL ROADWAYS
ARTERIAL ROADS
TOTAL AREA
TOTAL RESIDENTIAL UNITS
RETAIL/SERVICE GROSS SQUARE FEET
COMMUNITY USE GROSS SQUARE FEET
HOTEL ROOMS
* INCLUDES OPEN SPACE AND LAKES
EXHIBIT A
DRI 2012-00001
INTERSTATE I-75
COCONUT POINT MPD
BONITA SPRINGS INDUSTRIAL PARK IL ZONED
SAN CARLOS ESTATES AG-2 ZONING
AGRICULTURAL AG-2 ZONING
CORKSCREW WOODLANDS RV-3 ZONING
CORKSCREW HAMMOCKS PUD
ESTERO HIGH SCHOOL CF-2 ZONING
NORTH POINT MPD
PELICAN LANDING
COCONUT ROAD
PROJECT EQUIPMENT
TRACTS 2/3
TRACTS 5/6
TRACT 4
TRACT 1
LANDSCAPE AND DRAINAGE EASEMENT
SECTION CORNER (TYPICAL)
1302-02
11.0519

FISHKIND & ASSOCIATES

RECEIVED
JUN 3 1997
PLANNING DIVISION
LEE COUNTY

June 2, 1997

Mr. James Lewin, Fiscal Research Specialist
Division of Budget Services, Lee County
2115 2nd Street
Fort Myers, FL 33901

Dear Jim:

I am in receipt of your May 27 1997 memo to Paul O'Connor regarding your review of our revised report on the Fisacal Impacts of the Brooks PDDO. The purpose of today's letter is to resolve and clarify each of the points made in your memo.

It is my belief each point can be resolved to our mutual satisfaction through this letter. We have provided you with corrected tables and additional explanation. Below, I have summarized each point in your memo and indicated what stepts we have taken to resolve the issue.

1.0 Use of Per Capita and/or Employment Divisor

In general, population and employment are combined and used as the divisor to calculate per capita revenues and expenditures, in instances where per capita figures are used to estimate revenues or expenditures. This is done to reflect the conditions in which services are provided and expenses made to accommodate employment related facilities and commercial structures. Similarly, revenues are generated by employment related structures such as commercial facilities and the impact analysis should fairly reflect both expenditures and revenues.

424 Research Parkway, Suite 275, Orlando, Florida 32826 ✖ (407) 382-3256 ✖ FAX (407) 382-3254

EXHIBIT B

In some instances, however, county services are provided only to resident population and not to employees or the employment related facilities. Similarly , in some instances revenues are generated primarily by residents. Where County expenditures are made primarily on behalf of residents and do not benefit employees or where revenues are generated primarily from residential sources, the divisor used includes only population.

Revenue and expense categories which affect population and therefore which only uses the population divisor figure include: Intergovernmental Revenues, Economic Environment Expenses, and Culture and Recreation Expenses. All other revenue and expense categories affect the both population and employment and in these cases the combined figure is used.

In a discussion with Emergency Management representatives on this topic we explained that EMS provides services to both residential locations and employment locations, which is why the combined divisor is used for public safety. For example, EMS will respond to a backyard pool accident or a production machine accident. Similarly, both the residential location and the workplace location generate revenues through property taxes paid and license fees. Because of these types of conditions it is appropriate in many instances to reflect per capita divisors as the sum of population and employment.

In the March 7 letter from the Sheriff's office, it was indicated that the countywide population/employment divisor for Sheriff's revenue and expenditures was inappropriate because they provide service only to the unincorporated area. We agree with the Sheriff on this matter. Therefore, we included all of the direct costs identified by the Sheriff's office. For modeling purposes the Sheriff's expenditure figure was increased to reflect the data provided. Additional Public Safety category expenditures continue to be calculated using the countywide population/employment divisor. It is for this reason the per capita expenditures for Public Safety on Table 4a has been increased $173.15, which is in excess of the sum of the indented line items in table 4a under Public Safety (Sheriff, Detention, EMS and Other). The difference between the two per capita figures has been allocated to the Sheriff's office line item in Table 4, to reflect the higher per capita cost resulting from use of the unincorporated population and employment. The result is that the site specific calculations in Table 4 properly reflect the countywide divisor for Detention, EMS and Other and the data from the Sheriff's office for the Sheriff expenditures which represents the effects of using a divisor based on unincorporated population and employment.

2.0 Property Tax Values

There were two issues raised in this category. First, the calculation of property taxes in Table 4 as derived from the property valuations in Table 2. Second, the identification and use of specific millage rates in ad valorem tax revenue generation.

The calculation method as described in your memo is correct. The figures could not be calculated due to an incorrect version of Table 2. The correct version is included with the revised tables accompanying this memo.

Per our earlier discussions in April and May, the millage rates have been revised and now include "Countywide" millages as follows:

General Revenue	4.4751
Capital Outlay	0.272
Library	0.5755
COUNTYWIDE	5.3226
Unincorporated MSTU	1.1604

I believe these are the only millages we agreed upon as appropriate to use in the Fiscal analysis. Millages have been eliminated for All Hazards, Bonita Lighting, Hyacinth and Mosquito, and all water control districts.

The fiscal impact tables have been revised to reflect these changes and corrections.

3.0 Lee County FY 96/97 Approved Budget

There are four concerns raised under this item. First, the revenues and expenditures do not balance under the General Fund Column. Second, Intergovernment revenues under the General Fund column appear to double count gas tax revenues. Third, the revenue reserve account figure is inconsistent with the Budget. Fourth, the Capital Funds column includes some revenues which should be excluded. We will discuss and resolve each item.

The revenues and expenditure column now balances in the revised tables.

The Intergovernment revenues under the General Fund column have now been modified to exclude 71.2 percent of sales tax revenues which is earmarked for non-operating purposes. This reduction of sales tax revenues is based on my previous discussions with you. Similarly, expenditures derived from sales taxes have been reduced by the same amount in general government. In the revised and corrected Table 4a; Intergovernment revenues reflect the sales tax reductions. The sales tax revenue line item is additive with the Intergovernment line item. There is no double counting of sales tax revenues having made these corrections. The revenue reserve under the General Fund column is now consistent with the published budget figure.

The Capital Funds column is included in the fiscal impact analysis because most of the capital projects expenditures are made from annual budgeted revenue sources and we have included the annual capital outlay millage revenues. Based on your memo we should include 75 percent of the revenues however, the published budget provides insufficient detail to include the corresponding expenditures according to the appropriate expenditure category. Since the portion of revenues and expenditures you indicated should be included make up 75 percent of this fund, we believe it is a more conservative representation to include 100 percent of the expenditures as well as all the revenues from the millage source.

Alternatively, just as was the case in the Special Revenue Fund, we can modify our analysis, with further assistance from you, in correctly identifying expenditures by category for the Capital Outlay Fund.

Jim, it is clear we have not provided perfect recalibration of our model based on the extensive discussions we had in April and early May. I'm sure you would agree there is great complexity in the modeling effort. Despite this, I believe we have had very productive and useful discussions and I believe you have again raised useful points in your most recent analysis. It is for this reason that we have corrected and revised the Fiscal Impact Analysis and the accompanying tables. I believe our explanations and the revisions provided in this letter offer a picture of the fiscal impacts of the Brooks over the long term that is more accurate and is consistent with the methodological approach and modifications suggested by you and Bruce Loucks and agreed to by us. If this is the case, I would ask you to contact Paul O'Connor by Wednesday of this week and confirm these revisions and corrections are sufficient with respect to the issues you have raised in the May 27 memo. If not, then please contact me with any additional questions or concerns you may have.

Finally, it should be noted that the revisions and corrections provided do not substantially change the fiscal outcome in the final analysis. Therefore, these changes do not change our conclusions that the Brooks of Bonita Springs does meet the criteria for fiscal self sufficiency and will generate substantial fiscal surpluses to Lee County and other local government agencies.

Sincerely,

Stanley P. Geberer
Associate

cc: Margaret Emblidge
Neale Montgomery
Matt Noble
Paul O'Connor
Sharon Jenkins Owen
Alan Reynolds

Table 1: Proposed Development Schedule - Cumulative

Lee County Development	1998	1999	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Residential Development (units)															
Single-Family Detached	54	170	320	462	600	722	880	1,028	1,140	1,140	1,140	1,140	1,140	1,140	1,140
Single-Family Attached	48	184	366	514	700	862	1,040	1,222	1,362	1,460	1,460	1,460	1,460	1,460	1,460
Multifamily	118	384	688	954	1,300	1,562	1,815	2,080	2,344	2,600	2,600	2,600	2,600	2,600	2,600
Total Residential Units	220	738	1,380	1,930	2,600	3,146	3,735	4,330	4,846	5,200	5,200	5,200	5,200	5,200	5,200
Commercial Development															
Specialty Retail (sq. ft.)	0	0	0	0	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Community (sq. ft.)	5,000	5,000	20,000	20,000	20,000	40,000	40,000	40,000	40,000	35,000	55,000	55,000	55,000	55,000	55,000
General Retail (sq. ft.)	0	0	10,000	10,000	10,000	50,000	50,000	100,000	100,000	150,000	150,000	150,000	150,000	150,000	150,000
Hotel (rooms)	0	0	0	0	0	120	120	120	120	120	120	120	120	120	120
Golf (holes)	18	18	18	36	36	54	54	72	72	72	72	72	72	72	72

Fishkind & Associates, Inc.

Table 2: Development Property Values

Lee County Development	1988	1989	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Residential Development															
Single-Family Detached	$18,608,578	$58,857,690	$112,292,992	$166,028,274	$206,874,200	$252,142,524	$303,122,160	$354,101,796	$392,580,960	$392,580,960	392,580,960	392,580,960	392,580,960	392,580,960	$392,580,960
Single-Family Attached	$7,761,216	$29,751,328	$59,179,272	$87,960,448	$113,184,400	$135,376,504	$166,159,080	$197,587,624	$220,324,504	$236,070,320	236,070,320	236,070,320	236,070,320	236,070,320	$236,070,320
Multifamily	$14,569,524	$47,738,112	$85,539,784	$118,599,372	$161,813,400	$187,941,535	$225,781,488	$258,581,440	$291,401,392	$323,226,800	323,226,800	323,226,800	323,226,800	323,226,800	$323,226,800
Total Residential Value *	$41,031,418	$136,047,130	$257,003,038	$372,588,094	$481,472,000	$584,462,564	$697,043,328	$810,270,860	$904,305,876	$951,978,100	951,978,100	951,978,100	951,978,100	951,978,100	$951,978,100
Commercial Development															
Retail (sq. ft.)	$0	$0	$0	$0	$8,732,253	$8,658,072	$8,659,072	$8,659,072	$8,659,072	$8,659,072	8,659,072	8,659,072	8,659,072	8,659,072	$8,659,072
Community (sq. ft.)	$859,840	$859,840	$1,609,840	$1,609,840	$1,609,840	$3,219,680	$3,219,680	$3,219,680	$3,219,680	$3,969,680	3,969,680	3,969,680	3,969,680	3,969,680	$3,969,680
General Retail (sq. ft.)	$0	$0	$865,907	$865,907	$865,907	$4,329,536	$4,329,536	$8,659,072	$8,659,072	$12,988,608	$12,988,608	$12,988,608	$12,988,608	$12,988,608	$12,988,608
Hotel (rooms)	$0	$0	$0	$0	$0	$7,200,000	$7,200,000	$7,200,000	$7,200,000	$7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	$7,200,000
Golf (holes)	$8,750,000	$8,750,000	$8,750,000	$17,500,000	$17,500,000	$26,250,000	$26,250,000	$35,000,000	$35,000,000	$35,000,000	35,000,000	35,000,000	35,000,000	35,000,000	$35,000,000
Total Commercial Value	$9,609,840	$9,609,840	$11,226,747	$19,975,747	$28,708,000	$49,658,288	$49,658,288	$62,737,824	$62,737,824	$67,817,360	67,817,360	67,817,360	67,817,360	67,817,360	$67,817,360
Total Value - Lee County	$50,641,258	$145,656,970	$268,229,785	$392,563,841	$510,180,000	$634,120,852	$746,701,616	$873,008,684	$967,044,700	$1,019,795,460	$1,019,795,460	$1,019,795,460	$1,019,795,460	$1,019,795,460	$1,019,795,460

* assumes 58.4 percent of all residences have Homestead Exemption

Fishkind & Associates, Inc.

Table 3: Fiscal Impact Summary -- Development Cumulative

	1998	1999	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Population	477	1,601	2,995	4,297	5,642	6,927	8,107	9,396	10,616	11,284	11,284	11,284	11,284	11,284	11,284
Employees															
Specialty Retail	0	0	0	0	250	250	250	250	250	250	250	250	250	250	250
Community	8	8	32	32	32	64	64	64	64	87	87	87	87	87	87
General Retail (sq. ft.)	0	0	18	18	18	91	91	216	216	307	307	307	307	307	307
Hotel	0	0	0	0	0	72	72	72	72	72	72	72	72	72	72
Golf	29	29	29	58	58	88	88	117	117	117	117	117	117	117	117
Total Employees	37	37	80	109	359	565	565	719	719	814	814	814	814	814	814
Students															
Elementary	5	17	31	45	56	71	84	97	109	116	116	116	116	116	116
Middle	3	9	17	25	32	39	47	54	61	64	64	64	64	64	64
High	3	11	21	30	38	47	56	65	72	76	76	76	76	76	76
Total Students	11	37	69	98	128	157	187	217	241	256	256	256	256	256	256
Lee County															
Total Revenues Generated	$1,742,435	$4,054,802	$5,770,156	$6,256,218	$7,944,604	$8,556,251	$8,541,679	$9,744,690	$9,531,519	$9,221,527	$8,823,494	$8,823,494	$8,823,494	$8,823,494	$8,823,494
Total Expenditures Generated	$768,061	$1,253,853	$1,869,208	$2,441,125	$3,101,173	$3,675,445	$4,228,767	$4,834,351	$5,318,268	$5,579,833	$5,129,833	$5,129,833	$5,129,833	$5,129,833	$5,129,833
Net Fiscal Impact	$974,375	$2,800,749	$3,900,948	$3,815,093	$4,843,430	$4,880,806	$4,312,917	$4,910,339	$4,213,251	$3,641,694	$3,693,661	$3,693,661	$3,693,661	$3,693,661	$3,693,661
Lee County School Board															
Total Revenues Generated	$459,387	$1,346,577	$2,486,850	$3,532,252	$4,714,493	$5,853,726	$6,901,140	$8,058,656	$8,984,361	$9,429,683	$9,429,683	$9,429,683	$9,429,683	$9,429,683	$9,429,683
Total Expenditures Generated	$100,651	$337,639	$531,356	$805,861	$1,166,639	$1,439,012	$1,701,241	$1,980,993	$2,207,572	$2,342,428	$2,342,428	$2,342,428	$2,342,428	$2,342,428	$2,342,428
Net Fiscal Impact	$358,736	$1,010,938	$1,957,493	$2,726,391	$3,547,854	$4,414,414	$5,199,899	$6,077,657	$6,726,439	$7,087,255	$7,087,255	$7,087,255	$7,087,255	$7,087,255	$7,087,255
Estero Fire & Rescue District															
Total Revenues Generated	$177,310	$462,670	$748,279	$970,237	$1,352,070	$1,410,534	$1,644,986	$1,888,643	$2,038,075	$2,072,189	$1,956,070	$1,956,070	$1,956,070	$1,956,070	$1,956,070
Total Expenditures Generated	$123,877	$338,743	$539,938	$669,841	$858,819	$945,780	$1,098,014	$1,245,110	$1,347,960	$1,399,912	$1,276,998	$1,276,998	$1,276,998	$1,276,998	$1,276,998
Net Fiscal Impact	54,433	124,127	208,341	300,395	493,251	470,756	546,973	643,433	690,116	$672,278	$679,072	$679,072	$679,072	$679,072	$679,072

Fishkind & Associates, Inc.

Table 4: Fiscal Impact Detail For Development -- Lee County

Revenues	1998	1999	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Taxes - Unincorporated	$279,061	$602,650	$1,478,086	$2,163,243	$2,811,372	$3,494,355	$4,114,737	$4,810,756	$5,326,948	$5,619,634	5,619,634	5,619,634	5,619,634	5,619,634	$5,619,634
Taxes - Incorporated	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0					
Utility Service Taxes	$4,853	$15,450	$28,983	$41,635	$56,576	$69,690	$81,781	$92,358	$105,925	$114,054	114,054	114,054	114,054	114,054	$114,054
Licenses & permits	$1,613	$5,135	$9,633	$13,805	$16,804	$23,162	$27,174	$31,697	$35,205	$37,907	37,907	37,907	37,907	37,907	$37,907
Intergovernment	$12,395	$41,545	$77,686	$111,462	$145,364	$177,101	$210,314	$243,753	$272,800	$292,728	292,728	292,728	292,728	292,728	$292,728
Sales Tax	$1,859	$6,572	$12,289	$17,532	$23,154	$29,060	$34,334	$39,624	$44,219	$47,371	47,371	47,371	47,371	47,371	$47,371
Gas Tax	$2,009	$6,739	$12,602	$18,061	$23,742	$28,728	$34,116	$39,540	$44,272	$47,484	47,484	47,484	47,484	47,484	$47,484
Resort tax	$0	$0	$0	$0	$0	$57,947	$57,947	$57,947	$57,947	$57,947	57,947	57,947	57,947	57,947	$57,947
Impact Fees	$1,414,755	$3,094,359	$3,996,789	$3,675,644	$4,563,807	$4,305,680	$3,546,616	$3,918,828	$3,079,173	$2,498,033	$0	$0	$0	$0	$0
Charges for Services	$7,855	$25,009	$46,914	$67,231	$91,578	$112,806	$132,344	$154,370	$171,459	$184,616	184,616	184,616	184,616	184,616	$184,616
Fines & Forfeitures	$2,870	$9,136	$17,141	$24,554	$33,463	$41,216	$48,354	$56,402	$62,645	$67,453	67,453	67,453	67,453	67,453	$67,453
Misc. Revenue	$15,075	$47,995	$90,032	$129,023	$175,749	$216,466	$263,982	$298,253	$329,046	$354,298	354,298	354,298	354,298	354,298	$354,298
Non-Operating	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	0	0	0	0	$0
Non-Revenue	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Reserve	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Use of Fund Balance	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total Revenues	$1,742,435	$4,054,602	$5,770,156	$6,266,218	$7,944,904	$8,556,251	$8,541,575	$9,744,690	$9,531,619	$9,221,527	$6,623,494	$6,623,494	$6,623,494	$6,623,494	$6,623,494
Expenditures															
General Government	$42,088	$123,180	$249,922	$358,106	$469,906	$602,087	$705,893	$824,364	$915,103	$2,094,713					
Public Safety	$59,124	$203,782	$532,297	$762,822	$1,039,069	$1,273,976	$1,501,515	$1,751,528	$1,945,411	$985,924	985,924	985,924	985,924	985,924	$985,924
Sheriff	$59,610	$186,600	$350,035	$501,526	$683,284	$841,671	$987,461	$1,151,782	$1,279,288	$2,094,713	2,094,713	2,094,713	2,094,713	2,094,713	$2,094,713
Detention/Corrections	$12,596	$40,101	$75,224	$107,802	$146,941	$180,075	$212,208	$247,526	$274,925	$1,377,467	1,377,467	1,377,467	1,377,467	1,377,467	$1,377,467
Emergency/Ambulance/ME	$16,140	$51,386	$96,392	$138,138	$188,162	$231,778	$274,524	$317,180	$357,290	$296,025	296,025	296,025	296,025	296,025	$296,025
Other Public Safety	$1,783	$5,675	$10,648	$15,256	$20,781	$25,609	$30,032	$35,031	$39,506	$379,326	379,326	379,326	379,326	379,326	$379,326
Economic Environment	$1,546	$5,629	$10,339	$14,834	$19,479	$23,570	$27,990	$32,440	$36,306	$41,894	41,894	41,894	41,894	41,894	$41,894
Physical Environment	$12,225	$38,920	$73,008	$104,626	$142,515	$175,550	$205,956	$240,233	$269,625	$38,958	38,958	38,958	38,958	38,958	$38,958
Human Services	$15,311	$51,462	$96,043	$137,802	$180,982	$218,951	$260,013	$301,354	$337,289	$287,303	287,303	287,303	287,303	287,303	$287,303
Transportation	$563,589	$563,266	$831,158	$866,206	$708,425	$745,148	$778,949	$817,053	$846,614	$361,903	361,903	361,903	361,903	361,903	$361,903
Culture & Recreation	$44,070	$147,835	$276,439	$395,631	$520,828	$630,202	$748,390	$867,379	$978,743	$319,377	319,377	319,377	319,377	319,377	$319,377
Capital Projects	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,041,656	1,041,656	1,041,656	1,041,656	1,041,656	$1,041,
Debt Service	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	0	0	0	0	$0
Non-Operating	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	0	0	0	0	$0
Interfund Transfers	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Reserve	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total Expenditures	$768,060	$1,253,853	$1,969,208	$2,441,125	$3,101,173	$3,675,445	$4,228,762	$4,834,351	$5,318,268	$5,675,833	$5,129,833	$5,129,833	$5,129,833	$5,129,833	$5,129,833
Net Fiscal Impact	$974,375	$2,800,749	$3,900,948	$3,825,093	$4,843,430	$4,880,806	$4,312,917	$4,910,339	$4,213,351	$3,641,694	$1,693,661	$1,693,661	$1,693,661	$1,693,661	$1,693,661
Cumulative Fiscal Impact	$974,375	$3,775,125	$7,676,073	$11,501,166	$16,344,596	$21,225,402	$25,538,319	$30,448,659	$34,662,009	$38,303,703	$39,997,365	$41,691,026	$43,384,687	$45,078,348	$46,772,009

Fishkind & Associates, Inc.

Table 4A: Lee County FY 96/97 Approved Budget (Unincorporated Area Use)

Revenues	General Fund	Transportation Trust Fund	Special Revenue Fund	Capital Proj. Funds	Budget Total	Per Capita	
Taxes							
Utility Service Taxes	$85,695,908	$0	$13,397,236	$5,495,000	105,588,544	NA	
Licenses & Permits	$0	$0		$5,175,917	5,175,917	$9.43	(1)
Intergovernment	$107,400	$31,135	$1,561,745	$0	1,720,280	$3.13	(1)
Sales Tax	$5,923,422	$1,856,779	$2,253,794	$539,000	10,272,995	$25.84	(2)
Gas Tax	$5,695,488				5,695,488	NA	
Resort tax		$2,545,144			2,545,144	NA	
Impact Fees					0	NA	
Charges for Services	$7,417,425	$69,030	$881,671	$10,000	0	NA	(3)
Fines & Forfeitures	$3,023,000	$0	$38,093	$0	8,378,126	$15.26	(1)
Misc. Revenue	$11,609,067	$622,708	$200,485	$3,546,190	3,061,093	$5.58	(1)
Non-Operating	$0	$0		$0	16,078,500	$29.29	(1)
Non-Revenue	$4,267,237	$1,953,855	$89,860	$17,537,041	0	$0.00	(1)
Reserve	$0	$0		$0	23,957,793	NA	(1)
Use of Fund Balance	$38,849,546	$11,726,769	$25,391,865	$123,637,867	0	NA	(1)
Total Revenues	$163,589,195	$18,515,280	$46,834,849	$156,141,025	202,606,069	NA	(1)
Expenditures					$385,080,349		
General Government	$30,363,546	$1,481,326	$7,609,475	$10,551,223	$50,005,573	$91.09	(1)
Public Safety	$59,550,189	$0	$5,167,984	$0	$63,718,173	$173.15	(1), (3)
Sheriff	$31,909,853				$31,909,853	$58.12	(1), (3)
Detention/Corrections	$8,782,528				$8,782,528	$16.00	(1), (3)
Emergency/Ambulance/ME	$16,101,302				$16,101,302	$29.33	(1), (3)
Other Public Safety	$1,756,506				$1,756,506	$3.20	(1), (3)
Economic Environment	$1,335,420	$0		$31,768	$1,367,188	$3.45	(2)
Physical Environment	$2,637,535	$0	$167,249	$10,243,372	$13,036,156	$23.75	(1)
Human Services	$11,981,253	$0	$719,350	$0	$12,700,603	$32.07	(2)
Transportation Maint. Adm.	$0	$14,493,736		$0	$14,493,736	$26.40	(1)
Culture & Recreation	$4,252,350	$0	$20,276,717	$12,026,741	$36,555,808	$92.31	(2)
Capital Projects		$0			$0	$0.00	(1)
Debt Service		$0			$0	$0.00	(1)
Non-Operating		$0		$0	$0	$0.00	(1)
Interfund Transfers	$18,124,092	$0	$10,020,000	$4,594,782	$30,738,874	NA	(1)
Reserve	$38,344,706	$2,540,218	$2,884,073	$115,693,139	$157,462,136	NA	(1)
Total Expenditures	$163,589,195	$18,515,280	$46,834,849	$156,141,025	$385,080,349		

(1) divisor includes total County population and employment
(2) divisor includes total County population
(3) Does not include fire control impact fees, millage revenues or expenditures
(4) Special Revenue Fund includes Library Fund and MSTU

NA - per capita is not applicable, actual figures are used

Fishkind & Associates, Inc.

Table 5: Fiscal Impact Detail For Development – Lee County School Board -- 15 % Student Generation Rate – 776 Students

	1998	1999	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Revenues															
Ad Valorem Taxes															
Operating	$315,295	$909,744	$1,675,303	$2,451,875	$3,186,482	$3,960,592	$4,693,749	$5,452,638	$6,039,968	$6,369,438	$6,369,438	$6,369,438	$6,369,438	$6,369,438	$6,369,438
Debt Service	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Capital Improvement	$86,090	$247,617	$455,989	$667,358	$867,306	$1,078,005	$1,269,293	$1,484,115	$1,643,976	$1,733,652	$1,733,652	$1,733,652	$1,733,652	$1,733,652	$1,733,652
Other Sources															
Operating	$85,981	$288,428	$539,333	$773,826	$1,009,622	$1,229,524	$1,460,108	$1,692,256	$1,891,314	$2,021,849	$2,021,849	$2,021,849	$2,021,849	$2,021,849	$2,021,849
Debt Service	$16,692	$55,893	$104,703	$160,228	$196,002	$236,692	$263,457	$328,525	$367,169	$392,510	$392,510	$392,510	$392,510	$392,510	$392,510
Capital Improvement	$69,334	$229,228	$428,636	$615,002	$802,492	$977,170	$1,160,429	$1,344,929	$1,503,132	$1,606,875	$1,606,875	$1,606,875	$1,606,875	$1,606,875	$1,606,875
Total Revenues	$573,391	$1,731,009	$3,203,967	$4,668,288	$6,061,614	$7,483,984	$8,837,135	$10,302,462	$11,445,559	$12,124,324	$12,124,324	$12,124,324	$12,124,324	$12,124,324	$12,124,32
Expenditures															
Operating	$188,219	$631,389	$1,180,647	$1,693,972	$2,210,146	$2,691,533	$3,196,302	$3,704,493	$4,140,249	$4,426,000	$4,426,000	$4,426,000	$4,426,000	$4,426,000	$4,426,000
Debt Service	$16,692	$55,893	$104,703	$160,228	$196,002	$236,692	$263,457	$328,525	$367,169	$392,510	$392,510	$392,510	$392,510	$392,510	$392,510
Capital Improvement	$97,043	$325,535	$608,729	$873,345	$1,139,518	$1,357,712	$1,647,863	$1,909,978	$2,134,848	$2,281,976	$2,281,976	$2,281,976	$2,281,976	$2,281,976	$2,281,976
Total Expenditures	$301,954	$1,012,817	$1,894,073	$2,717,563	$3,545,666	$4,317,937	$5,127,722	$5,942,997	$6,642,065	$7,100,486	$7,100,486	$7,100,486	$7,100,486	$7,100,486	$7,100,486
Net Fiscal Impact	$271,438	$718,091	$1,309,894	$1,950,705	$2,516,146	$3,166,047	$3,709,413	$4,359,465	$4,803,493	$5,023,838	$5,023,838	$5,023,838	$5,023,838	$5,023,838	$5,023,838
Cumulative Fiscal Impact	$271,438	$989,529	$2,299,423	$4,249,128	$6,765,274	$9,922,321	$13,631,734	$17,991,199	$22,794,692	$27,818,530	$32,842,368	$37,866,206	$42,890,044	$47,913,882	$52,937,720

Fishkind & Associates, Inc.

Table 5: Fiscal Impact Detail For Development--Lee County School Board -- 05 % Student Generation Rate -- 256 Students

	1998	1999	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Revenues															
Ad Valorem Taxes															
Operating	$316,295	$909,744	$1,675,303	$2,451,875	$3,186,482	$3,959,692	$4,653,749	$5,452,638	$6,039,956	$6,369,438	$6,369,438	$6,369,438	$6,369,438	$6,369,438	$6,369,438
Debt Service	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Capital Improvement	$86,090	$247,617	$455,959	$667,359	$867,306	$1,078,005	$1,269,393	$1,484,116	$1,643,976	$1,733,652	$1,733,652	$1,733,652	$1,733,652	$1,733,652	$1,733,652
Other Sources															
Operating	$28,660	$96,142	$179,778	$257,842	$332,158	$403,841	$468,703	$564,085	$626,701	$667,002	$667,002	$667,002	$667,002	$667,002	$667,002
Debt Service	$5,564	$18,664	$34,901	$50,075	$64,491	$78,564	$94,486	$109,508	$122,052	$129,488	$129,488	$129,488	$129,488	$129,488	$129,488
Capital Improvement	$22,778	$76,409	$142,879	$205,001	$264,018	$325,773	$386,810	$448,310	$499,664	$530,103	$530,103	$530,103	$530,103	$530,103	$530,103
Total Revenues	$459,387	$1,348,577	$2,488,850	$3,632,252	$4,714,483	$5,853,726	$6,901,140	$8,058,656	$8,934,361	$9,429,683	$9,429,683	$9,429,683	$9,429,683	$9,429,683	$9,429,68
Expenditures															
Operating	$82,740	$210,483	$393,549	$564,657	$727,210	$897,178	$1,055,434	$1,234,831	$1,376,281	$1,460,124	$1,460,124	$1,460,124	$1,460,124	$1,460,124	$1,460,124
Debt Service	$5,564	$18,664	$34,901	$50,075	$64,491	$78,564	$94,486	$109,508	$122,052	$129,488	$129,488	$129,488	$129,488	$129,488	$129,488
Capital Improvement	$32,348	$106,512	$207,938	$281,128	$374,938	$462,571	$549,371	$635,680	$706,069	$752,817	$752,817	$752,817	$752,817	$752,817	$752,817
Total Expenditures	$100,651	$337,659	$631,358	$905,861	$1,166,639	$1,438,312	$1,709,241	$1,980,999	$2,207,922	$2,342,428	$2,342,428	$2,342,428	$2,342,429	$2,342,428	$2,342,428
Net Fiscal Impact	$358,736	$1,010,938	$1,857,493	$2,726,391	$3,547,854	$4,414,414	$5,191,899	$6,077,657	$6,726,439	$7,087,255	$7,087,256	$7,087,255	$7,087,255	$7,087,255	$7,087,255
Cumulative Fiscal Impact	$358,736	$1,369,674	$3,227,167	$5,953,558	$9,501,412	$13,915,826	$19,107,725	$25,185,381	$31,911,820	$38,999,075	$46,086,330	$53,173,585	$60,260,840	$67,348,094	$74,435,349

Fishkind & Associates, Inc.

Table 6: Lee County School Board District Summary Budget FY 1996-97

	Total	Per Student
Revenues		
Ad Valorem		
General Fund	157,487,402	NA
Debt Service Fund		NA
Capital Projects Fund	44,223,500	NA
Other Sources		
General Fund	132,444,106	2,605
Debt Service Fund	25,711,915	506
Capital Projects Fund	105,260,559	2,071
Total Revenue	465,127,582	5,182
Expenditures		
General Fund	289,931,506	5,704
Debt Service Fund	25,711,915	506
Capital Projects Fund	149,484,159	2,941
Total Expenditures	465,127,582	9,150

NA - per caipta is not applicable, actual figures are used.

Fishkind & Associates, Inc.

Table 7 The Brooks of Bonita Springs Fiscal Impacts
Estero Fire Protection & Rescue Service District

		1998	1999	2000	2001	Final Yr. Ph 1	2003	2004	2005	2006	Final Yr. Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Operating Revenue																
Taxable Value		$50,641,250	$145,656,970	$268,228,785	$392,563,841	$510,180,000	$634,120,852	$746,701,618	$873,005,684	$967,041,700	$1,019,795,460	1,019,795,460	1,019,795,460	1,019,795,460	1,019,795,460	1,019,795,460
Millage Rate	1.9181	1.9181	1.9181													
Annual Revenue		97,135	279,335	514,499	752,977	$978,575	$1,216,207	$1,432,248	$1,674,518	$1,854,888	$1,956,070	1,956,070	1,956,070	1,956,070	1,956,070	$1,956,070
Operating Expenses																
Dwelling Units		228	738	1360	1980	2,600	3148	3736	4330	4846	5,200	5,200	5,200	5,200	5,200	5,200
Cost per unit	$245.58	$245.58														
Annual Cost		54,027	181,235	338,896	486,241	$638,488	$772,584	$917,474	$1,063,346	$1,190,064	$1,276,998	1,276,998	1,276,998	1,276,998	1,276,998	$1,276,998
Net Fiscal Impact		43,108	98,149	175,594	266,735	$340,077	$443,724	$514,775	$611,172	$664,825	$679,072	$679,072	$679,072	$679,072	$679,072	$679,072
Cumulative Operating Impact		$43,108	$141,257	$316,851	$583,587	$923,664	$1,367,388	$1,882,162	$2,493,334	$3,158,159	$3,837,230	$4,516,302	$5,195,374	$5,874,446	$6,553,518	$7,232,590
Impact Fee Schedule																
Single Family		$484.20														
Att. Single Family		319.20														
Multi-Family		319.20														
Retail		1,561.20														
Community		208.20														
Impact Fee Revenue																
Single Family		25,147	56,157	75,535	75,535	$57,136	$63,914	$71,952	$71,952	$54,230	$0	$0	$0	$0	$0	$0
Att Single Family		15,322	43,411	58,094	58,618	48,799	51,710	56,818	58,094	44,888	31,282	$0	$0	$0	$0	$0
Multi-Family		37,856	84,907	37,037	84,907	110,443	80,438	84,269	84,269	84,269	81,715	$0	$0	$0	$0	$0
Retail		0	0	0	0	150,120	0	0	0	0	0	$0	$0	$0	$0	$0
Community		1,041	0	3,123	0	0	4,164	0	0	0	3,123	$0	$0	$0	$0	$0
Annual Impact Fee Revenue		80,175	184,456	233,788	217,260	378,494	200,227	212,746	214,925	183,187	116,120	$0	$0	$0	$0	$0
Capital Expense @$306 per ERU		68,850	158,508	201,042	183,600	220,320	173,196	180,540	181,764	157,896	112,914	$0	$0	$0	$0	$0
Annual Net Capital Impact		$11,325	$25,948	$32,747	$33,660	$153,174	$27,031	$32,206	$33,261	$25,291	$3,205	$0	$0	$0	$0	$0
Cumulative Capital Impact		$11,325	$37,303	$70,050	$103,710	$256,884	$283,915	$316,123	$349,384	$373,675	$376,881					
CUMULATIVE CAPITAL AND OPERATING IMPACTS		$54,433	$178,560	$388,901	$687,297	$1,180,548	$1,651,303	$2,198,285	$2,841,718	$3,531,834	$4,214,111	$4,516,302	$5,195,374	$5,874,446	$6,553,518	$7,232,590

Fishkind & Associates, Inc.

Table 7a
Estero Fire Protection & Rescue Service District
1996-1997 Budget

Labor & Benefits	642,286
Professional Fees & Services	39,050
General insurance	10,000
Repair & Maintenance	26,000
Operating Expenses	26,900
Interest Expense	9,165
Contingency Fund	21,000
Reserve *	69,891
Total Expenses	$844,292
Estimated ERU's	3,438
Cost of Annual Operations Per ERU	$245.58
Annual Millage Rate 1996-97	1.9181

* Reserve fund does not represent a cash flow expense

Fishkind & Associates, Inc.

DRI
EXHIBIT C

BIENNIAL MONITORING REPORT REQUIREMENTS

The Biennial Monitoring Report that must be submitted by the developer in accordance with Subsections 380.06(15) and 380.06(18), Florida Statutes, and 9J-2.025(7), Florida Administrative Code, must include the following:

A. Any changes in the plan of development or in the representations contained in the application for development approval, or in the phasing for the reporting year and for the next year;

B. A summary comparison of development activity proposed and actually conducted for the year;

C. Identification of undeveloped tracts of land, other than individual single family lots, that have been sold to separate entities or developers.

D. Identification and intended use of lands purchased, leased, or optioned by the developer adjacent to the original DRI site since the development order was issued;

E. A specific assessment of the developer's and the local government's compliance with each individual condition of approval contained in the DRI Development Order and the commitments which are contained in the application for development approval and which have been identified by the local government, the RPC, or the DCA as being significant;

F. Any requests for substantial deviation determination that were filed in the reporting year and to be filed during the following year;

G. An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;

H. A list of significant local, state, and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;

I. A statement that all persons have been sent copies of the biennial report in conformance with Subsections 380.06(15) and (18), Florida Statutes;

J. A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Paragraph 380.06(15)(f), Florida Statutes.

NOTE: The Florida Administrative Code specifically requires that the development order specify the requirements for the biennial report. The Administrative Code requires that the annual report will be submitted to DCA, the RPC, and the local government on Form RPM-BSP-Annual Report-1.

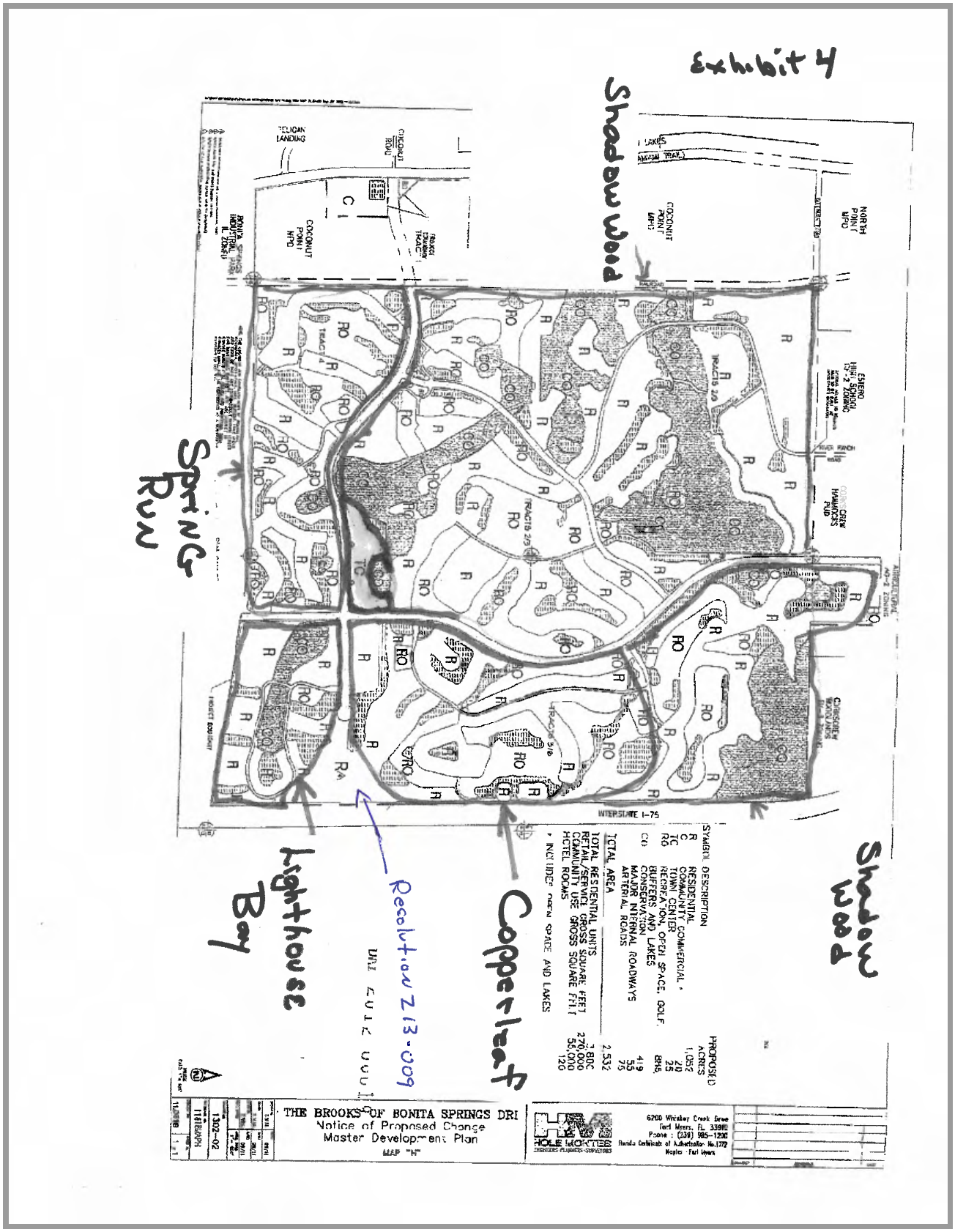


Exhibit 4
Shadow Wood
Spring Run
Lighthouse Bay
Copperleaf
Shadow Wood
Resolution 2013-009
THE BROOKS OF BONITA SPRINGS DRI
Notice of Proposed Change
Master Development Plan
MAP "H"
SYMBOL DESCRIPTION
R RESIDENTIAL
C COMMUNITY COMMERCIAL
TC TOWN CENTER
RO RECREATION, OPEN SPACE, GOLF, BUFFERS AND LAKES
CO CONSERVATION
MAJOR INTERNAL ROADWAYS
ARTERIAL ROADS
TOTAL AREA
TOTAL RESIDENTIAL UNITS
RETAIL/SERVICE GROSS SQUARE FEET
COMMUNITY USE GROSS SQUARE FEET
HOTEL ROOMS
INCLUDES OPEN SPACE AND LAKES
PROPOSED ACRES
1,052
29
25
898
419
53
75
2,532
7,800
270,000
50,000
120
INTERSTATE I-75
TELOGIA LANDING
COCONUT POINT MPD
NORTH POINT MPD
ESTERO HIGH SCHOOL
COLLIER COUNTY HAMMOCKS PUD
ROUTH STRAND INDUSTRIAL PARK IL ZONING
HOLE MONTES
CONSULTING ENGINEERS PLANNERS SURVEYORS
6200 Whiskey Creek Drive
Fort Myers, FL 33912
Phone : (239) 985-1200
Florida Certificate of Authorization No.1272
Naples - Fort Myers
1302-02
11/18/08

AFFIDAVIT

FOR TESTIMONY TO THE

VILLAGE OF ESTERO VILLAGE COUNCIL

The Brooks Town Center
Vested Rights Claim Determination and
Administrative Appeal

I, Mary Gibbs, FAICP, Community Development Director of the Village of Estero, being duly sworn and under oath, depose and state that the following is true based on my own personal knowledge:

1. My resume is attached hereto as Exhibit A.8 and incorporated herein.

2. I have prepared this affidavit to provide factual evidence related to the two applications made by Applicants Long Bay Partners, LLC ("Long Bay"), TOP-CR Associations, LLC ("TOP-CR"), and PAC Estero, LLC (PAC Estero), for determinations to be made by the Village of Estero Village Council. Those applications are for 1) a Determination of Vested Rights and 2) the Appeal of an Administrative Action for a decision that I made as Community Development Director.

3. My statement of facts is set forward in three parts. Part A is an Introductory Statement of Facts that is pertinent to both of the applications and is set forth below. Part B is a Supplemental Statement of Facts for the Determination of Claims of Vested Rights, contained within the materials separately consolidated for the Council's consideration of that application, and adopted as my statement as if incorporated herein. Part C is a Supplemental Statement of Facts for the Appeal of Administrative Action, contained within the materials separately consolidated for the Council's consideration of that application, and adopted as my statement as if incorporated herein.

4. To inform my Statements, I have reviewed the application materials filed by Long Bay Partners, LLC with the Village of Estero. I have also reviewed the Village of Estero files

pertaining to The Brooks that I maintain in my Village offices, including the exhibits referenced in the Introductory Statement of Facts and the Supplemental Statements of Facts. When those referenced exhibits are excerpts of larger documents, I attest that the complete documents are available in the files of the Community Development Department. I have also reviewed relevant provisions of the Transitional Land Development Code. I am personally familiar with the subject property and the Town Center, from having visited it multiple times and having reviewed the Final Plan Approval submissions of the Applicants. My affidavit incorporates these materials and information in their entirety.

PART A: INTRODUCTORY STATEMENT OF FACTS

The Applications

5. The Applicants have applied for a determination of vested rights to redevelop an approximately 9.95-acre site ("the subject property") within area of The Brooks designated "Town Center." Applicants seek to demolish 36,000 square feet of commercial retail space and replace it with a 4-story building with 154 multi-family residential dwelling units on the subject property. They argue that they are entitled to develop the project by virtue of the existing planned development zoning and Development of Regional Impact resolutions granted by Lee County.

6. The Applicants have also filed an appeal of my administrative decision which was set forth in a "sufficiency letter" dated July 27, 2020. The letter advised that the correct procedure for the redevelopment of the subject property is through the process for minor planned development approval, which requires Village Council approval. Applicants argue that the redevelopment project need only be reviewed administratively by the Village staff for "Final Plan Approval", before obtaining a local development order from the Planning Zoning and Design Board.

The Applicants

7. The Applicants are:

a. Long Bay Partners, LLC ("Long Bay"), the owner of the subject parcel.

b. TOP-CR Associations, LLC ("TOP-CR"), which is the ground lessee of the subject property.

c. PAC Estero, LLC (PAC Estero), an apartment developer and the contract purchaser of a portion of the subject property.

The Subject Property's Existing Approvals

8. The 9.95-acre subject property is part of a large, unified development called The Brooks of Bonita Springs ("The Brooks"). The Brooks was approved as a Development of Regional Impact (DRI) due to its size (approximately 2600 acres) and the amount of development planned within it and subsequently developed.

9. The subject property is located within The Brooks Town Center, a specific area designated as such in the DRI and zoning master plans for The Brooks development.

10. Long Bay obtained approval for The Brooks in 1997 from the Lee County Board of County Commissioners, with a DRI Development Order (DRI-DO), and a concurrent Mixed Use Planned Development (MPD) zoning Resolution. The original DRI-DO, is attached as Exhibit A.1. The original MPD zoning Resolution No. Z-97-037 is attached as Exhibit A.2.

11. The Town Center is internal to The Brooks MPD, surrounded by residential neighborhoods, and at the intersection of the two internal major roads that divide the full Brooks development. According to the Lee County DRI-DO approval, the Town Center as originally approved was

> . . . intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total

[vehicle] trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:

1) The Town Center may not exceed 100,000 square feet of office/retail/service gross floor area. . . . The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and
2) The uses within the Town Center will be governed by the planned development zoning; and
3) Single use retail buildings may not exceed 30,000 square feet of gross leasable area.

Exhibit A.1, p. 19 of 26, paragraph 5.

12. The DRI-DO classifies the 25-acre Town Center as "TC" (Town Center) on the Master Plan. There were also 1,032 acres of land designated "R" (Residential), 20 acres designated "C" (Community Commercial), 873 acres designated "RO" (Recreation Open Space), and 416 acres designated "CO" (Conservation) on the Master Plan. Exhibit A.1, map following p. 26 of 26.

13. The DRI-DO has been amended over time. The current designations of land are as follows:

<u>Summary Development Parameters – Buildout</u>

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Land Use	~~Proposed~~ DRI
Residential	
Single Family	1,600 d.u.
Multi Family	2,000 d.u.
Total	3,600 d.u.
Town Center	
Service/Retail/Office	120,000 sq. ft.
Community Use	50,000 sq. ft.
Total	170,000 sq. ft.
Community Center	
Retail	150,000 sq. ft.
Office	5,000 sq. ft.
Total	155,000 sq. ft.
Hotel	120 rooms
Golf Course	72 holes

Exhibit A.3, Fifth Amendment to DRI-DO (Excerpt).

14. The MPD zoning Resolution Z-97-037 adopted a Master Concept Plan that parallels the DRI-DO Master Plan. The land use designations for the properties within The Brooks are the same, and both the DRI-DO and the zoning include a Town Center designation. The Brooks zoning Resolution expressly requires the development of The Brooks MPD to be in accordance with the DRI-DO. Exhibit A.2, Master Concept Plan Exhibit IV-F following p. 26 of 26.

15. In addition, the zoning Master Concept Plan includes "Property Development Regulations" for each land use designation, that set out lot dimensions, setbacks, heights, number of habitable floors, minimum building separation; and maximum lot coverage for various specific uses within each use designation, including the Town Center. Exhibit A.2, Master Concept Plan Exhibit IV-F following p. 26 of 26.

16. The MPD zoning Resolution also contains a list of permitted uses for each land use designation. The Town Center list of uses includes, among others, Multi-Family Low Rise, and other residential uses ancillary to any permitted commercial use. The

Property Development Regulations for the Town Center also include regulations for Multi-Family Low Rise uses as well as for other specific uses. Exhibit A.2, pp. 9-11 and pp.17-18.

17. In 2007 TOP-CR Associates, LLC obtained a Lee County Final Zoning Plan Approval and Lee County Local Development Order for the full retail development of the subject property in 80,000 square feet of retail use. No residential development was authorized by the Final Zoning Plan Approval or Local Development Order. See Exhibit A.4.

18. The subject parcel was then developed for 71,334 square feet of retail use, except for two small currently vacant out-parcels, and has operated as a retail center since that time. The retail center is within the larger Town Center area that includes developed office, retail, commercial and Community Clubhouse uses. There are no residential units and no residential development on the subject property or in any part of the Town Center.

19. The MPD zoning Resolution was last amended in 2013. The current MPD approval allows no more than 3,800 single family/multifamily dwellings units in The Brooks. Exhibit 5, p. 1 of 6. Applicants claim that there are 154 multi-family units remaining that have not been constructed at The Brooks.

<u>The 2020 Application for Residential Development at the Town Center</u>

20. In early 2020, Applicants' attorney, Neale Montgomery, contacted me and discussed the Applicants' plan to demolish 36,000 square feet of commercial retail space - the vacant Winn Dixie store - in the Town Center and replace it with a 4-story building with 154 multi-family residential units.

21. In the discussion, Ms. Montgomery argued that to accomplish this redevelopment and change in use from commercial retail to residential, all that was necessary on the part of the Applicants was to submit an application to the Village Community Development Department for

an administrative Final Plan Approval and a subsequent application for Local Development Order approval. I disagreed that a Final Plan Approval was administrative. I advised Ms. Montgomery that any such approval must be made by the Village Council.

22. I also asked Nancy Stroud, the Village's Land Use Attorney, for her opinion regarding the appropriate Village procedure for the plan to redevelop the Town Center. Ms. Stroud provided her opinion to me in a May 19, 2020, memo. See Exhibit A.6.

23. Ms. Stroud's opinion to me advised that an application for minor planned development amendment to The Brooks MPD zoning resolution was the appropriate application for redevelopment of the subject property. Such an application is heard by the Village Council. I provided the opinion to Ms. Montgomery.

24. Applicants subsequently submitted a Final Plan Approval application for the redevelopment of the subject parcel for 154 low rise apartments on June 26, 2020. I proceeded to review the application for "sufficiency" and on July 27, 2020, provided a comment letter to the Applicants which, among other insufficiency comments, stated that the application should be for a minor planned development amendment. My letter made no determination of Applicants' vested rights. See Exhibit A.7.

25. Applicants submitted further information and a revised application for Final Plan Approval on August 20, 2020. They also provided further documentation of the number of built residential units in The Brooks, on September 16, 2020.

26. Applicants filed suit in Lee County circuit court on September 10, 2020. Their lawsuit asked the Court to determine that an administrative Final Plan Approval is the appropriate process to follow, rather than a quasi-judicial zoning process, and to determine that they have vested rights to "Multi-Family Low Rise dwellings within the Town Center." The suit was

voluntarily dismissed by the Applicants on June 24, 2021. The Applicants then filed their administrative appeal and request for determination of vested rights with the Village.

Further Affiant sayeth naught.

Mary Gibbs 10/18/21

Signature Date

STATE OF Florida

COUNTY OF LEE

SWORN TO (or affirmed) and subscribed before me by means of ✓ physical presence or _____ online notarization this 18 day of October, 2021, by _____.

Such person Notary Public must check applicable box:

✓ is personally known to me.

_____ produced her current driver license.

_____ produced _____ as identification.

(Notary Seal)

Notary Public State of Florida
Carolin Sacco
My Commission HH 048942
Expires 11/28/2024

Carol Sacco

Notary Public

Printed Name of Notary: Carol Sacco

Commission Number: HH 048942

My Commission Expires: 11/28/2024

Mary Gibbs, FAICP

PROFESSIONAL REGISTRATION
American Institute of Certified Planners (1982) #038742
Certification Current

EDUCATION
2003 Master of Business Administration,
Florida Gulf Coast University
Fort Myers, FL

1976 Master of Arts, Geography
1973 Bachelor of Arts, Geography
University of South Florida
Tampa, FL

2006 Adjunct Professor, Urban Planning
Barry University
Cape Coral, FL

Certified Planner with over 40 years of experience in local and regional government in one of the fastest growing areas of the State and Country.

Planning Accomplishments

- Developed and implemented the Village Center Planning Study, including Comprehensive Plan Amendments and Land Development Code Amendments, for a 500-acre area in the Village of Estero to create a walkable mixed-use center for the Village, to provide a sense of place in an existing suburban environment, and to foster creative projects with public spaces for the residents of the Village. The first project in the Village Center was approved in late 2016 and is now being constructed. Responsible for development and adoption of Village's first Comprehensive Plan and Land Development Code in 2018 and 2021.
- Completed major comprehensive planning update for Lee County in 2011. New Horizon 2035 was the first major update to the plan in 25 years, focusing on multi-modal concepts, infill, linkage between transportation and land use, and protection of rural areas.
- Established community planning program. Over 18 plans have been adopted giving citizens a voice in how the County is developed.
- Implemented plan to retrofit a 97 square mile area (Lehigh Acres, population over 60,000, larger than many cities), a pre-platted land sales subdivision that was developed with no infrastructure or commercial area. Three pilot projects followed to develop a downtown and mixed-use commercial areas to make Lehigh a self-sustaining community. The study won an award from Florida Planning and Zoning Association.
- Developed a plan for an 86,000 acre environmentally sensitive land and water supply area of Lee County (Density Reduction/Groundwater Resource) to retain the environmental areas, protect future water supplies, and balance diverse land uses. The study won several awards, including Congress for New Urbanism, APA Florida Chapter and 1000 Friends of Florida.
- Developed architectural and landscape standards to update the appearance of commercial areas along major roadways in Lee County. Used as model for other areas in the State.
- Assisted with implementation of professional Hearing Examiner program for rezoning. Program is one of a few in the State and was successfully expanded to include Code Enforcement.

Innovative Project Review

- Hertz World Headquarters – Provided expedited assistance in site selection and zoning review to meet critical timeframe for relocation of corporate office headquarters from New Jersey to Lee County. The project was endorsed by the Governor as an economic development project providing 700 jobs.
- Florida Gulf Coast University – Led the staff review of Florida's 10th university from site selection through planning, zoning and permitting. Received a resolution of appreciation from County Commission for vital planning assistance.
- Red Sox and Twins Spring Training Facilities – Led review of new Red Sox spring training facility (LEED certified) and original Twins stadium (Florida Quality Development) and expansion of Twins stadium to retain teams in Florida. Review included de-annexation, amendments to DRI and FQD and zoning amendments on expedited schedule to meet critical spring training game schedules. Spring training impact on economy is almost $50 million annually.
- Florida Quality Developments – Reviewed and enabled other Florida Quality Developments and innovative large scale projects.

Project Management

- Village Comprehensive Plan and Land Development Code
- Village Traffic Study
- NFIP Community Rating System Implementation
- Reviewed thousands of zoning and planning cases and DRI's over 40 years

- Negotiated and implemented contract for permitting/zoning service to Town of Fort Myers Beach and City of Bonita Springs after they incorporated to provide a smooth transition of service.
- Implemented impact fee studies (roads, schools, parks, and Fire/EMS) and periodic updates.
- Land Development Blasting Study
- Commercial and Industrial Lands Study
- Workforce Housing Study

Awards

- Florida Planning & Zoning Association – George W. Simons, Jr. Memorial Award (2015) for outstanding contributions in the profession of Planning and Zoning in the State of Florida
- City of Bonita Springs – Certificate of Appreciation (2015) – for assistance with community development services to the City
- Charter Award from Congress for the New Urbanism, Prospects for Southwest Lee County: Planning for the Density Reduction/Groundwater Resource Area (with Dover Kohl and Partners) 2010
- 1000 Friends of Florida – Community Steward Award – Density Reduction/ Groundwater Resource Area Plan (2010)
- Florida Planning & Zoning Association – Long Range Planning Award of Excellence – Lehigh Acres Comprehensive Planning Study (2009)
- American Planning Association (Florida Chapter) – Award of Merit – Prospects for Southeast Lee County: Planning for the Density Reduction/Groundwater Resource Area (2009)
- American Planning Association, SW Florida Chapter – Planner of the Year Award (2009)
- Award for Outstanding Community Support (1995)
- Resolution from Lee County Commission for Planning Assistance with Florida Gulf Coast University (1994)
- Building Industry Association – Community Service Award (1994)

Professional Affiliations

- Fellow, American Institute of Certified Planners (FAICP) - 2018
- American Institute of Certified Planners (AICP) – Member since 1982
- American Planning Association (APA) - Member of Florida and Local Chapter since 1980
- Speaker, Florida Planning and Zoning Association State Conference in Key West, 2019
- Speaker, Florida State APA Conference, 2006, and 2012 State Conferences in Naples
- APA Host Committee Member and Speaker – 1997 State Conference in Naples, 1989 State Conference in Sarasota
- Florida Planning and Zoning Association (FPZA) – Charter Member SW Florida Chapter (1982); Past Treasurer and President, SW Florida Chapter (1983-1984)
- 1000 Friends of Florida, Member
- Real Estate Investment Society, Director of Legislative Committee (2009)

Other Achievements

- Maintained service levels during years of record permitting activity and growth.
- Established Central Permitting operation (“One Stop Shop”) and relocation into new building for integrated review process and customer ease.
- Reorganized department, streamlined processes and regulations
- Implemented Computerized Permit Management System and electronic permitting.
- Established review time frames for permits, plan review, site plan and zoning activities.
- Implemented customer service training and customer service surveys for department.
- Implemented fee increases to cover costs of services.

Other

- Authored articles for Florida Planning and APA Practicing Planner
- Expert witness testimony
  - Hearing Examiner and other Quasi-Judicial proceedings
  - Mediation
  - Court Cases

Employment History

Village of Estero
Estero, FL

- ***Community Development Director, 2015 to Present*** – Hired as first Community Development Director of new municipality to implement the Village start-up and takeover of all planning, zoning, building permitting, and inspections, site plan review, code enforcement and environmental functions that had been handled by the County. During the transition, also implemented the Village Center Planning Study, Comprehensive Plan Amendments and Land Development Code Amendments for a 500-acre area to serve as the walkable mixed-use center of the Village. Developed first Comprehensive Plan for the Village adopted in June 2018. Developed first Land Development Code for the Village, adopted in January 2021. Other projects include Village-wide Traffic Study, Flood Insurance Rating Program, Parks Master Plan and Bicycle and Pedestrian Study. Staff liaison to Village Planning, Zoning and Design Board.

Lee County Board of Commissioners
Fort Myers, FL

- ***Community Development Director, Lee County, Florida 1991 to 2015 –*** Led a staff of up to 250 people with a budget of $25 million. Department includes Planning, Zoning, Environmental Sciences, Development Review, Central Permitting, Code Enforcement and Building Inspections. At various times also included Natural Resources, Economic Development and Community Redevelopment.
- ***Zoning Director, Lee County, 1990 to 1991 –*** Supervised 30-person division, budget $1.5 million. Processed 400 public hearing requests annually, provided zoning interpretations, prepared amendments to Zoning Ordinance, provided staff recommendations on zoning cases, presented staff recommendations at public hearings at Board of County Commissioners and Hearing Examiner. Liaison with task forces and committees.
- ***Principal Planner and Senior Planner, Lee County, 1984 to* 1990 –** A major accomplishment was implementing Hearing Examiner program to replace citizen zoning board. The program was so effective, it was expanded to include Code Enforcement. Also directed and reviewed major projects.
- Supervised an 11-person staff. Reviewed and prepared reports and recommendations on rezonings, special exceptions, variances, Developments of County Impact, and Developments of Regional Impact. Reviewed Plan consistency. Handled complex negotiations with attorneys, planners, engineers, developers, citizens, etc. Presented staff recommendations to the Local Planning Agency and Board of County Commissioners.

Southwest Florida Regional Planning Council
Fort Myers, FL

- ***Senior Planner and Regional Planner, 1978 to 1984 –*** Helped to develop one of the first hurricane evacuation plans in the State and Country which was used as a model for other areas.
- Developed several land use studies, comprehensive plans, and reviewed Developments of Regional Impact. Prepared comprehensive plans, reviewed Comprehensive Plans and amendments for a six-county area, developed a regional monthly economic newsletter and economic study for six-county area. One of the first in the State to implement a computerized fiscal impact model to assess project impacts. Prepared grants, and quarterly Council newsletter.

DCI File

DEVELOPMENT ORDER
FOR
THE BROOKS OF BONITA SPRINGS
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #07-9697-133

LET IT BE KNOWN THAT, PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, HAS HEARD AT A PUBLIC HEARING CONVENED ON AUGUST 25, 1997, THE APPLICATION FOR DEVELOPMENT APPROVAL FOR THE BROOKS OF BONITA SPRINGS (HEREAFTER REFERRED TO AS THE BROOKS) DRI, A MIXED USE DEVELOPMENT IN LEE COUNTY WHICH INCLUDES APPROXIMATELY 2,492± ACRES TO BE DEVELOPED IN ACCORDANCE WITH THE APPLICATION SUBMITTED TO LEE COUNTY ON July 3, 1996 BY THE OWNER/APPLICANT, LONG BAY PARTNERS, L.L.C.

WHEREAS, the Board of County Commissioners of Lee County, Florida, has considered the report and recommendations of the Southwest Florida Regional Planning Council, the Lee County Staff, the Lee County Hearing Examiner, the application and sufficiency submittals, and the documents and comments made on the record in public hearing, and after full consideration of those reports, recommendations, documents and comments, the Board of County Commissioners of Lee County, Florida, finds and determines that:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Brooks is a master planned community located in unincorporated south Lee County west of I-75, north of San Carlos Estates, east of U.S. 41 and south of Corkscrew Road. The property includes 2,492± acres. The Brooks is a mixed use development that will consist of: 5,200 residential units, 250,000 square feet of retail/service/office gross floor area, 120 hotel units, and a maximum of 55,000 square feet of gross floor area of community facilities; the community facilities may include community association meeting space, education and training facilities oriented toward the residents' daily needs, dining, recreation, entertainment, civic and community uses. In addition, there will be 873 acres of active and passive recreation areas that include open space, buffer, golf, tennis, swimming and lakes. At buildout, the development will provide approximately 416 acres of conservation lands (forested and open wetlands and wetland flow-way restoration) and 126 acres of internal and public arterial road right-of-ways.

The phasing schedule includes two 5-year phases. Site preparation will commence in 1997. Residential construction is scheduled to commence in 1998. The buildout date is December 31, 2007.

Water supply and wastewater treatment will be provided by Bonita Springs Utilities, Inc.

B. The factual findings, conclusions of law, conditions and other terms of this Development Order apply to the property described more completely below:

PARCEL 1

A portion of the South Half (S½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,542.33 feet;
THENCE run S88°02'34"W for a distance of 1,221.61 feet to the POINT OF BEGINNING of the herein described parcel of land;
THENCE continue S88°02'34"W for a distance of 750.33 feet to a point on the Easterly right-of-way line of US Highway No. 41 (State Road No. 45, a 200-foot right-of-way);
THENCE run S00°15'56"E along said Easterly right-of-way line for a distance of 553.06 feet to the beginning of a tangential circular curve, concave Easterly;
THENCE run Southerly along said Easterly right-of-way line, and along the arc of said curve to the left, having a radius of 5,605.39 feet, through a central angle of 06°12'58", subtended by a chord of 607.83 feet, at a bearing of S03°22'24"E, for a distance of 608.13 feet;
THENCE run N88°07'51"E for a distance of 747.23 feet to a point of intersection with a non-tangential circular curve, concave Easterly, whose radius point bears N82°31'42"E a distance of 3,909.60 feet therefrom;
THENCE run Northerly along the arc of said curve to the right having a radius of 3,909.60 feet through a central angle of 08°29'31", subtended by a chord of 578.92 feet, at a bearing of N03°13'32"W, for a distance of 579.45 feet to the end of said curve;
THENCE run N00°15'56"W for a distance of 583.09 feet to the POINT OF BEGINNING.
Containing 19.948 acres, more or less.
Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W.

PARCEL 2

A portion of the North Half (N½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,674.19 feet to the East Quarter corner of said Section 09;
THENCE run N01°15'50"W along the East line of said Section 09 for a distance of 68.17 feet;
THENCE run S88°02'34"W for a distance of 1,555.19 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE continue S88°02'34"W for a distance of 413.96 feet to a point on the Easterly right-of-way line of US Highway 41 (State Road No. 45, a 200 foot right-of-way);
THENCE run N00°15'56"W along said Easterly right-of-way line for a distance of 415.00 feet;
THENCE run S46°02'16"E for a distance of 577.45 feet to the POINT OF BEGINNING.
Containing 1.971 acres, more or less.
Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W.

PARCEL 3

A parcel of land located in Sections 02, 03, 10, and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Northwest corner of Section 03, Township 47 South, Range 25 East, Lee County, Florida;
THENCE run S00°46'22"E along the West line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 100.02 feet to a point 100.00 feet South of, as measured at right angles to, the North line of the Northwest Quarter (NW¼) of said Section 03;
THENCE run N89°51'03"E parallel with the North line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 23.35 feet to a point on the South right-of-way line of Williams Road, a 100.00 foot right-of-way, the same being the POINT OF BEGINNING of the parcel of land herein described;
THENCE continue N89°51'03"E along said parallel line and along said South right-of-way line for a distance of 2,623.11 feet;
THENCE run N89°51'33"E parallel with the North line of the Northeast Quarter (NE¼) of said Section 03 and along said right-of-way line for a distance of 975.29 feet;
THENCE run N00°08'27"W along said right-of-way line for a distance of 100.00 feet to a point on the North line of the Northeast Quarter (NE¼) of said Section 03;
THENCE run N89°51'33"E along the North line of the Northeast Quarter (NE¼) of said Section 03 for a distance of 1,664.48 feet to the Northeast corner of said Section 03, the same being the Northwest corner of Section 02, Township 47 South, Range 25 East;
THENCE run N89°51'16"E along the North line of the Northwest Quarter (NW¼) of said Section 02 for a distance of 2,641.95 feet;
THENCE run N89°50'12"E along the North line of the Northeast Quarter (NE¼) of said Section 02 for a distance of 2,026.48 feet to a point on the West right-of-way line of Interstate 75, a 410-foot right-of-way, the same being a point on a circular curve, concave Westerly, whose radius point bears S79°55'57"W a distance of 5,567.58 feet therefrom;
THENCE run Southerly along said right-of-way line and along the arc of said curve to the right, having a radius of 5,567.58 feet, through a central angle

of 08°30'06", subtended by a chord of 825.37 feet, at a bearing of S05°49'00"E for a distance of 826.13 feet to the end of said curve;
THENCE run S01°33'57"E along said right-of-way line for a distance of 4,512.58 feet to a point on the North line of the Northeast Quarter (NE¼) of Section 11, Township 47 South, Range 25 East;
THENCE continue S01°33'57"E along said right-of-way line for a distance of 5,977.28 feet to a point on the South line of said Section 11;
THENCE run N82°32'38"W along the South line of the Southeast Quarter (SE¼) of said Section 11 for a distance of 2,165.51 feet;
THENCE run N82°29'27"W along the South line of the Southwest Quarter (SW¼) of Section 11 for a distance of 2,698.44 feet to the Southwest corner of said Section 11, the same being the Southeast corner of Section 10, Township 47 South, Range 25 East;
THENCE run S88°50'19"W along the South line of the Southeast Quarter (SE¼) of said Section 10 for a distance of 2,664.18 feet;
THENCE run S88°50'37"W along the South line of the Southwest Quarter (SW¼) of said Section 10 for a distance of 2,540.14 feet to a point on the Easterly right-of-way line of the Seaboard Coastline Railroad right-of-way, a 130.00 foot right-of-way;
THENCE run N00°59'47"W along said Easterly right-of-way line for a distance of 5,341.51 feet to a point on the North line of the Northwest Quarter (NW¼) of said Section 10;
THENCE continue N00°59'47"W along said Easterly right-of-way line for a distance of 2,692.12 feet;
THENCE run N00°56'59"W along said Easterly right-of-way line for a distance of 1,590.73 feet to the beginning of a tangential circular curve, concave Westerly;
THENCE run Northerly along said Easterly right-of-way line and along the arc of said curve to the left, having a radius of 5,771.38 feet through a central angle of 09°31'27", subtended by a chord of 958.37 feet at a bearing of N05°42'42"W for a distance of 959.37 feet to the end of said curve;
THENCE run N10°28'26"W along said Easterly right-of-way line for a distance of 77.72 feet to the POINT OF BEGINNING.
Containing 2,470.384 acres, more or less.
Bearings hereinabove mentioned refer to the North line of the Northwest Quarter (NW¼) of Section 03, Township 47 South, Range 25 East, Lee County Florida, as being N89°51'03"E.

C. The property was zoned AG-2, and coincident with the approval of this Development Order the property will be rezoned to Mixed Use Planned Development. The property is currently in active agricultural use. Agricultural uses may continue on those portions of the site not under development.

D. The Application for Development Approval (ADA) for The Brooks is consistent with the requirements of Section 380.06, Florida Statutes, and was found sufficient by the Southwest Florida Regional Planning Council on March 20, 1997.

E. The development is not located in an area designated as an Area of Critical State Concern under the provision of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development plan. The development is consistent with the State Comprehensive Plan if developed in accordance with the conditions set forth herein.

G. The development has been reviewed by the Southwest Florida Regional Planning Council (SWFRPC) and is the subject of the report and recommendations adopted by that body on March 20, 1997. The SWFRPC report and recommendations were subsequently forwarded to Lee County pursuant to Section 380.06, Florida Statutes. The development, as proposed in the ADA and modified by this Development Order, is generally consistent with the report and recommendations of the SWFRPC pursuant to Section 380.06(11), Florida Statutes.

H. The development is located in the Rural, Wetlands, and Suburban future land use categories and the development, as proposed, is consistent with the Planned Development District Option set forth in the Lee Plan for the Rural future land use category. The project, as conditioned herein, is consistent with the Lee County Comprehensive Plan, and Lee County's Land Development Code.

I. The conditions set forth below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

II. ACTION ON THE REQUEST AND THE CONDITIONS OF APPROVAL.

NOW THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting duly advertised, constituted and assembled August 25, 1997, that the Development of Regional Impact Application for Development Approval submitted by Long Bay Partners, L.L.C., for the project known as The Brooks of Bonita Springs (The Brooks), is hereby Approved subject to the conditions, restrictions and limitations that follow. For the purpose of this Development Order, the term "Developer" refers to Long Bay Partners, L.L.C., and includes all of its successors or assigns, and all references to County Ordinances or other regulations, includes future amendments.

A. AFFORDABLE HOUSING

1. The Developer surveyed whether there was a sufficient number of housing units available to meet the demands of 747 employees at buildout (2007). Based on this survey, found to be sufficient, The Brooks has no regionally significant impact on low and moderate income housing.

2. If the Developer files a Notice of Proposed Change that extends the buildout date of the DRI beyond 2007, the Developer must reanalyze its impacts on low and moderate income housing, if the development subject to the extension includes commercial development. The analysis is limited to the low and moderate housing impact of the total commercial development. If the analysis indicates that there will be regionally significant

impacts, the Developer must mitigate those impacts in accordance with applicable regulations.

B. ENERGY

The Developer will utilize the energy conservation measures outlined in the ADA.

C. HURRICANE PREPAREDNESS

1. The Brooks, at its current elevation, is located in a Category Three area pursuant to the SLOSH model. This is not a high hazard hurricane impact area, and the impacts to hotel/motels are only considered in high hazard areas. The DRI is in a "Hurricane Vulnerability Zone" (9J-2.0256(2)(c), F.A.C.). Due to the project's location in a category three area of Lee County, the Developer has the option of mitigating its impacts under Rule 9J-2.0256, F.A.C., or Rule 9J-2.0257, F.A.C. The Developer has chosen to mitigate the regional hurricane preparedness impacts by selecting the option of elevating the first floor of all residential units above the category three flood level, pursuant to Rule 9J-2.0257(6)(b), F.A.C. The units must be elevated at or above 16.6 feet, NGVD, the level designated for a Category Three area. If they are not so elevated, the Developer may not use the 9J-2.0257, F.A.C. option to mitigate its impacts. If they are elevated at or above 16.6 feet, NGVD, they will be treated as if they were in a Category Four flood level, and they will be considered to be outside of the hurricane vulnerability zone as defined by Rule 9J-2.0256, F.A.C.

2. The Developer will provide 20,000 square feet of on-site shelter space. Ten thousand square feet will be constructed in Phase I, and ten thousand square feet will be constructed in Phase II. The on-site shelter space will be used exclusively by residents of The Brooks and their guests, and they will be located within the club house(s) and must meet the following criteria:

(a) All shelter buildings must be elevated at or above the 16.6 feet, NGVD;

(b) All shelter buildings must be constructed in accordance with the requirements in Rule 9J-2.0257(6)(e), F.A.C., to withstand winds of at least one hundred twenty (120) miles per hour;

(c) All windows in shelter buildings must be shuttered;

(d) All shelter buildings must be equipped with an emergency power generator with adequate capacity to handle the following:

(1) ventilation fans;

(2) emergency lighting;

(3) life safety equipment (i.e., intercom, fire and smoke alarms);

(4) refrigeration and cooking equipment;

(e) All shelters must have an auxiliary potable water supply.

3. Pursuant to Policy 79.2.2 of the Lee Plan, all landowners within The Brooks must pay an All-Hazards Tax for hurricane shelters.

4. The Developer must establish a public information program with the Property Owners' Association for the purpose of educating the development's residents regarding the potential hurricane threat. The Developer will do the following:

a. The various Property Owners' Associations must host an annual educational seminar, and will be responsible for obtaining the place for the seminar and for the provision of invitations to the homeowners. The time will be coordinated with the Lee County Emergency Services staff, who will provide the education and information at the program. The public information program will advise the residents of the location of The Brooks in a Special Hurricane Preparedness District and of the difficulty of evacuation in the event of an impending hurricane, the availability and location of hurricane shelters and the identification of steps to minimize property damage and to protect human life. Lee County Emergency Services staff will provide additional information regarding natural disasters if appropriate.

b. The Developer will also provide one, or more, coordinated preparedness plan(s) for the residential areas within the DRI. The hurricane preparedness plan(s) must address and include: a) operational procedures for the warning and notification of residents and visitors prior to and during a hurricane watch and warning period; b) a public information program, described above; c) identification of who is responsible for the implementation of the approved evacuation plan; d) identification of the County's hurricane evacuation routes and shelters; and e) how the private security force, if any, will be integrated with the local Sheriff's personnel and the Division of Public Safety. The preparedness plan(s) must be developed in cooperation with the Lee County Emergency Management officials and must be found sufficient by those officials prior to the issuance of the first residential certificate of occupancy. Lee County Emergency Management Services will review the preparedness plan(s), and any revisions or addendums thereto, and will provide written objections or a verification of approval within fifteen (15) days.

5. Prior to the issuance of a local Development Order, the Developer of the hotel must submit a hurricane preparedness plan for the hotel to Lee County. Prior to the issuance of the Certificate of Occupancy for the hotel, the written preparedness plan(s) must be approved by Lee County Emergency Management. Lee County Emergency Management will review the preparedness plan(s), and any resubmittals and addendums, and will provide written comments that identify the deficiencies in the plan(s), resubmittals or addenda within 15 days. If no deficiencies are identified, Lee County Emergency Management will issue a written approval within 15 days.

6. When property is conveyed, the Developer must include a disclosure statement in the form of a covenant in the deed which states that the property is located in

a hurricane vulnerability zone, that the hurricane evacuation clearance time for the County is high, and that shelter space is limited.

D. STORMWATER MANAGEMENT

1. The Developer must modify the existing agricultural construction and operation permit (#36-00288-5), to address the construction and operation of the surface water management system for the development approved by this Development Order and the project's proposed impacts to isolated wetlands, "waters of the state" and "other surface waters." Review and approval of the application will be in accordance with Chapter 40E, F.A.C. and the South Florida Water Management District (SFWMD) Basis of Review. The Developer will provide the County with copies of the modified permit.

2. The Developer must also obtain a SFWMD water use permit for certain dewatering activities proposed for the construction of project lakes, roads and building foundations. The Developer will provide the County with copies of the water use permit.

3. If needed, the Developer must obtain a consumptive use permit, in accordance with Chapter 40E, F.A.C., and the SFWMD Basis of Review. The Developer will provide the County with copies of the consumptive use permit.

4. At the time of permit application, the Developer and the SFWMD will determine whether the surface water management system must comply with discharge criteria for Outstanding Florida Waters.

5. An analysis of the method and routes proposed for off-site discharges will be required at the time of permit application. The analysis must include particular emphasis on control elevations, on-site storage, delineation of watershed boundaries, and the adequacy of off-site conveyances to accommodate the anticipated discharges from the project site. The analysis must include construction level detail. In order for District staff to determine whether the proposed discharges to Outstanding Florida Waters are classified as "direct" or "indirect," the Developer must submit construction level drawings showing the proposed conveyance methods at the time of permit application.

6. The Developer will establish a legal operating entity in accordance with the SFWMD Basis of Review and Lee County Land Development Code (LDC), to maintain all internal storm water management lakes, ditches and wetlands. Easements, common areas or other legal mechanisms may be utilized to ensure there is sufficient access to the storm water management areas.

7. The Developer must remove all silt barriers, hay bales, anchor soil, and accumulated silt, upon completion of construction, and stabilization of slide slopes.

8. Where applicable, the final stormwater management plan must consider measures to reduce runoff rates and volumes, including, but not limited to, fixed control structures, perforated pipes, and grass swale conveyances. The Developer must use swales rather than closed systems whenever practical.

9. On-site stormwater management lakes must include littoral zones. The location and extent of the littoral zones must be consistent with the requirements set forth in the surface water management permit issued by the SFWMD, as well as the local Development Order issued by Lee County. The SFWMD Basis of Review and County planned development resolution will dictate the required type, massing, and survival rate of vegetation in the littoral zones.

10. The Developer must conduct annual inspections of the Master Stormwater Management System and the on-site preserved/enhanced wetland areas to ensure that these areas are maintained in keeping with the final approved designs, and that the water management system is capable of accomplishing the level of stormwater storage and treatment for which it was intended.

11. If the stormwater management system impacts the habitats of state or federally listed plant and animal habitats on-site, these impacts will be evaluated during the review of any surface water management or ERP permit issued by the SFWMD, any dredge and fill permit issued by the Army Corps of Engineers (ACOE) and any local Development Order issued by Lee County. Impacts will be evaluated and mitigated in accordance with ACOE, SFWMD/DEP, and Lee County regulations.

12. The Developer, the UCDD, or the successors and assigns, must regularly vacuum sweep all privately owned internal streets and parking areas. The Developer will also encourage private parcel owners to regularly vacuum sweep their respective streets and parking areas.

13. The Developer must provide dry detention or retention pretreatment in the areas adjacent to commercial uses unless the Developer can provide reasonable assurances to the SFWMD that hazardous materials will not enter the project's surface water management system. The assurances may be in the form of deed restrictions, recorded lease agreements, or other legal instrument acceptable to SFWMD and the County.

E. TRANSPORTATION

1. Significant Impact

a. The traffic impact assessment for the project assumes the development parameters set forth below:

	Phase I (2002)	Buildout (2007)
Residential		
--Single Family	600 D.U.	1,140 D.U.
--Multi Family/Single Family-Attached	2,000 D.U.	4,060 D.U.
Non-Residential		
--Service/Retail/Office (Town Center)	10,000 sq. ft.	100,000 sq. ft.
--Community Use (Town Center)	15,000 sq. ft.	50,000 sq. ft.
--General Retail (Community Center)	100,000 sq. ft.	150,000 sq. ft.
--Community Use (Community Center)	5,000 sq. ft.	5,000 sq. ft.

--Hotel	0 Rooms	120 Rooms
--Golf Course	36 Holes	72 Holes

b. The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at project Build out (2007). The Brooks DRI is projected to significantly and adversely impact the following roadways and intersections:

Roadways:

	Needed Improvement
Corkscrew Road	
--Sandy Lane to Three Oaks Parkway	Widen to 4 lanes
--Three Oaks Parkway to I-75	Widen to 4 lanes
U.S. 41	
--Bonita Beach Road to W. Terry Street	Widen to 6 lanes
--Corkscrew Road to Koreshan Boulevard	Widen to 6 lanes
--Koreshan Boulevard to San Carlos Boulevard	Widen to 6 lanes
--San Carlos Boulevard to Alico Road	Widen to 6 lanes
--Alico Road to Island Park Road	6 lanes plus alternate facility*
--Island Park Road to Jamaica Bay West	6 lanes plus alternate facility*
--Jamaica Bay West to Six Mile Parkway	6 lanes plus alternate facility*
Bonita Beach Road	
--Imperial Street to I-75	Widen to 6 lanes

** Metro Parkway Extension (6 lanes)*

Intersections:

US 41/Six Mile Cypress Parkway	Intersection Improvements
US 41/Island Park Road	Intersection Improvements
US 41/Alico Road	Intersection Improvements
US 41/San Carlos Boulevard	Intersection Improvements
US 41/Koreshan Boulevard	Intersection Improvements
US 41/Corkscrew Road	Intersection Improvements
US 41/Williams Road	Intersection Improvements
US 41/Coconut Road (Partially site-related)	Intersection Improvements
US 41/Old 41/Pelican Landing Parkway	Intersection Improvements
US 41/W. Terry Street	Intersection Improvements
US 41/Bonita Beach Road	Intersection Improvements
Corkscrew Road/Three Oaks Parkway	Intersection Improvements
Corkscrew Road/I-75 West Ramps	Intersection Improvements
Corkscrew Road/I-75 East Ramps	Intersection Improvements

2. Mitigation

a. The total proportionate share obligation to mitigate The Brooks DRI's transportation impacts on the non-site related roads and intersections set forth in Section E.1.b. above is estimated to be $9,198,000, and the total estimated road impact fees to be generated by the project are $7,863,240. To satisfy the proportionate share obligation, the Developer must choose one of the two mitigation options identified below. The Developer must select one mitigation option and notify the County in writing prior to the granting of the first building permit for the first permanent residential or commercial structure, except for the sales center. The selection of Option 2 must be accompanied by a Local Government Development Agreement pursuant to Section 163.3220, Florida Statutes, and Chapter 2, Article III of the Lee County Land Development Code. Once an option has been selected, any request to change the mitigation option, including changing from one option to the other, must be accompanied by the filing of a Notice of Proposed Change and an analysis as to whether the change constitutes a substantial deviation.

b. Mitigation Option 1

1) Within 150 days of adoption of this DRI Development Order, but no later than January 1, 1998, the Developer must provide to the County a schedule for the dedication of certain right of way to the County. The schedule shall reflect the Developer's acquisition of the property. Right of way to be dedicated shall include the following : 150 feet of right-of-way for the extension of Coconut Road from U.S. 41 to the eastern property line, 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway, and 150 feet of right-of-way for the establishment of the Three Oaks Parkway extension from the south property line to the north property line, following the general alignments identified in the Master Plan (Map H). The actual alignments will need to be reviewed and approved by Lee County DOT prior to dedication. The Developer must also dedicate the expanded right-of-way (3.5 acres) at the eastern property line to allow for an eventual Coconut Road overpass over I-75. If the identified right-of-way is not provided as specified in the schedule, further building permits shall be suspended until that dedication occurs.

Although the appraisals will be completed at the time of dedication, the value of the right-of-way will be based on its appraised value at the time of DRI approval, without the enhanced value created by DRI and zoning approval. The Developer's proposed mitigation plan dated April 22, 1997 estimates the value to ~~be~~ 80 cents per square foot. The value of the Coconut Road right-of-way will be based on the following:

a) U.S. 41 to Three Oaks Parkway, (9,000 ± feet), 80 feet non-creditable and 70 feet creditable.

b) Three Oaks Parkway to Southeast Parcel Entrance, (2,000± feet), 80 feet non-creditable and 70 feet creditable.

c) Southeast Parcel Entrance to I-75 (1,600± feet), 150 feet creditable.

d) I-75 overpass quadrants at a total of 3.5 acres, creditable.

Consistent with the Land Development Code, there will be no impact fee credits or credits against the proportionate share obligation for the non-creditable component of these right-of-way dedications. The 150-foot right-of-way dedicated for Three Oaks Parkway and the 100-foot right-of-way dedicated for Williams Road are fully creditable; any additional right-of-way required for site-related improvements, as determined by the Lee County Engineer, is not creditable.

2) The total estimated value of the rights-of-way for the three roads, factoring out the non-creditable portion of Coconut Road, is $2,842,000 (assuming DRI approval and right-of-way dedication in 1997). The precise value will be verified through proper appraisals. The value of the creditable (non site-related) portion of the right-of-way will be subtracted from the $9,198,000 proportionate share obligation. Subtracting the estimated $2,842,000 right-of-way value from the $9,198,000 proportionate share obligation equals $6,356,000, or $1,507,240 less than the estimated impact fee revenue projected through project Build out ($7,863,240). The estimated $1,507,240 difference will be issued to the Developer in the form of road impact fee credits. These credits may be used to defray the estimated $7,863,240 in impact fees or transferred in accordance with the Land Development Code. In any event, the remaining proportionate share obligation will be addressed at the time of building permit issuance for each unit of development. At that time, the Developer may pay the impact fees in cash or redeem whatever impact fee credits he may have.

3) All development within The Brooks DRI will be subject to the County's Concurrency Management System in effect at the time building permits are requested.

4) If the Land Development Code Chapter governing roads impact fees is repealed, reduced or made unenforceable by court petition, The Brooks DRI will continue to pay, per individual permit, an amount equivalent to roads impact fees in effect prior to such repeal, reduction or court petition. If the Developer submits an independent fee study in accordance with Chapter 2 of the Land Development Code in an effort to reduce impact fees, he must file a Notice of Proposed Change to the DRI Development Order and conduct an analysis of whether the requested change in anticipated revenues constitutes a substantial deviation. In any case, the overall $9,198,000 obligation must be met, unless the scope of development is reduced. If road impact fees are increased, the Developer shall get credit for those increases against the total $9,198,000 obligation.

5) The County will apply the roads impact fees paid by The Brooks DRI under Mitigation Option 1 toward the non-site related improvements identified in Section E.1.b. In the alternative, the County will apply the fees toward improvements that relieve those roadways, provided those improvements are deemed necessary to maintain the County's adopted level of service standards. If the improvements identified in Section E.1.b. are ultimately funded through other sources, in whole or in part, or deemed unnecessary to maintain the adopted level of service standards, Lee County may apply the impact fees paid

by The Brooks to other improvements consistent with the requirements of Chapter 2 of the Lee County Land Development Code.

c. Mitigation Option 2

Phase I

1) Within 180 days of adoption of this DRI Development Order, but no later than February 1, 1998, the Developer must provide to the County a Development Agreement specifying the schedule for certain right-of-way dedication and roadway construction in lieu of the payment of road impact fees. Building permits for permanent residential or commercial structures (except for the sales center) within The Brooks cannot be issued until this Development Agreement is executed by both parties. The right-of-way dedication and construction schedule shall reflect the Developer's acquisition of the property, design of the improvements and construction of those improvements, as well as commitments made in this Development Order. On-site right-of-way to be dedicated shall include the following: 150 feet of right-of-way for the extension of Coconut Road from U.S. 41 to the eastern property line, 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway, and 150 feet of right-of-way for the establishment of the Three Oaks Parkway extension from the south property line to the north property line, following the general alignments identified in the Master Plan (Map H). The actual alignment will need to be reviewed and approved by Lee County DOT prior to dedication. The Developer must also dedicate the expanded right-of-way (3.5 acres) at the eastern property line to allow for an eventual Coconut Road overpass over I-75.

Off-site right-of-way to be dedicated includes all or part of the Developer-owned land between Williams Road and Corkscrew Road along the general alignment of the Three Oaks Parkway extension. As part of the Development Agreement submittal the Developer must provide to Lee County the necessary documentation identifying the property he is offering for the Three Oaks extension. The Lee County Division of Transportation will then make a determination as to how much of the property is usable for the extension.

2) As part of the submittal of the proposed Development Agreement, the Developer must provide an appraiser's estimate of value or range of value for the rights-of-way to be dedicated, including the off-site right-of-way for the Three Oaks extension from Williams Road to Coconut Road. These values will be based on the value at the time of DRI approval, without the enhanced value created by the DRI and zoning approval, and will be used to determine the amount of cash payment that may be required to complete the mitigation requirements for Phase I.

Actual value of the rights-of-way will be determined at the time of dedication through proper appraisals using the following parameter: the value of the right-of-way will be based on its appraised value at the time of DRI approval, without the enhanced value created by DRI and zoning approval. The Developer's proposed mitigation plan dated April 22, 1997 estimates the value to be 80 cents per square foot. The value of the Coconut Road right-of-way will be based on the following:

a) U.S. 41 to Three Oaks Parkway, (9,000± feet), 80 feet non-creditable and 70 feet creditable.

b) Three Oaks Parkway to Southeast Parcel Entrance, (2,000± feet) 80 feet non-creditable and 70 feet creditable.

c) Southeast Parcel Entrance to I-75 (1,600± feet) 150 feet creditable.

d) I-75 overpass quadrants at a total of 3.5 acres, creditable.

Consistent with the Land Development Code, there will be no impact fee credits or credits against the proportionate share obligation for the non-creditable component of these right-of-way dedications. The 150-foot right-of-way dedicated for Three Oaks Parkway and the 100-foot right-of-way dedicated for Williams Road are fully creditable; any additional right-of-way required for site-related improvements, as determined by the Lee County Engineer, is not creditable. The total estimated value of the rights-of-way for the three on-site roads, factoring out the non-creditable portion of Coconut Road, is $2,842,000 (assuming DRI approval and right-of-way dedication in 1997).

3) Coincident with the acceptance by Lee County of the Development Agreement but no later than February 1, 1998 or the issuance of the first building permit for the first permanent residential or commercial structure (except for the sales center), the Developer shall do the following:

a) Dedicate to the County 150 feet of right-of-way for Coconut Road from U.S. 41 to future Three Oaks Parkway.

b) Dedicate to the County all, or a portion, of the property owned by the Developer along the general alignment of the Three Oaks Parkway Extension from Williams Road to Corkscrew Road. The amount of land to be dedicated will be based on the Lee County determination referenced in Section E.2.c.(1).

c) Utilizing the values provided by an appraiser, estimate the total value of all right-of-way dedications to be made during Phase I, both on-site (Coconut Road from U.S. 41 to the east property line including the expanded right-of-way at I-75, Three Oaks Parkway from the south property line to Williams Road, and Williams Road from River Ranch Road to Three Oaks Parkway) and off-site (Three Oaks Parkway from Williams Road to Corkscrew Road). The Developer will then submit a cash payment for the difference between estimated Phase I impact fees ($3,777,270) and the value of the right-of-way dedications (estimated at $3,381,000 if all of the off-site Three Oaks property is utilized). At the time of dedication, the actual value for the rights-of-way will be based on an appraisal using certain valuation parameters noted in Section E.2.c.(2). If, upon completion of the right-of-way dedications and establishment of actual value, it is determined that the initial cash payment made by the Developer was insufficient to equal a total mitigation value of $3,777,270, then: 1) an additional cash payment must be made to reach the $3,777,270 total,

or 2) design plans as specified under Phase II for one or more of the identified roads (i.e., Williams Road, Coconut Road or Three Oaks Parkway) will be provided in lieu of all or a portion of the difference; or 3) no further building permits will be issued. If the initial cash payment results in a total Phase I mitigation value in excess of $3,777,270, then the difference will be applied to the Phase II mitigation requirements or reimbursed in the form of road impact fee credits, whichever is agreed upon by both Lee County and the Developer.

This cash payment will be applied by Lee County toward the improvements to be mutually agreed upon and specified in the Development Agreement.

4) Coincident with the 650th residential building permit, the Developer shall dedicate to the County 150 feet of right-of-way for Three Oaks Parkway from the south property line to the north property line.

5) Coincident with the 1300th residential building permit, the Developer shall dedicate to the County the balance of the right-of-way as described above.

6) If the right-of-way dedications and payments specified in Sections E.2.c.(1) through c.(5) above are made as described, in the time frames noted, The Brooks will not pay road impact fees and the level of development for Phase I of The Brooks DRI as identified in Section E.1.a. shall be exempt from the County's concurrency management requirements. If the dedications and payments are not made as described, then no further building permits will be issued until the Developer makes those dedications and payments.

Phase II

7) Before the end of calendar year 2002 or the initiation of any Phase II residential or commercial building permits, whichever is earlier, the Developer must provide to Lee County for review and approval design plans consistent with County standards for the following improvements:

a) Three Oaks Parkway as a 4-lane urban arterial expandable to six lanes from the south property line to the north property line.

b) Williams Road as a 2-lane rural collector from River Ranch Road to Three Oaks Parkway.

The design work will include any necessary permitting. The value of the designs and permitting must be verified and approved by Lee County, through the submittal of billing documents from the Developer's design consultant. The value is currently estimated at a total of $614,000 ($526,000 for Three Oaks Parkway, and $88,000 for Williams Road). The actual value is creditable against the total proportionate share amount of $9,198,000.

8) Within twelve months after design approval by Lee County and permit approval, the Developer shall initiate construction of the extension of Three Oaks Parkway from the project's southern property line to the northern property line. The

Developer must construct this roadway consistent with the approved design plans. The estimated construction cost of this improvement is $4,556,000 (excluding design, permitting and right-of-way costs) which is creditable against the proportionate share amount.

9) Within twenty-four months after design approval by Lee County and permit approval, the Developer must also initiate construction of the extension of Williams Road from River Ranch Road east to Three Oaks Parkway. The Developer must construct the Williams Road extension consistent with the approved design plans. The estimated construction cost of this improvement is $281,000 (excluding design, permitting and right-of-way costs) which is creditable against the proportionate share amount.

10) Upon completion of the Three Oaks Parkway and Williams Road extensions, the Developer must calculate the actual construction costs of the improvements to those roadways (including design and permitting) and add those costs to the value of the Phase I non site-related right-of-way dedications and cash payments. The Developer must then pay the balance, if any, of the proportionate share assessment in cash. (This is the difference between the total proportionate share obligation and the mitigation to date). This cash payment will be applied toward the improvements to be mutually agreed upon and specified in the Development Agreement.

If the actual costs and payments identified above exceed the proportionate share amount, the Developer would get the difference in road impact fee credits. In lieu of the cash payment, if any, as described above, the Developer may reduce the scope of the development within The Brooks.

11) If the construction and payments specified in Sections E.2.c.(7) through c.(10) above are made as described in the time frames noted, and the development schedule and impact levels remain consistent with the Development Order and substantial deviation criteria, the level of development for Build out identified in Section E.1.a. will be exempt from the County's concurrency management requirements. If the Developer does not complete the referenced construction and does not make the payments as described, then no further building permits will be issued until the Developer completes the construction and makes the payments identified.

12) A 2-lane road extending Coconut Road from U.S. 41 to Three Oaks Parkway is required by the development for site-related purposes. Four lanes on that corridor were identified as needed by 2020 in a recent County planning study, in conjunction with an extension of that corridor east over the interstate, but that need would not likely exist before 2010 (except as may be created by development of The Brooks). The Developer has proposed building at least part of the Coconut Road extension as four lanes as part of his mitigation plan, for credit against the proportionate share obligation (after subtracting the non-creditable portion). The estimated differential cost of building four lanes instead of two (excluding right-of-way) from U.S. 41 to Three Oaks Parkway is $1,307,000. This represents the amount potentially creditable against the proportionate share obligation. However, the premature nature of the improvement requires a reduction in the amount creditable. If credit against the proportionate share obligation for the 4-lane improvement is requested prior to 2010, then the amount creditable against the proportionate share obligation shall be reduced at a rate of 3 percent per year for every year before 2010 the

request is made. Any credits issued will be deducted from the cash payment obligations identified to vest the project from concurrency for Buildout. The referenced segment of Coconut Road must be constructed to County standards, with design plans submitted to the County for review and approval.

13) Due to concerns regarding the effect of construction traffic, Lee County will not accept for maintenance any roads constructed by the Developer under Mitigation Option 2 until the overall development is 80 percent complete, as estimated from the entire development mix. Acceptance of Coconut Road includes the railroad crossing. The roadways must meet the County's standards in effect at the time the roadways were designed.

3. Access and Site-Related Improvements

a. The Developer is fully responsible for the following site-related roadway and intersection improvements: all intersection improvements, including signalization, turn lanes and deceleration lanes, deemed necessary by the County Engineer and consistent with the Lee County Land Development Code for the project's access points onto U.S. 41, Williams Road, Coconut Road, and Three Oaks Parkway. As site-related improvements, they are not eligible for credit against impact fees or the project's proportionate share obligation.

b. The Developer is also required to make any improvements, including signalization, turn lanes and deceleration lanes, deemed necessary by FDOT and the County Engineer at the intersection of Coconut Road and U.S. 41. The County Engineer, consistent with the Lee County Land Development Code, will determine the percentage of costs of these improvements that are site-related and, therefore, the obligation of the Developer. That percentage deemed site-related will not be eligible for credit against impact fees or for credit against the project's proportionate share obligation.

c. The access point onto U.S. 41 for the Community Center must be located and developed consistent with FDOT's access management classification for U.S. 41, unless otherwise approved by the FDOT.

d. The Brooks' access onto Williams Road will be aligned with River Ranch Road. Once the Developer applies to connect to Williams Road, the School District of Lee County will be included in the review process, and their comments and concerns will be considered by the County's Department of Community Development.

4. Annual Monitoring Report

a. The Developer must submit an annual monitoring report to the following entities for review and approval: Lee County Division of Transportation, the Florida Department of Transportation (FDOT), the Florida Department of Community Affairs (FDCA), and the Southwest Florida Regional Planning Council (SWFRPC). The first monitoring report will be submitted one year after the approval of the DRI Development Order unless no buildings have been occupied. If the Developer contends that a traffic monitoring report is not required because no traffic impacts have been created, he must indicate so in writing to

the above review agencies. Once the development is required to submit a traffic monitoring report, it must be submitted annually thereafter.

b. The monitoring program will measure the project's actual external roadway impacts, the level of service condition on the impacted roads and intersections, and determine the timing for needed improvements. The monitoring program will be designed in cooperation with the Lee County Division of Transportation, FDOT, the SWFRPC and FDCA prior to submittal of the first report. The methodology of the annual traffic monitoring report may be revised if agreed upon by all parties.

c. The annual traffic monitoring report must contain the following information:

1) P.M. peak hour traffic counts with turning movements at the project's access points onto U.S. 41, Williams Road, Coconut Road, and Three Oaks Parkway, and on the external road segments and intersections identified in Section E.1.b.

2) A comparison of field measured project traffic volumes to the project trip generation assumed in the DRI analysis. The Developer will need to specify in the methodology how the internal interaction will be measured, particularly for the Town Center.

3) Estimated existing levels of service and needed improvements for the roads and intersections specified in Section E.4.c.(1) above.

4) Estimated future levels of service and needed improvements, based on a one-year projection of future volumes, for the roads and intersections specified in Section E.4.c.(1) above.

5) A summary of the status of road improvements assumed in the ADA to be committed by Lee County and FDOT as set forth below:

Roadways	Improvement	Construction Schedule
Corkscrew Road		
--I-75 to Treeline Ave.	4 lanes	FY 95/96
Alico Road		
--US 41 to I-75	4 lanes	FY 97/98
--I-75 to Treeline Ave.	4 lanes	FY 95/96
Treeline Ave.		
--Corkscrew Road to Alico Road	4 lanes	FY 95/96
US 41		
--Alico Rd. to Daniels Parkway	6 lanes	FY 96/97
		Construction

Intersection	Improvement	Schedule
US 41/Corkscrew Road	Turn lanes	FY 96/97
Corkscrew Road/Three Oaks Pkwy.	Turn lanes/Signalization	FY 96/97

d. If the annual monitoring report reveals that the project trip generation exceeds the thresholds identified in 380.06(19)(b)15, Florida Statutes, then the provisions regarding substantial deviations will take effect under either mitigation option. If the project is deemed to be a substantial deviation, the Developer must then undergo additional DRI review. This review, if required, must reanalyze the project impacts on the County road network and specifically evaluate the potential project impacts on I-75 from Alico Road to Daniels Parkway and on Old U.S. 41 from Rosemary Drive to U.S. 41.

Under Mitigation Option 1, if the annual monitoring report confirms that the peak season, p.m. peak hour traffic on the significantly impacted roadways exceeds the level of service standards adopted by Lee County, and the project is utilizing five percent or more of the adopted level of service standard service volume, then further local Development Orders, building permits and certificates of occupancy will not be granted until the standards of the County's concurrency management system have been met. Through the end of 1999, this means that adequate district-wide level of service capacity must be available. After 1999, this means that significantly impacted individual links must be operating at the adopted level of service or an improvement to achieve the adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program, unless an alternative concurrency system has been established for all or part of Lee County. The Brooks will comply with the County's concurrency management system in effect at the time.

5. Other

a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:

1) The Town Center may not exceed 100,000 square feet of office/retail/service gross floor area. Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and

2) The uses within the Town Center will be governed by the planned development zoning; and

3) Single use buildings may not exceed 30,000 square feet of gross leasable area.

b. The Brooks includes a Community Commercial Center located at the southeast quadrant of the proposed intersection of the Coconut Road extension and U.S. 41. The Community Commercial Center is limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet) until such time as the Coconut Road extension is designed and open as an arterial roadway.

c. The Developer will provide for efficient pedestrian and bicycle movement within The Brooks through the provision of a system of interconnecting sidewalks and bike paths that link the various pods of development.

d. If routes are established by Lee County, the Developer will accommodate local or express transit service with bus stops on public roadways and reasonably sized and located in commercial areas.

F. VEGETATION AND WILDLIFE/WETLANDS

1. Where practical, and where consistent with the permit issued by the SFWMD, the Developer will construct shallow lakes with wetland plantings in an effort to create additional wildlife habitat value.

2. The Developer will incorporate a 24-inch-diameter wildlife crossing under each arterial roadway crossing of wetlands by placing a culvert adjacent to the upland/wetland boundary. In addition to the wildlife crossing, the Developer will place additional culvert(s) under the roadway crossing, as needed, to provide a hydraulic connection between wetlands pursuant to the SFWMD regulations. There is currently a lime rock farm road at the roadway crossing between Wetlands 8 and 10, and the Developer will install approximately .9 acres of wetland herbaceous plants and shrubs in this area. The plantings will extend from the current northern/southern wetland boundaries up to the edge of the new east/west road.

3. There will be a total of 416 conservation acres; post development.

4. Approximately 300 of the 416 conservation acres will be wetland enhancement. The Developer will implement the enhancement of wetlands in phases in accordance with the permits issued by the ACOE and SFWMD. A portion of the wetland enhancement is intended to mitigate the project's impacts to approximately 33.5 acres of ACOE and SFWMD jurisdictional wetlands.

5. The Developer will eradicate invasive exotic vegetation from the site on a phased basis, in accordance with the local Development Order approvals and ACOE and SFWMD permit requirements. Invasive exotics are those species identified in the Lee County Land Development Code and tropical soda apple (*Solanum viarum*). Once the invasive exotics have been eradicated, the site must be maintained in accordance with County regulations to prevent the return of invasive exotics.

6. Where feasible, the surface water management system will incorporate the wetlands to assure appropriate hydroperiods and seasonal water elevations. Hydroperiods, seasonal water elevations, and the incorporation of wetlands into the surface

water management system will be evaluated by the SFWMD during the review of the District permit application(s).

7. In addition to the conservation areas identified in the open space table, the Developer will, to the extent possible, retain the existing native plant communities located in the areas designated as open space on Map H. This condition will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

8. The design for the golf course and residential areas will incorporate the retention of large slash pines for utilization as perch trees for bald eagles. This requirement will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

9. The Brooks enhancement area will include the following items to enhance wildlife habitat: a meandering flow-way interconnecting wetlands, shallow ponds with littoral shelves for wading birds and birds of prey, enhancement of existing herbaceous wetlands, osprey platforms in hammocks, establishment of willow areas and flag ponds, and vegetated upland buffers along portions of the wetland system.

G. WASTEWATER MANAGEMENT/WATER SUPPLY

1. The Developer will obtain a SFWMD permit for groundwater withdrawals for landscape irrigation, and for dewatering needed to construct the project lakes, roads or building foundations.

2. The Developer will utilize water conserving devices and methods necessary to meet the criteria established in the water conservation plan of the public water supply permit issued to Bonita Springs Utilities (BSU). If the Developer obtains potable water from a different provider, then the Developer must conform to the water conservation plan of the alternate provider.

3. The Developer will coordinate with BSU or other water supplier to ensure that adequate potable water is available to meet the demands of the project.

4. The Developer will provide verification to the SFWMD that the Developer's plumbing and irrigation designs are consistent with the District rules.

5. The Brooks will be served by BSU with potable water and wastewater treatment. If BSU cannot provide potable water or wastewater treatment, then the Developer must obtain service from an alternate provider with capacity or construct on-site interim facilities. Interim facilities constructed on-site must be built to DEP standards. Any interim facilities constructed by the Developer must be dismantled at the Developer's expense when service by BSU facilities is available. In any event the Developer must demonstrate at the time of final local Development Order approval, that sufficient potable water and wastewater treatment capacity is available.

6. If the Developer uses treated effluent for irrigation, the Developer must buffer the on-site lakes, preserved wetlands and stormwater management system from

possible effluent contamination in accordance with applicable SFWMD regulations. The Developer must isolate the effluent containment ponds from the on-site wetlands and water management lakes if it cannot be demonstrated that the water quality in these ponds is as good as the quality of water in its natural condition.

7. Septic systems utilized in conjunction with construction trailers, sales offices and model homes will be temporary. Except for golf course or recreational rest stations, permanent septic systems are prohibited. When it is feasible to connect the temporary uses to the regional wastewater treatment facilities all temporary septic systems will be abandoned or removed by a licensed septic system firm, in accordance with all applicable regulations.

8. The Developer must submit copies of all local Development Order plans that include potable water or wastewater distribution systems, to BSU (or alternate provider). BSU will review the plans for compliance with the BSU specifications manual. The Developer must also submit all construction plans for irrigation facilities to Resource Conservation Systems for review and approval prior to the commencement of construction.

9. Lee County will evaluate all potable water facilities, to ensure that the facilities are properly sized to meet average, peak day, and fire flow demands in accordance with the LDC. Lee County will consult with the appropriate Fire Protection District to confirm that the fire flow demands will be satisfied by the proposed potable water facility.

10. For all non-potable water purposes, the Developer must use the lowest quality of water available that is acceptable for the intended purpose.

11. This Development Order specifically incorporates the Developer's commitments set forth in the ADA and subsequent sufficiency road information relating to Questions 10, 14, 17 and 18 (General Project Description, Water, Water Supply and Wastewater Management respectively)

H. FIRE

The Developer will pay fire/EMS impact fees in accordance with the Fire and Emergency Service Impact fee ordinance.

I. FISCAL

1. Internal improvement capital costs will be borne by the Developer, a UCDD, a private utility or some other legal entity which has the ability to levy an assessment or otherwise raise revenues to pay the internal improvement capital costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the capital cost internal improvements.

2. The operating and maintenance costs of the water and sewer will be addressed by payment of the required assessments, charges, and fees to BSU. BSU,

through its rate structure, charges the user for its share of the maintenance costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the cost of operation and maintenance.

3. The Developer must provide the County with fiscal monitoring reports that identify the taxable value of the development by use codes. Taxable value means the actual taxable value assigned to the property in the development by the Lee County Property Appraisers Office. The report must be submitted when the certificate of occupancy of the 2600th unit is issued. A second report must be submitted at the end of the second 5-year period, which is the end of second phase, if the fiscal monitoring report at the end of the first phase indicates that the project is not fiscally positive and a second report is required as part of the mitigation condition.

These reports are intended to allow the County to determine whether the total taxable value is 25% less than, equal to, or exceeds the total taxable value of $510,180,000.00, which was contained in the fiscal analysis tables that were attached to the June 2, 1997 letter from Fishkind & Associates, to the Division of Budget Services, Lee County. [Table 2, Exhibit A, attached to this Development Order]

If these reports demonstrate that the taxable values are 25% less than, equal to or exceeded, no further action is required. If these reports indicate that the actual taxable values are more than 25% below the taxable values projected in the tables, the Developer must conduct a new fiscal impact analysis (using the actual budgets of Lee County, including the Sheriff's budget, the Lee County District School Board, and the Estero Fire and Rescue District) utilizing the methodology of the modified per capita approach as outlined in the applicant's document "Revised Fiscal Impacts of The Brooks of Bonita Springs" dated May 19, 1997. [Applicant's Exhibit 59 to the Hearing Examiner Recommendation]

If this new analysis indicates that the fiscal impact to the County is positive or neutral, no further action is required. If this new analysis indicates that the fiscal impact to the County is negative, the County, the applicant and other affected parties will try to reach a mutually agreed upon fiscal mitigation plan which fully mitigates the negative fiscal impacts at the sole cost of the Developer and the Property Owners within the development. If the Developer or the Property Owners do not concur with the County staff fiscal mitigation plan, then they have the right to avail themselves of any remedy allowed them under the County's LDC. No additional Development Orders will be issued to those portions of the project located within the Rural land use category, by the County, until the fiscal mitigation plan is implemented. If such a plan cannot be mutually agreed upon, the County reserves the right to create a taxing entity on the development, such as a Municipal Services Taxing Unit (MSTU) or Municipal Services Benefit Unit (MSBU), to address the identified negative fiscal impacts.

III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

1. This Development Order constitutes a resolution of Lee County adopted by the Board of County Commissioners in response to the DRI ADA filed for The Brooks of Bonita Springs DRI.

2. All commitments and impact mitigating actions volunteered by the Developer in the ADA and supplementary documents that are not in conflict with conditions or stipulations specifically enumerated above are incorporated by reference into this Development Order. These documents include, but are not limited to the following:

(a) The Brooks of Bonita Springs Application for Development Approval, stamped received on July 3, 1996.

(b) The Brooks of Bonita Springs DRI sufficiency responses, stamped received on October 1996, December 1996, and January 1997.

3. Map H, stamped received on March 7, 1997 is attached hereto as Exhibit "A," and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and the location of internal roadways may be modified by the Developer to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. However, this provision may not be used to reduce the size of wetland preserve areas. It is understood that the precise wetland boundaries are determined by the South Florida Water Management District, as delegated by the Department of Environmental Protection.

4. The Development Order is binding upon the Developer(s), and its assignees or successors in interest. Where the Development Order refers to lot owners, business owners or other specific reference, those provisions are binding on the entities or individuals referenced. Those portions of this Development Order that clearly apply only to the project developer are binding upon any builder/developer who acquires a tract of land within the DRI.

5. The terms and conditions set out in this Development Order constitute a basis upon which the Developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Development Order.

6. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party by action at law or equity. All costs of those proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

7. During the next four years, Lee County will undertake, to the extent legally permissible, any amendment to the 2010 overlay, or its successor, necessary to accommodate the buildout of The Brooks as set forth in the DRI phasing schedule. Lee County will cause these amendments to occur in a timely manner so development of The Brooks will not be impeded by the 2010 Overlay, or its successor. Nothing in this condition will be interpreted to cause the county to be liable for a failure to accomplish these amendments if the failure is the result of a refusal by any state or regional agency to approve such a charge.

8. At the time of local Development Order approval, the development outlined in the Local Development Order application will be evaluated for consistency with the Lee

County Concurrency Management Plan, except for transportation concurrency. Transportation concurrency is addressed by condition II.E.6.

9. References to governmental agencies will be construed to mean future instrumentalities that may be created and designed as successors in interest to, or which otherwise possesses the powers and duties of the referenced governmental agencies in existence on the effective date of this Development Order.

10. If any portion or section of this Development Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, that decision will not affect the remaining portions or sections of the Development Order, which will remain in full force and effect.

11. This Development Order does not negate the Developer's responsibility to comply with all applicable federal, state, regional and local regulations.

12. Subsequent requests for local development permits do not require further review pursuant to Section 380.06, Florida Statutes, unless the Board of County Commissioners, after due notice and hearing, make the following findings:

(a) There is a substantial deviation from the terms or conditions of this Development Order; or

(b) The period of effectiveness of this Development Order has expired. Any request to extend the effectiveness of this Development Order will be evaluated based on the criteria for the extension of the buildout date set forth in Section 380.06(19), Florida Statutes.

Upon a finding that either of the above has occurred, the Board must order a termination of all development activity in the development affected by the substantial deviation or expiration of the Development Order until such time as a new DRI Application for Development Approval, Notice of Substantial Deviation or Notice of Proposed Change has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes.

13. The project has a buildout date of 2007 and a termination date of 2012. This term is based on a 10-year buildout and the recognition that a local Development Order, which is valid for five years, may be obtained in the tenth year.

14. The administrative director of the Lee County Department of Community Development, or their designee, will be the local official responsible for assuring compliance with this Development Order.

15. The project will not be subject to down-zoning, unit density reduction, intensity reduction or prohibition of development until 2012. If the County demonstrates that substantial changes have occurred in the conditions underlying the approval of the Development Order, then a down-zoning, unit density reduction or prohibition of development may occur. No down-zoning, density or intensity reduction can occur without sufficient notice to the Developer and an opportunity to be heard. These changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the Developer, or that the change is clearly

established by Lee County to be essential to the preservation of the public health, safety and welfare.

16. The Developer, or its successor(s) in title will submit a report annually to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06(18), Florida Statutes. The Developer must inform successors in title to the undeveloped portion of the real property covered by the Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

17. The County will forward certified copies of this Development Order to the SWFRPC, the Developer and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the Developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Development Order was offered by Commissioner Manning, and seconded by Commissioner Judah and upon a poll of the members present, the vote was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 25th day of August, 1997.

FILED

SEP 9 1997

CLERK CIRCUIT COURT
BY Ruth T. D.C.

ATTEST:

Charlie Green, Clerk

By: Ruth Tugman
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
(Chairman)

APPROVED AS TO FORM

BY: _____
County Attorney's Office

G:\LU\ZONING\RE\BROOKS\DO.WPD (09/04/97)

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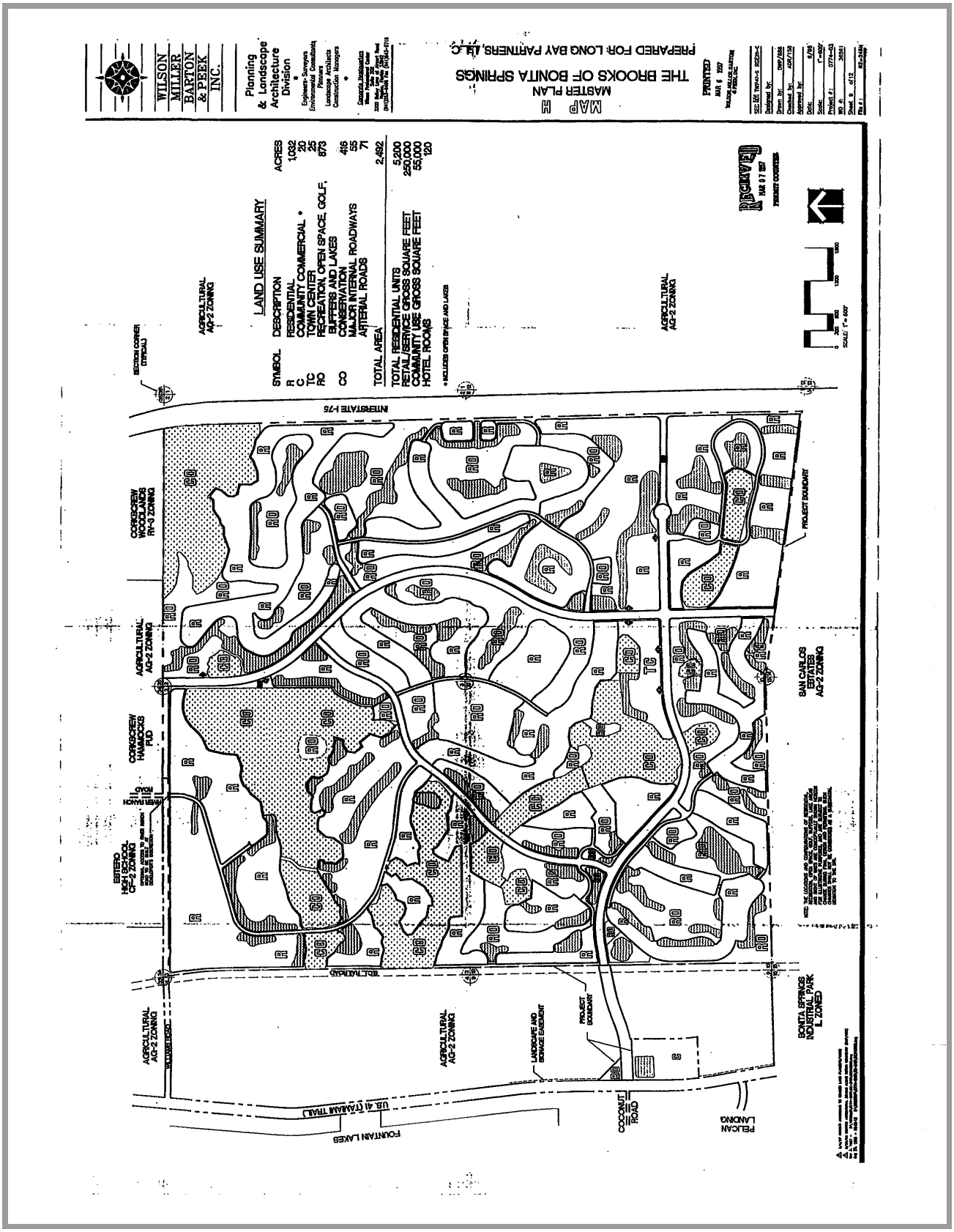

MAP H
MASTER PLAN
THE BROOKS OF BONITA SPRINGS
PREPARED FOR: LONG BAY PARTNERS, LTD.
WILSON MILLER BARTON & PEEK INC.
Planning & Landscape Architecture Division
LAND USE SUMMARY
SYMBOL DESCRIPTION ACRES
R RESIDENTIAL 1,082
C COMMUNITY COMMERCIAL * 20
TC TOWN CENTER 25
RO RECREATION, OPEN SPACE, GOLF, 673
B BUFFERS AND LAKES 416
C CONSERVATION 55
MI MAJOR INTERNAL ROADWAYS 71
AR ARTERIAL ROADS
TOTAL AREA 2,492
TOTAL RESIDENTIAL UNITS 5,200
RETAIL/SERVICE GROSS SQUARE FEET 250,000
COMMUNITY USE GROSS SQUARE FEET 55,000
HOTEL ROOMS 120
* INCLUDES OPEN SPACE AND LAKES
AGRICULTURAL AG-2 ZONING
INTERSTATE I-75
CORKSCREW WOODLANDS RV-3 ZONING
CORKSCREW HAMMOCKS PUD
BITTER HIGH SCHOOL CF-2 ZONING
SAN CARLOS ESTATES AG-2 ZONING
BONITA SPRINGS INDUSTRIAL PARK L ZONED
PROJECT BOUNDARY
LANDSCAPE AND SIGNAGE EASEMENT
COCONUT ROAD
PELICAN LANDING
FOUNTAIN LAKES
U.S. 41 (TAMIAMI TRAIL)
SCALE: 1" = 600'

RESOLUTION NUMBER Z-97-037

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Long Bay Partners LLC and Edward J. McArdle, Trustee, in reference to The Brooks of Bonita Springs, filed an application for:

a) Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2,492± acres, State DRI #07-9697-133; and

b) A rezoning from Agricultural (AG-2) to Mixed Use Planned Development (MPD); and

WHEREAS, the subject property is located at 23301 South Tamiami Trail, Bonita Springs, and is described more particularly as:

LEGAL DESCRIPTION: In Sections 02, 03, 09, 10 and 11, Township 47 South, Range 25 East, Lee County, Florida:

PARCEL 1

A portion of the South Half (S½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,542.33 feet;
THENCE run S88°02'34"W for a distance of 1,221.61 feet to the POINT OF BEGINNING of the herein described parcel of land;
THENCE continue S88°02'34"W for a distance of 750.33 feet to a point on the Easterly right-of-way line of US Highway No. 41 (State Road No. 45, a 200-foot right-of-way);
THENCE run S00°15'56"E along said Easterly right-of-way line for a distance of 553.06 feet to the beginning of a tangential circular curve, concave Easterly;
THENCE run Southerly along said Easterly right-of-way line, and along the arc of said curve to the left, having a radius of 5,605.39 feet, through a central angle of 06°12'58", subtended by a chord of 607.83 feet, at a bearing of S03°22'24"E, for a distance of 608.13 feet;
THENCE run N88°07'51"E for a distance of 747.23 feet to a point of intersection with a non-tangential circular curve, concave Easterly, whose radius point bears N82°31'42"E a distance of 3,909.60 feet therefrom;
THENCE run Northerly along the arc of said curve to the right having a radius of 3,909.60 feet through a central angle of 08°29'31", subtended by a chord of 578.92 feet, at a bearing of N03°13'32"W, for a distance of 579.45 feet to the end of said curve;

THENCE run N00°15'56"W for a distance of 583.09 feet to the POINT OF BEGINNING.
Containing 19.948 acres, more or less.

Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W; and

PARCEL 2
A portion of the North Half (N½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,674.19 feet to the East Quarter corner of said Section 09;
THENCE run N01°15'50"W along the East line of said Section 09 for a distance of 68.17 feet;
THENCE run S88°02'34"W for a distance of 1,555.19 feet to the POINT OF BEGINNING of the herein described parcel of land;
THENCE continue S88°02'34"W for a distance of 413.96 feet to a point on the Easterly right-of-way line of US Highway 41 (State Road No. 45, a 200 foot right-of-way);
THENCE run N00°15'56"W along said Easterly right-of-way line for a distance of 415.00 feet;
THENCE run S46°02'16"E for a distance of 577.45 feet to the POINT OF BEGINNING.
Containing 1.971 acres, more or less.

Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W; and

PARCEL 3
A parcel of land located in Sections 02, 03, 10, and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Northwest corner of Section 03, Township 47 South, Range 25 East, Lee County, Florida;
THENCE run S00°46'22"E along the West line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 100.02 feet to a point 100.00 feet South of, as measured at right angles to, the North line of the Northwest Quarter (NW¼) of said Section 03;
THENCE run N89°51'03"E parallel with the North line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 23.35 feet to a point on the South right-of-way line of Williams Road, a 100.00 foot right-of-way,

the same being the POINT OF BEGINNING of the parcel of land herein described;
THENCE continue N89°51'03"E along said parallel line and along said South right-of-way line for a distance of 2,623.11 feet;
THENCE run N89°51'33"E parallel with the North line of the Northeast Quarter (NE¼) of said Section 03 and along said right-of-way line for a distance of 975.29 feet;
THENCE run N00°08'27"W along said right-of-way line for a distance of 100.00 feet to a point on the North line of the Northeast Quarter (NE¼) of said Section 03;
THENCE run N89°51'33"E along the North line of the Northeast Quarter (NE¼) of said Section 03 for a distance of 1,664.48 feet to the Northeast corner of said Section 03, the same being the Northwest corner of Section 02, Township 47 South, Range 25 East;
THENCE run N89°51'16"E along the North line of the Northwest Quarter (NW¼) of said Section 02 for a distance of 2,641.95 feet;
THENCE run N89°50'12"E along the North line of the Northeast Quarter (NE¼) of said Section 02 for a distance of 2,026.48 feet to a point on the West right-of-way line of Interstate 75, a 410-foot right-of-way, the same being a point on a circular curve, concave Westerly, whose radius point bears S79°55'57"W a distance of 5,567.58 feet therefrom;
THENCE run Southerly along said right-of-way line and along the arc of said curve to the right, having a radius of 5,567.58 feet, through a central angle of 08°30'06", subtended by a chord of 825.37 feet, at a bearing of S05°49'00"E for a distance of 826.13 feet to the end of said curve;
THENCE run S01°33'57"E along said right-of-way line for a distance of 4,512.58 feet to a point on the North line of the Northeast Quarter (NE¼) of Section 11, Township 47 South, Range 25 East;
THENCE continue S01°33'57"E along said right-of-way line for a distance of 5,977.28 feet to a point on the South line of said Section 11;
THENCE run N82°32'38"W along the South line of the Southeast Quarter (SE¼) of said Section 11 for a distance of 2,165.51 feet;
THENCE run N82°29'27"W along the South line of the Southwest Quarter (SW¼) of Section 11 for a distance of 2,698.44 feet to the Southwest corner of said Section 11, the same being the Southeast corner of Section 10, Township 47 South, Range 25 East;
THENCE run S88°50'19"W along the South line of the Southeast Quarter (SE¼) of said Section 10 for a distance of 2,664.18 feet;
THENCE run S88°50'37"W along the South line of the Southwest Quarter (SW¼) of said Section 10 for a distance of 2,540.14 feet to a point on the Easterly right-of-way line of the Seaboard Coastline Railroad right-of-way, a 130.00 foot right-of-way;
THENCE run N00°59'47"W along said Easterly right-of-way line for a distance of 5,341.51 feet to a point on the North line of the Northwest Quarter (NW¼) of said Section 10;

THENCE continue N00°59'47"W along said Easterly right-of-way line for a distance of 2,692.12 feet;
THENCE run N00°56'59"W along said Easterly right-of-way line for a distance of 1,590.73 feet to the beginning of a tangential circular curve, concave Westerly;
THENCE run Northerly along said Easterly right-of-way line and along the arc of said curve to the left, having a radius of 5,771.38 feet through a central angle of 09°31'27", subtended by a chord of 958.37 feet at a bearing of N05°42'42"W for a distance of 959.37 feet to the end of said curve;
THENCE run N10°28'26"W along said Easterly right-of-way line for a distance of 77.72 feet to the POINT OF BEGINNING.
Containing 2,470.384 acres, more or less.

Bearings hereinabove mentioned refer to the North line of the Northwest Quarter (NW¼) of Section 03, Township 47 South, Range 25 East, Lee County Florida, as being N89°51'03"; and

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 02-47-25-00-00001.0000, 02-47-25-00-00001.0010, 03-47-25-00-00002.0000, 03-47-25-00-00002.0010, 09-47-25-00-00001.0010 (portion of), 09-47-25-00-00001.001A, 09-47-25-00-00001.001B, 10-47-25-00-00002.0000, 10-47-25-00-00002.0010, 11-47-25-00-00001.0000, and 09-47-25-00-00001.0010; and

WHEREAS, Long Bay Partners LLC and Edward J. McArdle, Trustee, the owners of the subject parcels, authorized Wilson, Miller, Barton & Peek, Inc. and Pavese, Garner, Haverfield, Dalton, Harrison & Jensen to act as agents to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on June 4, 1997 and subsequently continued on June 10, 1997 in Case #'s 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01, before the Lee County Hearing Examiner who gave full consideration to the evidence available; and

WHEREAS, a public hearing was advertised and held on July 21, 1997 and subsequently continued to August 25, 1997 before the Lee County Board of County Commissioners who gave full and complete consideration to the recommendations of staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS, that the Board:

a) **APPROVES** the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2,492± acres, State DRI #07-9697-133; and

b) **APPROVES with conditions** the requested rezoning from AG-2 to MPD as follows:

SECTION A. CONDITIONS:

The MPD zoning and Master Concept Plan are subject to the following conditions:

1.a. The development of the subject property shall be in accordance with the four-page Master Concept Plan for the project, entitled "Master Concept Plan prepared for Long Bay Partners, L.L.C.", prepared by Wilson, Miller, Barton & Peek, Inc., Project #0774-03, printed May 30, 1997, stamped "Received May 30, 1997" by the Permit Counter, except as modified herein. Unless specifically approved as part of this rezoning, development must be in accordance with all applicable local development regulations, including the Development of Regional Impact Development Order. No deviations from the Land Development Code are granted unless specifically identified herein.

1.b. Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development. The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan and DRI Development Order, while at the same time allowing flexibility in response to changing development practices. Once the application is determined to be sufficient, a decision by Lee County will be rendered within 21 calendar days.

1.c. The following information must be provided in the application for Final Plan Approval:

1) the type and amount of uses, i.e., the number of residential dwelling units or square feet of commercial uses;
2) an ongoing tabulation of the total number of residential dwelling units, commercial square footage, and community uses that have received local Development Order approval;
3) location and dimensions of access points;
4) location and dimensions of internal roadways;
5) location and dimensions of buildings/structures and parking spaces/areas;
6) setbacks and building heights;
7) boundary of development tract;
8) adjacent zoning and land uses;
9) buffers and landscape strips required or proposed;
10) open space, including an ongoing tabulation of required open space; and
11) detail drawings showing the application of deviations.

2. Schedule of Uses:

a. RESIDENTIAL "R"

1) Permitted Principal Uses and Structures

Administrative Offices
Assisted Living Facility - Density in accordance with Section 34-1494
Churches, Synagogues, and other Places of Worship
Civic and Cultural Facilities
Clubs: Country, Private - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises, limited to clubhouse(s) and golf course uses
Customary accessory uses and structures, including but not limited to private garages and swimming pools
Dwelling Units:
- Single Family, attached
- Single Family, detached
- Model Homes, Model Units and Model Display Center (limited to residential uses within The Brooks, Speculative Homes)
- Townhouse
- Two-Family and Multi-Family dwelling and customary accessory uses
- Two-Family attached, Residential Accessory Uses, including but not limited to:
  - Private garages, carports and parking areas
  - Private swimming pools and enclosures
  - Private tennis courts
- Cluster housing, townhouses, patio houses, and zero lot lines

Day Care Centers and other Pre-School Facilities (when compatible with adjacent uses)
Entrance Gates and Gatehouses
Essential Service Facilities, Group I
Excavation - Water Retention
Golf Courses, Golf Course Accessory and Associated uses, including but not limited to:
- Clubhouse
- Locker Rooms
- Maintenance Facility
- Pro Shop
- Snack Bar and other uses normal and necessary to the golf course
- Snack Bar at the ninth hole or other appropriate location

Helistop - located on clubhouse parcel for emergency use only

Home Occupations (Subject to standards in LDC Section 34-1772)
Irrigation Wells (Essential services)
Public and private parks, playgrounds, play fields and commonly owned open space
Real Estate Sales Office for The Brooks project only, (subject to Condition 34)
Recreational Facilities, Private
Recreational Hall, Private
Signs, in compliance with The Brooks Sign Schedule
Swimming Pools, Tennis Courts or other community recreational amenities
Temporary Agricultural uses (subject to Condition 35)
Temporary Sales and/or Construction Office
Any residential activity comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "R" District

b. COMMERCIAL "C"

1) Permitted Principal Uses and Structures

Administrative Offices
ALF (Assisted Living Facility) - Density in accordance with Section 34-1494
Animals:
- Clinic (Section 34-1321)
- Animal Kennel, when enclosed within a building

ATM (Automatic Teller Machine)
Automobile Repair and Service, Group 1 [Section 34-622(c)(2)]
Banks and Financial Establishments, Groups I and II [Section 34-622(c)(3)]
Bar or Cocktail Lounge - Limited to one (in compliance with LDC Section 34-1261 et seq.)
Broadcast Studio, Commercial Radio and Television (Section 34-1441)
Building Material Sales [Section 34-622(c)(4)]
Business Services, Groups I and II [Section 34-622(c)(5)]
Car Wash
Caretaker's residence
Caterers
Civic and Governmental Services
Cleaning and Maintenance Services [Section 34-622(c)(7)]
Clothing Stores [Section 34-622(c)(7)]
Clubs: Country, Commercial, Fraternal: The following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises (in compliance with LDC Sec. 34-1261 et seq.)
Contractors and Builders, Group I

Convenience Food and Beverage Stores
Cultural Facilities [Section 34-622(c)(10)]
Day Care Center: Adult, Child
Department Store
Drive-Through Facility for any Permitted Use
Drugstore, Pharmacy
Emergency Medical Service (ambulance station)
Emergency Operations Center
Essential Services [Section 34-1611]
Essential Service Facilities, Group I [Sections 34-622(c)(13) and 34-1611]
Excavation:
- Water Retention [Section 34-1651]
Fences, Walls
Fire Station
Food and Beverage Service, Limited
Food Stores, Group I
Gasoline Dispensing System, Special
Hardware Store
Health Care Facility, Groups I, II and III
Health Club or Spa
Helistop
Hobby, Toy, Game Shops [Section 34-622(c)(21)]
Hotel, Motel - limited to 120 rooms
Household and Office Furnishings, Groups I and II
Insurance Companies [Section 34-622(c)(23)]
Irrigation Wells (Essential Services)
Laundry & Dry Cleaning, Group II (excluding Plant)
Massage Establishments
Medical Office
Message Answering Service
Non-store Retailers, All Groups [Section 34-622(c)(30)]
Outdoor Display of Merchandise (in compliance with LDC Section 34-3004)
Package Store (in compliance with LDC Section 34-1261)
Paint, Glass, and Wallpaper
Parcel and Express Service
Parks, Public or Private, Groups I and II
Parking Lot:
- Accessory
- Garage, Public Parking
Personal Services, Groups I and III
Pet Services
Pet Shop
Photo Finishing Laboratory
Place of Worship
Police or Sheriff's Station

Post Office
Printing and Publishing [Section 34-622(c)(38)]
Real Estate Sales and Rental, for The Brooks project only
Religious Facilities [Section 34-2051]
Rental or Leasing Establishments: Group II
Repair Shops, Groups I, II and III
Research & Development Laboratories, Groups II & IV [Section 34-622(c)(41)]
Restaurants, Fast Food
Restaurants, Groups I, II, III and IV
Schools, Commercial [Section 34-622(c)(45)]
Schools, Non-commercial
- Lee County School District
- Other
Self-service Fuel Pumps and Station
Signs, in compliance with The Brooks Sign Schedule
Specialty Retail Shops, Groups I and II
Storage, Indoor only
Studios [Section 34-622(c)(49)]
Supermarket
Temporary Uses excluding flea markets (Section 34-3041)
Theater, Indoor
Towers, Communication - only when accessory to a permitted use: 50 feet or less in height
Variety Store
Wholesale Establishment, Group III
Any commercial use or professional service comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in the "C" district

2) Permitted Accessory Uses and Structures

Accessory uses and structures customarily associated with the uses permitted in this district

c. TOWN CENTER "TC"

1) Permitted Principal Uses and Structures:

Administrative Offices
ALF (Assisted Living Facility) - Density in accordance with Section 34-1494
Animals:
- Clinic
ATM (Automatic Teller Machine)
Banks and Financial Establishments, Groups I and II
Bar and Cocktail Lounge - Limited to one (in compliance with LDC Section 34-1261 et seq.)

Business Services, Groups I and II
Car Wash
Caretaker's Residence
Caterers
Civic and Governmental Services
Cleaning and Maintenance Services
Clothing Stores, General
Clubs: Country, Commercial, Fraternal, Private - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises (In compliance with LDC Section 34-1261 et seq.)
Convenience Food and Beverage Stores
Cultural Facilities
Day Care Center, Adult, Child
Department Store
Drive-Through Facility for any permitted use
Drug Store, Pharmacy
Dwelling Units:
Multi-Family Low Rise (minimum setback of 100 feet from the northeast property line)
Other Residential uses may be permitted as ancillary only to any permitted commercial use subject to review at Final Plan Approval
Entrance Gate, Gatehouse
Essential Services
Essential Service Facilities, Group I
Excavation:
- Water Retention

Fences, Walls
Food and Beverage Services, limited
Food Stores, Group I
Gasoline Dispensing System, Special
General and Professional Offices
Hardware Store
Health Care Facility, Group III
Health Club or Spa
Helistop - limited to emergency use only
Hobby, Toy, Game Shops
Hotel, Motel - limited to 120 rooms
Insurance Companies
Irrigation Wells (Essential services)
Laundry or Dry Cleaning, Group II - excluding Plant
Massage Establishments

Medical Office
Message Answering Service
Package Store
Parcel and Express Services
Parks, Public or Private, All Groups
Parking Lot:
- Accessory
- Garage, Public Parking - limited to two stories and not abutting residential land use

Personal Services, Groups I and III
Pet Services
Pet Shop
Photo Finishing Laboratory
Place of Worship
Post Office
Real Estate Sales Office for The Brooks project only (subject to Condition 34)
Recreation - Personal, Private or Public
Recreation Hall
Religious Facilities
Rental or Leasing Establishments, Group II
Restaurants, Groups I, II, III and IV
Restaurants, Fast Food
Self-Service Fuel Pumps and Station
Signs, in compliance with The Brooks Sign Schedule
Specialty Retail Shops, Groups I and II
Studios
Supermarket
Temporary Agricultural Uses (subject to Condition 35)
Theater, Indoor or Outdoor
Variety Store
Any commercial use or professional service which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "TC" District

2) Permitted Accessory Uses and Structures

Accessory uses and structures customarily associated with the uses permitted in this district

d. RECREATION, OPEN SPACE, GOLF COURSE, BUFFERS & LAKES "RO"

1) Permitted Principal Uses and Structures

Athletic Club
Biking, hiking, fishing piers and nature trails
Clubs, Private

Consumption on premises, limited to clubs and golf course uses
Equestrian and jogging paths
Golf Clubhouse - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Golf Course
Golf Maintenance Facility
Irrigation Wells
Parks, Playgrounds, Observation Towers, etc.
Pump Station
Real Estate Sales Office for The Brooks project only (subject to Condition 34)
Shelters, Restrooms, Showers, etc.
Temporary Agricultural Uses (subject to Condition 35)
Tennis and Basketball Courts, etc.
Tennis Clubhouses
Water Management Facilities
Any open space activity which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "RO" District

2) Permitted Accessory Uses and Structures

Ancillary Commercial Establishments - including gift shops, golf and tennis equipment sales, restaurants, cocktail lounges, and similar uses located within the clubhouse(s)
Maintenance Shops and Equipment Storage
Pro-Shop, Practice Driving Range and other customary accessory uses of golf courses, tennis clubs or other recreational facilities
Shuffleboard Courts, Swimming Pools and other types of facilities intended for recreation
Signs, in compliance with The Brooks Sign Schedule

e. CONSERVATION "CO"

1) Permitted Principal Uses and Structures

Interpretative centers, rain shelters, gazebos
Nature and foot trails, including boardwalks and jogging paths
Other activities for recreation, conservation and observation, when approved by the Director of the Lee County Department of Community Development
Paths, boardwalks and bridges to provide access from the uplands to the wetland for pedestrians and minor maintenance equipment, and to allow fishing piers, observation towers and golf cart crossings
Recreational shelters, restroom facilities, passive parks, picnic areas

Water Management Facilities
Wildlife Management
Any open space activity which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "CO" District

2) Permitted Accessory Uses and Structures

Accessory uses & structures customarily associated with the uses permitted in this district
Signs, in compliance with The Brooks Sign Schedule

3) Property Development Regulations:

a) **Residential "R":**

MINIMUM LOT DIMENSIONS

Residential Uses	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Single-Family Detached	5,500	100	55
Patio Homes	3,500	100	50
Two-Family Attached	4,000	100	35
Zero Lot Line	4,000	80	35
Townhouse	2,800	80	30
Multi-Family: Low-Rise Mid-Rise	6,500 10,000	80 100	80 100
ALF (5)	22,500	150	150
Clubhouse Area/Recreational Facility	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial/Office (per schedule of uses)	7,500	75	100

MINIMUM SETBACKS

Residential Uses	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Single-Family Detached	5	**10	20/*12	20	10	**10
Patio Homes	0	**10	20*/12	20	10	**10
Two-Family	0	**10	20/*12	20	10	**10
Attached		**10	20/*12	20	10	**10
Zero Lot Line	0					
1st side	0					
2nd side	0	**10	*12	20	10	**10
Townhouse						
1st side	0					
2nd side						
Multi-Family						
Low-Rise	10	10	20	20	10	**10
Mid-Rise	15	10	20	20	10	**10
ALF (5)	15	20	20	0	15	25

Clubhouse area/ recreational area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	0
Pool Deck	5	5	10	0	10	5
Non residential uses (per schedule of uses)	15	20	20	0	10	0

* with side entry garage ** 5 ft. for accessory structure (pool/lanai)

Residential Uses	Maximum Height (ft.)	Number of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Single-Family Detached	45	3	10	55
Patio Homes	45	3	10	55
Two-Family Attached	45	3	10	55
Zero Lot Line	45	3	10	55
Townhouse	45	3	20	55
Multi-Family: Low-Rise High-Rise	 50 75	 4 7	 20 30	 55 55
ALF (5)	65	5	20	55
Clubhouse Area/ Recreational Facility	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Non residential uses (per Schedule of Uses)	45	3	15	45

b. Commercial "C"

MINIMUM LOT DIMENSIONS

Commercial	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial			
Office	7,500	100	75
Retail	7,500	100	75
Hotel	22,500	150	150
Community Use	7,500	100	75

MINIMUM SETBACKS

Commercial	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Water-body (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	0
Pool Deck	5	5	10	0	10	5
Commercial						
Office	15	20	20	0	10	20
Retail	15	20	20	0	10	20
Hotel	15	20	20	0	15	25
Community Use	15	20	20	0	10	20

Commercial	Maximum Height (ft.)	No. of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial				
Office	65	5	15	45
Retail	45	5	15	45
Hotel	75	5	20	45
Community Use	65	5	15	45

c. **TOWN CENTER "TC":**

MINIMUM LOT DIMENSIONS

Town Center	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial:			
Office	7,500	100	75
Retail	7,500	100	75
Hotel	22,500	150	150
Community Use	7,500	100	75
Multi-Family, Low-rise	6,500	80	80
ALF	22,500	150	150

MINIMUM SETBACKS

Town Center	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	5	10	0
Pool Deck	5	5	10	5	10	5
Commercial:						
Office	15	20	20	0	10	20
Retail	15	20	20	0	10	20
Hotel	15	20	20	0	15	25
Community Use	15	20	20	0	10	20
Multi-Family Low-rise	10	10	20	20	10	10
ALF	15	20	20	0	15	25

Town Center	Maximum Height (ft.)	Number of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial				
Office	65	5	15	45
Retail	45	3	15	45
Hotel	65	5	20	45
Community Use	65	5	15	45
Multi-Family, Low-rise	50	4	20	55
ALF	65	5	20	55

d. RECREATION, OPEN SPACE, GOLF COURSE, BUFFERS & LAKES -"RO":

MINIMUM LOT DIMENSIONS

Recreation, Open Space, Golf Course, Buffers & Lakes	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial/Office (per Schedule of Uses)	7,500	100	75

MINIMUM SETBACKS

Recreation, open space, golf course, buffers & lakes	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	5
Pool Deck	5	5	10	5	10	5
Commercial/Office (per schedule of uses)	15	20	20	0	10	0

Recreation, Open Space, Golf Course, Buffers and Lakes	Maximum Height (ft.)	No. of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial/Office per Schedule of Uses	45	3	15	45

4. Deviation (1) requests relief from LDC Sections 10-8(2) (Traffic Pattern) and 34-2013(a) (Access) which require all parking lots to be designed to permit vehicles exiting the parking lot to enter the street right-of-way or easement in a forward motion, to allow individual parking spaces to back onto right-of-way or easement for common access drives and private local roads. The requested deviation is **APPROVED** subject to the following conditions:

   (a) this deviation will apply to private internal local roads and accessways only;
   (b) the design and posted speed will be 20 mph or less;
   (c) the visual clear zone will be in accordance with the visibility triangle criteria set forth in LDC Section 34-3131; and
   (d) where determined to be practical by the design engineer, traffic calming devices as identified in the ITE Residential Street Design and Traffic Control book will be provided.

5. Deviation (2) seeks to deviate from LDC Section 10-285 (Connection Separation) which requires a minimum 125-foot spacing between driveway accesses to a local road, to allow two connections for each short cul-de-sac (eyebrows), at a spacing of less than 125 feet. The requested deviation is **APPROVED** with the condition that:

   (a) each "eyebrow" must be provided with signage indicating one-way traffic in a counter-clockwise direction;
   (b) the minimum separation will be 60 feet;
   (c) it applies only to private local roads; and
   (d) it is approved only for those typical situations including, but not limited to, those designated in "Examples for Deviation (2)" attached as Exhibit E to the Staff Report.

6. Deviation (3) seeks to deviate from LDC Section 10-291(3)(b) (Access to Street) which requires, where practical, any residential development of least five± acres to provide

two or more means of ingress and egress, to allow only one means of ingress and egress. The requested deviation is **APPROVED** subject to the following conditions:

(a) an emergency turnaround of adequate dimension is provided for emergency service providers within each development pod;
(b) each multi-family pod with one means of ingress and egress will not exceed 150 units; and
(c) the local Fire and Emergency Service District must provide a letter of approval prior to local Development Order approval.

7. Deviation (4) seeks to deviate from LDC Section 10-296(b), Table 3 (Specifications for Privately Maintained Streets) which requires a right-of-way width of 35 feet for a two-way closed drainage, rear lot drainage, or inverted crown, to allow a right-of-way width to coincide with the back of curb for local private roads. The requested deviation is **APPROVED** provided the required drainage and utility easements are located outside of the right-of-way and adequate provisions are made for road drainage and utilities.

8. Deviation (5) seeks to deviate from LDC Section 10-296, Table 4(7)(c) (Minimum Specifications for Street Improvements) which requires wearing surfaces for local and access roads for Class A development be 1½-inch asphaltic concrete of Florida Department of Transportation Type S-1, to allow for decorative pavers within private local and public arterial roadways. The requested deviation is **APPROVED for local, private roads** provided that the structural number of the proposed alternate cross-section will equal or exceed the structural number of a "standard" Class A local road flexible pavement cross-section. The requested deviation is **APPROVED for public arterial roads** subject to Lee County Division of Transportation approval.

9. Deviation (6) seeks to deviate from LDC Section 10-296(m)(4)(a) (Privately Maintained Accessways) which allows privately maintained accessways that meet criteria outlined in item (m)(4)(a) to be exempt from the minimum right-of-way widths specified in 10-296(b), to permit accessways that provide access up to 150 residential units and 300 parking spaces to be exempt from the minimum right-of-way widths as specified in 10-296(b). The requested deviation is **APPROVED** subject to the following conditions:

(a) the design and posted speed will be 20 mph or less;
(b) each multi-family pod with one means of ingress and egress will not exceed 150 units;
(c) this deviation will apply to private internal local roads and accessways only; and,
(d) where determined to be practical by the design engineer, traffic calming devices as identified in the ITE Residential Street Design and Traffic Control book will be provided.

10. Deviation (7) seeks to deviate from LDC Section 10-329(e)(1)(a) (Excavations for Water Retention and Detention) to allow lake setbacks from rights-of-way as follows:

    a. Where local private streets meet the requirements of this document, a 25-foot lake setback as measured from the back of curb to the edge of water control elevation will be provided; and

    b. Where adequate elements for the protection of wayward vehicles are provided, a zero-foot setback from the back of the curb to the edge of the water control elevation will be provided.

    The requested deviation is **APPROVED** with the condition that the Developer provides elements for the protection of wayward vehicles such as guardrails, berms, swales, non-mountable curbs, etc., as determined by the Director of Development Services.

11. Deviation (8) seeks to deviate from LDC Section 10-329(e)(3) (Excavations for Water Retention and Detention) which requires the maximum depth of excavation not to exceed 12 feet, to allow a depth not to exceed 20 feet as supported by the hydrogeological report identified in The Brooks ADA, Question 14. The requested deviation is **APPROVED** for a maximum lake depth of 20 feet or to the confining layer, whichever occurs first, subject to implementation of the lake management plan entitled "The Brooks of Bonita Springs Management Program For Lakes Excavated To A Depth Greater Than 12 Feet - June 5, 1997," zoning counter stamped June 5, 1997. This plan must be a component of the engineering and design of The Brooks of Bonita Springs, be incorporated into the local Development Order, and be implemented prior to approval of any Certificate of Compliance (CC) for any portion of the development to which it applies.

12. Deviation (9) seeks to deviate from LDC Section 10-329)e)(4) (Excavations for Water Retention and Detention) which requires excavations to be sloped at four horizontal to one vertical to a water depth of four feet below the dry season water table and two horizontal to one vertical thereafter, to allow for lake slope to conform to South Florida Water Management District (SFWMD) permit. The requested deviation is **APPROVED**.

13. Deviation (10) seeks to deviate from LDC Section 10-355(a)(1) (Easements, Location of Water and Sewer Lines) which requires a 10-foot-wide public utility easement on both sides of a roadway, to allow the public utility easement on one side only. The requested deviation is APPROVED if all of the applicable utility companies state, in writing, that the easement may be eliminated.

14. Deviation (11) seeks to deviate from LDC Sections and 10-417(b)(2)f. (Installation of Plant Materials; Protection from Encroachment) which requires that no portion of a buffer area consisting of trees and shrubs be located in an easement, to allow planted

buffers in easements. The requested deviation is **APPROVED** provided that, if any required buffer or landscape strip plantings installed within easements must be removed, then the Developer or homeowners' association must replace these plantings with like size and species at no expense to Lee County. The requirement must be clearly stated in the homeowners' documents.

15. Deviation (12) seeks to deviate from LDC Sections 10-415(b)(1), 10-415(b)(2) and 10-415(c)(1) (Landscaping) which prohibit buffers within the right-of-way, to allow landscaping to be located within rights-of-way that exceed the minimum requirements of this document by 10 feet or more. The requested deviation is **APPROVED** subject to Lee County Division of Transportation approval including, but not limited to, provisions for maintenance and compliance with clear zone regulations. These buffer areas may not be counted toward the required open space calculations.

16. Deviation (13) seeks relief from LDC Section 10-418 (Stormwater Ponds) to allow lake littoral planting requirements to be met on the project site on an overall basis. The requested deviation is **APPROVED** provided that lake littoral planting requirements must be met on the overall project site with each lake containing, at a minimum, 50 percent of its normal LDC requirement. Additionally, The Brooks mitigation area will include: the creation of a meandering flow-way interconnecting wetlands, provide shallow ponds with littoral shelves for wading birds and birds of prey, enhancement of existing herbaceous wetlands, construction of osprey platforms in hammocks, the establishment of willow areas and flag ponds, and the establishment of vegetated upland buffers along portions of the wetland system.

17. Deviation (14) seeks to deviate from LDC Chapter 30, Signs to allow signage in conformance with The Brooks Signage Program. The requested deviation is **APPROVED** subject to compliance with The Brooks Sign Schedule as attached.

18. Deviation (15) seeks to deviate from LDC Section 34-935(b)(2) (Minimum Setbacks of Structures, Buildings and Pavement from Development Perimeter Boundaries) which requires that internal pavement be no closer than 25 feet to the development perimeter, to allow a 15-foot minimum. The requested deviation is **APPROVED** but applies to development perimeter (external project boundary) only.

19. Structures which exceed three stories or 45 feet in height must be set back a minimum of 100 feet from the north project boundary.

20. Structures which exceed two stories or 35 feet in height must be set back a minimum of 100 feet from the south project boundary.

21. A Management Plan per the requirements of LDC Section 10-474 must be approved prior to local Development Order approval for any portion of The Brooks of Bonita Springs DRI site on which a Lee County listed species per LDC Appendix H has been identified.

22. The design for the golf course and residential areas will incorporate the retention of large slash pines for utilization as perch trees for bald eagles. This requirement will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

23. The Open Space Table shown on the Master Concept Plan is hereby adopted. This table must be demonstrated in compliance at each local Development Order submittal. There can be no lessening of the indigenous open space areas as provided on this table. No parcel which has an open space requirement may provide less than 10 percent open space, and no water body may be used to meet this minimum 10 percent open space requirement.

24. Each multi-family development parcel which contains structures that exceed 45 feet in height must provide a minimum of five trees per 100 linear feet along each side lot line. Additionally, any lot line that abuts a single family or two-family residential development parcel must be planted with a 50 percent opaque landscape buffer that may incorporate the required trees. Setbacks for structures over 45 feet in height which abut non multi-family residential uses will be as follows:

Side Setback:	50 feet
Rear Setback:	35 feet
Front/Road:	35 feet
Waterbody:	25 feet
Golf Course:	25 feet
Preserve:	25 feet

25. Access to the development over and across the existing Seminole Gulf Railway is subject to approval by Seminole Gulf Railway.

26. The maximum number of ALF (Assisted Living Facility) units shall not exceed 500 units or beds - density equivalents to be calculated in accordance with LDC Section 34-1494.

27. During the next four years, Lee County will undertake, to the extent legally permissible, any amendment to the 2010 Overlay, or its successor, necessary to accommodate the buildout of The Brooks as set forth in the DRI phasing schedule. Lee County will cause these amendments to occur in a timely manner so development of The Brooks will not be impeded by the 2010 Overlay, or its successor. Nothing in this condition will be interpreted to cause the County to be liable for a failure to accomplish these amendments if the failure is the result of a refusal by any State or Regional agency to approve such a change.

28. This development must comply with all of the requirements of the Lee County Land Development Code at the time of local Development Order approval, except as may be granted by deviation as part of this planned development.

29. Retail Commercial development at US 41 will be limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet or less) until such time as the Coconut Road Extension has been designed and built to operate as an arterial road, and it has been connected to Three Oaks Parkway. It will then be allowed to develop to a maximum of 150,000 square feet of retail uses as delineated in the Schedule of Uses for this parcel.

30. Retail commercial development at the Town Center will be limited to the intensity allowed for Minor Commercial (30,000 square feet) until such time as the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway and the Coconut Road Extension. It will then be allowed to develop to a maximum of 100,000 square feet of retail uses as delineated in the Schedule of uses for this parcel.

31. Internal improvement capital costs will be borne by the Developer, a UCDD, a private utility or some other legal entity which has the ability to levy an assessment or otherwise raise revenues to pay the internal improvement capital costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the capital cost of internal improvements.

32. The operating and maintenance costs of the water and sewer systems will be paid by the Developer who connects to the utility system, and the users of the system who pay the fees and tariffs levied by the utility. However, if the portion of the operating and maintenance costs of the water and sewer system attributable to the Developer who connects to the utility system, or the users of the system, falls below the requirements of the PDDO, the Developer of The Brooks, a UCDD, a property owners' association, or some other legal entity will be responsible for the payment. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the cost of operation and maintenance.

33. The Developer must provide the County with fiscal monitoring reports that identify the taxable value of the development by use codes. Taxable value means the actual taxable value assigned to the property in the development by the Lee County Property Appraisers Office. The report must be submitted when the certificate of occupancy for the 2600th unit is issued. A second report must be submitted at the end of the second 5-year period, which is the end of second phase, if the fiscal monitoring report at the end of the first phase indicates that the project is not fiscally positive and a second report is required as part of the mitigation condition.

These reports are intended to allow the County to determine whether the total taxable value is 25% less than, equal to, or exceeds the total taxable value of $510,180,000.00, which was contained in the fiscal analysis tables that were attached to the June 2, 1997 letter from Fishkind & Associates, to the Division of Budget Services, Lee County.

If these reports demonstrate that the taxable values are 25% less than equal to, or exceeded, no further action is required. If these reports indicate that the actual taxable values are more than 25% below the taxable values projected in the tables, the Developer must conduct a new fiscal impact analysis (using the actual budgets of Lee County, including the Sheriff's budget, the Lee County District School Board, and the Estero Fire and Rescue District) utilizing the methodology of the modified per capita approach as outlined in the Applicants' document entitled "Revised Fiscal Impacts of The Brooks of Bonita Springs," prepared by Fishkind & Associates, Inc. and dated May 19, 1997 (Applicant's Exhibit 59).

If this new analysis indicates that the fiscal impact to the County is positive or neutral, no further action is required. If this new analysis indicates that the fiscal impact to the County is negative, the County, the Applicant and other affected parties will try to reach a mutually agreed upon fiscal mitigation plan which fully mitigates the negative fiscal impacts at the sole cost of the Developer and the property owners within the development. If the Developer or the property owners do not concur with the County Staff's fiscal mitigation plan, they have the right to avail themselves of any remedy allowed them under the County's LDC. No additional Development Orders will be issued to those portions of the project located within the Rural land use category, by the County, until the fiscal mitigation plan is implemented. If such a plan cannot be mutually agreed upon, the County reserves the right to create a taxing entity on the development, such as a Municipal Services Taxing Unit (MSTU) or Municipal Services Benefit Unit (MSBU), to address the identified negative fiscal impacts.

34. When the last or final certificate of occupancy for the last residential unit within a particular community or area is issued, the Real Estate Sales Office use located in or associated with that community must be discontinued. No sales for developments outside of The Brooks may occur within the residential real estate office.

35. Cattle grazing (which is an existing agricultural use on a portion of the property), and a proposed non-commercial tree nursery, for the exclusive use of The Brooks of Bonita Springs, are permitted within the following areas until these areas are developed: Residential (R), Recreation/Open Space/Golf/Buffer (RO), and Towncenter (TC). Cattle grazing is also permitted within the identified Conservation (CO) areas, until such time as the R, RO, or TC areas adjacent to the CO areas are developed. These agricultural uses are further limited to those portions of the site that have an existing agricultural tax exemption as of June 25, 1997.

The areas which have the tax exemption as of June 25, 1997 are legally identified as follows:

All of Sections 2, 3, 10 and 11, Township 47 South, Range 25 East, Lee County, Florida, lying east of the Seminole Gulf Railroad, west of Interstate Highway 75 and south of Williams Road.

LESS AND EXCEPT therefrom:
All that part of Sections 2, 3, 10 and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
BEGINNING at the southwest corner of said Section 10,
Thence along the south line of said Section 10 in the following two (2) described courses;

1. South 88°50'19" West 2664.18 feet;
2. South 88°50'37" West 2540.14 feet to the easterly right-of-way line of Seaboard Coastline Railroad;

Thence leaving said south line of Section 10, along said easterly right-of-way line of Seaboard Coastline Railroad, North 00°59'47" West 6010.75 feet;
Thence leaving said right-of-way line, South 73°35'15" East 457.66 feet;
Thence North 85°18'36" East 1675.18 feet;
Thence South 81°35'06" East 1297.84 feet;
Thence North 31°35'30" East 359.66 feet;
Thence Northeasterly and easterly 642.94 feet along the arc of a tangential circular curve concave to the southeast, having a radius of 800.00 feet, through a central angle of 46°02'41" and being subtended by a chord which bears North 54°36'55" East 625.78 feet;
Thence North 77°38'21" East 253.20 feet;
Thence North 13°14'05" East 538.91 feet;
Thence South 81°30'32" East 137.72 feet;
Thence North 82°07'16" East 160.18 feet;
Thence South 31°52'23" East 335.93 feet;
Thence North 40°23'26" East 382.59 feet;
Thence North 23°55'39" East 580.19 feet;
Thence North 45°00'00" East 684.13 feet to a point on the westerly right-of-way line of assumed Three Oaks Boulevard Extension;
Thence along said westerly right-of-way line in the following four (4) described courses;

1. South 45°00'00" East 803.17 feet;
2. Southeasterly, southerly and southwesterly, 3300.70 feet along the arc of a tangential circular curve concave to the west, having a radius of 2350.00 feet, through a central angle of 80°28'30" and being subtended by a chord which bears South 04°45'45" East 3036.00 feet to a point of reverse curvature;
3. Southwesterly and southerly, 1389.94 feet along the arc of a tangential circular curve concave to the southeast, having a radius of 2150.00 feet, through a central

angle of 37°02'27" and being subtended by a chord which bears South 16°57'17" West 1365.86 feet;

4. South 01°33'57" East 3238.37 feet to the south line of said Section 11;

Thence leaving said westerly right-of-way line, along said south line of Section 11, North 82°29'27" West 1112.95 feet to the **POINT OF BEGINNING** of the parcel less and excepted;

Subject to easements and restrictions of record.

Containing 1,494.09 net acres more or less.

Bearings are based on the South line of said Section 11, being North 82°29'27" West.

No other type of agricultural use is permitted within these areas and no agricultural use is permitted elsewhere within The Brooks of Bonita Springs DRI.

CO areas that are utilized for cattle must be surveyed for the presence of tropical soda apple Solanum viarum (TSA) commencing from the date of zoning approval. Any TSA found must be immediately eradicated and all CO areas must be maintained free of TSA. No native tree removal, clearing & grubbing, excavation, or other development activities may occur unless such activity is reviewed and approved in accordance with all applicable Lee County regulations as if no agricultural uses.

SECTION C. Master Concept Plan:

A four-page reduced copy of the Master Concept Plan is attached and incorporated into this resolution by reference.

SECTION D. FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested MPD zoning:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.

2. The MPD zoning:

   a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;

   b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;

   c) is compatible with existing or planned uses in the surrounding area; and

   d) will not adversely affect environmentally critical areas or natural resources.

3. Approval of the request will not unduly burden existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.

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

5. The proposed use or mix of uses is appropriate at the subject location.

6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.

7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

8. The deviations granted:

   a) enhance the objectives of the planned development; and

   b) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

The foregoing resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Manning, and seconded by Commissioner Judah and, upon being put to a vote, the result was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 25th day of August, 1997.

ATTEST:
CHARLIE GREEN, CLERK

BY: Ruth Trigueiro
Deputy Clerk

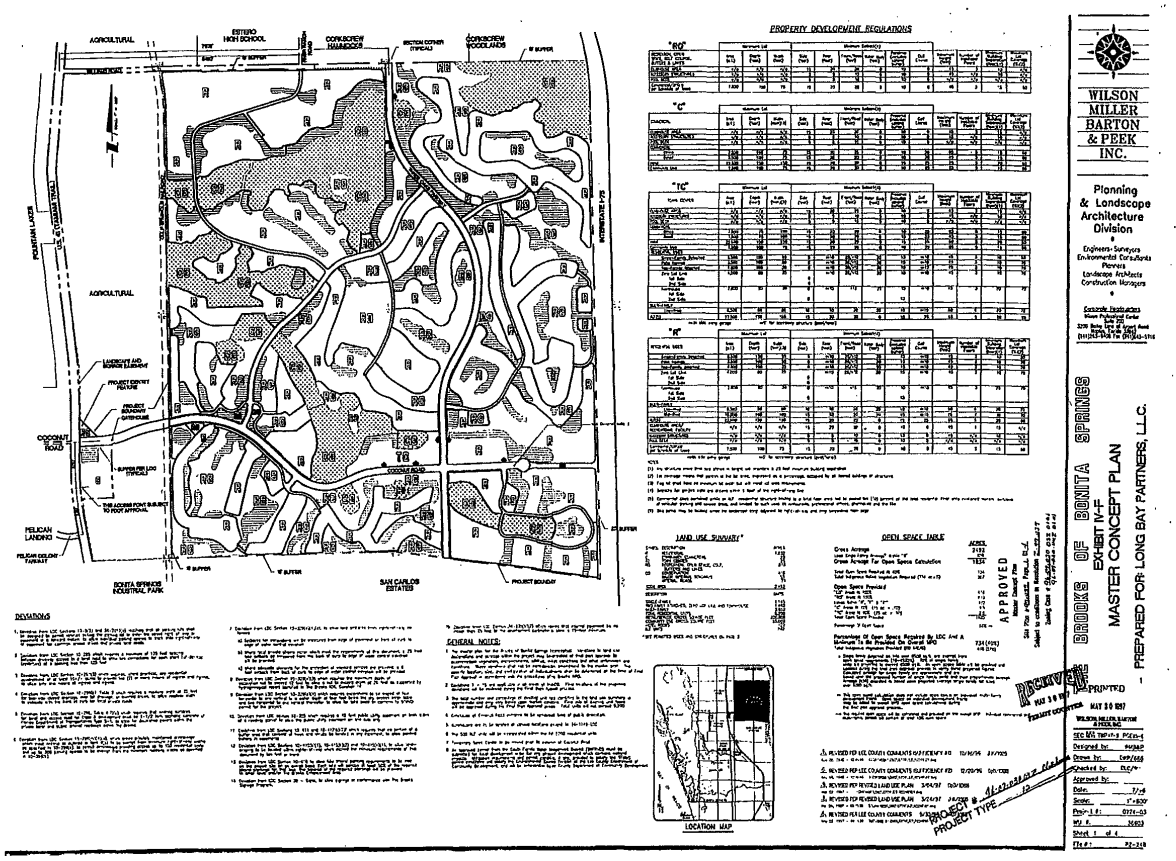
FILED
SEP 9 1997
CLERK CIRCUIT COURT
BY Ruth T. D.C.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Chairman

Approved as to form by:

_____
County Attorney's Office


PROPERTY DEVELOPMENT REGULATIONS
LAND USE SUMMARY
OPEN SPACE TABLE
DEVIATIONS
GENERAL NOTES
LOCATION MAP
WILSON MILLER BARTON & PEEK INC.
Planning & Landscape Architecture Division
BROOKS DE BONITA SPRINGS
EXHIBIT V-F
MASTER CONCEPT PLAN
PREPARED FOR: LONG BAY PARTNERS, L.L.C.
APPROVED
RECEIVED
PROJECT TYPE

12. The Developer, the UCDD, or the successors and assigns, must regularly vacuum sweep all privately owned internal streets and parking areas. The Developer will also encourage private parcel owners to regularly vacuum sweep their respective streets and parking areas.

13. The Developer must provide dry detention or retention pretreatment in the areas adjacent to commercial uses unless the Developer can provide reasonable assurances to the SFWMD that hazardous materials will not enter the project's surface water management system. The assurances may be in the form of deed restrictions, recorded lease agreements, or other legal instrument acceptable to SFWMD and the County.

E. TRANSPORTATION

1. Significant Impact

a. The original traffic impact assessment for the project assumed the development parameters set forth below:

	Phase I (2002)	Buildout (2007)[1]
Residential		
--Single Family	600 D.U.	1,140 D.U.
--Multi Family/Single Family-Attached	2,000 D.U.	4,060 D.U.
Non-Residential		
--Service/Retail/Office (Town Center)	10,000 sq. ft.	100,000 sq. ft.
--Community Use (Town Center)	15,000 sq. ft.	50,000 sq. ft.
--General Retail (Community Center)	100,000 sq. ft.	150,000 sq. ft.
--Community Use (Community Center)	5,000 sq. ft.	5,000 sq. ft.
--Hotel	0 Rooms	120 Rooms
--Golf Course	36 Holes	72 Holes

Based on the ~~proposed~~ Second DRI Development Order Amendment, the revised development parameters at buildout will be as follows:

Summary Development Parameters - Buildout

[1] The build out date was extended by operation of law by three years to December 31, 2010 on August 21, 2007 and another four years pursuant to HB7207 under the Fourth Amendment to the DRI DO. The build out date was also extended thru SB 2156 and State of Emergency for Tropical Storms Debbie and Isaac to March 2, 2017. The applicant submitted a traffic analysis (that included an additional 200 MF units and a 12/31/17 build out scenario) which demonstrated that the DRI will not significantly or adversely impact any relevant road segments. Based on this analysis, concurrency vesting rights for the additional residential units (3800 total SF/MF) are extended to December 31, 2017. ~~However, the Transportation Impact Assessment assumed build out in 2007. For this reason, the build out date was not altered in this paragraph.~~

Land Use	~~Proposed~~ DRI
Residential	
Single Family	1,600 d.u.
Multi Family	2,000 d.u.
Total	3,600 d.u.
Town Center	
Service/Retail/Office	120,000 sq. ft.
Community Use	50,000 sq. ft.
Total	170,000 sq. ft.
Community Center	
Retail	150,000 sq. ft.
Office	5,000 sq. ft.
Total	155,000 sq. ft.
Hotel	120 rooms
Golf Course	72 holes

b. The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at project Build out (2007)[2]. The Brooks DRI is projected to significantly and adversely impact the following roadways and intersections:

Roadways:

	Needed Improvement
Corkscrew Road	
--Sandy Lane to Three Oaks Parkway	Widen to 4 lanes
--Three Oaks Parkway to I-75	Widen to 4 lanes
U.S. 41	
--Bonita Beach Road to W. Terry Street	Widen to 6 lanes
--Corkscrew Road to Koreshan Boulevard	Widen to 6 lanes
--Koreshan Boulevard to San Carlos Boulevard	Widen to 6 lanes
--San Carlos Boulevard to Alico Road	Widen to 6 lanes

[2] The build out date was extended by operation of law by three years to December 31, 2010 on August 21, 2007 and another four years pursuant to HB7207 under the Fourth Amendment to the DRI DO. The build out date was also extended thru SB 2156 and State of Emergency for Tropical Storms Debbie and Isaac to March 2, 2017. The applicant submitted a traffic analysis (that included an additional 200 MF units and a 12/31/17 build out scenario) which demonstrated that the DRI will not significantly or adversely impact any relevant road segments. Based on this analysis, concurrency vesting rights for the additional residential units (3800 total SF/MF) are extended to December 31, 2017. ~~However, the initial Transportation Impact Assessment assumed build out in 2007. For this reason, the reference to the 2007 build out date was not altered in this paragraph~~.

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION

DATE: April 30, 2007

TO: WHOM IT MAY CONCERN

FROM: Donna Hock
Administrative Assistant

RE: Administrative Amendment

Case Number	Case Name
ADD2007-00064	Brooks Town Center

cc: Mr. Charles Krebs.
Mr. Bobby Stewart
Mr. Matt Noble
Mr. Chick Jakacki
Ms. Julie Dalton
DCI file

RECEIVED
MAY 01 2007
HOLF MONTES, INC.

ADMINISTRATIVE AMENDMENT (FPA) - ADD2007-00064

ADMINISTRATIVE AMENDMENT
LEE COUNTY, FLORIDA

WHEREAS, TOP-CR Associates, LLC & TOP-CR Associates, Inc. filed an application for Final Zoning Plan Approval to a Mixed-Use Planned Development on a project known as Brooks Town Center for 80,000 square feet of retail uses on 9.55 acres of property located at the Northwest corner of Coconut Road and Three Oaks Parkway, described more particularly as:

LEGAL DESCRIPTION: In Section 11, Township 47 South, Range 25 East, Lee County, Florida:

SEE ATTACHED TWO-PAGE "EXHIBIT A"

WHEREAS, the property was originally rezoned in Resolution Z-97-037, with subsequent amendments in Z-99-076, ADD2000-00008, ADD2001-00128, ADD2002-00016, Z-02-006, and Bluesheet #20020469; and

WHEREAS, the subject property is located in the Rural Future Land Use Category as designated by the Lee Plan; and

WHEREAS, Long Bay Partners, the owner of the subject property, has authorized Charlie Krebs to act as agent for the case for Final Plan Approval; and

WHEREAS, the subject property is located in the Town Center designation on the Master Concept Plan for The Brooks MPD; and

WHEREAS, permitted uses in the Town Center designation include *Banks and Financial Establishments, Groups I and II*, *Supermarkets*, and *Restaurants, Groups I, II, III and IV*; and

WHEREAS, Condition 1.b of Resolution Z-97-037 requires Final Plan Approval when proposed development includes vertical development; and

WHEREAS, Condition 1.c of Resolution Z-97-037 requires specific information about the proposed uses, as well as information about the site plan and the surrounding properties; and

WHEREAS, Condition 1.c also requires an ongoing tabulation of the total number of commercial square footage that have received local Development Order approval; and

WHEREAS, the applicant has provided a Land Use Summary for the Town Center category, which indicates the amount of square footage previously approved, proposed, and remaining to be developed; and

WHEREAS, a copy of this table is attached as "Attachment B;" and

WHEREAS, the applicant has filed an application for Final Plan Approval for 80,000 square feet of retail uses on a 9.55± acre property at the Northwest corner of Coconut Road and Three Oaks Parkway; and

WHEREAS, the 80,000 feet will be broken up into a proposed Bank, Restaurant, Supermarket (with adjoining strip commercial center), and a smaller retail strip center; and

WHEREAS, a minimum of 10% open space is required in the Town Center, as depicted on the Master Concept Plan for The Brooks; and

WHEREAS, the two-page Master Development Plan, "Attachment A," indicates that 17.3% open space will be provided on the subject property; and

WHEREAS, the Master Development Plan also indicates the locations of the proposed Bank, Restaurant, and two separate strip commercial centers; and

WHEREAS, the Lee County Land Development Code provides for certain administrative changes to planned development master concept plans and planned unit development final development plans; and

WHEREAS, the subject application and plans have been reviewed by the Lee County Department of Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for Final Zoning Plan Approval to the Planned Development for 80,000 square feet of retail development on 9.55± acres in the Town Center is **APPROVED with the following conditions:**

1. **The Development must be in substantial compliance with the 2-page Master Development Plan, by Hole Montes, dated March 15, 2007, stamped received by Community Development on March 26, 2007.**

2. **Final Zoning Plan ADD2007-00064 is hereby APPROVED and adopted. A reduced copy is attached hereto as "Attachment A".**

DULY SIGNED this 27th day of April, A.D., 2007.

BY: Pam Houck

Pam Houck, Director
Division of Zoning
Department of Community Development

CASE NO. ADD2007-00064

Page 2 of 2

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS
LANDSCAPE ARCHITECTURE

6200 Whiskey Creek Drive • Fort Myers, Florida 33919 • Phone: 239.985.1200 • Fax: 239.985.1259

Exh. AA-3.C.1

EXHIBIT A

HM PROJECT #2006056
3/23/2007
REF. DWG. #D-55
Page 1 of 1

LEGAL DESCRIPTION:

ALL THAT PART OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT E OF SHADOW WOOD AT THE BROOKS UNIT FIVE, AS RECORDED IN PLAT BOOK 65, PAGES 23 THROUGH 28, LEE COUNTY, FLORIDA; THENCE S.01°33'57"E., A DISTANCE OF 563.70 FEET ALONG THE WEST RIGHT OF WAY OF THREE OAKS PARKWAY TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD OF 70.71 FEET, A CHORD BEARING OF S.43°26'03"W., AN ARC DISTANCE OF 78.54 FEET TO A POINT ON THE NORTH RIGHT OF WAY OF COCONUT ROAD; THENCE S.88°26'03"W., ALONG THE NORTH RIGHT OF WAY OF COCONUT ROAD A DISTANCE OF 870.87 FEET; THENCE, LEAVING SAID NORTH RIGHT OF WAY N.01°34'02"W., A DISTANCE OF 382.26 FEET TO A POINT ON THE SOUTH LINE OF TRACT C-1 OF SHADOW WOOD AT THE BROOKS UNIT THREE; THENCE S.87°34"35'E., ALONG SAID SOUTH LINE OF TRACT C-1 A DISTANCE OF 258.81 FEET; THENCE N.85°58'28"E., A DISTANCE OF 143.76 FEET; THENCE N.58°20'16"E., A DISTANCE OF 30.84 FEET; THENCE N.01°33'57"W., A DISTANCE OF 17.34 FEET; THENCE N.58°20'16"E., A DISTANCE OF 72.17 FEET; THENCE N.43°47'40"E., A DISTANCE OF 195.02 FEET; THENCE N.02°43'41"E., A DISTANCE OF 2.63 FEET; THENCE N.48°31'36"E., A DISTANCE OF 54.00 FEET TO A SOUTHEAST CORNER OF TRACT C-1, AND THE SOUTHWEST CORNER OF TRACT E; THENCE N.88°26'03"E., ALONG THE SOUTH LINE OF TRACT E A DISTANCE OF 249.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.95 ACRES, MORE OR LESS.

Applicant's Legal Checked
by 29MAR07

RECEIVED
MAR 29 2007
COMMUNITY DEVELOPMENT

DOD 2007-00064

C:\Documents and Settings\darlenedenton\Local Settings\Temporary Internet Files\OLK38\06056BND.doc

Naples • Fort Myers • Venice

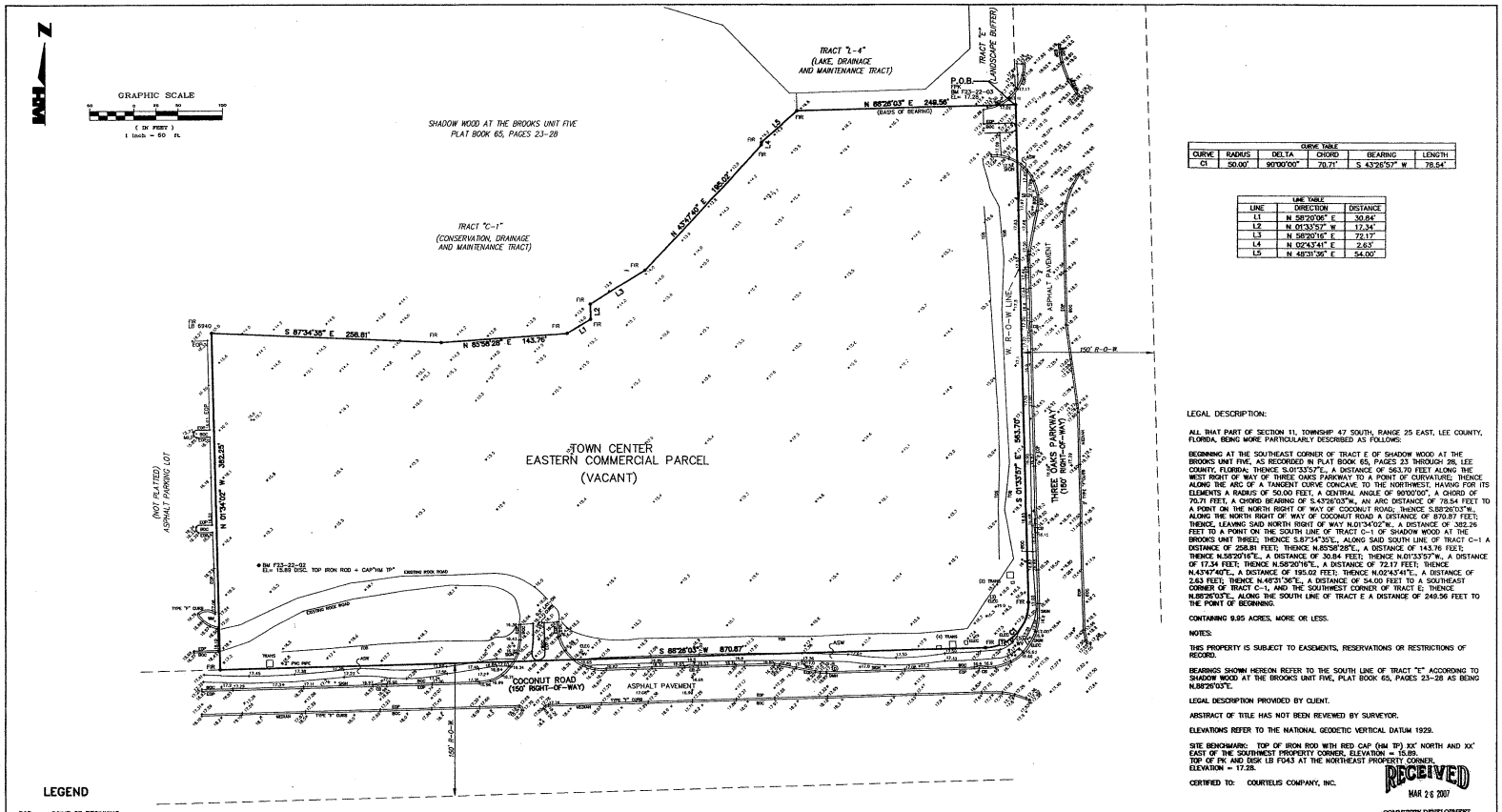
ATTACHMENT B

LAND USE SUMMARY: DOS2007-00028

11-47-25-00-00001.0180 & A PORTION OF 11-47-25-00-00001.0010

SYMBOL	DESCRIPTION	TOTAL UNITS PER MPD/DRI & AMENDMENT	UNITS PREVIOUSLY APPROVED	UNITS THIS APPROVAL	UNITS REMAINING
TC	TOWN CENTER				
	COMMUNITY USE SQUARE FEET	50,000	35,575	0	17,425
	SERVICE/RETAIL/OFFICE SQUARE FEET [RETAIL SQUARE FEET]	120,000	40,000 [10,000]	*80,000	0

*PROPOSED SQUARE FOOTAGE



CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	50.00'	90°00'00"	70.71'	S 43°26'57" W	78.54'

LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 58°20'06" E	30.84'
L2	N 01°33'57" W	17.34'
L3	N 58°20'16" E	72.17'
L4	N 02°43'41" E	2.63'
L5	N 48°31'36" E	54.00'

LEGAL DESCRIPTION:

ALL THAT PART OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT E OF SHADOW WOOD AT THE BROOKS UNIT FIVE, AS RECORDED IN PLAT BOOK 65, PAGES 23 THROUGH 28, LEE COUNTY, FLORIDA; THENCE S.01°33'57"E., A DISTANCE OF 563.70 FEET ALONG THE WEST RIGHT OF WAY OF THREE OAKS PARKWAY TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A RADIUS OF 50.00 FEET; A CENTRAL ANGLE OF 90°00'00", A CHORD OF 70.71 FEET, A CHORD BEARING OF S.43°26'03"W., AN ARC DISTANCE OF 78.54 FEET TO A POINT ON THE NORTH RIGHT OF WAY OF COCONUT ROAD; THENCE S.88°26'03"W., ALONG THE NORTH RIGHT OF WAY OF COCONUT ROAD A DISTANCE OF 870.87 FEET; THENCE, LEAVING SAID NORTH RIGHT OF WAY N.01°34'02"W., A DISTANCE OF 382.26 FEET TO A POINT ON THE SOUTH LINE OF TRACT C-1 OF SHADOW WOOD AT THE BROOKS UNIT THREE; THENCE S.87°34'35"E., ALONG SAID SOUTH LINE OF TRACT C-1 A DISTANCE OF 258.81 FEET; THENCE N.85°58'28"E., A DISTANCE OF 143.76 FEET; THENCE N.58°20'16"E., A DISTANCE OF 30.84 FEET; THENCE N.01°33'57"W., A DISTANCE OF 17.34 FEET; THENCE N.58°20'16"E., A DISTANCE OF 72.17 FEET; THENCE N.43°47'40"E., A DISTANCE OF 195.02 FEET; THENCE N.02°43'41"E., A DISTANCE OF 2.63 FEET; THENCE N.48°31'36"E., A DISTANCE OF 54.00 FEET TO A SOUTHEAST CORNER OF TRACT C-1; AND THE SOUTHWEST CORNER OF TRACT E; THENCE N.88°26'03"E., ALONG THE SOUTH LINE OF TRACT E A DISTANCE OF 249.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.95 ACRES, MORE OR LESS.

NOTES:

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE SOUTH LINE OF TRACT "E" ACCORDING TO SHADOW WOOD AT THE BROOKS UNIT FIVE, PLAT BOOK 65, PAGES 23-28 AS BEING N.88°26'03"E.

LEGAL DESCRIPTION PROVIDED BY CLIENT.

ABSTRACT OF TITLE HAS NOT BEEN REVIEWED BY SURVEYOR.

ELEVATIONS REFER TO THE NATIONAL GEODETIC VERTICAL DATUM 1929.

SITE BENCHMARK: TOP OF IRON ROD WITH RED CAP (HM TP) XX' NORTH AND XX' EAST OF THE SOUTHWEST PROPERTY CORNER, ELEVATION = 15.89.
TOP OF PK AND DISK LB F043 AT THE NORTHEAST PROPERTY CORNER, ELEVATION = 17.28.

CERTIFIED TO: COURTELIS COMPANY, INC.

RECEIVED
MAR 26 2007
COMMUNITY DEVELOPMENT

I HEREBY CERTIFY THAT THIS SKETCH OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY DIRECTION ON 06/28/2006. I FURTHER CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA PURSUANT TO CHAPTER 61G17-6, F.A.C.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION NUMBER LB 1772

ADD 2007-00064

BY _____ P.S.M. #6130
JERRY L. REFELMACHER STATE OF FLORIDA

LEGEND

POB	POINT OF BEGINNING
FPK	FOUND P.K. NAIL W/DISC-LBF043
SIR	SET IRON ROD, 5/8" W/CAP LB 1772
FIR	FOUND IRON ROD W/ CAP LBF043
EOP	EDGE OF PAVEMENT
BOC	BACK OF CURB
TOS	TOE OF SLOPE
TOB	TOP OF BANK
ASW	ASPHALT SIDEWALK
R-O-W	RIGHT-OF-WAY
ELEC	ELECTRICAL BOX
MLP	METAL LIGHT POLE
TRANS	CONCRETE TRANSFORMER PAD
T	TELEPHONE BOX
WM	WATER METER
WV	WATER VALVE
CB	CATCH BASIN
DMH	DRAINAGE MANHOLE

FIELD BOOK F23/07-12 F22/47			
4			
3			
2			
1			
LETTER	REVISIONS	DATE	REV BY

BROOKS TOWNCENTER

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

PARTY CHIEF: B.HARRISON	DATE: 6/27/06	
DRAWN BY: J.R.D.	DATE: 06/27/06	
CHECKED BY: J.L.P.	DATE: 06-28-06	
SEC-TWN-RGE 11-47-25	HORIZONTAL SCALE 1"=50'	

HOLE MONTES
ENGINEERS-PLANNERS-SURVEYORS

6202F Presidential Court
Ft. Myers, FL. 33919
Phone: (239) 985-1200
Florida Certificate of Authorization No.1772

BOUNDARY & TOPOGRAPHIC SURVEY

Exh. AA-3.C.2

DRAWING NO.	D-55
PROJECT NO.	06.056
REFERENCE NO.	06.056 BND

Final Plan Approval Submittal for

BROOKS TOWN CENTER

Zoning Res. #Z-02-006
DRI2001-00006
DCI2001-00043
DRI Development Order #07-9697-133

11-47-25-00-00001.0180 &
A PORTION OF 11-47-25-00-00001.0010
LEE COUNTY, FLORIDA

ATTACHMENT A

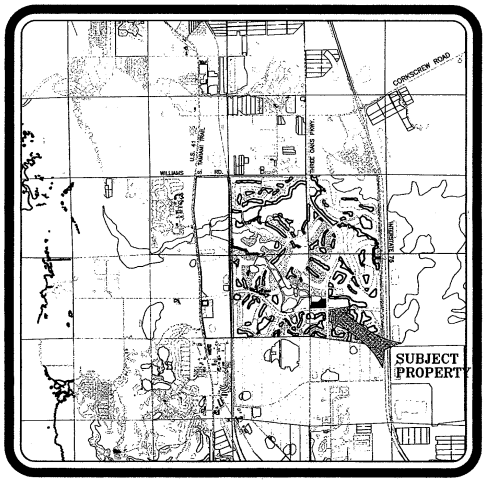
APPROVED
Final Plan Approval
for _____ Planned Development
Subject to Case # ADD2007-00064
Date 4/27/07

APPROVAL HISTORY

LEE COUNTY NUMBER	DATE APPROVED	DESCRIPTION
Res. #Z-97-037 DRI #07-9697-133	08/25/97	The Brooks DRI/MPD. BCC Appvd. DBC from AG-2 to MPD. Appvd. DRI State D.O. for ±2,492 Acres, 5,200 D.U.'s and 250,000 sq.ft. Commercial, subject to conditions.
Res. #Z-99-076 Case #96-07-030.032 02.01 Case #96-07-030.042 02.01	12/06/99	DBC from AG-2 to MPD with conditions.
ADD2000-00008	04/10/00	Final Plan Approval Amendment for Lighthouse Bay, Tract 7, with conditions.
ADD2001-00138	10/10/01	Administrative Approval to Amend the MCP, with conditions.
ADD2002-00016	03/27/02	Approved for encroachment of eave for 2 ft. along Eastern side lot line for Parcel #11472509000B0440, subject to conditions.
Res #Z-02-006 DRI #2001-00006 DCI #2001-00043	04/01/02	Approval to amend The Brooks of Bonita Springs DRI, State D.O. #07-9697-133, subject to conditions.
BLUESHEET #20020469	05/14/02	Approved amendment to existing Development Agreement, Brooks of Bonita Springs DRI.

LAND USE SUMMARY

DESCRIPTION	Per Res. #Z-97-037 State DRI #07-9697-133 Total Units	Per Res. #Z-02-006 State DRI #07-9697-133 (Second D.O. Amendment) Total Units
RESIDENTIAL		
Single Family Residential	1,140 d.u.	1,600 d.u.
Multi-family Residential	4,060 d.u.	2,000 d.u.
Total Residential Units	5,200 d.u.	3,600 d.u.
TOWN CENTER		
Service / Retail / Office	100,000 sq.ft.	120,000 sq.ft.
Community Use	50,000 sq.ft.	50,000 sq.ft.
Total	150,000 sq.ft.	170,000 sq.ft.m
COMMUNITY CENTER		
Retail	150,000 sq.ft.	150,000 sq.ft.
Office	5,000 sq.ft.	5,000 sq.ft.
Total	155,000 sq.ft.	155,000 sq.ft.m
HOTEL		
Hotel (total units)	120	120
GOLF COURSE		
Golf Course (No. of Holes)	72	72
RECREATION, LAKES, AND BUFFERS		
Active / Passive Recreation Areas	±873 Ac.	±890 Ac.
CONSERVATION		
Conservation Areas	±416 Ac.	±419 Ac.
RIGHT-OF-WAYS		
Internal / Public Road (Arterial)	±126 Ac.	±130 Ac.



OPEN SPACE TABLE

	Per Res. #Z-02-006 State DRI #07-9697-133 (Second D.O. Amendment)	Per This Submittal
GROSS PROJECT AGREAGE	±2,532 Ac.	No Change Proposed
LESS Single Family Acreage within "R" Areas	± 674 Ac.	No Change Proposed
Gross Acreage for Open Space Calculations	±1,858 Ac.	No Change Proposed
OPEN SPACE REQUIRED:		
Total Open Space Required (@ 40% of ±1,858 Ac.)	±743 Ac.	No Change Proposed
Total Indigenous Native Vegetation Required (@ ±743 Ac. x 0.5)	±372 Ac.	No Change Proposed
OPEN SPACE PROVIDED:		
Conservation Areas ("CO")(@ 100%)	±419.0 Ac.	No Change Proposed
Recreation, Open Space, Golf Course, Buffers and Lakes ("RO")(@ 100%)	±890.0 Ac.	No Change Proposed
Lakes within "R", "C" & "TC" Areas	±132.0 Ac.	No Change Proposed
Commercial Areas ("C")(@ 10%)(±15 Ac. x 0.10)	±1.5 Ac.	No Change Proposed
Town Center Area ("TC")(@ 10%)(±25 Ac. x 0.10)	±2.5 Ac.	
Total Open Space Provided	±1,445.0 Ac.	
Percentage of Open Space	** 56%	
Percentage of Open Space required by the L.C.L.D.C., and a minimum to be provided on the overall MPD	±743 Ac. (40%)	
Total Indigenous Vegetation Provided ("CO" Areas)	±419 Ac. (57%)	

** This Open Space calculation does not include open space on individual multi-family development tracts. Open Space on individual development tracts may added to overall MPD open space calculations during the final plan approval process.

This submittal covers a portion (±9.95 Ac.) of the previously approved Town Center Area ("TC")(±25 Ac.) (±9.95 Ac. x 0.17) = ±1.69 Ac.

RECEIVED
MAR 26 2007
COMMUNITY DEVELOPMENT

ADD 2007-00064

PREPARED BY :

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS

6200 Whiskey Creek Drive
Fort Myers, FL. 33919
Phone : (239) 985-1200
Florida Certificate of Authorization No.1772
Naples · Fort Myers · Venice · Englewood

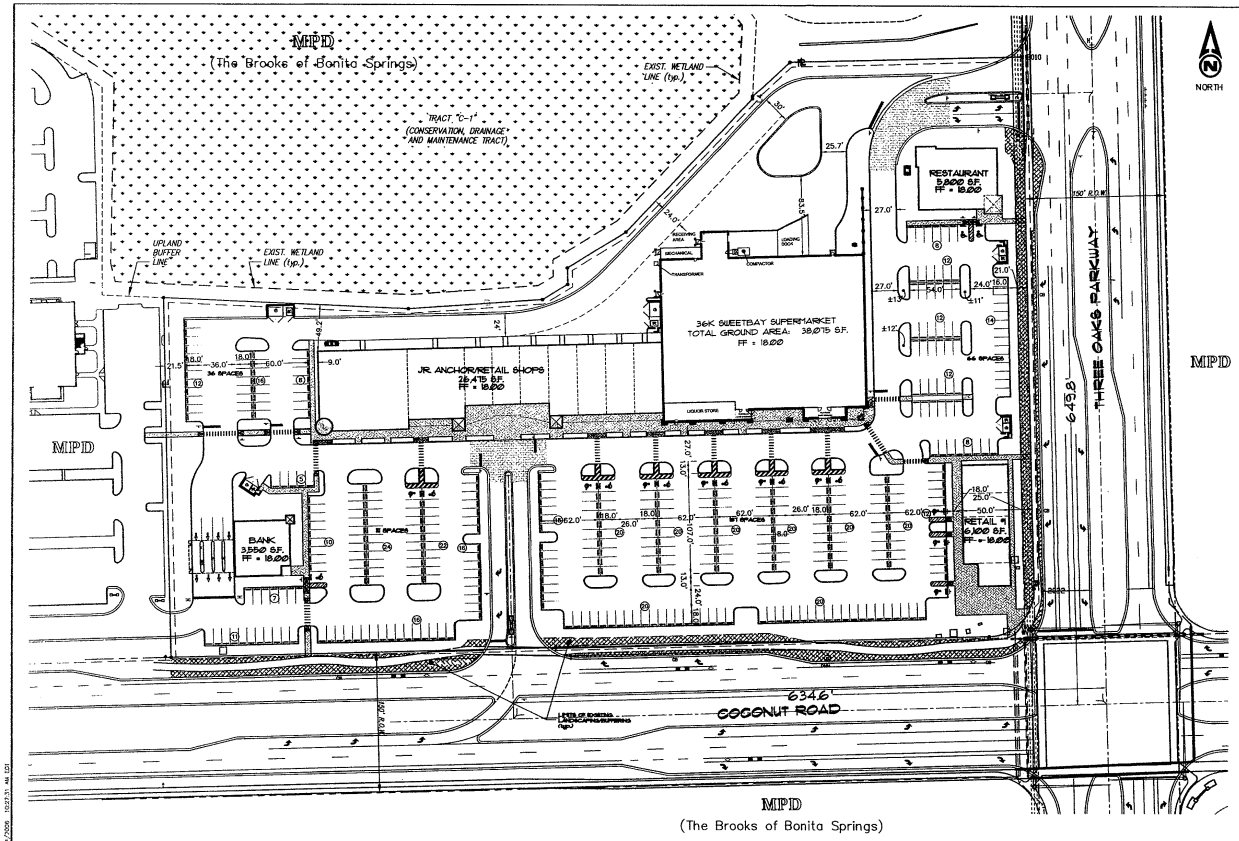
PROPERTY OWNER:

LONG BAY PARTNERS L.L.C.

9990 Coconut Road, Suite 200
Bonita Springs, Florida 34135-8488
Ph. No.: (239) 495-1000

Exh. H-4.C

DEVELOPER: Courtelis Company, Mr. Elias Vassiliaros, Exec. Vice President, 703 Waterford Way Suite 800, Miami, FL 33126-8077, Ph.: (305) 261-4330	These drawings are not approved unless signed and sealed below: Charles L. Knabb, P.E. Florida Professional Engineer Registration #39953 Date: 4/26/07	REFERENCE NO. 0656D_CVR	DRAWING NO. 1132-01
		PROJECT NO. 06.56-D	SHEET NO. 1 OF 2



GENERAL DEVELOPMENT NOTE:

Based on the SFWMD General Permit #36-00288-S-02 and the U.S.D.A. Soil Conservation Service Soil Survey of Lee County, Florida, it is anticipated that this site may be used safely for building purposes, without undue danger from flood or adverse soil or foundation conditions. Subject to properly engineered and constructed corrective measures, including but not limited to site fill, drainage, water management and sewage disposal facilities.

EXOTICS MAINTENANCE PLAN:

The site was previously cleared as part of D.O. #005****-*****, and is maintained in a mowed state. Therefore, there are no exotics on the subject property.

PROJECT DATA:

Buildings	80,000 sq.ft.	± 1.84 Ac.	18.4%
Impervious Surface Areas	263,993 sq.ft.	± 6.06 Ac.	60.9%
Open Space Areas	74,848 sq.ft.	± 1.72 Ac.	17.3%
Green Areas	14,598 sq.ft.	± 0.33 Ac.	3.4%
Total Site	433,439 sq.ft.	±9.95 Ac.	100.0%

THE BROOKS OF BONITA SPRINGS
RES #Z-97-037

(DRI #96-07-030.03Z 01.01 & #96-07-030.04Z 01.01)

Proposed Land Use: Commercial – TOWN CENTER

Minimum Lot Dimensions:

	Office	Retail
Area (min.)	7,500	7,500
Depth (min.)	100	100
Width (min.)	75	75

Minimum Setbacks: (in ft.)

	Office	Retail
Front/Road:	20	20
Side:	15	15
Rear:	20	20
Waterbody:	0	0
Golf Course	20	20
Preserve (incl. Upland Buffer)	10	10
Minimum Building Ht. (in ft.)	65	45
Number of Habitable Floors	5	3
Minimum Building Separation (in ft.)	15	15
Minimum Lot Coverage	45%	45%

APPROVED
Final Plan Approval
for _____ Planned Development
Subject to Case # ADD2007-00064
Date 4/27/07

RECEIVED
MAR 29 2007
COMMUNITY DEVELOPMENT
ADD 2007 00064

DCI2001-00043
DRI 2001-00006
Zoning Res. #Z-02-006

NUMBER	REVISIONS	DATE
1		
2		
3		
4		
5		

BROOKS TOWN CENTER
BONITA BAY GROUP & COURTELIS DEVELOPMENT

DESIGNED BY: C.R.B.	DATE: 07/27/06		
DRAWN BY: C.R.B.	DATE: 07/27/06		
CHECKED BY: C.L.K.	DATE: 07/06		
VERTICAL SCALE:	HORIZONTAL SCALE: 1"= 50'		

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS
6200 Whiskey Creek Drive
Fort Myers, FL. 33919
Phone : (239) 985-1200
Florida Certificate of Authorization No.1772
Naples · Fort Myers · Venice · Englewood

Final Plan Approval
Master Development Plan

REFERENCE NO. 0656B_FPA	DRAWING NO. 1132-02
PROJECT NO. 06.56-B	SHEET NO. 2 of 2

RESOLUTION NUMBER Z-13-009

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Oakbrook Properties, Inc., filed an application on behalf of the property owner, Funnel Land Investment, LLC., to amend the Brooks DRI Development Order; and

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner, Laura B. Belflower, was advertised and held on May 15, 2013; and

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case #DRI2012-00019 and DCI2012-00039 and recommended APPROVAL of the Request; and

WHEREAS, a second public hearing was advertised and held on August 19, 2013 before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request for:

1. DRI2012-00019: Notice of Proposed Change (NOPC) seeking:

   a. an increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;

   b. removal of DRI DO conditions regarding dedication of ROW from Three Oaks Parkway to The Brooks eastern property line for the extension of Coconut Road and overpass over I-75;

   c. extension of the DRI Buildout and Termination Dates;

   d. revisions to the DRI Map H to:

      i. eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential);

      ii. update Land Use Summary table per requests; and

081913Z

iii. update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

2. DCI2012-00039: Amend existing MPD zoning to:

a. increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;

b. revisions to the zoning Master Concept Plan (MCP) to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) eliminate MF (Mid-rise) from schedule of uses; iii) update Land Use Summary and Open Space Tables per requests; and iv) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

The property is located in the Rural Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

DRI2012-00019:

Subject to the provisions of the Fifth Amendment to the DRI Development Order attached hereto as Exhibit E.

DCI2012-00039:

1. Development of the subject property, along with all property within The Brooks, must be consistent with the original zoning approval adopted in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006. All Administrative Approvals granted after the adoption of Zoning Resolution Z-97-037, as amended, also remain in full force and effect, except the use of multi-family mid-rise is not a permitted use and this use is removed from the approved schedule of uses and property development regulations on the Master Concept Plan (MCP).

2. Development of the subject property (an irregularly shaped 38± acre parcel at the eastern end of Coconut Road) within the existing MPD is also subject to the following:

a. Master Concept Plan

The development of the subject 38± acre tract must be consistent with the one-page Master Concept Plan entitled "The Brooks of Bonita Springs MPD, Master Concept Plan," stamped received FEB 08, 2013, last revised 1/25/2013 (Exhibit C), except as modified by the conditions below. This development must comply with all requirements of the Lee County 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 MCP are subsequently pursued, appropriate approvals will be necessary.

b. Uses and Site Development Regulations

All uses and property development regulations may be found in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006.

c. Solid Waste Management

As part of any local development order approval for vertical development on the subject property, the development order plans must include facilities in compliance with LDC §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.

d. Agricultural Uses

Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:

i. Bona fide agricultural uses consisting of the raising and cultivation of hay for livestock, that was in existence on the subject 38± acre tract when the application for this project was filed, may continue in the areas depicted on Exhibit D until a local development order is approved for the area containing the agricultural uses.

ii. Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed, but those areas may not be cleared or expanded. Violations of this condition will require restoration in accordance with LDC §10-423. This prohibition of clearing or expansion of agricultural use is not intended to preclude County approved requests for removal of invasive exotic vegetation.

iii. Prior to issuance of a local development order for the portion that contains the agricultural use, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

(1) Termination of all agricultural use on the property included in the local development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the property that specifically provides:

(a) the date the agricultural uses ceased;

(b) the legal description of the property subject to the local development order approval;

(c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow agricultural uses on the property until the property is re-zoned to permit agricultural uses; and

(d) that the affidavit constitutes a covenant between the owner and the County that is binding on the owner, their assignees and successors in interest.

The affidavit must be properly recorded in the public records of the County at the owner's expense.

(2) Proof of termination of the agricultural tax exemption for the portion of the property included in the local development order application/approval. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

SECTION C. DEVIATIONS:

All deviations granted as part of the original and subsequent amending Zoning Resolutions and all deviations granted as part of all administrative actions referred to in Condition 1 above remain in full force and effect.

As part of this application, the applicant seeks to add the following deviation:

Deviation (1) seeks relief from the LDC §10-291(3) requirement to provide residential development of more than five acres must provide more than one means of ingress or egress for the development, to allow only one means of access to the development. This deviation is APPROVED.

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

Exhibit A: Legal description of the property
Exhibit B: Zoning Map (with the subject parcel indicated)
Exhibit C: The Master Concept Plan
Exhibit D: Bona Fide Agricultural Uses
Exhibit E: Fifth Amendment to the Brooks DRI Development Order

SECTION E. FINDINGS AND CONCLUSIONS:

For the DRI Amendment:

1. The requests, as conditioned, do not create new or additional unreviewed regional impacts, and do not constitute a Substantial Deviation, as that term is defined in §380.06(19) of the Florida Statutes.

2. The changes to the DRI Development Order to remove the requirements to dedicate the right-of-way for the extension of Coconut Road and to provide an approach for a flyover bridge are consistent with the requirements of the DRI, and do not trigger additional review, because the actual proportionate share for the development has been provided and those requirements have already been satisfied.

3. The amendments to the DRI Map H are not regionally impacting or significant enough to require additional DRI review.

4. The amendments to the DRI Development Order to extend the DRI build-out and termination dates do not require additional regional review because the extensions are less than the five year extension considered under §380.06(19), Florida Statutes, to not constitute a substantial deviation.

For the MPD Amendment

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.

2. The rezoning, as approved:

   a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;

   b. is consistent with the densities, intensities and general uses set forth in the Lee Plan;

   c. is compatible with existing or planned uses in the surrounding area;

   d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and

   e. will not adversely affect environmentally critical areas or natural resources.

3. The rezoning satisfies the following criteria:

   a. the proposed use or mix of uses is appropriate at the subject location;

   b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and

c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

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

5. The approved deviation, as conditioned, enhances achievement of the planned development objectives, and preserves and promotes the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

Commissioner Manning made a motion to adopt the foregoing resolution, seconded by Commissioner Hall. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of August, 2013.

ATTEST:
LINDA DOGGETT, CLERK

BY: Joyce Townsend
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:
Cecil L Pendergrass, Chair

Approved as to form by:

Michael D. Jacob
Assistant County Attorney
County Attorney's Office

BOARD OF COUNTY COMMISSIONERS SEAL LEE COUNTY, FLORIDA

RECEIVED
AUG 26 -2013
mw
MINUTES OFFICE

Case No. DRI2012-00019 & DCI2012-00039

Z-13-009
Page 6 of 6

Nancy E. Stroud, P.A.

MEMORANDUM

TO: Mary Gibbs, Village Community Development Director

FROM: Nancy Stroud
Village Land Use Counsel

RE: Procedures for Review of Brooks Town Center Redevelopment

DATE: May 19, 2020

You have asked my advice regarding the proper procedure for the review of a proposal to add multifamily residential units to the Town Center area in The Brooks master planned community. My analysis below concludes that an amendment to the MPD master concept plan is necessary in order to add the proposed use, which requires that the Village Council process the approval.

Background.

The Brooks Development of Regional Impact (DRI) was originally approved in 1997, with the adoption by Lee County of the DRI Development Order and Mixed Use Planned Development (MPD) in Resolution No. Z-97-037. The DRI and MPD have been amended several times, with the most recent amendment by Resolution No. Z-13-009. As related to Town Center, the approvals do the following:

1. The DRI establishes an area known as the Town Center (TC), depicted on the Master Plan (Map H). The DRI states that "the uses within the Town Center will be governed by the planned development zoning" at section II. E.5.a.2. The DRI permits 2,200 multifamily units, and 1600 single family units within the total community, without specifically assigning any residential units to the TC. Within the TC, non-residential use is limited to 50,000 square feet of community uses; and 120,000 square feet of commercial retail/service/office use.

2. The MPD adopts a map titled Master Concept Plan – Rezoning. This map shows the TC area with the same configuration as the DRI Master Plan. The MPD provides that the uses permitted in the TC include a wide variety of commercial and non-residential uses, as well as Multi-Family Low Rise and residential uses ancillary to a permitted commercial use.

3. MPD Multi-Family Low Rise uses in the TC have minimum lot dimensions and setbacks, and maximum building separation and lot coverage. The maximum height is 50 feet, and the maximum number of habitable floors is 4. The MPD does not establish a minimum or maximum number of Multi-Family Low Rise units in the TC.

1875 N.W. Corporate Blvd., Suite 100, Boca Raton, Florida 33431
Telephone — 561 826 2800

4. The MPD provides that "Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development."

5. The MPD also provides that "(d)evelopment must comply with the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development." Section B.1.

6. In 2007, TOP-CR Associates, LLC obtained an Administrative Approval for Final Zoning Plan Approval of 80,000 square feet of retail uses on 9.55 acres within the TC. The FPA accompanied a development order for the proposed shopping center. The "Final Zoning Plan Approval to the Planned Development" was depicted in an attached map labeled Final Plan Approval Master Development Plan, showing a buildout of the entire 9.55 acre site in commercial use. See ADD2007-00064 FPA.

Analysis.

The proposed developer of multifamily units on this 9.95 acre site argues that the Village need only approve another Final Plan Approval to redevelop a part of the site in the proposed multifamily development. In the Village, all development approvals are the responsibility of the Village Council, unless delegated by the Council to another board or to the staff. The Council has not delegated Final Plan Approvals, and the developer recognizes that any FPA would be considered by the Village Council. The developer further suggests that because the DRI and MPD allow Multi-Family Low Rise units in the TC, that the only subject of Council review would be whether the development regulations (setbacks, height, lot dimensions, etc., but not the use) of the MPD are met by the proposal.

My analysis differs. First, it should be noted that there is no procedure in the transitional land development code for a "Final Plan Approval." Thus, while the nature of and the process for an FPA is not spelled out in the LDC, this and other sites in the DRI have been built out in the past as a Planned Development "final zoning plan approval." This is a zoning process that establishes the zoning plan for the property, effectively amending the planned development, including the master concept plan. The uses now approved in the Brooks Planned Development for this part of the TC are limited to commercial retail uses, which have in fact been built. While the original concept for the TC allowed residential use, the "Final" zoning at the request of the developer has been narrowed down to the commercial uses in the Final Plan Approval. Any further amendment to include new uses on the existing commercial master concept plan for this site is an amendment to the master concept plan of the MPD.

The Village transitional land development code provides for amendments to planned developments in section 34-380. Pursuant to this section, the proposal would be a "minor planned development" which is subject to a quasi-judicial hearing before the Village Council. See also section 34-341(b)(2)d ("Amendments to an approved major or minor master concept

plan or its attendant documentation will be treated procedurally as minor planned developments.”). The criteria to be considered in the review of the proposal include the following:

- Section 34-377(a)(2):
  a. The proposed use or mix of uses is appropriate at the subject location;
  b. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
  c. The recommend conditions are reasonably related to the impacts on the public’s interest created by or expected from the proposed development.

- Section 34-377(a)(4):
  If the application includes a schedule of deviations pursuant to section 34-373(a)(9), the (decision) must approve, approve with modification or reject each requested deviation based upon a finding that each item:
  a. Enhances the achievement of the objectives of the planned development; and
  b. Preserves and promotes the general intent of this chapter to protect the public health, safety and welfare.

- Section 34-145(d)(3), as to whether:
  a. The applicant has proved entitlement to the rezoning by demonstrating compliance with the (Comprehensive Plan), this land development code, and any other applicable code or regulation; and
  b. The request, including the use of TDR or affordable housing bonus density units, is consistent with the densities, intensities and general uses set forth in the (Comprehensive Plan); and
  c. The request is compatible with existing or planned uses in the surrounding area; and
  d. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
  e. Where applicable, the request will not adversely affect environmentally critical areas and natural resources.
  f. In the case of a planned development rezoning or mine excavation planned development, the decision . . . must also be supported by the formal findings required by sections 34-377(a)(2) and (4) . . .
  i. That the level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.

Amendments to the final zoning plan approval for the site, and any development order, also will require that the proposed development conform to the current Comprehensive Plan, per the MPD. See also Section 34-378 of the LDC.

Please do not hesitate to call me if you have any questions.

The Village of ESTERO
www.Estero-fl.gov

William Ribble
Mayor
District One

Katy Errington
Vice Mayor
District Four

Howard Levitan
District Two

Jon McLain
District Three

James Boesch
District Five

Nick Batos
District Six

Jim Wilson
District Seven

Steve Sarkozy
Village Manager

Burt Saunders
Village Attorney

July 27, 2020

Ms. Paula McMichael, AICP
Hole Montes
6200 Whiskey Creek Dr.
Fort Myers, FL 33919

Re: The Brooks Town Center
Completeness Review of Zoning Application

Dear Ms. McMichael:

The staff has reviewed the application you submitted on June 30, 2020 for The Brooks Town Center (Hole Montes File No. 2020.027). Our review indicates that the application is not complete and that additional information is necessary. Please see the attached list as well as email comments from Lee County Solid Waste.

If the requested items are not provided within 60 days of the date of this letter, the application will be considered withdrawn.

Please feel free to contact me if you have any questions.

Sincerely,

Mary Gibbs

Mary Gibbs, FAICP
Community Development Director
Village of Estero

Attachments:
Staff Review Comments
Memorandum from Village Land Use Attorney
Lee County Solid Waste Comments

Village of Estero
9401 Corkscrew Palms Circle • Estero, Florida 33928
Phone: (239) 221-5035 | Fax: (239) 494-5343

THE BROOKS TOWN CENTER

Staff Review Comments

Application

Please submit the correct application form "Application for Planned Development Public Hearing" (see attached memorandum from Village land use counsel Nancy Stroud.)

Please submit the application fee differential of $6,500 ($8,000 - $1,500).

Items missing from the application include but may not be limited to the following:

- Property owners list
- Property owners map
- List of surrounding property owners
- Map of surrounding property owners
- Mailing labels
- Density calculation
- Topography, Soils Map, FLUCCS Map, Rare and Unique Uplands Map and Flowways Map (or submit waiver request)
- Master Concept Plan
- Public Information Meeting summary (as noted, can be submitted later)
- Administrative Amendment - (ADD2007-00064) attachments are not legible

Ownership and Disclosure Forms

The applicant is listed as PAC Land Development Corporation but the owner is listed as Elias Vassilaros of Courtelis Company. Additionally, county property appraiser records indicate the property owner as Long Bay Partners, LLC. Please clarify the ownership and authorization.

The notarized application form also contains an asterisked handwritten notation of TOP-CR Associates, LTD. and Newcaster DevCorp, Inc. Please clarify the relationship of these companies and the ownership.

Request Statement

Zoning History – The narrative (page 1) states that The Brooks MPD/DRI is vested under Florida Statutes, and refers to the June 11, 2020 memorandum from attorney Neale Montgomery. Please explain the basis for your claim and where it is referenced in the memo.

The narrative states that the Residences at The Brooks are proposed as an "upscale" rental community. Please provide specifics as to the "upscale" definition. What are the proposed unit sizes, and the proposed breakdown of unit types and mix?

The narrative further states that the project amenities will be "first class." Please explain the amenities. Please explain the clientele the project is trying to attract as stated in the narrative.

Landscaping – The narrative states that the landscaping will be augmented. Please provide specifics. This should be included in the Pattern Book.

Criteria per Z-97-037 – Please provide more detail on the tabulation table, including the following:

- Community use square feet – Does this include recent changes to The Brooks fitness center?
- Service/retail/office square feet – Where is the 40,000 sf previously approved?
- Dwelling units – Provide a breakdown by location, single family and multifamily, not just totals.

Paragraph 1 says the applicant is asking for 35,334 sf of retail and 154 multifamily dwelling units. Please clarify if the sf for the supermarket and outparcel is proposed to be deleted.

Exterior Elevation Drawing

- It appears that a height deviation will be necessary as the height exceeds 50 feet (LDC Section 33-229).

As a note, the building in the Exterior Elevation black and white diagram appears to be very linear and horizontal. The project massing is of concern.

Traffic and Parking

- Where are the 338 required parking spaces located on the site plan?
- Will parking spaces be assigned?
- How will the parking be controlled to ensure that spaces are in proximity to the apartments and not in the retail area?
- Where will guest parking be located and will it be identified?
- How will the parking spaces for the multifamily be differentiated from the commercial parking spaces?
- Will there be any parking agreements?
- What is the covered parking that is shown on the site plan? Garages? Carports?
- How many covered parking spaces are proposed?

Backout parking is not permitted where the access must meet roadway standards. The site plan should be reconfigured, or a deviation will be needed for backout parking due to the number of units (LDC Section 10-296(r)).

Line of Sight Exhibit

- The line of sight exhibit does not explain where the measurement is from. What adjacent residence?
- Please provide line of sign exhibits to the north, east and south as they will all be affected.
- Please provide buffer details and whether the view will be completely obscured.

Conceptual Site Plan

The table on this site plan shows a "minimum" building height of 65, 45 and 50 feet. This should be "maximum." Please correct.

- What does the existing/proposed green area shown on this plan consist of?
- What is the building size (sf) of the multifamily development?

Pattern Book

Please provide a Pattern Book (LDC Sections 33-391 – 33-393). Many of the elements of a Pattern Book are already provided in the application and can be supplemented with the remaining items. The Pattern Book should indicate connectivity between the external sidewalks and streets, the commercial and residential areas, as well as gathering spaces or public areas.

- Are the project amenities all internal to the building?
- The Pattern Book should include design for the maintenance and dumpster areas, as well as any garages or carports.
- The Pattern Book should include color architectural elevations of all sides of the building (without the landscaping component). The conceptual renderings submitted on July 7th are more of an artist rendering, with a perspective that does not appear to be to scale.
- The Pattern Book should also provide information on the parking lot lighting and design. The narrative mentioned that there would be new LED site lighting to provide a cohesive design for the entire center. Please explain.

The Pattern Book needs to show landscaping buffers (existing and proposed).

Landscape Conceptual Plan

The landscape schematic provided contains no details and does not appear to be consistent with the rendering.

- Please provide the open space breakdown.
- Please provide details of the enhanced open space and landscaping referred to in the narrative.

Other

What is the plan for the existing retail area? Will the uses be retained and how specifically will they be integrated into the multifamily parcel to create a synergistic and cohesive mixed use development?

Reference was made to a subdivision. If the intent is to subdivide this property, it must show details and how it will be accomplished. The multifamily parcel does not stand on its own in terms of meeting code requirements and if sold off later, this will create a nonconformity issue along with insufficient parking.

THE BROOKS TOWN CENTER

Staff Report

for

Village Council

PROJECT NAME:	**The Brooks Town Center**
CASE TYPE:	**Vested Rights Determination**
CASE NUMBER:	**VRD2021-E001**
COUNCIL MEETING:	**October 27, 2021**

SUMMARY OF REQUEST

The applicants filed for a vested rights determination for a proposed 154-multifamily apartment project at The Brooks Town Center, under the Development of Regional Impact and Lee County zoning resolution.

STAFF RECOMMENDATION

1. Acknowledge vesting for use of “multifamily low rise” for property owner Long Bay Partners, LLC, only.
2. No vested rights exist for any specific number of units in Town Center.
3. No vested rights exist for an administrative (staff) review process.

GENERAL INFORMATION

Applicants
PAC Estero Apartments, LLC; TOP-CR Associates LLC; Long Bay Partners, LLC

Authorized Agents
Paula McMichael, Hole Montes; Neale Montgomery, Pavese Law Firm

Property Owner
Long Bay Partners, LLC

Location
Northwest corner of Coconut Road and Three Oaks Parkway

STRAP Number
11-47-25-E4-U2161.1988

Size of Property
10± acres

Zoning
Mixed Use Planned Development (MPD)

Comprehensive Plan Land Use Category
Village Neighborhood 1, Wetlands/Conservation

Project History
The Brooks is a Development of Regional Impact that was originally approved by Lee County in 1997 (State DRI #07-9697-133). At the same time, rezoning was also approved from Agriculture to Mixed Use Planned Development (Lee County Resolution Z-97-037). There have been several amendments since that time. An Administrative Amendment ADD2007-00064 was approved by Lee County in April, 2007, granting Final Zoning Plan Approval for 80,000 square feet of retail development on the 9.95 acres in the Town Center now proposed for apartments.

STAFF ANALYSIS

The applicants submitted an application for "Vested Rights Determination" for property located in the Town Center of the Brooks on July 1,2021. The proposal is to demolish the now vacant Winn Dixie structure in the shopping plaza, leave the remaining retail buildings, and develop a multifamily apartment building in the parking lot area.

The applicants believe they have vested rights to develop this project because of its zoning and DRI status. The applicants also believe they have a vested right to have a staff approval for the project, without Council review.

Lee County Zoning Resolution Z-09-037 rezoned the entire Brooks development (2,500 acres±) in 1997. The project was also a Development of Regional Impact under Florida Statute Section 380.066. The Zoning Resolution site plan identified various tracts, such as R (Residential), C (Conservation), and Town Center (TC), among others. The Town Center property is located at the northeast corner of Three Oaks Parkway and Coconut Road.

The Town Center was described in the DRI as:

> *The Town Center…"is intended to primarily serve the commercial retail/service and office needs to the Community."*

Uses listed in the Zoning Resolution include civic uses, numerous commercial uses, and multifamily low rise. No specific number of multifamily low rise units are listed.

The Land Development Code describes vested rights and the process for a vested rights determination. The Land Development Code states:

> 1. *Generally*
> *A property owner at the property owner's option may apply for a Village determination that it has vested rights under Florida judicial standards or Florida statutes for development of its property based on a prior approval such that it is not required to comply with a particular requirement of this LDC.*

After a pre-application meeting on September 15, 2021 with the applicants' attorney, staff, and the Village's land use attorney, the applicants provided an additional letter on October 6, 2021 further clarifying its request.

Upon review of all the documents submitted by the applicants and additional research by the Village land use counsel, it is the recommendation to Council that no vested rights exist to a specific number of units in Town Center. Additionally, no vested rights exist to the administrative (staff) review process claimed by the applicants.

Legal counsel recommends that vesting for the "multifamily low rise" use only be acknowledged for the property owner, Long Bay Partners, LLC, only.

VESTED RIGHTS APPROVAL STANDARDS

The Land Development Code, in Section 2-506.E.3., states:

> *The Village Council shall apply judicially defined principles of equitable estoppel to all claims of vested rights to a particular development not otherwise made on the basis that the vested rights are granted by state statute. In the case of statutory vested rights, the Village Council shall use the statutory standards to determine if the applicant is entitled to vested rights for a particular development. Village Council approval shall be based on substantial competent evidence that all of the following criteria, as applied under Florida law, are met:*
>
> A. *The applicant in good faith has relied on an affirmative governmental act on which the applicant had a right to rely;*
> B. *The applicant made substantial expenditures to the applicant's detriment in reliance on the governmental approval; and*
> C. *Balancing the actions of the applicant and the interest of the governmental regulation, it would be inequitable to prevent the landowner from proceeding according to the governmental act on which the applicant relied.*

ATTACHMENTS:

Applicants' application is provided separately

PART B: SUPPLEMENTAL STATEMENT OF FACTS

Determination of Claims of Vested Rights

1. At the time the Brooks DRI DO and MPD were approved, the entire property had Rural, Wetlands, and Suburban Future Land Use designations under the Lee County Comprehensive Plan. Those future land use categories did not allow the Brooks development. However, the Comprehensive Plan also contained Policy 1.8.1., called the Planned Development District Option (PDDO) that would allow the Brooks development if the standards of that comprehensive plan policy were met. Exhibit B.1, Lee County Comprehensive Plan (94-2ER) (Ordinance PAM 93-05) Excerpt, p. II-15-16.

2. To satisfy the PDDO policy, and to be found consistent with the Lee County Comprehensive Plan, The Brooks development and resultant community had to be essentially self-contained. Exhibit B.1, Lee County 94-2ER, p. II-15-16. The property had to be zoned to a Mixed Use Planned Development district, and it had to include the Town Center with the 100,000 square feet of commercial retail/service and office development, in order to be found consistent with the Plan. Exhibit B.1, Lee County 94-2ER Excerpt, p. II-15-16.

3. This commercial-office-community mix of uses in the Town Center was critical to The Brooks development in order to internally capture the necessary portion of the total trips resulting from the residential homes in The Brooks, and to reduce the development's traffic impacts on the public roadways. Exhibit B.2, Staff Report Excerpt, pp. 31, 38, 39, 71; Exhibit B.3, Brooks TIS Excerpt, p. 5.

4. Long Bay Partners LLC, explicitly advanced the Town Center's commercial-office-community development features as the means by which The Brooks development would

comply with the Lee County Plan. In its Report and Recommendation to the Board of County Commissioners, the Hearing Examiner wrote:

> The [Applicant's] agent went on to state that the centerpiece of the community will be The Brooks Town Center which will be located at the intersection of Coconut Road and Three Oaks Parkway. This complex will contain cultural, recreational, civic and community services and activities for the residents of The Brooks. It will provide a small-town, main street ambience, which is a growing trend in planning. The Town Center is designed to pull the community into a cohesive whole.

Exhibit B.4, Report and Recommendation Excerpt, p. 26.

5. The Hearing Examiner went on to state in the Report and Recommendation:

> The Applicants have submitted abundant information which is intended to demonstrate how they will address the impacts of the project. One of the mechanisms that they have used is to keep the bulk of the impacts internal to the project. That is, they have decided that the most prudent approach is to determine the need for commercial uses that are generated by the project, and to provide these uses on-site. In this way, they have reasoned, they will reduce off-site impacts by confining them to the site itself rather than depending on off-site trips to meet this need.

Exhibit B.4, Report and Recommendation Excerpt, p. 31.

6. The DRI DO contains the following language:

> I. FINDINGS OF FACT AND CONCLUSIONS OF LAW
>
> A The Brooks is a master planned community located in unincorporated south Lee County west of I-75, north of San Carlos Estates, east of U.S. 41 and south of Corkscrew Road. The property includes 2,492± acres. The Brooks is a mixed use development that will consist of: 5,200 residential units, 250,000 square feet of retail/service/office gross floor area, 120 hotel units, and a maximum of 55,000 square feet of gross floor area of community facilities; the community facilities may include community association meeting space, education and training facilities oriented toward the residents' daily needs, dining, recreation, entertainment, civic. and community uses.
> . . . . .
> C. The property was zoned AG-2, and coincident with the approval of this Development Order the property will be rezoned to Mixed Use Planned Development. . . .
> . . . .

H. The development is located in the Rural, Wetlands, and Suburban future land use categories and the development, as proposed, is consistent with the Planned Development District Option set forth in the Lee Plan for the Rural future land use category. The project, as conditioned herein, is consistent with the Lee County Comprehensive Plan, and Lee County's Land Development Code.

II. . . .

E. TRANSPORTATION

. . . .

5. Other

a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:

1) The Town Center may not exceed 100,000 square feet of office/retail/service gross floor area. Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and

2) The uses within the Town Center will be governed by the planned development zoning; and

3) Single use buildings may not exceed 30,000 square feet of gross leasable area.

III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER AND ADMINISTRATIVE REQUIREMENTS

. . .

3. Map H, stamped received on March 7, 1997 is attached hereto as Exhibit "A," and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and the location of internal roadways may be modified by the Developer to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. However, this provision may not be used to reduce the size of wetland preserve areas. It is understood that the precise wetland boundaries are determined by the South Florida Water Management District, as delegated by the Department of Environmental Protection.

. . .

> 5. The terms and conditions set out in this Development Order constitute a basis upon which the Developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Development Order.
>
> . . .
>
> 11. This Development Order does not negate the Developer's responsibility to comply with all applicable federal, state, regional and local regulations.
>
> . . .
>
> 14. The administrative director of the Lee County Department of Community Development, or their designee, will be the local official responsible for assuring compliance with this Development Order.

Exhibit A.1, pp. 1 of 26; 4 of 26; 5 of 26; 19 of 26; 24 of 26; 25 of 26.

7. Laws of Florida, Chapter 2015-193 (the Village Charter), provides in pertinent part:

> Section 1. Paragraph (c) of subsection (7) and subsection (8) of section 12 of chapter 2014-249, Laws of Florida, are amended to read:
>
> Section 12. Referendum election; transition.—
>
> (7) TRANSITIONAL LAND DEVELOPMENT REGULATIONS.—To implement the transitional comprehensive land use plan when adopted, the village shall, in accordance with the procedures required by the laws of the state, adopt ordinances providing for land use development regulations within the corporate limits. Until the village adopts the ordinances:
>
> . . .
>
> (c) Subject to general law, the council is fully empowered to amend, supersede, enforce, or repeal the transitional land use development regulations, or any portion thereof, by ordinance. All approved developments of regional impact (DRIs) located within the jurisdictional boundaries of and existing on the date of incorporation of the village are not required to submit a notice of proposed change application to adopt a new DRI development order as required by s. 380.06(15)(h), Florida Statutes. Effective December 31, 2014, any existing DRI development orders are deemed subject to the jurisdiction of the village without the need to amend the existing DRI development order. Jurisdiction over existing DRI development orders by the village is subject to, without limitation, all rights, entitlements, covenants, and commitments adopted in DRI development orders and zoning adopted in conjunction with or pursuant to the DRI development order before December 31, 2014, including, without limitation, all rights and entitlements included in any local development orders or plats adopted pursuant to the DRI development order and related zoning. The village shall recognize the property rights and interests held by property owners under such DRI development orders and all other vested property rights held by such property owners as such rights and entitlements existed on or before December 31, 2014.

Exhibit B.5, Village Charter Excerpt.

8. The utilization of Land Use Policy 1.8.1 was the only way The Brooks could be allowed and be consistent with the Lee County Plan. Thus, the Town Center's commercial space was necessary for The Brooks to be consistent with the Lee County Comprehensive Plan. Without it, The Brooks was inconsistent with the Plan. According to the Hearing Examiner's Report and Recommendation to the Lee County Board of County Commissioners:

> Objective 1.8 of the Lee Plan, entitled Planned Development District Option (PDDO) , spells out a procedure that a potential developer may use to obtain increased densities and intensities in what are, ostensibly, rural areas of the County. Policy 1.8.1 states that the purpose of the Objective is to provide a mechanism for adding flexibility to the Lee Plan. It allows a developer to increase residential densities and ancillary uses beyond that which would be tolerated in certain land use areas outside of Future Urban Areas. The Policy goes on to note that the development must be totally independent of County-subsidized facilities and services and shall not cause harm to the environmental/natural resources, or cause negative economic, fiscal, infrastructure/services, or public safety impacts. Essentially, the County is acknowledging that the services that are normally associated with a large residential development are not available in non-urban areas, and they are attempting to provide a means for development to take place in those areas without placing a financial burden on the County or its citizens.
> . . . .
> The potential developer has to successfully demonstrate to the County Staff (after an extensive review) that the project will be self-sufficient. If the developer prevails, it will be authorized to increase the density of the project to the Urban Community density range (without bonuses) (i.e., six dwelling units per acre).

Exhibit B.4, Report and Recommendation Excerpt, p. 24.

9. The Hearing Examiner's Report and Recommendation also includes the following with regard to the significance of the commercial uses in the Town Center:

> The [Applicant's] agent went on to state that the centerpiece of the community will be The Brooks Town Center which will be located at the intersection of Coconut Road and Three Oaks Parkway. This complex will contain cultural, recreational, civic and community services and activities for the residents of The Brooks. It will provide a small-town, main street ambience, which is a growing trend in planning. The Town Center is designed to pull the community into a cohesive whole.

Exhibit B.4, Report and Recommendation Excerpt, p. 26.

10. Additionally, one of the Hearing Examiner's critical findings leading to her recommendation that the project would be consistent with Policy 1.8.1, and to approve the DRI project and MPD rezoning was that:

> The Applicants have submitted abundant information which is intended to demonstrate how they will address the impacts of the project. One of the mechanisms that they have used is to keep the bulk of the impacts internal to the project. That is, they have decided that the most prudent approach is to determine the need .for commercial uses that are generated by the project, and to provide these uses on-site. In this way, they have reasoned, they will reduce off-site impacts by confining them to the site itself rather than depending on off-site trips to meet this need.

Exhibit B.4, Report and Recommendation Excerpt, p. 31.

11. Section 34-940 of the Lee County Land Development Code, under which The Brooks was zoned Mixed Use PD, provided, in pertinent part:

> Sec. 34-940. Mixed use planned developments.
>
> (a) All mixed use planned developments must meet or exceed at least two of the following DCI thresholds:
>
> (1) A residential development of 300 or more dwelling units. (Section 34-341(b)(1));
>
> (2) A commercial development or activity which is either located on a parcel of ten (10) or more acres or which may include 100,000 square feet or more of floor area (Section 34-341(b)(3)); or
>
> (3) An industrial development or activity which is located on a parcel of ten (10) or more acres or which may include 100,000 square feet or more of floor area.
>
> (b) *Mixed use developments containing residential uses should be designed to capture within the development a substantial percentage of the vehicular trips that are projected to be generated by those uses at the project's buildout.*

Exhibit B.6, Lee County Ordinance 94-24 Excerpt.

12. The Town Center, and its commercial retail space and businesses at that location, is a critical project component of the Mixed Use PD Zoning that The Brooks obtained, and it was an essential feature of the project when Long Bay Partners, LLC, presented the proposal to the

public and Lee County and sought approval of DRI and rezoning of the property in 1997. This commercial-office-community use component of The Brooks made its approval by Lee County possible, as without it The Brooks project would have been inconsistent with the Lee County Comprehensive Plan. Exhibit B.2, Staff Report Excerpt, pp. 31, 38, 39.

13. Since 1997, the DRI-DO has been amended to add an additional 20,000 square feet of commercial/retail/office space to the Town Center, among other changes. The current DRI-DO now contains the following chart regarding the number of units and amounts of space for each category:

Summary Development Parameters – Buildout

Land Use	~~Proposed~~ DRI
Residential	
Single Family	1,600 d.u.
Multi Family	2,000 d.u.
Total	3,600 d.u.
Town Center	
Service/Retail/Office	120,000 sq. ft.
Community Use	50,000 sq. ft.
Total	170,000 sq. ft.
Community Center	
Retail	150,000 sq. ft.
Office	5,000 sq. ft.
Total	155,000 sq. ft.
Hotel	120 rooms
Golf Course	72 holes

Exhibit A.3, Fifth Amendment to DRI-DO, p. 13 of 33. The addition of 20,000 square feet of commercial/retail/office in the Town Center confirms its intended essential function as the center of commercial activity for The Brooks.

FUTURE LAND USE

Chapter II

POLICY 1.7.5:

The Water-Dependent overlay zone designates shoreline areas where priority shall be granted to water-dependent land uses. Specific requirements are detailed for such zones on San Carlos Island under Goal ~~8~~ 13, in the Greater Pine Island area under Goal ~~16~~ 15, and for other areas in Lee County in the Ports, Aviation and Related Facilities element.

~~**POLICY 1.7.6:**~~

~~The Year 2010 Overlay (see Maps 16 and 17 and Policies 1.1.1 and 2.2.2) depicts the proposed distribution, extent, and location of generalized land uses for the year 2010. Acreage totals are provided for land in each subdistrict in unincorporated Lee County. No final development orders or building permits will be issued by Lee County which would allow the acreage totals for any land use category on these maps to be exceeded. The adopted acreage totals shall be reevaluated every three years, beginning in 1991.~~

POLICY 1.7.~~7~~6:

The Public Acquisition overlay zone designates areas that have been targeted for public acquisition by federal, state, regional, and/or local agencies. This overlay does not restrict the use of the land in and of itself. It shall be utilized for informational purposes since this map will represent a composite of public acquisition activities in the county. (Amended by Ordinance 91-19)

POLICY 1.7.7:

The Agricultural overlay (Map 17) shows existing active and passive agricultural operations in excess of 100 acres located outside of the Future Urban Areas. Since these areas play a vital role in Lee County's economy, they should be protected from the impacts of new developments, and the county should not attempt to alter or curtail agricultural operations on them merely to satisfy the lifestyle expectations of non-urban residents.

OBJECTIVE 1.8: PLANNED DEVELOPMENT DISTRICT OPTION.

Provide an option to landowners outside the Future Urban Areas to increase allowable densities for development that will be totally independent of county-subsidized facilities and services.

POLICY 1.8.1: PURPOSE.

The Planned Development District Option is presented as a mechanism for adding flexibility to this plan; it provides a means ~~for~~ by which increased residential density and ancillary development ~~to~~ may take place in certain land use areas outside the Future Urban Areas. That development must be totally independent of county-subsidized facilities and services and shall not

result in harmful environmental/natural resource, economic, fiscal, infrastructure/services, or public safety impacts. The rationale for the Planned Development District Option is that the county is attempting to direct urban services within the Future Urban Areas; outside, urban-level county facilities and services are not expected to be available, yet the county is responsible for orderly land use and for ensuring against impacts harmful to the public health, safety, or welfare.

POLICY 1.8.2: CONCEPT.

This "floating" performance standard-based district can be requested by a property owner or developer seeking permission to develop outside the Future Urban Areas at densities higher than those permitted by right in the Rural ~~or Outer Islands~~ category~~ies~~. Requests will be granted only after comprehensive reviews, including professional impact analyses provided by the applicant, and demonstration that the project will be self-sufficient. If standards and requirements are met, then the density may be increased up to the Urban Community density range (without bonuses).

POLICY 1.8.3: PERFORMANCE STANDARDS.

1. SELF-SUFFICIENCY: CAPITAL COSTS. All internal improvements (water, sewer, roads, water management, recreation) must be installed to county standards at the developer's expense and the developer must provide the capital costs of all off-site improvements and services required by the project (e.g. arterial streets, transit service extensions, solid waste disposal, public protection).

2. SELF-SUFFICIENCY: OPERATING COSTS. The developer must demonstrate that the operating and maintenance costs of the project will not be borne by the county, through establishment of a homeowner's association, Municipal Services Taxing or Benefit Unit (MSTU/MSBU), or other legally responsible organization or arrangement (e.g., contracts with public or private service providers).

3. IMPACT ANALYSIS: ENVIRONMENTAL. The developer must provide an analysis of environmental impacts of the project, conducted by professional engineers, hydrologists, biologists, landscape architects, and/or planners, including:

   a. Hydrologic - Modeling of surface water quality and quantity impacts within the drainage basin(s) and environmental systems affected. Modeling of groundwater drawdown. Description of mitigation of impacts.

b. Vegetation - Mapping of vegetation within project area. Description of mitigation of impacts.

c. Wildlife - Mapping of habitats. Mitigation measures.

d. Soils - Description of anticipated erosion and sedimentation impacts. Mitigation measures.

e. Wetlands - Description of impacts on wetlands. Mitigation measures.

f. Floodplains or Riverine Areas - Description of impacts on floodplains or riverine areas. Mitigation measures.

4. IMPACT ANALYSIS: FISCAL & ECONOMIC. The developer must provide an analysis of fiscal and economic impacts of the project, for each phase of the development, including:

a. Estimated annual average ad valorem tax yield from the development during each phase;

b. Estimated capital costs of the development and the funding source for all public facilities and services required by the development, on-site and off-site, during each phase of the development through its projected buildout and through the five-year period following the projected buildout date;

c. Estimated average annual operating and maintenance costs of the development and the funding source for all public facilities and services required by the development during each phase of the development through its projected buildout and through the five-year period following the projected buildout date, including water supply, wastewater disposal, solid waste disposal, surface water management, recreation, roads, and public protection (such as EMS, hospitals, police, and fire protection);

d. Balanced impact statement which clearly demonstrates that estimated capital, operating, and maintenance costs will be fully compensated for by identified funding sources without negative fiscal impacts, or in the alternative, a fiscal mitigation plan which fully compensates for any and all negative fiscal impacts;

e. Estimated expenditures for development during each phase;

f. Impacts of displaced activities including agriculture or other previous land uses; and,

g. Market feasibility of the development.

5. IMPACT ANALYSIS: SOCIAL. The developer must provide an analysis of the social impacts of the project, including:

a. Impact on adjacent neighborhoods - during each phase of the development, including traffic generation, noise, runoff, etc.;

b. Impact on housing supply - including the number of low/ moderate income dwelling units provided, the total units, and the proposed sales price or rental range (by type) of unit;

c. Public safety impact - for police and fire protection and land uses in hazard areas, such as floodplains, and measures for hurricane evacuation and/or sheltering;

d. Educational impact - including estimates of average annual school-age children and contributions to school site or construction needs and any special needs of the population; and,

e. Health impact - including travel time to health and medical facilities and provisions for any special health needs of the population.

POLICY 1.8.4: PROCEDURE.

The application for the Planned Development District Option will proceed through the following steps:

1. Preliminary consultation with county staff;

2. Submission of proposed plan and impact analyses, with required fee;

3. Determination by county staff of adequacy of information and proposals with respect to standards and requirements;

4. Revision of plan and analyses as necessary;

5. Public hearings as provided in the Lee County ~~Z~~zoning ~~Ordinance~~ regulations;

6. Approval/disapproval of proposal;

7. Completion of necessary agreements and funding arrangements;

8. Issuance of local development orders which must contain conditions addressing the fiscal impacts of the development and, where appropriate, a fiscal mitigation plan addressing any negative fiscal impacts. Compliance with these conditions or this fiscal mitigation plan shall be a binding condition of the local development order;

9. Submission of construction plans for building permit approval; and,

10. Issuance of building permits.

POLICY 1.8.5: APPLICABILITY.

The Planned Development District Option is only available for properties located in the Rural ~~and Outer Islands~~ category~~ies~~ as depicted on the Future Land Use Map. The option may not be pursued for land in any other land use category.

GOAL 2: GROWTH MANAGEMENT.

To provide for an economically feasible plan which coordinates the location and timing of new development with the provision of infrastructure by government agencies, private utilities, and other sources.

OBJECTIVE 2.1: DEVELOPMENT LOCATION.

Contiguous and compact growth patterns shall be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, ~~and reverse typical~~ prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.

POLICY 2.1.1:

Most residential, commercial, industrial, and public development is expected to occur within the designated Future Urban Areas on the Future Land Use Map through the assignment of very low densities to the non- urban categories.

POLICY 2.1.2:

New land uses shall be permitted only if they are consistent with the Future Land Use Map and the goals, objectives, policies, and standards of this plan.

POLICY 2.1.3:

All land use categories ~~and Year 2010 Overlay districts~~ permit the consideration of churches and schools (except in ~~Resource Protection Areas, Transition Zones,~~ Wetlands and Airport Noise Zones), public uses and

LEE COUNTY, FLORIDA

DEVELOPMENT SERVICES DIVISION

STAFF REPORT

TYPE OF CASE: PLANNED DEVELOPMENT/DCI/DRI

CASE NUMBER: 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01

HEARING EXAMINER DATE: June 4, 1997

I. **APPLICATION SUMMARY:**

A. Applicant: Long Bay Partners LLC and Edward J. McArdle, Trustee, in reference to The Brooks of Bonita Springs

B. Request:

a) Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2, 492± acres, State DRI #07-9697-133; and

b) A rezoning from Agricultural (AG-2) to Mixed Use Planned Development(MPD) to permit a maximum of 5,200 dwelling units, golf courses and related ancillary uses, 250,000 square feet of retail/service floor area, 55,000 square feet of community use floor area and 120 hotel rooms not to exceed 75 feet in height, on 2,492± total acres of land.

NOTE: If approved, the Master Concept Plan (available for inspection at 1500 Monroe St., in Ft. Myers) will deviate from certain Land Development Code (LDC) standards.

C. Location: The subject property is located at 23301 S. Tamiami Trl., Bonita Springs (E. side of US 41, E. of railroad, S. of Williams Rd., N. of San Carlos Estates & W. of I-75) in S02-T47S-R25E, S03-T47S-R25E, S09-T47S-R25E S10-T47S-R25E and S11-T47S-R25E, Lee County, FL. (District #3)

D. Land Use Plan Designation: Rural, Wetlands and Suburban

E. Surrounding Land Use:

	Existing Use	Future Land Use Map
North:	Williams Road; then Estero High School, Corkscrew Hammocks Corkscrew Woodlands	Suburban, Public Facilities, Wetlands and Urban Community

Master Concept Plan

The Master Concept Plan depicts land development areas that have a list of permitted uses and land development regulations for each area. Different land use categories include Residential, Community Commercial, Town Center, Recreation/Open Space and Conservation. The specific uses and development regulations are detailed in the recommended conditions for approval. The residential development would consist of Single Family, Multi-Family, Zero Lot Line, Two-Family Attached, Patio Homes and Townhouse units.

The residential development will consist of 5,200 dwelling units at buildout in 2007. Of the 5,200 units 1,140 will be single family, 1,460 will be comprised of Two-Family Attached, Zero Lot Line and Townhouse units and 2,600 will be Multiple Family Units. The commercial development will feature a 20 acre site of general commercial uses on US 41 and a Town Center including 100,000 square feet of retail commercial/service and professional uses located internal to the development. A total of 50,000 square feet of community use is also proposed in the Brooks Town Center. This category will include community association meeting space, educational and training facilities, Developer sales and administrative offices, civic and community uses and similar types of uses. The development will also include a total of 120 hotel units to be developed in either the Town Center or Commercial land use categories. The development will include 500 Assisted Living Units (ALF).

The Master Concept Plan illustrates the general location and configuration of major community land uses and features. The community is proposed to consist of several neighborhoods, each serving a distinct and different market segment although the site plan allows for a wide variety of uses in any neighborhood. The applicant originally stated that the higher density would be located along I-75 although the current site plan does not reflect this. The plan requests great flexibility regarding designated locations of uses.

The Brooks is scheduled to be developed in two five-year phases with site preparation beginning in late 1997 and residential construction expected to commence in 1998. The proposed dates and rate of development are best estimates as of the date the DRI application was filed. The actual development rate will be determined by market demand and economic conditions. Although the phasing schedule is not binding on the zoning approval it is binding with respect to the DRI Development Order.

Deviation Discussion

Deviation #1 is a request to deviate from LDC Sections 10-8(2) and 34-2013(a) which require that all parking lots shall be designed to permit vehicles exiting the parking lot to

Deviation #15, is a request to deviate from LDC Section 34-935(b)(2) which requires that internal pavement be no closer than 25 feet to the development perimeter, to allow a 15 foot minimum. This deviation is requested to allow more flexibility in site design by allowing greater building setbacks from the property boundary. This request has been granted in many planned communities and has not created a health, safety or welfare concern. Staff recommends approval of this request subject to Condition #18.

Lee Plan Considerations

The subject property is located predominantly in the Rural land use category but also includes portions located in the Wetland and Suburban categories. The applicant has chosen to utilize the Planned Development District Option (PDDO) pursuant to Objective 1.8 of the Lee Plan. This objective provides an option to landowners outside the Future Urban Areas to increase allowable densities for development that will be totally independent of County-subsidized facilities and services. That development must be totally independent of County-subsidized facilities and services and shall not result in harmful environmental/natural resource, economic, fiscal, infrastructure/services, or public safety impacts. The Lee County Division of Planning has performed a detailed review and analysis of the DRI rezoning request including the PDDO and its consistency with the Lee County Comprehensive Land Use Plan. The Division of Planning has provided comments in a memorandum attached as Exhibit B.

Compatibility

South of the subject property is San Carlos Estates, an unrecorded subdivision generally consisting of 1.25 acre lots zoned AG-2. The subject property is bounded on the east first by Interstate 75, and then vacant agricultural property that is predominantly wetlands. The subject property is partially bounded on the north by Williams Road, Corkscrew Hammocks, a vacant parcel zoned PUD, Corkscrew Woodlands, a residential and recreational vehicle development zoned RPD and RV-3, and vacant agricultural property. To the north of Williams Road is Estero High School and more vacant agriculturally zoned property. For the most part, the parcel is bounded on the west by a segment of the Seaboard Coastline Railroad and vacant agricultural property with the remainder, approximately 1,580 feet abutting US 41.

As conditioned, the residential development proposed in the Brooks will be compatible with the residential uses to the north and south of the subject property. The proposed density of 2.5 units per acre is less intense than what is allowed in the Suburban and Urban Community land use categories to the north.To the south, San Carlos Estates is located in the Rural land use category. Although the proposed density of the Brooks will exceed that which is permitted in San Carlos Estates, the Brooks development will provide urban services, infrastructure and facilities to support the development which otherwise would not be available.

The Brooks of Bonita Springs DRI/PDDO

Lee Plan Consistency

Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585

May 30 , 1997

B

The Brooks of Bonita Springs DRI
Lee Plan Consistency

I. PROJECT SUMMARY

The Brooks of Bonita Springs (The Brooks) is located in southeastern Lee County, south of Williams road, east of Interstate 75, north of San Carlos Estates and east of U. S. 41. It is a mixed use project encompassing 2,492 +/- acres. The Development of Regional Impact (DRI) application for development approval (ADA) is requesting approval of 5,200 dwelling units, 250,000 gross square feet of retail/service, 120 hotel rooms, up to 55,000 square feet of community uses, golf course(s), recreational facilities, lakes, conservation areas and open space.

The Brooks is located in the Rural Land Future Land Use Category, with a small portion of the property located in the Suburban Future Land Use Category. The application for approval includes a submittal pursuant to Lee Plan Objective 1.8, and its subsequent policies, which set forth the requirements of the Planned Development District Option (PDDO). This option of the Lee Plan allows urban densities to be achieved outside of the future urban areas, provided the applicant can demonstrate the proposal will be totally independent of county-subsidized facilities and services.

II. LEE PLAN GOALS

GOAL 1: THE FUTURE LAND USE MAP

A. FLUM DESIGNATION

Goal 1 of the Lee Plan establishes the FLUM. The map is intended to provide for the protection of natural and man-made resources and to provide for essential services in a cost-effective manner and to discourage urban sprawl. As proposed the density and intensity of The Brooks exceeds that allowed by the FLUM. The PDDO contained in the Lee Plan is intended to allow this to happen provided the applicant can demonstrate the proposal will be totally independent of county-subsidized facilities and services. It is through this option that The Brooks can achieve Lee Plan consistency. Please refer to the section of this report entitled The Planned Development District Option.

The subject property is currently designated by the Future Land Use Map (FLUM) as Rural, Suburban and Wetlands. There are some 416 acres of wetlands. Some of the wetlands will be restored or enhanced pursuant to permits to be issued by the Army Corps of Engineers (ACOE) and the South Florida Water Management District (SFWMD). The residential density in the Wetlands Future Land Use Category is one unit per 20 acres. The total permitted density in the Wetlands Future Land Use Category is, therefore, 21 units.

Approximately 30 acres of the proposal are located within the Suburban Future Land Use Category. The Suburban areas are proposed to be residential. Pursuant to the Lee Plan, the Suburban areas are located in areas where it is appropriate to protect existing or emerging residential neighborhoods. Table 1 of the Lee Plan provides that the minimum density in the Suburban Future Land Use Category is one unit an acre, and the maximum number of dwelling units is six units per acre. The total permitted density in the Suburban Future Land Use Category is 180 units.

The remainder of the project is located in the Rural Future Land Use Category. Lee Plan Policy 1.4.1 describes the Rural category as follows:

> *Policy 1.4.1.: The Rural areas are to remain predominantly rural--that is, low density residential, agricultural uses, and minimal non-residential land uses that are needed to serve the rural community. These areas are not to be programmed to receive urban-type capital improvements, and they can anticipate a continued level of public services below that of the urban areas. Maximum density in the Rural area is one dwelling unit per acre (1 du/acre), except as may be permitted under the Planned Development District Option.*

Approximately 2,046 acres of the property are located in the Rural Future Land Use Category. Forty to 45 acres of these lands are proposed for commercial use. The remaining 2001 acres are proposed for residential use. Using the standard density range, the lands designated Rural would allow 2001 units. However, the applicant has opted to use the Planned Development District Option (PDDO). Utilizing the PDDO option an applicant can request up to six units an acre. This application is asking for an increase of 1.5 dwelling units per acre above the permitted rural density, or 2.5 dwelling units per acre. Thus, the applicant is within the permitted density range. There will be a detailed discussion about the PDDO later in this report.

B. SPECIAL TREATMENT AREAS

Map 1, page 2 of 4, identified Special Treatment Areas, pursuant to Objective 1.7. These areas, which are designated on the FLUM series, contain special restrictions or allowances in addition to all of the requirements of their underlying categories.

B.1. Airport Noise Zones

The Brooks is not located in an airport noise zone.

B.2. Committed Development Overlay

The Brooks is not located in the Committed Development Overlay.

B.3. Urban Reserve

The Brooks is not located in the Urban Reserve Area.

III. THE PLANNED DEVELOPMENT DISTRICT OPTION

A. PURPOSE

Objective 1.8 provides for the Planned Development District Option (PDDO). The purpose of the PDDO is defined by Policy 1.8.1. as follows:

> *The Planned Development District Option is presented as a mechanism for adding flexibility to this plan; it provides a means by which increased residential density and ancillary development may take place in certain land use areas outside the Future Urban Areas. That development must be totally independent of County-subsidized facilities and services and shall not result in harmful environmental/natural resource, economic, fiscal, infrastructure/services, or public safety impacts. The rationale for the Planned Development District Option is that the County is attempting to direct urban services within the Future Urban Areas; outside, urban-level County facilities and services are not expected to be available, yet the County is responsible for orderly land use and for ensuring against impacts harmful to the public health, safety or welfare.*

As described above the PDDO is included in the Lee Plan to provide additional flexibility. The option allows for increased residential density and ancillary development. The Brooks is proposing a net density of approximately 2.5 units per upland rural acres. In addition to the increased density, the application proposes a town center, internal to the project, and an additional commercial community center located at the intersection of Coconut Road and U.S. 41. From a planning perspective the town center is justifiable, as it is internal to the project, ancillary, and of a magnitude that is in scale with the residential component. The community commercial center is more difficult to justify. A liberal interpretation of the PDDO could allow this component if it can be shown that it does not have a negative impact on county facilities and services. A strict interpretation of the PDDO would require justification that this commercial component is ancillary to the residential component. Staff notes that the applicant has not provided any analysis or justification that shows that this commercial component is in fact ancillary. Given the size of the requested commercial use, 250,000 square feet, it could be difficult to justify.

Staff does not believe that the PDDO can or should be used to approve commercial development in non-urban areas that is not part of a larger residential project. Planning staff maintains that the only way to treat these kinds of requests is through a Future Land Use Map (FLUM) amendment. The Brooks community commercial center is technically part of this application but does resemble a stand alone commercial development.

Lee Plan Policy 6.1.8 provides that "commercial development may take place, when properly zoned and when meeting the standards in Policy 6.1.2, within the Future Urban Areas or under the Planned Development District Option." PDDO Policy 1.8.1 is a "means by which increased residential density and ancillary development may take place." Staff does not believe that the provisions of

MEMORANDUM

LEE COUNTY DEPARTMENT OF PUBLIC WORKS
DIVISION OF TRANSPORTATION

TO: Mike Pavese, Zoning & Development Services Division
FROM: David Loveland, Director, Project Development Program
DATE: May 22, 1997
RE: **THE BROOKS DRI**

As requested, we are providing you an overview of The Brooks DRI transportation issues for inclusion in the Staff Report.

The Brooks DRI is a large, mixed use development proposed south of Williams Road and east of U.S. 41, in the Estero area north of Bonita Springs. It is proposing to develop in two phases, with Phase 1 to be completed in 2002 and Buildout to be completed in 2007. According to the proposed Master Plan, access to the road system will be via U.S. 41, a Coconut Road extension east from U.S. 41, a Three Oaks Boulevard extension, and Williams Road. The applicant has proposed one full access to Williams Road opposite River Ranch Road, three full accesses and two partial accesses onto Coconut Road, and six full accesses onto Three Oaks Parkway. The primary access to U.S. 41 will be via Coconut Road, but an additional connection from the commercial parcel fronting U.S. 41 was assumed in the applicant's transportation analysis (although not shown on the Master Plan). Final access locations and designs will be approved by the Florida Department of Transportation and Lee County.

The transportation issues were analyzed in accordance with the methodology for The Brooks DRI agreed to by all state, regional and local governmental review entities. Computer simulations were run on an existing-plus-committed (E+C) roadway network for Phase 1 (2002) and buildout (2007) of the DRI. Because the Coconut Road and Three Oaks Parkway extensions, and an extension of Williams Road east from River Ranch Road to Three Oaks Parkway, are not considered "committed", they were not included in the model runs. Rather, a connection to U.S. 41 was the only thing assumed in the computer model analysis (a connection to Williams Road was assumed for the second phase of the project, but the model was not rerun to include it).

The trip generation for the project was estimated using the Lee County Florida Standard Urban Transportation Modeling Structure (FSUTMS) travel demand model. That is the same model used to develop the County's long-range transportation plan. The Brooks DRI was divided into three traffic analysis zones. Development parameters for Phase 1 and buildout were assigned to each zone. Those development parameters by zone were converted to the population and employment estimates needed to drive the model.

C

Internal orientation was estimated by the applicant using the FSUTMS model. The model provided an estimate of intrazonal trips (trips that stay within a zone) and trips between the project's three traffic analysis zones. The sum of the intrazonal trips and trips between project zones constitutes internal trips. However, rather than allowing the model to run unimpeded to determine the level of internal interaction, the applicant manipulated the model by adding a time penalty on the connection to the County road network. This had the effect of forcing more traffic to stay on site, to reflect the applicant's assumption that the Town Center would absorb a high percentage of project trips. The applicant stated in the ADA that the Town Center, with a total of 150,000 square feet, was "intended to provide the residents of the project retail, dining, recreation, entertainment, civic and community uses." The Southwest Florida Regional Planning Council (SWFRPC) questioned whether the Town Center would truly serve in that capacity, noting that if it didn't, the internal capture may be significantly less than assumed and the external project impacts more. The RPC even went so far as to revise the analysis to assume less internal capture and more external impact. Lee County staff has considered the issue and attempted to provide some limitations on the land uses allowed within the Town Center in the DRI Development Order, so that it will function as envisioned by the applicant. With that limitation, we have relied on the applicant's estimate of trip generation, a total of 2,292 p.m. peak hour net new external trips at buildout. This is comparable to a trip generation estimate derived from the Institute of Transportation Engineers Trip Generation manual (Fifth Edition) of 2,335 trips. This results in one less significantly impacted road link than assumed by the RPC: I-75 from Alico Road to Daniels Parkway.

The distribution and assignment of project trips to the E+C roadway network was accomplished using the FSUTMS travel demand model. The socio-economic data sets used to run the model for the horizon years of 2002 and 2007 were interpolated from the Lee County Metropolitan Planning Organization's interim year 2000 and 2010 data sets. A review of the 2002 model results indicated that the interpolated data for that year led to extreme growth projections, so background traffic for that year was instead estimated by applying growth rates to existing traffic counts and adding the impacts of approved development such as Florida Gulf Coast University and the Corkscrew Road Service Area projects. The project traffic for The Brooks, as assigned by the model, was then added to the manually projected growth to estimate total traffic for year 2002. No such adjustment was necessary for the year 2007 estimations.

For service level determination, the applicant initially relied on capacities from FDOT's 1995 LOS Manual for all roadways. However, concerns were raised by the review agencies about the use of uninterrupted flow capacities for segments which included traffic signals. A compromise methodology that split the links up was developed by Lee County DOT staff, which was acceptable to the applicant for all but one link: Old 41 from Rosemary Drive to U.S. 41. County DOT staff further evaluated the situation and developed the capacity estimation used in this analysis. Based on our assessment, the link in question is not significantly and adversely affected by the project. The applicant also used FDOT's ART_PLAN program to analyze in more specific detail the condition of one of the roads identified as significantly and adversely impacted in the first phase, namely U.S. 41 from Alico Road to Six Mile Parkway. This analysis relied on input data provided by the County and is an acceptable approach to take a more specific look at problem areas identified through the use of generalized capacity tables. Using this

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D.O. FILE FOR

CASE #: DOS 97 11 019

THE BROOKS
LOCAL DEVELOPMENT ORDER
MASTER TRAFFIC IMPACT STATEMENT
ADDENDUM

Project #99560

September 30, 1999

Prepared By:
DAVID PLUMMER & ASSOCIATES, INC.
1531 Hendry Street
Fort Myers, Florida 33901

THE BROOKS
LOCAL DEVELOPMENT ORDER
MASTER TRAFFIC IMPACT STATEMENT
ADDENDUM

Introduction

This addendum is not a stand-alone report. The addendum contains the AM peak hour, peak season traffic analysis and should be used in conjunction with the main report titled, The Brooks Local Development Order Master Traffic Impact Statement, September 17, 1999.

Development Parameters

The anticipated development parameters through to the year 2004 is summarized below.

2004 Development Parameters

	Dwelling Units			Golf	Square Feet		
Subdivision	SF	MF	Total	Holes	Retail	Office	Rec.
US 41 Commercial	—	—	—	—	33,750	116,250	–
Shadow Wood	750	352	1,102	36	–	7,267	–
Shadow Wood East	149	131	280	–	–	–	–
Spring Run	143	704	847	18	–	–	–
The Commons	–	–	–	–	79,116	27,500	17,426
Lighthouse Bay	–	652	652	–	–	–	–
Copperleaf	412	154	566	18	–	–	–
Total	1,454	1,993	3,447	72	112,866	151,017	17,426

Cumulative Trip Generation

The trip generation of the development anticipated through year 2004 was derived based on the trip rates from the Institute for Transportation Engineer's, Trip Generation, 6th Edition. The resultant AM peak hour, peak season trips at the Project driveways is summarized below.

2004 Driveway Volumes
AM Peak Hour, Peak Season

Subdivision/Driveway	IN	OUT	TOTAL
US 41 Commercial - US 41 (1)	200	50	250
- Coconut Road	75	23	98
Shadow Wood - Oak Wilde	209	451	660
- Underpass	11	3	14
Spring Run	58	217	275
The Commons - A	53	6	59
- B	15	2	17
- C	15	2	17
Lighthouse Bay	30	148	178
Copperleaf	97	237	334
Shadow Wood East - Main	29	98	127
- Underpass	3	11	14
Total	795	1,248	2,043

Footnote:
(1) Includes retail pass-by trips

The complete AM peak hour trip generation calculation with intrazonal and interzonal capture assumptions, by subdivision, are presented in Exhibit 3A and provided in Appendix A_A and B_A.

The resultant 2004 net new AM traffic volumes at the external intersections and roadway are summarized below. The net new trip calculations are presented as part of Appendix B_A.

2004 Net New Trips
AM Peak Hour, Peak Season

Subdivision	In	Out	Total
US 41 Commercial	231	39	270
Shadow Wood	203	437	640
Spring Run	55	206	261
The Commons	56	1	57
Lighthouse Bay	28	141	169
Copperleaf	94	230	324
Shadow Wood East	27	93	120
Total	694	1,147	1,841

It should be noted that as the development of The Brooks DRI continues, it is expected that the internal capture rate will increase, reflective of the land use mix that will be in place as the community matures. The internal capture rate of approximately 32 percent was approved as part of the DRI application.

Trip Generation Rates

For purposes of providing a trip generation estimate for subsequent D.O. applications, the following AM peak hour trip generation rates identified in Exhibits 4A and 5A should be utilized to be consistent with the trip generation rates derived for the Master TIS.

Two sets of trip generation rates are being provided. The first set of rates is reflective of the total driveway volumes at the subdivision access on US 41, Coconut Road and Three Oaks Parkway Extension after the intrazonal trips have been deducted. The resultant trip generation would serve as the basis to determine the turn-lane requirements at the subdivision access, Exhibit 4A.

The second set of rates represents the net new project trips at the external intersections at The Brooks (i.e., US 41/Coconut Road and Three Oaks Parkway/Williams Road) where both intrazonal and interzonal captured trips have been discounted from the total trip generation, Exhibit 5A. The resultant AM peak hour trip generation would serve as the basis of determining the turn lane requirements at the external intersections.

Traffic Distribution/Assignment

Consistent with The Brooks DRI approved trip distribution and assignment, the Project turn volumes anticipated during the AM peak hour along Coconut Road and Three Oaks Parkway Extension, coincident with year 2004, are depicted in Exhibit 6A.

Background Traffic

The eventual construction of the Three Oaks Parkway Extension will connect with Williams Road and Coconut Road. This enhanced network will provide by-pass opportunities for non-project (background) traffic to travel through The Brooks. For information purposes, an estimate of the 2004 AM peak hour background traffic is provided in Exhibit 7A.

Future 2004 Traffic/LOS

The resultant 2004 AM peak hour turn volumes on Coconut Road and Three Oaks Parkway Extension, inclusive of background traffic, are presented in Exhibit 8A. The anticipated intersection levels of service (LOS) derived based on the 1997 HCM/HCS are summarized below and included as part of Appendix C_A.

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

LEE COUNTY RECEIVED 97 JUL 28 AM 8:14 BOARD OF COUNTY COMM. PUBLIC WORKS ADM.

REZONING:	CASE 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01
APPLICANT:	LONG BAY PARTNERS LLC and EDWARD J. McARDLE, TRUSTEE, in ref. to THE BROOKS OF BONITA SPRINGS
BEGINNING HEARING DATE:	June 4, 1997
CONTINUED HEARING DATES:	June 5, 1997 and June 10, 1997
WRITTEN RESPONSE DATES:	June 27, 1997 and July 7, 1997

I. APPLICATION:

This matter came before the Lee County Hearing Examiner as an Application for Development of Regional Impact pursuant to Lee County Land Development Code.

Filed by LONG BAY PARTNERS LLC, 3451 Bonita Bay Blvd. S.W. #202, Bonita Springs, FL 33923 (Applicant/Owner); WILSON, MILLER, BARTON, PEEK, INC., 4571 Colonial Blvd., Ft. Myers, FL 33912 and NEALE MONTGOMERY, ESQUIRE, % PAVESE, GARNER, HAVERFIELD, DALTON & HARRISON, P.O. Drawer 1507, Ft. Myers, FL 33902-1507 (Agents). See Section VIII. for List of Additional Property Owners and Agents.

Requests:

a) Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2,492± acres, State DRI #07-9697-133; and

b) A rezoning from Agricultural (AG-2) to Mixed Use Planned Development(MPD) to permit a maximum of 5,200 dwelling units, golf courses and related ancillary uses, 250,000 square feet of retail/service floor area, 55,000 square feet of community use floor area and 120 hotel rooms not to exceed 75 feet in height, on 2,492± total acres of land.

The subject property is located at 23301 South Tamiami Trail, Bonita Springs (east side of U.S. 41, east of the railroad, south of Williams Road, north of San Carlos Estates, and west of I-75), in S02-T47S-R25E, S03-T47S-R25E, S09-T47S-R25E, S10-T47S-R25E and S11-T47S-R25E, Lee County, FL. (District #3)

II. STAFF REPORT AND RECOMMENDATION:

The Planning Division has determined that the requirements of the Planned Development District Option (PDDO) have not been clearly satisfied. Lee Plan consistency and zoning approval are predicated on a favorable PDDO determination. Should the Applicants provide sufficient information to satisfy the requirements of the PDDO and result in a finding of Lee Plan consistency, Staff offers the following recommendation:

DENIAL of the Applicants' request for rezoning from **AG-2** to **MPD** for the proposed commercial parcels abutting U.S. 41 and **APPROVAL** of the Applicants' request for rezoning from **AG-2** to **MPD** for the remaining parcels with conditions and deviations.

The Department of Community Development Staff Report was prepared by Mike Pavese. 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 Applicants' request for Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2,492± acres, State DRI #07-9697-133 for the real estate described in Section IX. Legal Description; and

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners APPROVE the Applicants' request for a rezoning from Agricultural (AG-2) to Mixed Use Planned Development (MPD) for the real estate described in Section IX. Legal Description WITH THE FOLLOWING CONDITIONS AND DEVIATIONS:

CONDITIONS AND DEVIATIONS:

1. a. The development of the subject property shall be in accordance with the proposed Master Concept Plan for The Brooks MPD, except as modified herein. Unless specifically approved as part of this rezoning, development must be in accordance with all applicable local development regulations, including the Development of Regional Impact Development Order. No deviations from the Land Development Code are granted unless specifically identified herein.

b. Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development. The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan and DRI Development Order, while at the same time allowing flexibility in response to changing development practices.

c. The following information must be provided in the application for Final Plan Approval:

1) the type and amount of uses, i.e., the number of residential dwelling units or square feet of commercial uses;

2) an ongoing tabulation of the total number of residential dwelling units, commercial square footage, and community uses that have received local Development Order approval;

3) location and dimensions of access points;

4) location and dimensions of internal roadways;

5) location and dimensions of buildings/structures and parking spaces/areas;

6) setbacks and building heights;

7) boundary of development tract;

8) adjacent zoning and land uses;

9) buffers and landscape strips required or proposed;

10) open space, including an ongoing tabulation of required open space; and

11) detail drawings showing the application of deviations.

2. Schedule of Uses:

a. **RESIDENTIAL "R"**

1) Permitted Principal Uses and Structures

Administrative Offices
Assisted Living Facility - Density in accordance with Section 34-1494
Churches, Synagogues, and other Places of Worship
Civic and Cultural Facilities
Clubs: Country, Private - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail
Consumption on Premises, limited to clubhouse(s) and golf course uses
Customary accessory uses and structures, including but not limited to private garages and swimming pools
Dwelling Units:
- Single Family, attached
- Single Family, detached
- Model Homes, Model Units and Model Display Center (limited to residential uses within The Brooks, Speculative Homes)
- Townhouse
- Two-Family and Multi-Family dwelling and customary accessory uses
- Two-Family attached, Residential Accessory Uses, including but not limited to:
  - Private garages, carports and parking areas

IV. HEARING EXAMINER DISCUSSION:

The Applicants, Long Bay Partners LLC and Edward J. McArdle, Trustee, in reference to The Brooks of Bonita Springs, are requesting approval of a Development of Regional Impact (DRI), and a rezoning from the Agricultural (AG-2) zoning district, to the Mixed Use Planned Development (MPD) zoning district for a 2,492±-acre parcel located in the Rural, Wetlands, and Suburban land use categories. The bulk of the parcel is on the interior of the site; there is a 20-acre portion abutting U.S. 41. It is the designation of the land use categories within which the Applicants wish to develop their community that is the crux of this request. They are asking for urban type densities and intensities in what are, primarily, rural land use locations.

To address this apparent anomaly, the Applicants have elected to utilize a portion of the Lee Plan that has been in existence since 1984, but which has never been used in Lee County. As such, the Applicant, the Staff and the Hearing Examiner have had to fashion the criteria upon which to evaluate the request as it developed. Since the Lee County Board of County Commissioners (BOCC) has not had an opportunity to review and evaluate this process, it is necessary to describe the Lee Plan Objective and Policies upon which a portion of their decision will be based.

Objective 1.8 of the Lee Plan, entitled Planned Development District Option (PDDO), spells out a procedure that a potential developer may use to obtain increased densities and intensities in what are, ostensibly, rural areas of the County. Policy 1.8.1 states that the purpose of the Objective is to provide a mechanism for adding flexibility to the Lee Plan. It allows a developer to increase residential densities and ancillary uses beyond that which would be tolerated in certain land use areas outside of Future Urban Areas. The Policy goes on to note that the development must be totally independent of County-subsidized facilities and services and shall not cause harm to the environmental/natural resources, or cause negative economic, fiscal, infrastructure/services, or public safety impacts. Essentially, the County is acknowledging that the services that are normally associated with a large residential development are not available in non-urban areas, and they are attempting to provide a means for development to take place in those areas without placing a financial burden on the County or its citizens.

Needless to say, any developer attempting to use the PDDO has to be prepared to commit tremendous resources to its project if it has any hope of successfully navigating through the County's procedures. With this extraordinary up-front commitment as a given, no other developer has yet attempted so ambitious an undertaking.

The potential developer has to successfully demonstrate to the County Staff (after an extensive review) that the project will be self-sufficient. If the developer prevails, it will be authorized to increase the density of the project to the Urban Community density range (without bonuses) (i.e., six dwelling units per acre).[3]

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[3] Policy 1.8.2 of the Lee Plan.

If approved, the community will contain 5,200 dwelling units, and amenities which include 72 holes of golf, and related accessory uses, a town center with 100,000 square feet of retail commercial and service uses to serve The Brooks, and a total of 55,000 square feet of floor area to be used for community services. There would also be an additional 150,000 square feet of commercial floor area on a 20-acre parcel (with 1,580 feet of frontage on U.S. 41) that is located on the southeast corner adjacent to U.S. 41 and the proposed Coconut Road extension. This will serve as the project's main entrance. A total of 120 hotel units are also proposed for the site. The community will be developed in two 5-year phases with commencement in 1997 and buildout in 2007. The overall density of the project will be 2.18 dwelling units per acre.

As described by the Applicants' agent, many of the natural features of the site will be restored, preserved and enhanced. It will feature several defined "country club, golf club and lakefront neighborhoods." Each neighborhood will be unique. Amenities will include two championship golf courses, nature and biking trails, country club facilities, and an integrated landscape plan with architectural design standards which will link the neighborhood to the amenities in one master planned community image.

The site is divided by two "arterial road networks." These two road systems, actually separate the site into four segments because one bisects the site from east to west (i.e., Coconut Road), and the other (Three Oaks Parkway) bisects the site from north to south. This represented a challenge to the Developer because it was introducing "arterial" traffic into a low density residential community.

The Applicants consider these two roadways as critical components of the County's future transportation network, and they recognize that these two roads will serve an important public need. Thus, they will provide rights-of-way and they will construct major portions of the two roadways. This will provide an additional north-south arterial road parallel to I-75.

They will extend Coconut Road eastward to provide access to the initial phase of the community. They note that Williams Road (which aligns with River Ranch Road) will provide secondary access into the community. There will be no direct access for any of the residential uses to the "arterial" roads. The residences are all served by a system of internal collectors and local streets that will be privately constructed and maintained.

The site will contain 873 acres of open space/recreational uses (i.e., golf courses, lakes, landscaping, open space and buffers). There will also be 416 acres of wetland conservation areas. The wetlands are integrated into the overall design of the project, the centerpiece of which will be the restoration of a previously impacted freshwater flow way. Thus, more than 50 percent of the project will be devoted to these uses. All of the residential pods will be surrounded by open space and recreational facilities. This will provide not only buffering for the homes, but it will add value as well.

The agent went on to state that the centerpiece of the community will be The Brooks Town Center which will be located at the intersection of Coconut Road and Three Oaks Parkway. This complex will contain cultural, recreational, civic and community services and activities for the residents of The Brooks.

It will provide a small-town, main-street ambiance, which is a growing trend in planning. The Town Center is designed to pull the community into a cohesive whole.

This project will be unique because it will develop two golf club communities in the first year of operation. This is an important consideration because it addresses some of the fiscal impacts that will be discussed extensively below.

The main sales center is slated to go on the U.S. 41 parcel at the Coconut Road entrance. This parcel will also contain the project's identification, signage, and landscaping, and will serve as the community's "window." The Developer is planning to install 4,000 linear feet of landscaping along U.S. 41 to serve as buffering. The commercial center that is proposed for this 20-acre site is designed to serve as part of the continuity of the project. It provides architectural controls and value protection for the development. It was noted that what is being proposed is not unique, there are commercial parcels in front of other master planned communities along U.S. 41. These include Bonita Bay (which has two), Spring Creek DRI, The Vineyards, and Pelican Bay.

The Applicants concluded their preliminary statement by stating that The Brooks will be a high quality, well planned community. They believe that it will be a positive addition to Southwest Florida in the tradition of Bonita Bay (their other project in south Lee County). They also believe that the documents they have submitted to the County have met the requirements and the standards established by the PDDO, and that their impacts have been very carefully evaluated and that these impacts have been mitigated through design and planning techniques, as well as by the recommended conditions as modified by the Applicants. They believe that they are fully consistent with the Lee Plan and that they are compatible with the surrounding uses. They also noted that the Southwest Florida Regional Planning Council had recommended approval of the project.

The Staff, on the other hand, differed with the Applicants on several important points. First, prior to the hearing, they were not satisfied with the information that they were given by the Applicants with respect to the fiscal impacts, transportation needs, and the intensity of the commercial development that was requested by the Applicants. The Staff's recommendation before the hearing was as follows:

> The Planning Division has determined that the requirements of the Planned Development District Option (PDDO) have not been clearly satisfied. Lee Plan consistency and zoning approvals are predicated on a favorable PDDO determination. Should the applicant provide sufficient information to satisfy the requirements of the PDDO and [if this] result[s] in a finding of Lee Plan consistency, staff would offer the following recommendation:
>
> DENIAL of the Applicant's request for rezoning from **AG-2** to **MPD** for the proposed commercial parcels abutting U.S. 41 and **Approval** of the Applicant's request for rezoning from **AG-2** to **MPD** for the remaining parcels with the following conditions and deviations ....

project. However, this is not sufficient in and of itself to authorize the amount of commercial development requested. There must also be a showing that the demand for the commercial space is being generated by The Brooks and that the Applicants are not simply trying to add commercial activity to a rural area that may not be able to support it. Policy 1.1.8 of the Lee Plan states that the PDDO "provides a means by which increased residential density *and ancillary development* may take place in certain land use areas outside the Future Urban Areas [of the County]." *(emphasis added)*

The County Staff has taken the position that "ancillary" means a relatively minor amount of commercial development rather than the amount being requested by the Applicants. Under this interpretation, commercial uses would be very limited in Rural land use areas. The Applicants argue that the term "commercial" does not appear in Policy 1.8.1, and that the Staff is being overly restrictive in its interpretation of this Policy. Furthermore, the Applicants noted that the Staff recognizes that nonresidential land uses designed to serve the rural community are allowed in the Rural land use category and that this can be done without amending the Lee Plan. It was also acknowledged by the Staff that minor commercial developments (i.e., 30,000 square feet or less) are allowed in the Rural land use category. Consequently, argued the Applicants, Policy 1.8.1 was not intended to restrict commercial uses in Rural land use areas.

The Staff, in an abundance of caution, admits that it has taken a restricted view in interpreting the PDDO process. However, if one were to adopt the Staff's cautious approach one might fail to consider the express intent of Objective 1.8, which is to allow the development of the project if it is self-sufficient and if it mitigates all environmental, fiscal, economic and social impacts which may occur by virtue of the project's existence. The Applicants have submitted abundant information which is intended to demonstrate how they will address the impacts of the project. One of the mechanisms that they have used is to keep the bulk of the impacts internal to the project. That is, they have decided that the most prudent approach is to determine the need for commercial uses that are generated by the project, and to provide these uses on-site. In this way, they have reasoned, they will reduce off-site impacts by confining them to the site itself rather than depending on off-site trips to meet this need.

To support their approach in addressing Objective 1.8, the Applicants submitted several studies produced by Fishkind, which concluded that The Brooks of Bonita Springs will support 366,648 square feet of retail uses. They intend to provide roughly two-thirds (i.e., 250,000 square feet) of this demand on-site in the commercial node on U.S. 41 and in the Town Center at the intersection of Three Oaks Parkway and Coconut Road. This will greatly reduce the need for The Brooks' residents to use the County's roads when they go shopping. All of the planning experts who were present at the hearing were in agreement that capturing the commercial demand on-site was good planning practice, and that it was consistent with the PDDO.

For the reasons stated above, it is found that the Applicants do not need a Lee Plan amendment to develop retail/service commercial uses on the parcel of land that abuts U.S. 41 because the PDDO portion of the Lee Plan contemplates and allows such development.

The next issue is to decide how much commercial space should be allowed at the two commercial sites (i.e., U.S. 41 and the Town Center) and to determine when it is ripe for development. The amount of commercial square footage requested, and its timing are so intertwined that they will be discussed together rather than separately. The key to the analysis is the classification of the roads that will serve the project.

The Applicants are requesting 150,000 square feet of commercial uses on U.S. 41, and 100,000 square feet in the Town Center. Each of these commercial uses would be classified as Community Commercial under Lee Plan Policy 6.1.2.3. Community Commercial sites must be between 10 and 35 acres in size, they must contain between 100,000 and 400,000 square feet of floor area, and they must be located at the intersection of two arterial roads so that direct access is provided to both intersecting roads. Such direct access may be provided by an internal access road to either intersecting road. The first two criteria have been clearly met; it is the third criterion that is at issue.

If it is determined by the BOCC that a Lee Plan amendment is not needed for the U.S. 41 parcel, then the Staff has proposed limiting retail development on U.S. 41 to Neighborhood Commercial uses (a maximum of 100,000 square feet) until such time as the Coconut Road extension is open and functioning as an arterial roadway. The Applicant is partially agreeable to this proposal. One of the concerns that they have, however, is the Staff's use of the term "functioning" as an arterial roadway. The Applicants indicated that the trouble that they had with this term was that the County has been known to take the position that, until the road is accepted by them as an arterial, it is not classified as an arterial. The Applicants would prefer to use the term "designed and built" as an arterial. They reason that, if the road meets all of the design criteria of an arterial road, the fact that it does not have the traffic demand normally associated with an arterial is not as important as the fact that it can handle arterial road demands. Thus, if the street is "primarily intended to carry large volumes of through traffic connecting major activity centers to other major traffic generators,"[8] then it is an arterial for purposes of determining how much commercial development is allowed.

To address both the Applicants' and the Staff's concerns about this issue, the language to Condition 30 has been amended to say:

> Retail Commercial development at U.S. 41 will be limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet or less) until such time as the Coconut Road Extension has been designed and built to operate as an arterial road, and it has been connected to Three Oaks Parkway. It will then be allowed to develop to a maximum of 150,000 square feet of Retail uses as delineated in the Schedule of Uses for this parcel.

The positions that the Staff and the Applicants have taken with respect to the Town Center (Condition 31) are similar to their positions for the Commercial site on U.S. 41. The Condition has been amended to read:

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[8] Section 10-1, LDC, under the definition of "Street."

> Retail Commercial development at the Town Center will be limited to the intensity allowed in Minor Commercial Centers (30,000 square feet or less) until such time as the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway and the Coconut Road extension. It will then be allowed to develop to a maximum of 100,000 square feet of Retail uses as delineated in the Schedule of Uses for this parcel.

For both of these commercial nodes the Applicants have asked to be allowed to develop commercial uses which are not limited by the site location standards that have been established by the County. This would be allowed in the interim period before Coconut Road meets arterial standards. This might restrict the types of uses that would be permitted on the site but it would not necessarily reduce the volume of activity. The more prudent approach would be to require the Applicants to make the road improvements before allowing greater commercial activity than the existing roads might be able to handle. Therefore, this language has not been included in Conditions 30 and 31.

Another hotly debated issue was whether the Applicants had to provide hurricane shelter space for the project. The County's position is that the Applicants' project is subject to storm surge flooding in Category 3, 4 and 5 hurricanes, and that the project has the potential to generate 2,272 people seeking public shelter in a Category 3 or greater hurricane. The Staff went on to say that, since this total could require Lee County to create more than 200 additional shelter spaces, a regionally significant impact is created. However, because of the project's high elevations (14.5 feet [NGVD]), the site is suitable for on-site hurricane shelters, vertical evacuation, or both.

The Applicants have taken the position that they will elevate all residential units at or above the predicted Category 3 storm height (16.6 feet [NGVD]) in compliance with Rule 9J-2.0257(6)(b), F.A.C. As such, they will no longer be in a Category 3 hurricane vulnerability zone, and, therefore, no shelters will be necessary because no residents will have to be evacuated.[9] However, even though the Applicants argue that no shelters are required, they have agreed to provide 20,000 square feet of shelter space on-site.

The debate revolves around the interpretation of two fundamental points: (1) is there a distinction between a Category 3 hurricane, and a Category 3 hurricane vulnerability zone; and, (2) does Rule 9J-2.0257 require shelters or does it merely set the standards that shelters must meet if they are shown to be needed?

Hurricanes are classified by Categories that depend upon the wind speed, barometric pressure, storm surge, and damage potential to determine the degree of danger that they pose to the public. For example, using the **Saffir-Simpson Hurricane Scale**, a Category 1 hurricane is classified as

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[9] Hurricane vulnerability zone is defined as: the areas delineated by a regional hurricane evacuation study as requiring evacuation in the event of a 100-year or category three hurricane event.

CHAPTER 2015-193

Committee Substitute for House Bill No. 983

An act relating to the Village of Estero, Lee County; amending chapter 2014-249, Laws of Florida; providing continuing effect of certain developments of regional impact; delaying compliance with state-shared revenue requirements; authorizing millage levied by the Estero Fire Rescue District to be used for certain purposes; revising the corporate and council district boundaries; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (7) and subsection (8) of section 12 of chapter 2014-249, Laws of Florida, are amended to read:

Section 12. Referendum election; transition.—

(7) TRANSITIONAL LAND DEVELOPMENT REGULATIONS.—To implement the transitional comprehensive land use plan when adopted, the village shall, in accordance with the procedures required by the laws of the state, adopt ordinances providing for land use development regulations within the corporate limits. Until the village adopts the ordinances:

(c) ~~Subsequent to the adoption of a local comprehensive land use plan and~~ Subject to general law, the council is fully empowered to amend, supersede, enforce, or repeal the transitional land use development regulations, or any portion thereof, by ordinance. All approved developments of regional impact (DRIs) located within the jurisdictional boundaries of and existing on the date of incorporation of the village are not required to submit a notice of proposed change application to adopt a new DRI development order as required by s. 380.06(15)(h), Florida Statutes. Effective December 31, 2014, any existing DRI development orders are deemed subject to the jurisdiction of the village without the need to amend the existing DRI development order. Jurisdiction over existing DRI development orders by the village is subject to, without limitation, all rights, entitlements, covenants, and commitments adopted in DRI development orders and zoning adopted in conjunction with or pursuant to the DRI development order before December 31, 2014, including, without limitation, all rights and entitlements included in any local development orders or plats adopted pursuant to the DRI development order and related zoning. The village shall recognize the property rights and interests held by property owners under such DRI development orders and all other vested property rights held by such property owners as such rights and entitlements existed on or before December 31, 2014.

(8) STATE-SHARED REVENUES.—The village shall be entitled to participate in all revenue sharing programs of the state effective April 1, 2015. The provisions of s. 218.23(1), Florida Statutes, shall be waived for the purpose of conducting audits and financial reporting through the end of fiscal

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2384

THE LEE COUNTY LAND DEVELOPMENT CODE NUMBER 94-24

AN ORDINANCE AMENDING CHAPTER 1, -GENERAL PROVISIONS AND CHAPTER 34, ZONING PROVISIONS OF THE LEE COUNTY LAND -DEVELOPMENT CODE SO AS TO AMEND SECTION 1-2, RULES OF CONSTRUCTION AND DEFINITIONS; SECTION 34-2, DEFINITIONS; SECTION 34-3, RULES OF CONSTRUCTION; SECTION 34-83, BOARD OF COUNTY COMMISSION FUNCTIONS AND AUTHORITY; SECTION 34-84, BOARD OF COUNTY COMMISSION REHEARING OF DECISIONS, JUDICIAL REVIEW; SECTION 34-145, REARING EXAMINER FUNCTIONS AND AUTHORITY; SECTION 34-146, HEARING EXAMINER REHEARING OF DECISIONS, JUDICIAL REVIEW; SECTION 34-203(g)(1), MODIFICATION OF SECTION LINE OR STREET SETBACKS; SECTION 34-209, BUILDING RELOCATION PERMIT; ADD A NEW SECTION 34-268, ADMINISTRATIVE SETBACK VARIANCES; SECTION 34-341, EMPLOYMENT OF PLANNED DEVELOPMENT DESIGNATION; SECTION 34-371, GENERALLY; SECTION 34-373(b)(3), EXISTING DEVELOPMENTS SEEKING PLANNED DEVELOPMENT CLASSIFICATION; SECTION 34-377, PUBLIC HEARING; SECTION 34-412, DEVIATIONS FROM GENERAL ZONING REGULATIONS; ARTICLE V, COMPREHENSIVE PLANNING; THE LEE PLAN; SECTION 34-622, USE ACTIVITY GROUPS; SECTION 34-381, DURATION OF RIGHTS CONFERRED BY ADOPTED MASTER CONCEPT PLAN; SECTION 34-901, PURPOSE AND INTENT; SECTION 34-931, PURPOSE AND INTENT; SECTION 34-935, PROPERTY DEVELOPMENT REGULATIONS; ADD A NEW SECTION 34-940, MIXED USE PLANNED DEVELOPMENT; SECTION 34-1001, APPLICABILITY; SECTION 34-1003, DEFINITIONS; SECTION 34-1004, FLIGHT OBSTRUCTION SURFACES; SECTION 34-1006, AIRPORT NOISE ZONES; SECTION 34-1143, ZONES OF ARCHAEOLOGICAL SENSITIVITY; SECTION 34-1144, DESIGNATED HISTORICAL RESOURCES; SECTION 34-1174, LOCATION ND SETBACKS GENERALLY; SECTION 34-1177, ACCESSORY APARTMENTS; ARTICLE VII, DIVISION 4, AIRCRAFT LANDING FACILITIES, PRIVATE; SECTION 34-1264(d), TEMPORARY ONE-DAY PERMIT; SECTION 34-1297, ACTIVITIES REQUIRING SPECIAL APPROVAL; SECTION 34-1352(a), APPLICABILITY; SECTION 34-1412, DAY CARE CENTERS; SECTION 34-1413, HOSPITALS; SECTION 34-1682, SITE REQUIREMENTS; SECTION 34-1772, PERMITTED USES; OPERATION; ARTICLE VII, DIVISION 19, HOTELS AND MOTELS; SECTION 34-2017, PARKING LOT SURFACE; SECTION 34-2193, SETBACKS FROM SECTION LINES AND QUARTER SECTION LINES; SECTION 34-2381, NON-COMMERCIAL SCHOOLS; SECTION 34-2442, DEFINITIONS; SECTION 34-2443, MINIMUM REQUIRED SETBACKS FOR AGRICULTURALLY ORIENTED COMMERCIAL OR INDUSTRIAL USES; SECTION 34-3021, SUBORDINATE USES; SECTION 34-3102, NUMBER OF PRINCIPAL BUILDINGS ON LOT; ARTICLE VII, DIVISION 41, WATER-ORIENTED RECREATIONAL EQUIPMENT; USE REGULATIONS TABLES 34-653, 34-694, 34-714, 34-735, 34-791, 34-813, 34-843, 34-873, 34-903, 34-934; PROPERTY DEVELOPMENT REGULATIONS TABLES 34-654, 34-695, 34-715, 34-736, 34-792, 34-814, 34-844, 34-874, 34-904; PROVIDING FOR SEVERABILITY, CONFLICT, INCLUSION IN CODE; AND, PROVIDING FOR AN EFFECTIVE DATE.

SECTION **TWENTY-SEVEN:**

Article VI, Division 9, PLANNED DEVELOPMENT DISTRICTS, is hereby amended by adding a new section 34-940, Mixed use pianned developments as-follows:.

Sec. **34-940. Mixed** use **planned developments.**

(a) All mixed use planned developments must meet or exceed at least two of the following DCI thresholds:

(1) A residential development of 300 or more dwellinq units (Section 34-341(b)(1));

(2) A commercial development or activity which is either located on a parcel of ten (10) or more acres or which may include 100,000 square feet or more of floor area (Section 34-341(b)(3)); or

(3) An industrial develooment or activity which is located on a parcel of ten (10) or more acres or which may include 100,000 square feet or more of floor area (Section 34-341(b)(4)).

(b) Mixed use developments containing residential uses should be designed to capture within the development a substantial percentage of the vehicular trios that are projected to be generated by those uses at the project's buildout.

Secs. ~~34-940~~ 34-941 - 34-960. Reserved.

SECTION TWENTY-EIGHT:

Sections 34-1001, Applicability; 34-1003, Definitions by amending the definition Airport; 34-1004, Flight obstruction surfaces by amending the first paragraph; 34-1004(1)g.1.; Section 34-1006(b); Section 34-1006(b)(2)a. and; Section 34-1006(b)(3)a. are amended by deleting the word Regional and replacing it with the word International as follows:

Sec. 34-1001. Applicability.

Through the development and implementation of this subdivision, it is hereby determined that county airports consist of the Southwest Florida International ~~Regional~~ Airport, Page Field and all existing and proposed state-licensed airports and heliports, public and private, in the county.

2481

THE FOREGOING ORDINANCE was offered by Commissioner John Manning, who moved its adoption. The motion was seconded by Commissioner John Albion and, upon being put to a vote, the vote was as follows:

RAY JUDAH	Aye
JOHN MANNING	Aye
DOUGLAS ST. CERNY	Aye
FRANKLIN MANN	Aye
JOHN ALBION	Aye

DONE AND ADOPTED this 31st day of August, 1994.

ATTEST:
CHARLIE GREEN, CLERK
BY: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA
BY: _____
Chairman

APPROVED AS TO FORM:
BY: _____
Office Of The County Attorney

(10288)

FIFTH DEVELOPMENT ORDER AMENDMENT
FOR
THE BROOKS OF BONITA SPRINGS
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #07-9697-133

LET IT BE KNOWN THAT, PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, HEARD AT A PUBLIC HEARING CONVENED ON AUGUST 25, 1997, THE APPLICATION FOR DEVELOPMENT APPROVAL FOR THE BROOKS OF BONITA SPRINGS (HEREAFTER REFERRED TO AS THE BROOKS) DRI, A MIXED USE DEVELOPMENT IN LEE COUNTY WHICH INCLUDED APPROXIMATELY 2,492± ACRES TO BE DEVELOPED IN ACCORDANCE WITH THE APPLICATION SUBMITTED TO LEE COUNTY ON July 3, 1996 BY THE OWNER/APPLICANT, LONG BAY PARTNERS, L.L.C.

WHEREAS, the Brook DRI development order was amended: 1) on December 6, 1999 to increase the project acreage by 40 acres and to amend Map H, 2) on April 1, 2002 to reduce the number of dwelling units by 1,600 units and increase the commercial square footage by 20,000 square feet, 3) on August 21, 2007 amending the Brooks of Bonita Springs DRI Development Order in compliance with House Bill 7203 to extend the phase-end, build out, and termination dates of the DRI Development Order, and 4) on February 24, 2012 amending the Brooks of Bonita Springs DRI DO in compliance with Senate Bill 2156 to extend the phase-end, build out, and termination dates of the DRI DO; and

WHEREAS, an extension and tolling of time is permitted pursuant to Section 252.363, F.S. if the Governor declares a state of emergency. A tolling of time and extension of the build out date occurred in February of 2012, and an additional tolling will occur for the State of Emergency for Tropical Storm Debby and the subsequent extension of the State of Emergency, and for the State of Emergency for Tropical Storm Isaac; and,

WHEREAS, The Brooks of Bonita Springs DRI build out and termination dates in this Development Order will reflect the extensions and tolling of time that have occurred by operation of law. The statutory extensions and tolling are not and will not be considered in any present or future substantial deviation determinations; and,

WHEREAS, on September 28, 2012, Lee County received a request to amend the Brooks DRI DO and Map H; and

WHEREAS, the Board of County Commissioners finds and determines that based on the evidence in the record, the proposed change does not constitute a substantial deviation for the original development order approvals warranting further DRI review.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Brooks is a master planned community located in unincorporated south Lee County west of I-75, north of San Carlos Estates, east of U.S. 41 and south of Corkscrew Road. The property includes 2,533± acres. The Brooks is a mixed use development that will consist of: ~~3,600~~ 3800 residential units, 150,000 square feet of commercial center retail/service/office gross floor area, 120,000 square feet of Town Center retail/service/office gross floor area, 120 hotel units, and a maximum of 55,000 square feet of gross floor area of community facilities; the community facilities may include community association meeting space, education and training facilities oriented toward the residents' daily needs, dining, recreation, entertainment, civic and community uses. In addition, there will be ~~890~~ 886 acres of active and passive recreation areas that include open space, buffer, golf, tennis, swimming and lakes. At buildout, the development will provide approximately 419 acres of conservation lands (forested and open wetlands and wetland flow-way restoration) and 130 acres of internal and public arterial road rights-of-way.

The phasing schedule includes two 5-year phases. Site preparation will commence in 1997. Residential construction is scheduled to commence in 1998. The buildout date is December 31, ~~2010~~ 2017.

Water supply and wastewater treatment will be provided by Bonita Springs Utilities, Inc.

B. The factual findings, conclusions of law, conditions and other terms of this Development Order apply to the property described more completely below:

PARCEL 1

A PORTION OF THE SOUTH HALF OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN N.00°57'23"W., ALONG THE EAST LINE OF SAID SECTION 9, FOR A DISTANCE OF 2542.33 FEET; THENCE RUN S.88°02'34"W. FOR A DISTANCE OF 1221.61 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE N.00°15'56"W. FOR A DISTANCE OF 47.18 TO A POINT ON A NON-TANGENTIAL CURVE AND THE SOUTH RIGHT-OF-WAY LINE OF COCONUT ROAD; THENCE ALONG SAID RIGHT-OF-WAY AND CURVE, CONCAVE NORTHERLY; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 2024.96 FEET, THROUGH A CENTRAL ANGLE OF 08°29'00", SUBTENDED BY A CHORD OF 299.55 FEET AT A BEARING OF S.83°48'03"W., FOR A DISTANCE OF 299.82 FEET; THENCE RUN

12. The Developer, the UCDD, or the successors and assigns, must regularly vacuum sweep all privately owned internal streets and parking areas. The Developer will also encourage private parcel owners to regularly vacuum sweep their respective streets and parking areas.

13. The Developer must provide dry detention or retention pretreatment in the areas adjacent to commercial uses unless the Developer can provide reasonable assurances to the SFWMD that hazardous materials will not enter the project's surface water management system. The assurances may be in the form of deed restrictions, recorded lease agreements, or other legal instrument acceptable to SFWMD and the County.

E. TRANSPORTATION

1. Significant Impact

a. The original traffic impact assessment for the project assumed the development parameters set forth below:

	Phase I (2002)	Buildout (2007)[1]
Residential		
--Single Family	600 D.U.	1,140 D.U.
--Multi Family/Single Family-Attached	2,000 D.U.	4,060 D.U.
Non-Residential		
--Service/Retail/Office (Town Center)	10,000 sq. ft.	100,000 sq. ft.
--Community Use (Town Center)	15,000 sq. ft.	50,000 sq. ft.
--General Retail (Community Center)	100,000 sq. ft.	150,000 sq. ft.
--Community Use (Community Center)	5,000 sq. ft.	5,000 sq. ft.
--Hotel	0 Rooms	120 Rooms
--Golf Course	36 Holes	72 Holes

Based on the ~~proposed~~ Second DRI Development Order Amendment, the revised development parameters at buildout will be as follows:

Summary Development Parameters - Buildout

[1] The build out date was extended by operation of law by three years to December 31, 2010 on August 21, 2007 and another four years pursuant to HB7207 under the Fourth Amendment to the DRI DO. The build out date was also extended thru SB 2156 and State of Emergency for Tropical Storms Debbie and Isaac to March 2, 2017. The applicant submitted a traffic analysis (that included an additional 200 MF units and a 12/31/17 build out scenario) which demonstrated that the DRI will not significantly or adversely impact any relevant road segments. Based on this analysis, concurrency vesting rights for the additional residential units (3800 total SF/MF) are extended to December 31, 2017. ~~However, the Transportation Impact Assessment assumed build out in 2007. For this reason, the build out date was not altered in this paragraph.~~

Land Use	~~Proposed~~ DRI
Residential	
Single Family	1,600 d.u.
Multi Family	2,000 d.u.
Total	3,600 d.u.
Town Center	
Service/Retail/Office	120,000 sq. ft.
Community Use	50,000 sq. ft.
Total	170,000 sq. ft.
Community Center	
Retail	150,000 sq. ft.
Office	5,000 sq. ft.
Total	155,000 sq. ft.
Hotel	120 rooms
Golf Course	72 holes

b. The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at project Build out (2007)[2]. The Brooks DRI is projected to significantly and adversely impact the following roadways and intersections:

Roadways:

	Needed Improvement
Corkscrew Road	
--Sandy Lane to Three Oaks Parkway	Widen to 4 lanes
--Three Oaks Parkway to I-75	Widen to 4 lanes
U.S. 41	
--Bonita Beach Road to W. Terry Street	Widen to 6 lanes
--Corkscrew Road to Koreshan Boulevard	Widen to 6 lanes
--Koreshan Boulevard to San Carlos Boulevard	Widen to 6 lanes
--San Carlos Boulevard to Alico Road	Widen to 6 lanes

[2] The build out date was extended by operation of law by three years to December 31, 2010 on August 21, 2007 and another four years pursuant to HB7207 under the Fourth Amendment to the DRI DO. The build out date was also extended thru SB 2156 and State of Emergency for Tropical Storms Debbie and Isaac to March 2, 2017. The applicant submitted a traffic analysis (that included an additional 200 MF units and a 12/31/17 build out scenario) which demonstrated that the DRI will not significantly or adversely impact any relevant road segments. Based on this analysis, concurrency vesting rights for the additional residential units (3800 total SF/MF) are extended to December 31, 2017. ~~However, the initial Transportation Impact Assessment assumed build out in 2007. For this reason, the reference to the 2007 build out date was not altered in this paragraph~~.

changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the Developer, or that the change is clearly established by Lee County to be essential to the preservation of the public health, safety and welfare.

16. The Developer or its successor(s) in title will submit a report biennially to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06(18), Florida Statutes. The Developer must inform successors in title to the undeveloped portion of the real property covered by the Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

17. The County ~~will~~ forwarded certified copies of this Development Order to the SWFRPC, the Developer and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the Developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

Commissioner Manning made a motion to adopt the Fifth Development Order Amendment, seconded by Commissioner Hall. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of August, 2013.

ATTEST:
LINDA DOGGETT, CLERK

BY: Joyce Townsend
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Cecil L Pendergrass, Chair

Approved as to form by:

Michael D. Jacob
Assistant County Attorney
County Attorney's Office

Exhibits:

A. Map H dated ~~June 12, 2001~~ September 11, 2012, stamped received by Community Development ~~June 21, 2001~~ September 28, 2012
B. June 2, 1997 correspondence from Fishkind & Associates [Table 2]
C. Biennial Monitoring Report Requirements

AFFIDAVIT

FOR TESTIMONY TO THE

VILLAGE OF ESTERO VILLAGE COUNCIL

The Brooks Town Center
Vested Rights Claim Determination

I, Walter Keller, PE, AICP, being duly sworn and under oath, depose and state that the following is true based on my own personal knowledge:

1. My resume is attached hereto as Exhibit A. and incorporated herein. I have over forty years professional experience in Traffic and Transportation, Land Development and Urban Planning. I am a member of the American Institute of Certified Planners, the Institute of Transportation Engineers and the American Planning Association. I have testified as an expert in planning, zoning, and transportation analysis and planning in the Florida Courts and in administrative proceedings. My experience includes developments of regional impact as well as planning and development in accordance with the state Community Planning Act.

2. I have prepared this affidavit to provide factual evidence and related expert opinions with regard to the application made by Applicants Long Bay Partners, LLC ("Long Bay"), TOP-CR Associations, LLC ("TOP-CR"), and PAC Estero, LLC ("PAC Estero"), for Determination of Vested Rights.

3. To inform my statements and opinions, I have reviewed the certain application materials and supplements pertaining to the 1997 approval of The Brooks DRO DO and MPD rezoning, Lee County Comprehensive Plan and land development code provisions referenced or observed in the analysis of the developer's applications, and the hearing examiner's Report and Recommendation on the 1997 applications. I have also reviewed the fifth amendment to The Brooks DRI DO, which increased the maximum square footage of commercial/retail/service space

available in the Town Center from 100,000 square feet to 120,000 square feet. All these documents are among the exhibits to the Statement of Facts, the Supplemental Statement of Facts for the Administrative Appeal, and the Supplemental Statement of Facts for the Vested Rights Application. My affidavit incorporates these materials and information in their entirety.

4. According to the above referenced records of the DRI and MPD rezoning in 1997, the project was proposed for land designated rural, wetlands, and suburban on the Lee County Future Land Use Map. Being so designated, the project's proposed density did not comply with the density limits for those designations according to the Lee County Comprehensive Plan. However, the county's plan had an objective and policy (Future Land Use Objective 1.8, and Policy 1.8.1), named the Planned Development District Option (PDDO), that would allow the project without having to amend the future land use designations to a more-dense designation allowing a residential density of development consistent with the project's density. To satisfy the PDDO objective and policy, the project and the development had to be "totally independent of county-subsidized facilities and services."

5. The records show that the developer satisfied the PDDO objective and policy by including substantial commercial development within the project to assure that the residential units and the project density would be totally independent of county-subsidized facilities. The developer's DRI application and reports analyzing the project's impacts on county-subsidized facilities and services indicated that, with the project's commercial uses and space – particularly in the Town Center inside the residential project – the project would not negatively impact the county-subsidized roadway facilities in the area. Concurrently with the DRI application, the developer applied to rezone the property to the county's Mixed Planned Development zoning district.

6. The Lee County zoning ordinance required that, to qualify as a mixed-use planned development, the development had to have a residential development of 300 or more dwelling units (which the developer's 5,200 units satisfied), and a commercial development or activity which is either located on a parcel or 10 or more acres or which may include 100,000 square feet or more of floor area, "to capture within the development a substantial percentage of the vehicular trips that are projected to be generated by those uses at the project's buildout." The developer's project satisfied this latter requirement by including 100,000 square feet of commercial use in the project in the Town Center.

7. To show that the commercial space in the Town Center will capture within the development a substantial percentage of the vehicular trips that are projected to be generated by the 5,200 residences at the project's buildout, the developer included transportation facilities impact analyses which indicated that a substantial percentage of the vehicle trips that would be generated by the 5,200 residences would be captured by (i.e., would, back and forth, go no farther than) the commercial facilities within the project's Town Center. To reinforce accomplishment of substantial percentage of internal capture, the DRI DO contains a provision that "The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network." In 1999 (two years after the DRI-DO and rezoning was approved), the developer's transportation engineer submitted an updated traffic impact statement addendum stating that an "internal capture rate of approximately 32 percent was approved as part of the DRI application."

8. Currently, there are approximately 71,000 square feet of built commercial retail space and uses in the Town Center.

9. The developer's plan is to remove 36,000 square feet of the space (a supermarket space) and, in place of that space and the other remaining vacant commercial parcels in the Town Center, replace that space with a 154 multi-family building. The proposed project will reduce the amount of commercial use space in the Town Center to approximately 35,000 square feet consisting of an approximately 9,000 square-foot bank and approximately 26,000 square feet of strip retail. This will reduce not only the number of trips generated by the residential units staying exclusively within the project, but will also result in more trips travelling off the project to accommodate the commercial needs no longer available in the project.

10. Based on the foregoing facts and my review of the aforementioned documents, it is my expert opinion that the Applicant does not have a right under the DRI DO and MPD zoning to remove 36,000 square feet of the space (a supermarket space) in the Town Center and replace that space, along with the remaining vacant commercial parcels in the Town Center, with a 154 multi-family building, leaving only 35,000 square feet of commercial space in the Town Center at the project's buildout. The elimination of 36,000 square feet of commercial space in this central location of the project will significantly reduce the percentage of internal capture of the trips generated by the residences in The Brooks, and will result in significant increase in the trips generated by the residences on the county-subsidized roadway facilities.

11. This significantly lower percentage of internal capture, and significantly higher number of trips on the county-subsidized roadways, is not what Lee County and the developer understood and relied upon at the time the DRI DO and MPD zoning was approved. Before such a substantial change can be made, it will be necessary to determine whether or not the change will conflict with the DRI DO (which incorporated the developer's application and transportation impact reports and relied on the PDDO Option), the MPD zoning for the property, and the land

development code's essential requirements for an MPD zoning districts. Based on my knowledge and experience with planning and zoning in Florida, including in Lee County and the Village of Estero, these are policy decisions reserved to the Council.

FURTHER AFFIANT SAYETH NOT.

Walter H. Keller, PE, AICP

10/17/21
Date

STATE OF FLORIDA

COUNTY OF MARTIN

SWORN TO and subscribed before me by means of physical presence this 17th day of October, 2021, by Walter H. Keller, PE, AICP, who is personally known to me.

(Notary Seal)

Notary Public

GARY KEITH OLDEHOFF
Commission # HH 138699
Expires June 6, 2025
Bonded Thru Troy Fain Insurance 800-385-7019

Resume

WALTER H. KELLER, PE, AICP - President

Professional Engineer - Florida 1976
American Institute of Certified Planners - 1981
Florida Atlantic University - B.S.E - 1971

Mr. Keller has a **40+** year professional background in Transportation Planning, Traffic Engineering, Comprehensive Planning, Growth Management and Impact Fee Studies. He has served as President of Walter H. Keller, Inc since 1983. In this capacity he has been responsible for major transportation planning studies, comprehensive plans, construction plans for roadway and land development projects, impact fee studies, expert witness and or governmental review services. Mr. Keller is both a Registered Professional Florida Engineer and a Certified Planner and served as the Principal in Charge or the Project Manager for the projects listed below.

Representative Projects:

- 2014 and 2007 SGR & Impact Fee Study, Broward School Board, Ft. Lauderdale, FL.
- 2014 Park & Recreation Impact Fee Update, Dania, FL.
- 2012 Impact Fee Update, Martin County Commission, Stuart, FL.
- 2011 Traffic Assessment E. Tibbetts Hwy, National Rds Authority, Grand Cayman Island.
- 2011 Land Use Amendment Transportation Analysis, Pompano Beach, FL.
- Transportation Operations Study: 5 Interchanges, FL Turnpike, Broward County, FL.
- Key West US1 LOS Study, FDOT, Miami, FL.
- Martin MPO 2025 Transportation Plan, Stuart, FL.
- 2009 Traffic Intersection Studies, National Road Authority, Grand Cayman Island.
- Travel Demand Study: Pt. St. Lucie Urban Area, Tech Rpt 1, FDOT, Ft. Lauderdale, FL.
- Parkland Village Development Approvals, Private Developer, Parkland, FL.
- 2005 Impact Fee Study, Port St. Lucie, FL.
- 2003 Transit Impact Fee & Concurrency Study, Broward County, FL.
- 2010 Pompano Beach Comprehensive Plan, Pompano Beach, FL.
- Broward County Land Use Plan, Fort Lauderdale, FL.
- Growth Management Reviews, FDOT, Miami, FL.
- Transportation Plan for Georgetown, Grand Cayman Island, B.W.I.
- Districtwide Trip Generation Study, FDOT, Fort Lauderdale, FL.
- Treasure Coast Travel Characteristics Study, FDOT, Fort Lauderdale, FL.

Societies and Professional Associations:

- Institute of Transportation Engineers – Life Member
- American Institute of Certified Planners - Member
- American Planning Association - Member

Walter H. Keller, Inc.

Legal Analysis

Vested Right Determinations

Summary of Recommendations:

1. The Application for Vested Right to review and approval (or denial) of final plan by staff only should be denied.

2. The Application for Vested Right to Multi-Family Use in the Town Center should be acknowledged, only to the use, as to Long Bay Partners, LLC only.

3. The Application for Vested Right to 154 multi-Family residential units in the Town Center should be denied.

4. The Application for Vested Right to the Project, i.e., to demolish and remove the 36,000 square-foot supermarket in the Town Center and replace it with a 90,000 square foot multi-family structure with 154 dwelling units and associated amenities should be denied.

Legal Standards to be Observed in the Analysis

Florida law provides that vested rights may be established if a property owner has (1) in good faith reliance, (2) upon some act or omission of government, (3) made such a substantial change in position or has incurred such extensive obligations and expenses (4) that it would make it highly inequitable to interfere with the acquired right, balancing the actions of the applicant and the interest of the governmental regulation. This is the same standard for the vested rights determination that is provided in the Village of Estero Land Development Code, Section 2-506.E. So, it has been found that

> A grant of zoning, coupled with a change of position of a purchasing developer who commences development permitted and authorized by the zoning, is sufficient to establish vested rights that cannot be limited or modified by a new and subsequent policy adopted pursuant to chapter 380 of the Florida Statutes.

Ridgewood Properties, Inc. v. Dep't of Cmty. Affs., 595 So. 2d 1101, 1102 (Fla. 1st DCA 1992).

The Village LDC also recognizes that vested rights may be granted by state statute, and in that case, the Village Council must use the statutory standards. Protection of vested rights in

developments of regional impact from the provisions of local comprehensive plans is also afforded by section 163.3167(5) of the Florida Statutes, which states, in pertinent part:

> Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith.

Accordingly, once a DRI has been approved, the right to develop pursuant to the terms of the DRI vests against subsequent changes in the law that would eliminate the ability to complete the project as it was approved. **But the extent of any vested rights "does not, and cannot, create entitlement to greater rights than those originally obtained."** *Bay Point Club, Inc. v. Bay County*, 890 So. 2d 256, 258 (Fla. 1st DCA 2004).

Two additional principles in the law of vested rights are relevant to this matter. First, a vested right cannot be subject to "conditions of approval." *Bay Point Club, Inc. v. Bay County*, 890 So. 2d 256, 258 (Fla. 1st DCA 2004). For instance, if the local government has the right and ability to place further conditions on a particular use or development than were set forth in the development order, that use or development is not a vested right. The second principle is that development rights to units of density and amounts of intensity created by a DRI DO or planned development zoning that are not specifically allocated to a specific subparcel in the development are not conveyed when the subparcel is conveyed, or specifically vested on that subparcel. *Howard v. Murray*, 184 So. 3d 1155, 1158–59 (Fla. 1st DCA 2015). "When DRI property is subdivided, the contracting parties determine which development rights, if any, are transferred, unless the development order provides otherwise. Development rights need not, indeed, attach to all land within a parcel to which aggregate development rights are assigned." *Howard v. Murray*, 184 So. 3d 1155, 1165 (Fla. 1st DCA 2015).

Analysis of the Applicants' Requests

As an initial matter, only one of the Applicants, Long Bay Partners, LLC, is a proper applicant or subject for vested rights. Long Bay Partners, LLC, is the land owner of the subject property. It is also the entity who owned the entire Brooks property and it was the applicant for and recipient of the DRI DO and rezoning to MPD. TOP-CR Associates LLC possesses a ground lease of the subject property, but there is no evidence that specific development rights in the DRI-DO or the MPD have been assigned to TOP-CR or to the leased property. Consequently, TOP-CR Associates is not a proper applicant or subject for vested rights. Likewise, PAC Estero Apartments, LLC is not a proper applicant or subject for vested rights because it does not own the subject property or any interest in the DRI DO or MDP zoning.

1. Request for finding of vested right to a procedure that only requires review and approval by staff of applications for Final Approval.

The Applicants' request includes the finding of a vested right "to have the redevelopment project at the Town Center authorized, prior to local development order approval, only by application for final plan approval by the community development director based on the criteria in Section A.1.b. and A.1.c". It is the Applicants' contention that Condition A(1) of the DRI DO specifies the process or procedure that must be followed. It is therefore the Applicants' position (with which it is agreed) that Condition A(1) is a procedural law. The subject of the claimed procedure and process is more fully discussed in the analysis of the Appeal of Administrative Determination, but the text and interpretation of DRI DO Condition (A)1 is not material to the issue of vested rights.

Legally, there is no vested right to a ***procedure*** or ***process***. The law is well settled that "No one has a vested right in any given mode of procedure." *Ex parte Collett*, 337 U.S. 55, 71 (1949). The Village has the ability and authority to establish a procedure and process for reviewing and

making a decision regarding applications for development orders and permits, including the application that is the subject of Condition A(1), and such procedure or process will govern. "The fact that [a] change in the law deals with procedure rather than with substance brings it within the generally accepted idea that 'there is no vested right in any particular mode of procedural remedy.'" *Cong. of Racial Equal. v. Town of Clinton*, 346 F.2d 911, 914 (5th Cir. 1964); *see also Hargis v. Florida Real Estate Commission*, 153 So. 2d 836 (Fla. 2d DCA 1963) (There is no vested right in any particular remedy or form of proceeding.); *Harper v. Cooper*, 226 So.2d 878 (Fla 4th DCA 1969) (same). "So long as a substantial and efficient remedy remains or is provided due process of law is not denied by a legislative change." *Crane v. Hahlo*, 258 U.S. 142, 147 (1922)

Therefore, it is recommended that the Application for Vested Right to review and approval (or denial) of a final plan by staff only should be denied.

2. Request for finding of vested right to multi-family units in the Town Center.

The Brooks MPD Zoning provides that multi-family residential use is a permitted use in the Town Center. Based on this provision, and in accordance with the law set forth above, the request should be granted or acknowledged as to Long Bay Partners, LLC only. However, as will be explained more specifically below, the vesting should be <u>only</u> as to the use, and not to any particular or specific number of units.

3. Request for finding of vested right to 154 multi-family units in the Town Center.

Though the DRI DO provides for a maximum number of multi-family units for The Brooks development as a whole, and the MPD Zoning provides that multi-family residential use is a permitted use in the Town Center, there is no express assignment of a number of residential units to the Town Center Parcel in either the DRI DO or the MPD Zoning.

The 2600-acre Brooks DRI appears to still have 154 multi-family units available according to the Fifth Amendment to the DRI DO ("the DRI DO"). However, none of those units is expressly or explicitly allocated and vested to the Town Center. Regarding the Town Center, the DRI DO only states numbers and minimum/maximum thresholds for non-residential uses: Specifically, the DRI DO states:

> The Brooks is a mixed-use development that will consist of: . . . 120,000 square feet of Town Center retail/service/office gross floor area, 120 hotel units, and a maximum of 55,000 square feet of gross floor area of community facilities.

DRI DO, Section 1.A. Likewise, Section II.E.5 of the DRI DO only mentions intensities for commercial and community center uses.

> 5(a) The Brooks includes a Town Center intended to primarily serve the commercial/retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's impacts on the public roadway network. The following conditions apply to the Town Center:
>
> > 1) The Town Center may not exceed 120,000 square feet of office/retail/service gross floor area. The Town Center may not exceed 50,000 square feet of gross floor area of community uses.

As with the DRI DO, the MPD zoning Resolution for The Brooks does not allocate or acknowledge any number of residential units in the Town Center. The language in the DRI DO and the zoning resolution shows that the Town Center is to be an area primarily of commercial, office, and community development and use, and that residential use, if any, would be in addition to, rather than in place of, the commercial, office, and community development. Demonstrably, (and it appears as well as by design), residential use in the Town Center and its configuration was left to be determined at a later time to assure that the commercial/retail/office feature was not being lost or jeopardized.

As indicated above, a vested right cannot be subject to doubt, nor can it be subject to conditions of approval. The absence of any specific allocation of units to the Town Center establishes that there is no vested right to any particular number units in the Town Center. Before there could be a vested right to a particular number of units in the Town Center, any such number would have to be subsequently assigned and approved by the Village Council through a planned development amendment.

This also appears to be consistent with reasonable belief of both the Applicant for the DRI DO and MPD rezoning and the County as to the extent of what had been approved to be developed at the time the DRI DO and MPD rezoning were approved in 1997. It is also corroborated by the Applicant's 4/01 Community Site Plan, attached to this analysis, which was published, displayed, and distributed by the Applicant in 2001. The Community Site Plan states that the only development in the Town Center was to be the Town Center's already constructed community use feature and "Future Commercial." Additionally, "Future Development" is identified in the Key at the top of the Site Plan in a grouping only of residential housing types. And wherever "Future Development" is identified on the Site Plan, the land so identified is particularly suited for residential development. Of course, in or about 2007, the Applicant actually developed the commercial space and use that is on this Town Center property. In short, for purpose of this vested rights analysis, the Community Site Plan appears to be a good representation of what the Applicant intended to develop, and believed could be developed, and relied on.

Therefore, it is recommended that the application for Vested Right to 154 multi-family units in the Town Center be denied.

4. Request for finding of a vested right to change the completed Town Center, i.e., to demolish and remove a 36,000 square foot supermarket in the Town Center and replace it with a 90,000 square foot multi-family structure with 154 dwelling units and associated amenities.

The DRI DO and MPD Zoning were approved by Lee County when the only way the project could have been consistent with the Lee County Plan was by explicitly providing for and building the Town Center with 100,000 square feet of retail/service/office gross floor area, and 50,000 square feet of gross floor area of community facilities. These uses were how the Town Center was intended to primarily serve and satisfy the commercial/retail/service and office needs of the Brooks community, and to internally capture a significant of the total trips generated by the residential units, reducing the project's impacts on the public roadway network. And though multi-family use was listed as a permitted use in the Town Center in the MPD Zoning, there was no explicit assignment of any residential density to the Town Center.

A vested right has to be an established right, and cannot be a matter which can be subject to further "conditions of approval." The circumstances in which The Brooks was approved, as well as the language and framework of the DRI DO and MPD Zoning Resolution, show that commercial/retail/service and office facilities are critical and paramount to the Town Center and the overall Brooks development because they capture a significant volume of trips generated by the residential, and that – without any specific assignment of units – multi-family residential would be supplemental to the commercial/retail/service and office facilities. It is our considered judgment that construction of a particular number of multi-family units, and their assignment to the Town Center, was a subsequent matter for the Board of County Commissioners (and now the Village Council) to examine at a later time to assure that it would not conflict with the essential commercial/retail/service/office component of the project and accord with the Comprehensive Plan, DRI DO, and the MPD.

Given the Applicants' present project and their vested right request is to change the completed Town Center, i.e., to demolish and remove a 36,000 square foot supermarket building

in the Town Center and replace it with a 90,000 square foot multi-family structure with 154 dwelling units and associated amenities, it is recommended that the vested right claim to do so be denied.

Attachment: Community Site Plan

THE BROOKS COMMUNITY SITE PLAN

Graphics and written representations reflected on this drawing do not necessarily reflect actual dimensions, zoning, restrictions, amenities and present and future use of the property depicted and surrounding areas. The developer can assist in obtaining more detailed information about the property.

"The Lee County 2020 Financial Feasibility Transportation Plan shows that Coconut Road will be extended beyond I-75 to the East which will create a fly-over of I-75 at Coconut Road. Neither the State nor Lee County show this crossing as an interchange in their long range transportation plans at this time."

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THE BROOKS

By The Creators of Bonita Bay

The Bonita Bay Group

4/01 10141

APPLICANT INFORMATION FOR VESTED RIGHTS

PAVESE LAW FIRM
est. 1949

NEALE MONTGOMERY
Partner
Direct dial: (239) 336-6235
Email: NealeMontgomery@paveselaw.com

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Box 1507, Fort Myers, Florida 33902 | (239) 334-2195 | Fax (239) 332-2243

October 6, 2021

Nancy E. Stroud
Lewis, Stroud & Deutsch, PL
1875 NW Corporate Blvd. Suite 100
Boca Raton, FL 33431

Via Email: nstroud@nstroudpa.com

RE: Brooks of Bonita Springs MPD/DRI

Dear Ms. Stroud:

Please accept this letter as a response to your inquiry about the vested rights application submitted for The Brooks of Bonita Springs MPD/DRI. You asked several questions seeking clarification.

1. Yes, the applicants submit that they have vested rights to the permitted uses listed in Resolution Z-97-037 which were reconfirmed in Resolution Z-13-0009 for the Town Center "TC".
2. The applicants submit that they have the right to 154 of the remaining vested units. The applicants want to locate the units in the Town Center. The mitigation for all of the development approved in the DRI has been paid.
3. The applicants submit that they have a vested right to process the Application for Final Plan Approval, submitted on June 26, 2020, in accordance with the application submitted and the process in effect when the application was submitted. The application was for an administrative amendment for Final Plan Approval. The criteria and required information for the final plan approval is set forth in Resolution Z-97-037, Section A, 1.
4. Chapter 2015-193, Laws of Florida, provides that all developments of regional impact located within the jurisdictional boundaries or existing on the date of the incorporation of the Village are entitled to all rights, entitlements, covenants, and commitments adopted in the DRI development orders and zoning adopted in conjunction with or pursuant to the DRI development order before 12/31/2014 including without limitation, all rights and entitlements included in any local development orders or plats adopted pursuant to the DRI development order and related zoning. The village shall recognize the property rights and interests held by property owners under such DRI development orders and all other vested property rights held by such property owners as such rights and entitlements existed on or before December 31, 2014.

4632 VINCENNES BOULEVARD, SUITE 101
CAPE CORAL, FLORIDA 33904
(239) 542-3148

4524 GUN CLUB ROAD, SUITE 203
WEST PALM BEACH, FLORIDA 33415
(561) 471-1366

I hope that this addresses your questions and the matter can move forward on October 27, 2021.

Your consideration of this matter is greatly appreciated.

Sincerely,

Neale Montgomery

NM/olr

Village of ESTERO

VESTED RIGHTS DETERMINATION

[Land Development Code Section 2-506.E]

A property owner may apply for a Village determination that it has vested rights for development of its property based on a prior approval.

A pre-application conference is required, along with application form and filing fee.

Case Number: Hole Montes File No. 2020.027
Project Name: The Brooks Town Center

PART 1.
OWNER/ APPLICANT INFORMATION

1. Name of Property Owner PAC Estero Apartments, LLC, TOP-CR Associates LLC, Long Bay Partners, LLC
   Street Address 730 Bonnie Brae St
   City Winter Park State FL Zip 31789
   Phone 407-628-3065 Email tlc@paclanddevelopment.com
2. Name of Agent or Representative Paula McMichael, Hole Montes
   Street Address 6200 Whiskey Creek Drive
   City Fort Myers State FL Zip 33919
   Phone 239-985-1200 Email paulamcmichael@hmeng.com

PART 2.
SUBJECT OF VESTED RIGHTS DETERMINATION

1. Date of pre-application conference _____
2. Current zoning MPD
3. List all zoning resolutions, DRI development orders, and other local development orders applicable to the project. ADD2007-00064, Z-02-006, Z-13-009, DOS2007-00028
4. Written narrative: Provide a written narrative explaining why the applicant believes it has vested rights based on a prior approval such that it is not required to comply with a particular requirement of the LDC. Explain the nature and extent of vested rights. Attach all pertinent documents. Please attach a separate sheet and label as **Written Narrative: Vested Rights Determination**.

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PART 3.
SITE SPECIFIC INFORMATION

1. Owner of Property Long Bay Partners, LLC
2. STRAP No of Subject Property 11-47-25-E4-U2161.1988
3. Street Address of Subject Property 10010-28 Coconut Road
4. Legal Description of Property

PART 4.
CERTIFICATION

I, John Greeley, being first duly sworn, depose and say that the answers, attachments, and exhibits included herewith as part of this application are accurate and true to the best of my knowledge and belief.

- Vice President 6/30/21

Signature of Owner Long Bay Partners, LLC By Date

Bonita Bay Properties, Inc. its Manager by John Greeley Vice President

Name and Title (typed or printed legibly)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 30 day of June, 2021, by John Greeley (name of person making acknowledgement) as Vice-President (type of authority, e.g., officer, manager, trustee) for Long Bay Partners, LLC (Owner).

ROUXANN M. RUBERTE
MY COMMISSION # GG242417
EXPIRES: July 26, 2022

Signature of Notary Public

Rouxann M. Ruberte

Name of Notary (typed, printed or stamped)

[NOTARY SEAL]

Personally known ☒ OR produced identification ☐
Type of Identification Produced

	SUBMITTAL REQUIREMENT CHECKLIST ***Clearly label your attachments as noted in bold below.*** *Please provide 1 collated paper copy and 1 CD or thumb drive of all submitted information.*
☑	Completed Application
☑	Filing Fee
☑	**Written Narrative: Vested Rights Determination**
☐	**Affidavit of Authorization**
☑	**Legal Description**
☐	**Previous Zoning or DRI Actions** (if applicable)
☐	**Development Order Numbers** (if applicable)

Rev. 6/2021

Vested Rights Determination

1.) The subject of the Vested Rights Determination is the property labelled Town Center on the Master Concept Plan contained within Lee County Resolution Z-97-037, approved August 25, 1997, and a parcel designated as Town Center (TC) on Map H of the Brooks of Bonita Springs Development or Regional Impact, #07-9697-133, also approved August 25, 1997.

2.) Under those approvals, the subject property was granted the following uses:

i. Administrative Offices
ii. ALF (Assisted Living Facility) - Density in accordance with Section 34-1494
iii. Animals: Clinic
iv. ATM (Automatic Teller Machine)
v. Banks and Financial Establishments, Groups I and II
vi. Bar and Cocktail Lounge- Limited to one (in compliance with LDC Section 34-1261 et seq.)
vii. Business Services, Groups I and II
viii. Car Wash
ix. Caretaker's Residence
x. Caterers
xi. Civic and Governmental Services
xii. Cleaning and Maintenance Services
xiii. Clothing Stores, General
xiv. Clubs: Country, Commercial, Fraternal, Private- the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail
xv. Consumption on Premises (In compliance with LDC Section 34-1261 et seq.)
xvi. Convenience Food and Beverage Stores
xvii. Cultural Facilities
xviii. Day Care Center, Adult, Child
xix. Department Store
xx. Drive-Through Facility for any permitted use
xxi. Drug Store, Pharmacy
xxii. Dwelling Units:
xxiii. Multi-Family Low Rise (minimum setback of 100 feet from the northeast property line) [emphasis added]
xxiv. Other Residential uses may be permitted as ancillary only to any permitted commercial use subject to review at Final Plan Approval

xxv. Entrance Gate, Gatehouse
xxvi. Essential Services
xxvii. Essential Service Facilities, Group I
xxviii. Excavation: Water Retention
xxix. Fences, Walls
xxx. Food and Beverage Services, limited
xxxi. Food Stores, Group I
xxxii. Gasoline Dispensing System, Special
xxxiii. General and Professional Offices
xxxiv. Hardware Store
xxxv. Health Care Facility, Group Ill
xxxvi. Health Club or Spa
xxxvii. Helistop - limited to emergency use only
xxxviii. Hobby, Toy, Game Shops
xxxix. Hotel, Motel - limited to 120 rooms
xl. Insurance Companies
xli. Irrigation Wells (Essential services)
xlii. Laundry or Dry Cleaning, Group II- excluding Plant
xliii. Massage Establishments
xliv. Medical Office
xlv. Message Answering Service
xlvi. Package Store
xlvii. Parcel and Express Services
xlviii. Parks, Public or Private, All Groups
xlix. Parking Lot:
l. Accessory
li. Garage, Public Parking- limited to two stories and not abutting residential land use
lii. Personal Services, Groups I and Ill
liii. Pet Services
liv. Pet Shop
lv. Photo Finishing Laboratory
lvi. Place of Worship
lvii. Post Office
lviii. Real Estate Sales Office for The Brooks project only (subject to Condition 34)
lix. Recreation - Personal, Private or Public
lx. Recreation Hall
lxi. Religious Facilities
lxii. Rental or Leasing Establishments, Group II
lxiii. Restaurants, Groups I, II, Ill and IV
lxiv. Restaurants, Fast Food
lxv. Self-Service Fuel Pumps and Station
lxvi. Signs, in compliance with The Brooks Sign Schedule

lxvii. Specialty Retail Shops, Groups I and II
lxviii. Studios
lxix. Supermarket
lxx. Temporary Agricultural Uses (subject to Condition 35)
lxxi. Theater, Indoor or Outdoor
lxxii. Variety Store
lxxiii. Any commercial use or professional service which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "TC" District.

3.) The current Development of Regional Impact (DRI) and Zoning approvals permit a total of 2,200 multi-family residential units for the Brooks of Bonita Springs development, of which 1,912 have been permitted and built. There are 288 remaining multi-family residential units remaining to be constructed by the terms of the DRI development order and the approved zoning resolution. No increase in density or intensity within the DRI is being requested.

4.) At no point during the period from the initial approval of the DRI Development Order and the Lee County Zoning Resolution did the owner or applicant surrender any of the permitted uses granted by Z-97-037.

5.) Until Ms. Gibbs' and Ms. Stroud's determinations in June 2020, from the period of the initial approval of the DRI Development Order, at no time did any governmental agency indicate that the owner or applicant had surrendered any of the permitted uses granted by Z-97-037.

6.) At no point during the period from the initial approval until Ms. Gibbs' and Ms. Stroud's erroneous determinations in June 2020, did any governmental agency indicate that the provisions of Section A.1.b. and A.1.c. were being superseded to require a Minor Planned Development amendment rather than Final Plan Approval as specified in the adopted resolution.

7.) Policy FLU-1.7.1 of the Village comprehensive plan states, "Nothing contained in this Comprehensive Plan shall modify or abridge the law of vested rights or estoppel under Florida Statutes or judicial precedent. Developments of Regional Impact maintain their statutory vested rights status pursuant to the provisions of Florida Statutes Chapter 380.06 and Section 163.3167(5)." Ms. Gibbs' and Ms. Stroud's erroneous interpretation is violative of the plain meaning of the Village's comprehensive plan regarding the rights of approved DRI Development Orders.

8.) The mistaken analysis put forward by Ms. Gibbs and Ms. Stroud ignores specific procedures detailed in Z-97-037, and then proceeds to apply the wrong provision

of the Village's land development code (Section 34-380) to the request. Instead of undertaking the analysis as it relates to the Brooks of Bonita Springs MPD at-large, the existing provisions of the Zoning Resolution, and the details of the request, the request was analyzed as if it were a stand-alone parcel instead of a small portion, centrally located, of a much larger development and bounded on all sides by other components of that very same development.

9.) Chapter 380.06(8), Florida Statutes states, in part, "If a developer has, by his or her actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights." If Ms. Gibbs' and Ms. Stroud's interpretation of the DRI development order for the subject property were correct, it would represent a significant, new restriction upon the right of the property owner to proceed with development in accordance with prior approvals.

10.) Ms. Gibbs' and Ms. Stroud's erroneous interpretation is violative of Section 12, Paragraph (7) (c) of the Charter of the Village of Estero which states:

> All approved developments of regional impact (DRIs) located within the jurisdictional boundaries of and existing on the date of incorporation of the village are not required to submit a notice of proposed change application to adopt a new DRI development order as required by s. 380.06(15)(h), Florida Statutes. Effective December 31, 2014, any existing DRI development orders are deemed subject to the jurisdiction of the village without the need to amend the existing DRI development order. Jurisdiction over existing DRI development orders by the village is subject to, without limitation, all rights, entitlements, covenants, and commitments adopted in DRI development orders and zoning adopted in conjunction with or pursuant to the DRI development order before December 31, 2014, including, without limitation, all rights and entitlements included in any local development orders or plats adopted pursuant to the DRI development order and related zoning. The village shall recognize the property rights and interests held by property owners under such DRI development orders and all other vested property rights held by such property owners as such rights and entitlements existed on or before December 31, 2014.

PROPERTY DESCRIPTION:

ALL THAT PART OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT E OF SHADOW WOOD AT THE BROOKS UNIT FIVE, AS RECORDED IN PLAT BOOK 65, PAGE 23 THROUGH 28, LEE COUNTY, FLORIDA; THENCE SOUTH 01°33'57" EAST, A DISTANCE OF 563.70 FEET ALONG THE WEST RIGHT-OF-WAY OF THREE OAKS PARKWAY TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD OF 70.71 FEET, A CHORD BEARING OF SOUTH 43°26'03" WEST, AND ARC DISTANCE OF 78.54 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF COCONUT ROAD; THENCE SOUTH 88°26'03" WEST, ALONG THE NORTH RIGHT-OF-WAY OF COCONUT ROAD A DISTANCE OF 870.87 FEET; THENCE, LEAVING SAID NORTH RIGHT-OF-WAY NORTH 01°34'02" WEST, A DISTANCE OF 382.26 FEET TO A POINT ON THE SOUTH LINE OF TRACT C-1 OF SHADOW WOOD AT THE BROOKS UNIT THREE; THENCE SOUTH 87°34'35" EAST, ALONG SAID SOUTH LINE OF TRACT C-1 A DISTANCE OF 258.81 FEET; THENCE NORTH 85°58'28" EAST, A DISTANCE OF 143.76 FEET; THENCE NORTH 58°20'16" EAST, A DISTANCE OF 30.84 FEET; THENCE NORTH 01°33'57" WEST, A DISTANCE OF 17.34 FEET; THENCE NORTH 58°20'16" EAST, A DISTANCE OF 72.17 FEET; THENCE NORTH 43°47'40" EAST, A DISTANCE OF 195.02; THENCE NORTH 02°43'41" EAST, A DISTANCE OF 2.63 FEET; THENCE NORTH 48°31'36" EAST, A DISTANCE OF 54.00 FEET TO A SOUTHEAST CORNER OF TRACT C-1, AND THE SOUTHWEST CORNER OF TRACT E; THENCE NORTH 88°26'03" EAST, ALONG THE SOUTH LINE OF TRACT E A DISTANCE OF 249.56 FEET TO THE POINT OF BEGINNING.

THE BROOKS TOWN CENTER

Staff Report

for

Village Council

PROJECT NAME:	**The Brooks Town Center**
CASE TYPE:	**Appeal of Administrative Determination**
CASE NUMBER:	**APP2021-E001**
COUNCIL MEETING:	**October 27, 2021**

SUMMARY OF REQUEST

The applicants are appealing the staff administrative action related to the correct process for filing an application for proposed multifamily apartments at The Brooks Town Center.

STAFF RECOMMENDATION

Affirm staff decision

GENERAL INFORMATION

Applicant
PAC Estero Apartments, LLC; TOP-CR Associates LLC; Long Bay Partners, LLC

Authorized Agents
Paula McMichael, Hole Montes; Neale Montgomery, Pavese Law Firm

Property Owner
Long Bay Partners, LLC

Location
Northwest corner of Coconut Road and Three Oaks Parkway

STRAP Number
11-47-25-E4-U2161.1988

Size of Property
10± acres

Zoning
Mixed Use Planned Development (MPD)

Comprehensive Plan Land Use Category
Village Neighborhood 1, Wetlands/Conservation

Project History
The Brooks is a Development of Regional Impact that was originally approved by Lee County in 1997 (State DRI #07-9697-133). At the same time, rezoning was also approved from Agriculture to Mixed Use Planned Development (Lee County Resolution Z-97-037). There have been several amendments since that time. An Administrative Amendment ADD2007-00064 was approved by Lee County in April, 2007, granting Final Zoning Plan Approval for 80,000 square feet of retail development on 9.95 acres in the Town Center.

STAFF ANALYSIS

Request
The action being appealed is staff's July 27, 2020 determination that a Final Plan Approval application is not the correct application for the redevelopment of property, but requires a minor planned development amendment.

The applicant submitted an application for "Final Plan Approval" for property located in The Town Center of The Brooks on July 1, 2021. The proposal is to demolish the now vacant Winn Dixie structure in the shopping plaza, leave the remaining retail buildings, and develop a multifamily apartment building in the parking lot area. The applicant believes "Final Plan Approval" is the correct process for such a proposal. The applicant submits that final plan approval is an administrative (staff) process based on how Lee County processed requests in the past. The Zoning Resolution for The Brooks contains a condition that the applicant believes controls the process. Conditions 1.b. and 1.c. state:

1.b. *Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneously with, a local Development Order that proposes vertical development. The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan and DRI Development Order, while at the same time allowing flexibility in response to changing development practices. Once the application is determined to be sufficient, a decision by Lee County will be rendered within 21 calendar days.*

1.c. The following information must be provided in the application for Final Plan Approval:

1) the type and amount of uses, i.e., the number of residential dwelling units or square feet of commercial uses;

2) *an ongoing tabulation of the total number of residential dwelling units, commercial square footage, and community uses that have received local Development Order approval;*
3) *location and dimensions of access points;*
4) *location and dimensions of internal roadways;*
5) *location and dimensions of buildings/structures and parking spaces/areas;*
6) *setbacks and building heights;*
7) *boundary of development tract;*
8) *adjacent zoning and land uses;*
9) *buffers and landscape strips required or proposed;*
10) *open space, including an ongoing tabulation of required open space; and*
11) *detail drawings showing the application of deviations.*

Final Plan approval was previously granted for this site (the shopping plaza area containing the Winn Dixie and other commercial businesses) in 2007.

It is staff's opinion that redeveloping the property for a different use (proposed residential) would require an amendment to the zoning, not simply another Final Plan, since final plan approval was already granted for a different use. Final Plan is typically granted for a vacant property that proposes a project, to ensure it is compatible and that it meets all parameters of the zoning and Development of Regional Impact, prior to issuance of a development order site plan.

There was no provision in the Lee County Code nor the Village Transitional Land Development Code addressing Final Plan approval or outlining a Final Plan approval process. A zoning condition for Final Plan was included in a few County-approved projects' zoning resolutions. Staff does not agree with applicants' interpretation of the zoning condition.

The applicant's submittal references Lee County Zoning Resolution Z-97-037. That Resolution lists uses for the "Town Center" area of The Brooks. There is a wide variety of listed uses, primarily commercial. "Multi-family, Low Rise" is also listed. The applicant believes that because multi-family is listed in the zoning list of uses, that an amendment is not the correct process, and they may build 154 multifamily apartments in the location and configuration allowable under the original Zoning Resolution.

Staff disagrees. Staff believes that demolishing the existing commercial building and adding a new and different use would require a review as a zoning amendment. The Zoning Resolution does not allocate any specific number of residential units to the Town Center area. The property has been developed as a shopping center. Staff notes that The Brooks DRI states that the Town Center is *"intended to primarily serve the commercial/retail/service needs of the community"*.

Changing the character of the Town Center to a primarily multifamily residential use would require an amendment to the zoning, not a Final Plan approval.

Additionally, if Council agrees with applicants that a zoning amendment is not necessary, staff's opinion is that only the Village Council, and not the staff, may grant Final Plan approval.

APPEAL REVIEW STANDARDS

The Land Development Code states:

In reaching a decision, the Village Council or the PZDB, as applicable, shall consider the competent substantial evidence presented at the hearing and the plain and ordinary meaning of all applicable LDC provisions, unless the language is ambiguous, in which case the intent of the LDC provision applied or interpreted may be considered. The Village Council or the PZDB, as applicable, may reverse, affirm, or modify the administrative decision [emphasis added].

ATTACHMENTS:

Applicants' application is provided separately

PART C: SUPPLEMENTAL STATEMENT OF FACTS

Administrative Appeal – The Brooks Town Center

1. Applicants are appealing my (Mary Gibbs') opinion in the letter of July 27, 2020 that the correct procedure for the redevelopment of the subject property, prior to local development order, is through the process for amendment to The Brooks MPD zoning Resolution, specifically by a minor planned development approval.

2. Applicants' Appeal is set out more fully in Applicants' submission of the Administrative Appeal.

3. The Village Land Development Code, Section 2-506.D.3, provides the following standards for the Council's review of an administrative appeal:

> In reaching a decision, the Village Council or the PZDB, as applicable, shall consider the competent substantial evidence presented at the hearing and the plain and ordinary meaning of all applicable LDC provisions, unless the language is ambiguous, in which case the intent of the LDC provision applied or interpreted may be considered. The Village Council or the PZDB, as applicable, may reverse, affirm, or modify the administrative decision.

Final Plan Approval

4. At the time that Applicants' request for Final Plan Approval was made, and at the time they filed suit in September, 2020, there was no Final Plan Approval process set out in the Village Code. The Village Code at that time was the Transitional Land Development Code, which was the Lee County Land Development Code at the time of the Village incorporation, made applicable by the Village Charter.

5. Final Plan Approval is a term contained in Condition 1 of The Brooks MPD zoning Resolution, which states:

> 1.b. Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development. The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan and DRI Development Order, while at the same time allowing flexibility in response to changing development practices. Once the application is determined to be sufficient, a decision by Lee County will be rendered within 21 calendar days.
>
> 1.c. The following information must be provided in the application for Final Plan Approval:
>
> 1) the type and amount of uses, i.e., the number of residential dwelling units or square feet of commercial uses;
> 2) an ongoing tabulation of the total number of residential dwelling units, commercial square footage, and community uses that have received local Development Order approval;
> 3) location and dimensions of access points;
> 4) location and dimensions of internal roadways;
> 5) location and dimensions of buildings/structures d parking spaces/areas;
> 6) setbacks and building heights;
> 7) boundary of development tract;
> 8) adjacent zoning and land uses;
> 9) buffers and landscape strips required or proposed;
> 10) open space, including an ongoing tabulation of required open space; and detail drawings showing the application of deviations.

Exhibit A-2, p.5 of 28.

6. In 2007, TOP-CR Associates, LLC applied for and obtained Final Zoning Plan Approval of 80,000 square feet of retail uses on the subject property, and subsequently constructed the Final Plan. The retail space has been occupied by retail commercial businesses. Exhibit A-4.

7. While the MPD zoning Resolution condition requires "a decision by Lee County," the Lee County staff in 2007 interpreted the condition to allow a staff approval, and the 2007 Final Zoning Plan was approved administratively. Exhibit A-4.

8. The MPD zoning Resolution does not provide for an additional "Final Plan Approval" when a parcel is proposed to be redeveloped. Exhibit A-2.

9. Under the Village Charter, all powers of the Lee County staff, Hearing Examiner and Board of County Commissioners set forth in the Transitional Land Development Code ("TLDC") remain vested with the Village Council unless and until the Council delegates those powers to another agency, department or entity. See Exhibit C.1, Village Charter Excerpt Section 12(7)(b).

10. The Village Council has not delegated to any other agency, department or entity the power to make Final Plan Approval decisions.

11. If Final Plan Approval were required to be applied to the application for redevelopment, then under the Charter the decision on the Final Plan Approval would be for the Village Council to make. The Village Council also would make the decision under the Village Land Development Code, Section 2-501.F. Exhibit C.2.

Redevelopment of the Subject Parcel

12. The Applicants propose to establish residential uses on the subject property where commercial retail uses obtained Final Zoning Plan Approval, were built and operated.

13. The Brooks MPD zoning Resolution states that:

> 28. This development must comply with the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development.
>
> See Exhibit A.2, p. 23 of 28.

14. The DRI-DO states:

> 11. This Development Order does not negate the Developer's responsibility to comply with all applicable federal, state, regional and local regulations.
>
> See Exhibit A.1, p. 25 of 26.

15. The Transitional LDC at the time that I (Mary Gibbs) issued the July 27, 2020 letter states:

> **Sec. 34-380. Amendments to approved master concept plan.**

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development.

(b) **The Director may approve any change to the development that does not increase height, density or intensity (i.e., number of dwelling units or quantity of commercial or industrial floor area). The Director may not approve a change that will:**

(1) Result in the substantial underutilization of public resources and public infrastructure committed to the support of the development;

(2) Result in a reduction of total open space provided on the master concept plan by more than ten percent or that would decrease the amount of indigenous native vegetation or open space required by the Code;

(3) Decrease preservation areas. Changes to buffer or landscaping areas are permitted but must provide equivalent or better (by comparison with the approved Master concept plan) landscaping or buffering; or

(4) Adversely impact surrounding land uses.

. . .

(c) If a proposed amendment to an approved planned development would, if taken by itself, constitute a major planned development (Development of County Impact- see section 34-341(b)(1)) then the application to amend must proceed as a new and separate major planned development.

(d) All other requests for amendments to a master concept plan or its auxiliary documentation will be treated procedurally as minor planned developments, but with application information and materials specified by section 34-373(a).

(emphasis added). Exhibit C.3

16. I (Mary Gibbs) found that the proposed redevelopment of the subject property changed the uses on the developed site, increasing heights and density, and would potentially adversely impact surrounding land uses, thus requiring a minor planned development application.

(a) All applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced in this charter, shall remain in place until and unless rescinded by action of the council, except that a county ordinance, rule, or regulation which is in conflict with an ordinance, rule, or regulation of the village shall not be effective to the extent of such conflict. Any existing Lee County ordinances, rules, and regulations, as of November 4, 2014, shall not be altered, changed, rescinded, or added to, nor shall any variance be granted, if such action would affect the village without the approval of the council.

(b) The council shall adopt ordinances and resolutions required to effect the transition. Ordinances adopted within 90 days after the first council meeting may be passed as emergency ordinances as provided in this charter, except the transitional ordinances shall be effective for no longer than 90 days after adoption and, thereafter, may be readopted, renewed, or otherwise continued only in the manner normally prescribed for ordinances.

(6) TRANSITIONAL COMPREHENSIVE PLAN.—Until such time as the village adopts a comprehensive plan, the Lee County Comprehensive Plan, as it exists on the day that the village commences corporate existence, shall remain in effect as the village's transitional comprehensive plan. However, all planning functions, duties, and authority shall thereafter be vested in the council, which shall be deemed the local planning agency until the council establishes a separate local planning agency.

(7) TRANSITIONAL LAND DEVELOPMENT REGULATIONS.—To implement the transitional comprehensive land use plan when adopted, the village shall, in accordance with the procedures required by the laws of the state, adopt ordinances providing for land use development regulations within the corporate limits. Until the village adopts the ordinances:

(a) The comprehensive land use plan and land use development regulations of Lee County, as they exist on the date that the village commences corporate existence, shall remain in effect as the village's transitional land use development regulations and comprehensive land use plan.

(b) All powers and duties of the Lee County Department of Community Development, the Lee County Hearing Examiner, and Board of County Commissioners of Lee County, as set forth in these transitional land use development regulations, shall be vested in the council until such time as the council delegates all powers and duties, or a portion thereof, to another agency, department, or entity.

(c) Subsequent to the adoption of a local comprehensive land use plan and subject to general law, the council is fully empowered to amend, supersede, enforce, or repeal the transitional land use development regulations, or any portion thereof, by ordinance.

(d) Subsequent to the commencement of the village's corporate existence, an amendment of the comprehensive land use plan or land use development

regulations enacted by the Board of County Commissioners of Lee County shall not be deemed an amendment of the village's transitional comprehensive land use plan or land use development regulations or otherwise take effect within the village's municipal boundaries.

(8) STATE-SHARED REVENUES.—The village shall be entitled to participate in all revenue sharing programs of the state effective April 1, 2015. The provisions of s. 218.23(1), Florida Statutes, shall be waived for the purpose of conducting audits and financial reporting through the end of fiscal year 2014-2015. For purposes of complying with s. 218.23(1), Florida Statutes, relating to ad valorem taxation, the millage levied by special districts may be used for an indefinite period of time. Initial revised population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research. Should the bureau be unable to provide an appropriate population estimate, the Lee County Department of Community Development shall provide the estimate.

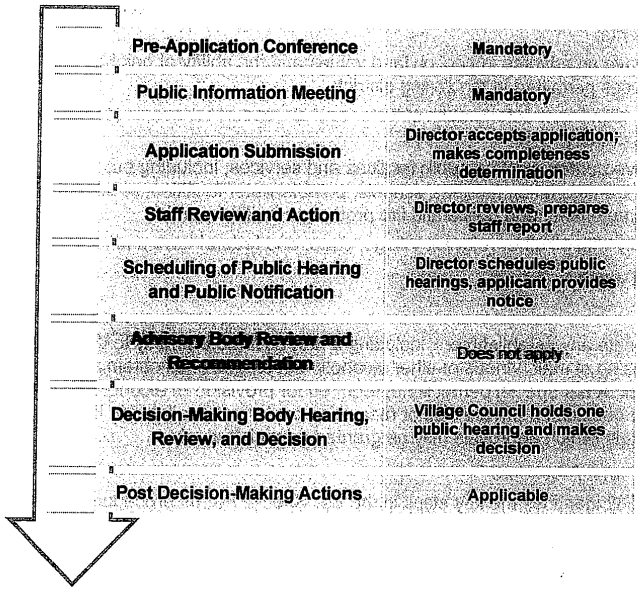
(9) LOCAL REVENUE SOURCES.—The village shall be entitled to receive all local revenue sources available pursuant to general law, including, but not limited to, the local communications services tax imposed under s. 202.19, Florida Statutes. The local communications services tax rate imposed by Lee County will continue within the village boundaries during the period commencing with the date of incorporation through December 31, 2015. Revenues from the tax shall be shared by Lee County with the village in proportion to the projected village population estimate of the Lee County Planning Division compared with the unincorporated population of Lee County before the incorporation of the village.

(10) LOCAL OPTION GAS TAX REVENUES.—The village shall be entitled to receive local option gas tax revenues beginning October 1, 2015, in accordance with an interlocal agreement if executed before June 1, 2015. If such interlocal agreement is not executed before June 1, 2015, the distributions shall be in accordance with the lane mile formula contained in s. 336.025(4)(b)1., Florida Statutes.

(11) CONTRACTUAL SERVICES AND FACILITIES.—Contractual services for police, emergency management, public works, parks and recreation, planning and zoning, building inspection, development review, animal control, library services, and solid waste collection may be supplied by a contract between the village and Lee County, special districts, municipalities, or private enterprise until such time as the council establishes such independent services. However, existing solid-waste contracts shall be honored as required by s. 165.061(1)(f), Florida Statutes, and s. 10, Article I of the State Constitution. Facilities for housing the newly formed municipal operations may be rented or leased until the village selects more permanent facilities.

(12) INDEPENDENT SPECIAL DISTRICTS.—It is recognized that certain services within the municipal boundaries are provided by

Figure 2-501.F.2: Final Plan Approval Procedure Flowchart



A. *Decision-Making Body Hearing, Review and Recommendation*

The Final Plan Approval shall be decided by the Village Council at a quasi-judicial hearing. The decision-making body shall make a decision based on the review standards in paragraph 3 below.

B. *Post Decision-Making Action*

1. The Final Plan Approval shall automatically expire if the use(s) authorized by the Final Plan Approval is not established or substantially commenced within two years after the date of the Final Plan Approval, unless an extension of this time period is authorized in accordance with Sec. 2-408.D, Lapse of Development Approval.
2. All other modifications of a Final Plan Approval may be amended only in accordance with the procedures and standards for its original approval. Any property or portion thereof which has completed development according to a duly approved Final Plan Approval and development order shall be modified pursuant to the processes established for Planned Development modifications in Sec. 2-501.D Planned Development

3. *Final Plan Approval Review Standards*

Final Plan Approval shall be granted only on a finding there is competent substantial evidence in the record that the proposed uses:

A. Will be consistent with the goals, objectives, and policies of the comprehensive plan;
B. Will comply with the zoning resolution and all applicable zoning district standards;
C. Will comply with all standards in Chapter 4: Use Specific Standards;
D. Will be appropriate for its location and is compatible with the general character of surrounding lands and the uses permitted in the zoning district;
E. Will adequately screen, buffer, or otherwise minimize adverse visual impacts on adjacent lands;
F. Will ensure that no site lighting source shall negatively impact adjacent properties and rights-of-way;
G. Will maintain safe and convenient ingress and egress and traffic flow onto and through the site by vehicles and pedestrians, and safe road conditions around the site;

H. Will avoid significant adverse odor, noise, glare, and vibration impacts on surrounding lands regarding refuse collection, service delivery, parking and loading, signs, lighting, and other site elements;

I. Will not have an adverse impact on land values and the ability of neighboring lands to develop uses permitted in the zoning district;

J. Will avoid significant deterioration of water and air resources, scenic resources, and other natural resources;

K. Will not overburden existing public facilities and services, including but not limited to, streets and other transportation facilities, schools, potable water facilities, sewage disposal, storm water management, and police and fire protection facilities; and

L. Will comply with all other relevant Village, state, and federal laws and regulations.

G. Bar Special Permit

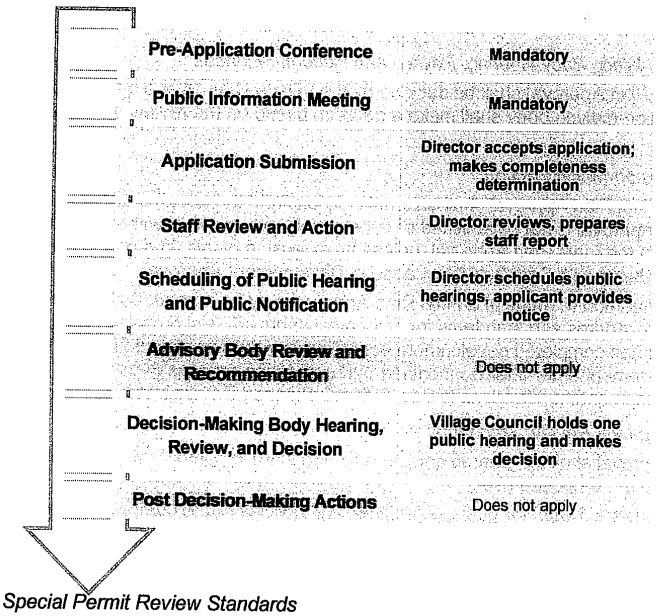
1. *Generally*

A permit to locate any establishment, including a bar, devoted primarily to the retailing and on-premises drinking of malt, vinous or other alcoholic beverages shall obtain an approval from the Village Council. A bar special permit is not required for provision of alcoholic beverages for members and guests of a private club or recreation center not available to the general public, or for hotels/motels, which approvals may be granted administratively.

2. *Bar Special Permit Procedure*

Figure 2.5.1(G)2 identifies the key steps in the Bar Special Permit procedure.

Figure 2-501.E.2: Bar Special Permit Procedure Flowchart



3. *Bar Special Permit Review Standards*

The criteria for a special exception approval, Sec. 2-501.E, shall apply to bar special permit approval. See also Chapter 4: Use Specific Standards.

DIVISION 2. - APPLICATION AND PROCEDURE FOR APPROVAL

Sec. 34-371. - Generally.

All applications for planned development zoning or master concept plan approval must follow the requirements detailed in sections 34-201, 34-202 and 34-203 and the requirements set out in this division.

(Zoning Ord. 1993, § 804.03; Ord. No. 94-24, § 17, 8-31-94; Ord. No. 98-11, § 5, 6-23-98)

. . .

Sec. 34-380. - Amendments to approved master concept plan.

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development.

(b) The Director may approve any change to the development that does not increase height, density or intensity (i.e., number of dwelling units or quantity of commercial or industrial floor area). The Director may not approve a change that will:

(1) Result in the substantial underutilization of public resources and public infrastructure committed to the support of the development;

(2) Result in a reduction of total open space provided on the master concept plan by more than ten percent or that would decrease the amount of indigenous native vegetation or open space required by the Code;

(3) Decrease preservation areas. Changes to buffer or landscaping areas are permitted but must provide equivalent or better (by comparison with the approved Master concept plan) landscaping or buffering; or

(4) Adversely impact surrounding land uses.

If the County determines that an approved administrative amendment was based on inaccurate or misleading information or if the approval did not comply with this Code when the decision was rendered, then, at any time, the Director may issue a modified approval that complies with the Code or revoke the approved administrative amendment.

If the approval is revoked, the applicant may acquire the necessary approvals by filing an application for public hearing in accordance with section 34-373 of this chapter. Decisions by the Director pursuant to this section are discretionary and may not be appealed in accordance with section 34-145(a) of this chapter.

(c) If a proposed amendment to an approved planned development would, if taken by itself, constitute a major planned development (Development of County Impact - see section 34-341(b)(1)) then the application to amend must proceed as a new and separate major planned development.

(d) All other requests for amendments to a master concept plan or its auxiliary documentation will be treated procedurally as minor planned developments, but with application information and materials specified by section 34-373(a).

(e) Notice of an amendment to a master concept plan must be recorded in the same manner as the approved master concept plan itself.

(f) An updated master concept plan of the entire planned development boundary must be submitted for attachment to the resolution adopting the amendment. This is required whether or not the amendment will affect the entire planned development project or just one parcel.

(Zoning Ord. 1993, § 804.03(I); Ord. No. 96-06, § 5, 3-20-96; Ord. No. 01-03, § 5, 2-27-01; Ord. No. 07-24, § 7, 8-14-07; Ord. No. 11-08, § 10, 8-9-11; Ord. No. 13-01, § 6, 2-12-13; Ord. No. 13-10, § 10, 5-28-13)

AFFIDAVIT

FOR EXPERT TESTIMONY TO THE

VILLAGE OF ESTERO VILLAGE COUNCIL

Appeal of Administrative Action -Brooks Town Center

I, Merle Bishop, FAICP, Senior Planner of Pennoni Associates, Inc., being duly sworn and under oath, depose and state that the following is true based on my own personal knowledge and professional opinion:

1. My resume is attached hereto as Exhibit "A" and incorporated herein.

2. To inform my statements and opinions, I have reviewed the application materials pertaining to The Brooks Town Center Appeal of Administrative Action filed by Long Bay Partners, LLC with the Village of Estero. I have also reviewed the Introductory Statement of Facts and the Supplemental Statement of Facts, and associated exhibits, prepared by The Village of Estero Department of Community Development. I have also reviewed relevant provisions of the Transitional Land Development Code. My affidavit incorporates these materials and information in their entirety.

3. I have also interviewed Mary Gibbs, Director of the Village Department of Community Development, and Nancy Stroud, Village Land Use Attorney, regarding the Administrative Action being appealed, and I have visited the Town Center site and surrounding area. This affidavit is a summary of the sworn testimony I would provide at the public hearing and is based upon the materials referenced above, and my investigation interviews and site visit.

A. Who makes the decision?

1. In my experience as a local planning official for both counties and cities, local governments typically change land development processes when necessary and appropriate. As a matter of planning practice, it should be assumed that processes may change over time, and especially in newly incorporated areas. The state planning statute, The Community Planning Act, requires that newly incorporated areas (i.e., new municipalities) must follow the county's comprehensive plan and land development regulations until it adopts a plan and land development regulations of its own, and thus anticipates that newly incorporated areas will adopt their own plans and land development regulations. Once adopted, the new plan and land development regulations govern land use and development. It is common for new municipalities to enact administrative procedures and processes different from the procedures and processes in the county's land development regulations.

2. Once the Village was incorporated, the authority of Lee County for local land development regulation was transferred to the Village. The Village Charter assigns all land development regulatory authority under the Transitional Land Development Code to the Village Council, unless and until the Village Council delegates to other Village

agencies such authority. The Village Council has not delegated authority to make Final Plan approval to any other Village agency, and thereby retains that authority in itself.

3. The MPD zoning Resolution condition 1 reference to Final Plan Approval states only that a decision will be made by "Lee County." It does not state that the Final Plan decision is one by the county staff, and thus does not by its plain and ordinary meaning compel a decision by the staff. Instead, it plainly allows the decision by the elected body, or any other body chosen by the elected body as the decision-making authority.

4. The MPD zoning Resolution also anticipates changes to the Land Development Code over time, and intends that later approvals for the Planned Development will comply with the Code in effect at that later time. Condition 28 states that "This development must comply with all of the requirements of the Lee County Land Development Code at the time of local Development Order approval . . .." Additionally, the Resolution Condition 11 states that "This Development Order does not negate the Developer's responsibility to comply with all applicable federal, state, regional and local regulations."

5. My professional opinion therefore is that under the Village Charter and Ordinance 15-01, and the plain language of MPD zoning Resolution condition 1, the Final Plan decision referenced in Resolution condition 1 is not a staff decision, but a Village Council decision.

6. It is also my professional opinion that it is a reasonable planning practice for the Village Council to retain the decision-making authority for planned developments and their redevelopment, especially in a relatively small jurisdiction such as the Village of Estero and as compared to the much larger Lee County.

<u>B. Is Final Plan Approval the only application and relevant process for redevelopment of the Village Center parcel?</u>

1. I agree with Ms. Gibbs' administrative decision that the appropriate process for redevelopment of the subject property is not simply another application for Final Plan Approval and a local development order, but that a minor planned development amendment is required first.

2. The MPD zoning Resolution condition 1 states that "Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development." Long Bay has already obtained Final Plan approval on the subject property, in 2007, for vertical development of the retail uses which have been constructed on the property. The Final Plan has been implemented and developed, i.e., the vertical (structural) development has been completed. It is my opinion that, reading the condition under ordinary English usage, the condition contemplates and requires only one Final Plan Approval. Once an FPA is issued, then the approval is the final plan for the property and the final development governed by condition 1. Otherwise, the word "final" has no

meaning as it is understood in plain and ordinary English. A subsequent redevelopment of the subject property demolishing and removing the development under the Final Plan, and replacing it with new development for completely different use, cannot be accomplished merely in accordance with condition 1.

3. The condition **does not** state that FPA is the **sole, exclusive** approval necessary to proceed to vertical structural development. Applicants want the Village to read that exclusivity into the language of the condition, but the language does not state or imply that interpretation. Land development regulations typically include many steps in the approval process before development can proceed. In my opinion, a minor planned development amendment is one of those required steps in review of this redevelopment project. This does not preclude a later FPA for the vertical construction of the redevelopment project if the Council decides to retain the FPA process.

4. A minor planned development amendment is an appropriate step for the proposed project, and is required by the Transitional Land Development Code. It is also required by the Resolution, which states in Condition 28 that "This development must comply with all of the requirements of the Lee County Land Development Code at the time of local Development Order approval . . .."

C. The Transitional Land Development Code requires the proposed project to be reviewed as a minor planned development amendment.

1. It is notable that in the 2007 approval by Lee County, the County used the term "Final Zoning Plan Approval" (I have underlined the word Zoning). Based on my experience, this phraseology is a strong indication to me that the approval of a final plan was not merely a "checklist" exercise by the County, but was instead a final zoning action for the subject property, intending to make concrete and final the accomplishment of the master concept plan in the original MPD zoning Resolution. This is typical in many zoning codes for "planned unit development" (PUD) zoning, as well as in zoning practice. In that typical process, a zoning plan is approved in two stages, the first being a "preliminary" plan that is more generalized and conceptual (here the Concept Plan), and the second being a "final" plan that is the more detailed and the ultimate plan for development (here the Final Zoning Plan). Subsequent changes to the PUD final plan in this typical process require an amendment to the PUD. This is the same two step process that applies to plats, as well, with the final plat being the ultimate conclusive approval.

2. The Transitional Land Development Code provides for changes to a planned development in Section 34-380. Amendments may be requested "at any time during the **development** of or useful life of a planned development." Section 34-380(a). Section 34-2 defines "development" as "the construction of new buildings or other structures on a lot, the relocation of existing building, or the use of a tract of land for new uses." The applicant proposed the construction of new buildings on the subject parcel, and so this provision applies.

3. Further in Section 34-380, paragraph (b), the Code allows the Director of Community Development to approve changes to the development, but she may **not** issue approval if those changes increase height, density or intensity, or adversely impact surrounding land uses. See excerpts from paragraph (b):

> (b) The Director **may** approve any change to the development **that does not increase height, density or intensity** (i.e., number of dwelling units or quantity of commercial or industrial floor area). The Director **may not** approve a change that will:
>
> … (4) Adversely impact surrounding land uses.

4. The use of "may" in plain English means that the Director has a choice, in her discretion, to approve any change that is not prohibited. Alternatively, she can decide to allow another appropriate approving body to make the decision. The plain English is supported by the definition of "may" in Section 1-2 of the Transitional Land Development Code:

> The term "may" shall be construed as being permissive and will mean "has discretion to," "is permitted to," or "is allowed to." "May not" shall be construed as being mandatory and will mean "is disallowed from," or "is not permitted to."

It was therefore consistent with the plain language of the Transitional Land Development Code for Ms. Gibbs to determine that the proposed construction of new buildings on the subject parcel, and the new uses proposed for the subject parcel, should not be a staff decision. She had the discretion under the TLDC to make that determination.

5. Even if Ms. Gibbs did not have that discretion, Section 34-380 does not allow a staff member to decide on a change to the Planned Development that increases height or density, or adversely impacts surrounding land uses. The applicant is proposing changes to its Final Plan that change the existing uses on the subject property from commercial to residential, and thereby adding residential density to the site. The proposed changes also increase the height of the existing buildings on the property, proposing four stories where no building on the subject parcel (or anywhere within The Brooks) is constructed at such height.

6. The relevant height and density for purposes of the decision-making authority in Section 34-380 are those that currently exist on the subject property and that were constructed according to the Final Plan approval, not the height and density that were conceptually permitted in the original Master Concept Plan. Good planning practice will not ignore the reality of how a built development functions and will be potentially adversely affected by a partial redevelopment which has different height, density and different use from the existing devleopment. This is particularly true in a Planned Development, defined in Section 34-2 as "a development designed and developed as a cohesive, integrated unit under unified control . . .."

7. The proposed changes, including the building height and the location design that is not integrated into the existing uses in the Town Center, adversely impact the surrounding uses. Those surrounding uses to the proposed project include the single-family residential uses on adjoining tracts, and the commercial uses immediately adjacent to the proposed project. "Surrounding land uses" in paragraph (4) cannot reasonably be implied to mean those land uses at the periphery of the entire MPD boundary. Nor does paragraph (4) explicitly say "surrounding land uses **to the Planned Development**". Such an interpretation would not serve the purposes of the section to ensure that changes with adverse impacts are not made at the staff level, but are made instead by a higher authority.

8. A planned development amendment also is needed because this redevelopment, removing a substantial amount of commercial retail in the Town Center and replacing it with multi-family residential, appears to conflict with the property's DRI DO Application, MPD Zoning Application, DRI DO, and MPD rezoning Resolution. Those applications and approvals intended that the Town Center would serve primarily as a commercial retail/service office area for the Brooks community. The proposed project significantly changes the function of the Town Center, and requires the Council policy level review through a planned development amendment.

4. Based upon the above testimony, it is my professional opinion that the Administrative Action is consistent with the plain and ordinary meaning of the Transitional Land Development Code and the MPD zoning Resolution, and the intent of the Transitional Land Development Code and MPD zoning Resolution as that intent would carry out reasonable and good planning practice.

Signature

10/13/21
Date

STATE OF Florida.

COUNTY OF Polk.

SWORN TO (or affirmed) and subscribed before me by means of x physical presence or _____ online notarization this 13 day of October, 2021, by _____.

Such person Notary Public must check applicable box:
x is personally known to me.
_____ produced his current driver license.

_____ produced _____ as identification.

(Notary Seal)

AMANDA JO NICHOLSON
MY COMMISSION # HH 125282
EXPIRES: May 3, 2025
Bonded Thru Notary Public Underwriters

Notary Public
Printed Name of Notary: AMANDA JO NICHOLSON
Commission Number: # HH 125282.
My Commission Expires: May 3, 2025.

Merle H. Bishop, FAICP, CPM

Senior Planner

EDUCATION

Post Graduate Coursework: Systems Ecology/Resource Management University of Florida (1973-1975)

BS, Forestry, Resource Management and Forest Recreation; University of Florida (1971)

PROFESSIONAL REGISTRATIONS

American Institute of Certified Planners (#5296, 1986)

CERTIFICATIONS/TRAINING

Certified Public Manager, CPM, Florida State University (2002)

PROFESSIONAL AFFILIATIONS

American Planning Association

- College of Fellows Oversight Committee
- AICP Certification Exam Task Force

American Planning Association, Florida Chapter

- Chapter President (2010-12)
- Exec. Committee (2006-12)
- Legislative Policy Committee
- Sustainability Committee
- Emerging Topics Committee

National Society of Certified Public Managers

HONORS/AWARDS

APA Florida Chapter, Distinguished Contribution to the Chapter Award, (2014)

AICP College of Fellows (2003)

Xi Sigma Pi, National Honorary Forestry Fraternity (1971)

EXPERIENCE SUMMARY

Mr. Bishop has over 45 years' experience in providing quality planning, growth management, economic development services, and leadership. He is skilled in building, motivating and leading productive, results-oriented teams to achieve tangible and implementable results. He has a proven reputation for finding practical solutions and providing no-nonsense explanations of complex planning concepts and development requirements.

REPRESENTATIVE ACCOMPLISHMENTS

Pennoni Associates Inc. – Senior Planner (Part-time) 4/2019 – Present

Merle leads the firm's planning practice in Florida providing professional planning services to public and private clients. He serve as the "City Planner" providing "on-call" services to the City of Eagle Lake, FL. Provided expert advice and assistance related to several economic development initiatives in Winter Haven, including redevelopment of the 7th Street, SW corridor, development of City owned property at wastewater treatment plant #3. Researched and developed an evaluation for certification of the ability of Winter Haven to comply with existing bond covenants for current and future utility infrastructure.

City of Winter Haven - Growth Management Department Director 8/2013 – 4/2019

Oversaw the growth management functions for a vibrant, rapidly growing central Florida City with a population of over 45,000. This included comprehensive planning, zoning, land use and economic development, engineering, transportation planning, building permitting & inspections, two Community Redevelopment Areas (CRAs), the CDBG program, and a regional airport (Gilbert Field). Provided management oversight for the preparation of a Downtown Transportation Master Plan. Provided oversight to an update of the Airport Master Plan and multiple airport construction projects.

Kimley-Horn and Associates - Senior Planner/Project Manager 1/2008 – 7/2013

Provided planning services to public and private clients throughout Florida, including Polk, Gadsden, and Volusia Counties. Participated on a three-member team to create a "Complete Streets" Policy and Handbook for the Polk Transportation Planning Organization. The Complete Streets Policy was adopted by all 18 local governments in Polk County. Prepared a Master Plan for a 16,000-acre resource based, recreation resort known as "Streamsong," which was approved by Polk County and developed by The Mosaic Company on reclaimed phosphate minded land.

Polk County BoCC - Growth Management Director 11/2003 – 12/2007

Managed the planning functions of Polk County, FL, including comprehensive planning, land development (zoning), Transportation Planning Organization (MPO), county engineering, building permitting & inspections, code enforcement and four Community Redevelopment Areas (CRA). Served on the Polk TPO Technical Advisory Committee including Vice-Chairman and Chairman. Served as the County representative on the Central Florida Regional Planning Council.

Polk County BoCC - Planning Division Director 10/1995 – 11/2003

Managed a professional staff of 25 planners to provide comprehensive planning and land development regulation services for a large Central Florida County. Rewrote the County's zoning regulations to create a unified code which changed the County's approach to land development regulations from that of traditional (Euclidean) zoning to boarder, mixed land uses classifications consistent with the Comprehensive Plan policies and future land use map.

Pennoni

Merle H. Bishop, FAICP, CPM

Senior Planner

Polk County BoCC - Community Development Department Director **05/1984 – 10/1995**

Managed the County planning program which included comprehensive planning, transportation planning, zoning, building permits & inspections, code enforcement, engineering services, social services, and the CDBG program. Worked with a large, diverse citizen's advisory committee to rewrite the Comprehensive Plan. Prepared the "Critical Area Management Plan," which established land use politics and a future land use map for the Green Swamp Area of Critical State Concern. The Plan establishes policies and regulations, which protect resources of the Green Swamp, especially wetlands, groundwater and wildlife habitat. The Plan was adopted by the Board of County Commissioners in 1994 as part of the County's Comprehensive Plan.

Polk County BoCC - Various positions from Assistant Planner to Assistant Planning Director **04/1975 – 05/1984**

Managed the County's planning functions, including preparation of the County's first Comprehensive Plan and a comprehensive rewrite of the zoning code. Initiated and led a local planning assistance program to provide planning & zoning services to four small municipalities. Principal author of the County's first recreation and open space master plan, which included recommendations for recreation Level of Service standards, identification of recreation deficiencies, and recommendations for providing future recreation and open space. Worked with the Florida Department of Community Affairs (FDCA) in the development of state legislation for the "Green Swamp" Area of Critical State Concern. This effort included the development of specific language for proposed legislation requiring protection of this environmentally sensitive area. The Bill provided for development of local land development regulations and the establishment of a "Critical Area Management Committee."

University of Florida, Center for Wetlands – Graduate Assistant **08/1973 – 03/1975**

Worked on research regarding the impact of cypress (domes) wetlands on pine-flatwoods forest. Created a detailed land use and vegetative cover map of Alachua County, FL. Participated in a graduate, multi-disciplined planning studio which involved development of GIS mapping and data analysis for the County. This was used to perform data analysis on different growth scenarios for Alachua County and the City of Gainesville. An optimum growth pattern was identified based on environmental impacts using an "Ian McHarg" land use analysis method. The work performed by the Center for Wetlands and the planning studio were the forerunners of the Department of Urban and Regional Planning at the University of Florida.

Florida Department of Agriculture and Consumer Services, Division of Forestry – Forester **11/1971 – 8/1973**

Worked as a Forester in the Division's Bureau of Education for six months. Supervised a topographical survey for a proposed recreational water impoundment area within the Blackwater River State Forest. Worked as a County Forester for Orange and Osceola Counties advising landowners on forest management practices. Worked closely with city/county agencies on urban forestry and environmental issues. Worked with the East Central Florida Regional Planning Council on projects including a recreation facility survey. Designed and performed the first tree canopy assessment for the City of Orlando, FL. This survey provided valuable data on urban forestry and tree protection efforts within the City. Results of the survey were reported in the Orlando Sentinel newspaper.

PUBLICATIONS AND PRESENTATIONS

- 2013 – 2021 – "AICP Ethics Cases of the Year" American Planning Association, Florida Chapter Annual Conference.
- 2015 – 2021 – "Planning Official Training" American Planning Association, Florida Chapter Annual Conference.
- 2017 - "Measuring Success of Parks & Public Spaces" Florida Recreation & Parks Association (FRPA), Central Florida Chapter, Lakeland, FL
- 2017 - "The Economics of Parks & Recreation" Florida Recreation & Parks Association (FRPA), Annual Conference, Orlando, FL
- June 2015 - "Guiding Growth and Development for Maximum Benefit: What Makes a City Great?" Florida City/County Managers Association (FCCMA), Annual Conference, Tampa, FL
- April 2013 - "Resiliency: Beyond Sustainability" American Planning Association (APA) – National Conference, Chicago, IL
- June 2013 - "Great Public Spaces in Florida" Florida City/County Managers Association (FCCMA), Annual Conference, Orlando, FL
- June 2012 - "Envisioning 2020 Future of Florida Local Government" Florida City/County Managers Association (FCCMA), Annual Conference, Bonita Springs, FL

Pennoni

APPLICANT INFORMATION
FOR ADMINISTRATIVE APPEAL

1. Application Appeal of Administrative Action

3. Action Being Appealed 2020-07-27 Sufficiency Letter

4. Summary of Action Being Appealed

4a. Summary Attachment Brooks Resolution Z-97-037

4b. Summary Attachment Brooks ADD2007-00064 (Final Plan Approval)

4c. Summary Attachment Brooks Resolution Z-13-009

4d. Summary Attachment 1 2020-09-17 Gibbs letter re not process application

5. Reason for Appeal

5a. Resolution Z-97-037 Final Plan Approval Conditions

5b. Resolution Z-97-037 Town Center TC list of permitted uses

5c. ADD2017-E012 Pelican Landing Lot 5 Hotel – Staff Report for Council 4-11-18

5d. ADD2017-E012 Pelican Landing Lot 5 Hotel – Planning and Zoning Board Minutes 03-20-18

5e. Resolution Z-97-037 Town Center list of property development regulations

Village of ESTERO

APPEAL OF AN ADMINISTRATIVE ACTION OR INTERPRETATION TO THE VILLAGE COUNCIL

[Land Development Code Section 2-409.A.2]

An administrative action or interpretation may be appealed by the Applicant.

The appealing party must file a Notice of Appeal no later than 30 calendar days after the administrative official renders the action. The Notice of Appeal must be filed with the Department of Community Development on this form and the filing fee paid. A Notice of Appeal is not filed until payment of the filing fee.

All administrative appeals will be heard in accordance with the provisions of Land Development Code Section 2-409.A.2.

Case Number Being Appealed: Hole Montes file No 2020.027
Case Name: The Brooks Town Center

PART 1.
APPELLANT INFORMATION

1. Name of Appellant PAC Estero Apartments, LLC, TOP-CR Associates LLC, Long Bay Partners, LLC
   Street Address
   City State Zip
   Phone Email
2. Name of Agent or Representative Paula McMichael / Neale Montgomery
   Street Address 950 Encore Way / 1833 Hendry Street
   City Naples / Fort Myers State Florida Zip 34110 / 33901
   Phone 239-254-2000 / 239-336-6235 Email PaulaMcMichael@hmeng. com / nealemontgomery@paveselaw.com
3. Name of Property Owner Long Bay Partners, LLC
   Street Address 730 Bonnie Brae Street
   City Winter Park State FL Zip 32789
   Phone 407-628-3065 Email tlc@paclanddevelopment.com

PART 2.
SUBJECT OF APPEAL

1. Action being appealed (attach and label as **Action Being Appealed**):
   ☑ Copy of Administrative Action being appealed
   ☐ Copy of Administrative Interpretation being appealed.
2. Summarize the action that is being appealed. (Note; If additional space is needed, please attach a separate sheet and label as **Summary of Action Being Appealed**.)
   Please see separate sheet
3. Specifically state the error you believe the administrative official made, the relief sought, and the legal basis for the requested relief. The failure to state the error made by the administrative official may result in dismissal of the appeal. (Note: If additional space is needed, please attach a separate sheet and label as **Reason for Appeal**.)
   Please see separate sheet

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4. Name(s) of Administrative Official and Department making original interpretation:
Mary Gibbs: Director of Community Development

PART 3.
SITE SPECIFIC INFORMATION

1. Owner of Property Long Bay Partners, LLC
2. STRAP No of Subject Property 11-47-25-E4-U2161.1988
3. Street Address of Subject Property 10010-28 Coconut Road
4. Council District District Six

PART 4.
CERTIFICATION

I, John Greeley, being first duly sworn, depose and say that the answers, attachments, and exhibits included herewith as part of this application are accurate and true to the best of my knowledge and belief.

Signature of Applicant Long Bay Partners, LLC BY - VICE PRESIDENT Date 6/30/21

Bonita Bay Properties, Inc. its Manager by John Greeley Vice President
Name and Title (typed or printed legibly)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of [X] physical presence or [ ] online notarization this 30 day of June, 2021, by John Greely as Vice-President for ~~PAC Estero Apartments, LLC, TOP OR Associates LLC~~ Long Bay Partners,LLC

ROUXANN M. RUBERTE
MY COMMISSION # GG242417
EXPIRES: July 26, 2022

[NOTARY SEAL]

Signature of Notary Public

Rouxann M. Ruberte
Name of Notary (typed, printed or stamped)

Personally known [X] OR produced identification [ ]
Type of Identification Produced _____

SUBMITTAL REQUIREMENT CHECKLIST *Clearly label your attachments as noted in bold below.*
✓ Completed Application
✓ Filing Fee
✓ Copy of Administrative **Action Being Appealed**
✓ **Summary of Action Being Appealed**
✓ **Reason for Appeal**

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Administrative Action Being Appealed

The Village of ESTERO
www.Estero-fl.gov

William Ribble
Mayor
District One

Katy Errington
Vice Mayor
District Four

Howard Levitan
District Two

Jon McLain
District Three

James Boesch
District Five

Nick Batos
District Six

Jim Wilson
District Seven

Steve Sarkozy
Village Manager

Burt Saunders
Village Attorney

July 27, 2020

Ms. Paula McMichael, AICP
Hole Montes
6200 Whiskey Creek Dr.
Fort Myers, FL 33919

Re: The Brooks Town Center
Completeness Review of Zoning Application

Dear Ms. McMichael:

The staff has reviewed the application you submitted on June 30, 2020 for The Brooks Town Center (Hole Montes File No. 2020.027). Our review indicates that the application is not complete and that additional information is necessary. Please see the attached list as well as email comments from Lee County Solid Waste.

If the requested items are not provided within 60 days of the date of this letter, the application will be considered withdrawn.

Please feel free to contact me if you have any questions.

Sincerely,

Mary Gibbs

Mary Gibbs, FAICP
Community Development Director
Village of Estero

Attachments:
Staff Review Comments
Memorandum from Village Land Use Attorney
Lee County Solid Waste Comments

Village of Estero
9401 Corkscrew Palms Circle • Estero, Florida 33928
Phone: (239) 221-5035 | Fax: (239) 494-5343

THE BROOKS TOWN CENTER

Staff Review Comments

Application

Please submit the correct application form "Application for Planned Development Public Hearing" (see attached memorandum from Village land use counsel Nancy Stroud.)

Please submit the application fee differential of $6,500 ($8,000 - $1,500).

Items missing from the application include but may not be limited to the following:

- Property owners list
- Property owners map
- List of surrounding property owners
- Map of surrounding property owners
- Mailing labels
- Density calculation
- Topography, Soils Map, FLUCCS Map, Rare and Unique Uplands Map and Flowways Map (or submit waiver request)
- Master Concept Plan
- Public Information Meeting summary (as noted, can be submitted later)
- Administrative Amendment - (ADD2007-00064) attachments are not legible

Ownership and Disclosure Forms

The applicant is listed as PAC Land Development Corporation but the owner is listed as Elias Vassilaros of Courtelis Company. Additionally, county property appraiser records indicate the property owner as Long Bay Partners, LLC. Please clarify the ownership and authorization.

The notarized application form also contains an asterisked handwritten notation of TOP-CR Associates, LTD. and Newcaster DevCorp, Inc. Please clarify the relationship of these companies and the ownership.

Request Statement

Zoning History – The narrative (page 1) states that The Brooks MPD/DRI is vested under Florida Statutes, and refers to the June 11, 2020 memorandum from attorney Neale Montgomery. Please explain the basis for your claim and where it is referenced in the memo.

The narrative states that the Residences at The Brooks are proposed as an "upscale" rental community. Please provide specifics as to the "upscale" definition. What are the proposed unit sizes, and the proposed breakdown of unit types and mix?

The narrative further states that the project amenities will be "first class." Please explain the amenities. Please explain the clientele the project is trying to attract as stated in the narrative.

Landscaping – The narrative states that the landscaping will be augmented. Please provide specifics. This should be included in the Pattern Book.

Criteria per Z-97-037 – Please provide more detail on the tabulation table, including the following:

- Community use square feet – Does this include recent changes to The Brooks fitness center?
- Service/retail/office square feet – Where is the 40,000 sf previously approved?
- Dwelling units – Provide a breakdown by location, single family and multifamily, not just totals.

Paragraph 1 says the applicant is asking for 35,334 sf of retail and 154 multifamily dwelling units. Please clarify if the sf for the supermarket and outparcel is proposed to be deleted.

<u>Exterior Elevation Drawing</u>

- It appears that a height deviation will be necessary as the height exceeds 50 feet (LDC Section 33-229).

As a note, the building in the Exterior Elevation black and white diagram appears to be very linear and horizontal. The project massing is of concern.

<u>Traffic and Parking</u>

- Where are the 338 required parking spaces located on the site plan?
- Will parking spaces be assigned?
- How will the parking be controlled to ensure that spaces are in proximity to the apartments and not in the retail area?
- Where will guest parking be located and will it be identified?
- How will the parking spaces for the multifamily be differentiated from the commercial parking spaces?
- Will there be any parking agreements?
- What is the covered parking that is shown on the site plan? Garages? Carports?
- How many covered parking spaces are proposed?

Backout parking is not permitted where the access must meet roadway standards. The site plan should be reconfigured, or a deviation will be needed for backout parking due to the number of units (LDC Section 10-296(r)).

Line of Sight Exhibit

- The line of sight exhibit does not explain where the measurement is from. What adjacent residence?
- Please provide line of sign exhibits to the north, east and south as they will all be affected.
- Please provide buffer details and whether the view will be completely obscured.

Conceptual Site Plan

The table on this site plan shows a "minimum" building height of 65, 45 and 50 feet. This should be "maximum." Please correct.

- What does the existing/proposed green area shown on this plan consist of?
- What is the building size (sf) of the multifamily development?

Pattern Book

Please provide a Pattern Book (LDC Sections 33-391 – 33-393). Many of the elements of a Pattern Book are already provided in the application and can be supplemented with the remaining items. The Pattern Book should indicate connectivity between the external sidewalks and streets, the commercial and residential areas, as well as gathering spaces or public areas.

- Are the project amenities all internal to the building?
- The Pattern Book should include design for the maintenance and dumpster areas, as well as any garages or carports.
- The Pattern Book should include color architectural elevations of all sides of the building (without the landscaping component). The conceptual renderings submitted on July 7th are more of an artist rendering, with a perspective that does not appear to be to scale.
- The Pattern Book should also provide information on the parking lot lighting and design. The narrative mentioned that there would be new LED site lighting to provide a cohesive design for the entire center. Please explain.

The Pattern Book needs to show landscaping buffers (existing and proposed).

Landscape Conceptual Plan

The landscape schematic provided contains no details and does not appear to be consistent with the rendering.

- Please provide the open space breakdown.
- Please provide details of the enhanced open space and landscaping referred to in the narrative.

Other

What is the plan for the existing retail area? Will the uses be retained and how specifically will they be integrated into the multifamily parcel to create a synergistic and cohesive mixed use development?

Reference was made to a subdivision. If the intent is to subdivide this property, it must show details and how it will be accomplished. The multifamily parcel does not stand on its own in terms of meeting code requirements and if sold off later, this will create a nonconformity issue along with insufficient parking.

Nancy E. Stroud, P.A.

Nancy E. Stroud, Esq.

Direct Dial: 561 826 2804

July 10, 2020

Ms. Neale Montgomery
Pavese Law Firm
1833 Hendry Street
P.O. Box 1507
Fort Myers, FL 33902

Dear Neale:

The Village of Estero has requested that I respond to your Memorandum of June 11, 2020 regarding the application for a Final Plan Approval for the Brooks' Town Center. Your memo in response to mine of May 19 was received by the Village on June 30 and forwarded to me.

I have carefully reviewed the points in your Memorandum. I must respectfully disagree that the application can be processed as a Final Plan Approval. The correct process, and the only one set out in the Land Development Code for such situations, is the minor Planned Development amendment pursuant to Section 34-380 and Section 34-341(b)(2)d.

As you know, the actual approval granted in 2007 by ADD2007-00064 FPA for the Town Center is described by its own terms as the "Final Zoning Plan Approval." The plain English of the approval states that it is not only a zoning approval, but it is Final. When I prepared my May 19, 2020 memo, I was aware of Resolution Z-13-009. That resolution does not amend the Town Center and in fact states that administrative approvals granted after the adoption of Zoning Resolution Z-97-037 (such as that granted in 2007) "remain in full force and effect."

My opinion of course is limited to the correct process that applies, and does not assume any particular result from the Village's consideration of the application under the correct process. As a note, Village staff has begun its review of the application, but will be applying the correct process, that is, for a minor Planned Development amendment.

Sincerely,

Nancy

Nancy E. Stroud
Village of Estero Land Use Attorney

NES/bh

Cc: Mary Gibbs, Community Development Director

1875 N.W. Corporate Blvd., Suite 100, Boca Raton, Florida 33431
Telephone — 561 826 2800 Facsimile — 561 826 2828

Mary Gibbs

From: Kantor, Brigitte <BKantor@leegov.com>
Sent: Friday, July 24, 2020 10:34 AM
To: Mary Gibbs
Cc: Walter McCarthy
Subject: Village of Estero DCI2020-E001 - The Residence at Brooks Town Cente

[**NOTICE:** This message originated outside of the Village of Estero -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Hello Mary,
I have reviewed the project documents submitted for the Solid Waste Department and find the dumpster enclosures sufficient for the commercial businesses and bank building. However, I have concerns with the multi-family compactor enclosure. Truck access, in a straight line to the enclosure gate, must be at minimum 75' in order to pull the full compactor for service (see snip of area below). The area shown in the Master Development Plan appears to be short of that. The enclosure for the recycling material is sufficient.
I apologize for the late submittal of my concerns to you and hope this does not have a negative effect on your response time to the applicant.

Respectfully,
Brigitte

Brigitte Kantor | Manager, Public Utilities
Lee County Solid Waste Division
(239) 533-8000, Extension 38005 | fax: (239) 533-8025
BKantor@leegov.com

Website: www.leegov.com/solidwaste

We value your input. Please take our brief customer satisfaction survey. http://leegov.com/solidwaste/customersurvey

To learn how to handle your debris before and after a storm, please click on the following link: https://www.leegov.com/solidwaste/hurricane

Lee County
Southwest Florida

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SUMMARY OF ACTION BEING APPEALED

The property owner and applicant submitted an application to the Village of Estero for a Final Plan Approval as required by the Mixed Planned Development zoning, Resolution Z-97-037, as subsequently amended with the most recent amendment being Resolution Z-13-009. Resolution Z-97-037 (Exhibit "A"), Administrative Approval ADD2007-00064 (Exhibit "B"), and Resolution Z-13-009 (Exhibit "C") are attached here to and made a part hereof.

The applicant received a request for additional information or sufficiency letter dated July 27, 2020, from Mary Gibbs, the Community Development Director. The applicant provided a response on or about August 20, 2020. The July 27, 2020, sufficiency letter from Mary Gibbs submits that the applicant did not submit the correct application. The letter submits that the applicant should have filed an "Application for Planned Development Public Hearing". The error is the assertion that the applicant should not have used the Application for Final Plan Approval to request Final Plan Approval as provided for in the approved zoning resolution. The July 27, 2020, request for additional information includes a statement, "see attached memorandum from Village Land Use counsel Nancy Stroud." The attachment is a letter dated July 10, 2020, which states: "The Village of Estero has requested that I respond to your Memorandum of June 11, 2020" included with the application. The letter submits that the application for Final Plan Approval cannot be processed as a Final Plan Approval because of the prior issuance of the Administrative Approval 2007-00064 FPA for the Town Center is a final zoning action. Ms. Stroud submits that in her opinion the correct process to obtain the Final Plan Approval is a minor Planned Development Amendment, and the staff has undertaken a review of the application as a zoning amendment.

Subsequent to the Hole Montes submission of the August 20, 2020 sufficiency response the Village did not send the applicant a letter requesting additional information and the applicant did not receive a letter finding the application sufficient. The applicant's agent received a letter from the Community Development Director, Mary Gibbs, dated September 17, 2020, which advised the applicant's agent that the Village would not process the application until the appropriate process and procedure for addressing the application was determined. The letter is attached hereto and made a part hereof as Exhibit "D".

The error is the Community Development Director's determination that the applicant's application requesting Final Plan Approval, which is required by Section A. CONDITIONS, 1.b., and 1.c. of Resolution Z-97-037, was filed on the incorrect form, and the further determination that the multi-family residential uses approved in Resolution Z-97-037 were essentially eliminated from the list of permitted uses in the Town Center and the applicant must submit an application for a minor planned development

to add the residential multi-family uses back into the Town Center. Resolution Z-13-009 was approved at a public hearing. The zoning resolution was approved after the 2007 Administrative Approval, and the Resolution continues to identify multi-family as a permitted use in the Town Center.

The action that is being appealed is the July 27, 2020 determination that a Final Plan Approval application is not the correct application to obtain Final Plan Approval and the determination that the property has to be rezoned in order to construct multi-family in the Town Center even though it is listed as a permitted use, and the September 17, 2020 determination that the application would not be processed.

EXHIBIT "A"

RESOLUTION Z-97-037

RESOLUTION NUMBER Z-97-037

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Long Bay Partners LLC and Edward J. McArdle, Trustee, in reference to The Brooks of Bonita Springs, filed an application for:

a) Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2,492± acres, State DRI #07-9697-133; and

b) A rezoning from Agricultural (AG-2) to Mixed Use Planned Development (MPD); and

WHEREAS, the subject property is located at 23301 South Tamiami Trail, Bonita Springs, and is described more particularly as:

LEGAL DESCRIPTION: in Sections 02, 03, 09, 10 and 11, Township 47 South, Range 25 East, Lee County, Florida:

PARCEL 1

A portion of the South Half (S½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,542.33 feet;
THENCE run S88°02'34"W for a distance of 1,221.61 feet to the POINT OF BEGINNING of the herein described parcel of land;
THENCE continue S88°02'34"W for a distance of 750.33 feet to a point on the Easterly right-of-way line of US Highway No. 41 (State Road No. 45, a 200-foot right-of-way);
THENCE run S00°15'56"E along said Easterly right-of-way line for a distance of 553.06 feet to the beginning of a tangential circular curve, concave Easterly;
THENCE run Southerly along said Easterly right-of-way line, and along the arc of said curve to the left, having a radius of 5,605.39 feet, through a central angle of 06°12'58", subtended by a chord of 607.83 feet, at a bearing of S03°22'24"E, for a distance of 608.13 feet;
THENCE run N88°07'51"E for a distance of 747.23 feet to a point of intersection with a non-tangential circular curve, concave Easterly, whose radius point bears N82°31'42"E a distance of 3,909.60 feet therefrom;
THENCE run Northerly along the arc of said curve to the right having a radius of 3,909.60 feet through a central angle of 08°29'31", subtended by a chord of 578.92 feet, at a bearing of N03°13'32"W, for a distance of 579.45 feet to the end of said curve;

THENCE run N00°15'56"W for a distance of 583.09 feet to the POINT OF BEGINNING.
Containing 19.948 acres, more or less.

Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W; and

PARCEL 2
A portion of the North Half (N½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,674.19 feet to the East Quarter corner of said Section 09;
THENCE run N01°15'50"W along the East line of said Section 09 for a distance of 68.17 feet;
THENCE run S88°02'34"W for a distance of 1,555.19 feet to the POINT OF BEGINNING of the herein described parcel of land;
THENCE continue S88°02'34"W for a distance of 413.96 feet to a point on the Easterly right-of-way line of US Highway 41 (State Road No. 45, a 200 foot right-of-way);
THENCE run N00°15'56"W along said Easterly right-of-way line for a distance of 415.00 feet;
THENCE run S46°02'16"E for a distance of 577.45 feet to the POINT OF BEGINNING.
Containing 1.971 acres, more or less.

Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W; and

PARCEL 3
A parcel of land located in Sections 02, 03, 10, and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Northwest corner of Section 03, Township 47 South, Range 25 East, Lee County, Florida;
THENCE run S00°46'22"E along the West line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 100.02 feet to a point 100.00 feet South of, as measured at right angles to, the North line of the Northwest Quarter (NW¼) of said Section 03;
THENCE run N89°51'03"E parallel with the North line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 23.35 feet to a point on the South right-of-way line of Williams Road, a 100.00 foot right-of-way,

the same being the POINT OF BEGINNING of the parcel of land herein described;
THENCE continue N89°51'03"E along said parallel line and along said South right-of-way line for a distance of 2,623.11 feet;
THENCE run N89°51'33"E parallel with the North line of the Northeast Quarter (NE¼) of said Section 03 and along said right-of-way line for a distance of 975.29 feet;
THENCE run N00°08'27"W along said right-of-way line for a distance of 100.00 feet to a point on the North line of the Northeast Quarter (NE¼) of said Section 03;
THENCE run N89°51'33"E along the North line of the Northeast Quarter (NE¼) of said Section 03 for a distance of 1,664.48 feet to the Northeast corner of said Section 03, the same being the Northwest corner of Section 02; Township 47 South, Range 25 East;
THENCE run N89°51'16"E along the North line of the Northwest Quarter (NW¼) of said Section 02 for a distance of 2,641.95 feet;
THENCE run N89°50'12"E along the North line of the Northeast Quarter (NE¼) of said Section 02 for a distance of 2,026.48 feet to a point on the West right-of-way line of Interstate 75, a 410-foot right-of-way, the same being a point on a circular curve, concave Westerly, whose radius point bears S79°55'57"W a distance of 5,567.58 feet therefrom;
THENCE run Southerly along said right-of-way line and along the arc of said curve to the right, having a radius of 5,567.58 feet, through a central angle of 08°30'06", subtended by a chord of 825.37 feet, at a bearing of S05°49'00"E for a distance of 826.13 feet to the end of said curve;
THENCE run S01°33'57"E along said right-of-way line for a distance of 4,512.58 feet to a point on the North line of the Northeast Quarter (NE¼) of Section 11, Township 47 South, Range 25 East;
THENCE continue S01°33'57"E along said right-of-way line for a distance of 5,977.28 feet to a point on the South line of said Section 11;
THENCE run N82°32'38"W along the South line of the Southeast Quarter (SE¼) of said Section 11 for a distance of 2,165.51 feet;
THENCE run N82°29'27"W along the South line of the Southwest Quarter (SW¼) of Section 11 for a distance of 2,698.44 feet to the Southwest corner of said Section 11, the same being the Southeast corner of Section 10, Township 47 South, Range 25 East;
THENCE run S88°50'19"W along the South line of the Southeast Quarter (SE¼) of said Section 10 for a distance of 2,664.18 feet;
THENCE run S88°50'37"W along the South line of the Southwest Quarter (SW¼) of said Section 10 for a distance of 2,540.14 feet to a point on the Easterly right-of-way line of the Seaboard Coastline Railroad right-of-way, a 130.00 foot right-of-way;
THENCE run N00°59'47"W along said Easterly right-of-way line for a distance of 5,341.51 feet to a point on the North line of the Northwest Quarter (NW¼) of said Section 10;

THENCE continue N00°59'47"W along said Easterly right-of-way line for a distance of 2,692.12 feet;
THENCE run N00°56'59"W along said Easterly right-of-way line for a distance of 1,590.73 feet to the beginning of a tangential circular curve, concave Westerly;
THENCE run Northerly along said Easterly right-of-way line and along the arc of said curve to the left, having a radius of 5,771.38 feet through a central angle of 09°31'27", subtended by a chord of 958.37 feet at a bearing of N05°42'42"W for a distance of 959.37 feet to the end of said curve;
THENCE run N10°28'26"W along said Easterly right-of-way line for a distance of 77.72 feet to the POINT OF BEGINNING.
Containing 2,470.384 acres, more or less.

Bearings hereinabove mentioned refer to the North line of the Northwest Quarter (NW¼) of Section 03, Township 47 South, Range 25 East, Lee County Florida, as being N89°51'03"; and

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 02-47-25-00-00001.0000, 02-47-25-00-00001.0010, 03-47-25-00-00002.0000, 03-47-25-00-00002.0010, 09-47-25-00-00001.0010 (portion of), 09-47-25-00-00001.001A, 09-47-25-00-00001.001B, 10-47-25-00-00002.0000, 10-47-25-00-00002.0010, 11-47-25-00-00001.0000, and 09-47-25-00-00001.0010; and

WHEREAS, Long Bay Partners LLC and Edward J. McArdle, Trustee, the owners of the subject parcels, authorized Wilson, Miller, Barton & Peek, Inc. and Pavese, Garner, Haverfield, Dalton, Harrison & Jensen to act as agents to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on June 4, 1997 and subsequently continued on June 10, 1997 in Case #'s 96-07-030.03Z 01.01 and 96-07-030.04Z 01.01, before the Lee County Hearing Examiner who gave full consideration to the evidence available; and

WHEREAS, a public hearing was advertised and held on July 21, 1997 and subsequently continued to August 25, 1997 before the Lee County Board of County Commissioners who gave full and complete consideration to the recommendations of staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS, that the Board:

a) **APPROVES** the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as The Brooks of Bonita Springs, on 2,492± acres, State DRI #07-9697-133; and

b) **APPROVES with conditions** the requested rezoning from AG-2 to MPD as follows:

SECTION A. CONDITIONS:

The MPD zoning and Master Concept Plan are subject to the following conditions:

1.a. The development of the subject property shall be in accordance with the four-page Master Concept Plan for the project, entitled "Master Concept Plan prepared for Long Bay Partners, L.L.C.", prepared by Wilson, Miller, Barton & Peek, Inc., Project #0774-03, printed May 30, 1997, stamped "Received May 30, 1997" by the Permit Counter, except as modified herein. Unless specifically approved as part of this rezoning, development must be in accordance with all applicable local development regulations, including the Development of Regional Impact Development Order. No deviations from the Land Development Code are granted unless specifically identified herein.

1.b. Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development. The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan and DRI Development Order, while at the same time allowing flexibility in response to changing development practices. Once the application is determined to be sufficient, a decision by Lee County will be rendered within 21 calendar days.

1.c. The following information must be provided in the application for Final Plan Approval:

1) the type and amount of uses, i.e., the number of residential dwelling units or square feet of commercial uses;
2) an ongoing tabulation of the total number of residential dwelling units, commercial square footage, and community uses that have received local Development Order approval;
3) location and dimensions of access points;
4) location and dimensions of internal roadways;
5) location and dimensions of buildings/structures and parking spaces/areas;
6) setbacks and building heights;
7) boundary of development tract;
8) adjacent zoning and land uses;
9) buffers and landscape strips required or proposed;
10) open space, including an ongoing tabulation of required open space; and
11) detail drawings showing the application of deviations.

2. Schedule of Uses:

a. RESIDENTIAL "R"

1) Permitted Principal Uses and Structures

Administrative Offices
Assisted Living Facility - Density in accordance with Section 34-1494
Churches, Synagogues, and other Places of Worship
Civic and Cultural Facilities
Clubs: Country, Private - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises, limited to clubhouse(s) and golf course uses
Customary accessory uses and structures, including but not limited to private garages and swimming pools
Dwelling Units:
- Single Family, attached
- Single Family, detached
- Model Homes, Model Units and Model Display Center (limited to residential uses within The Brooks, Speculative Homes)
- Townhouse
- Two-Family and Multi-Family dwelling and customary accessory uses
- Two-Family attached, Residential Accessory Uses, including but not limited to:
  - Private garages, carports and parking areas
  - Private swimming pools and enclosures
  - Private tennis courts
- Cluster housing, townhouses, patio houses, and zero lot lines

Day Care Centers and other Pre-School Facilities (when compatible with adjacent uses)
Entrance Gates and Gatehouses
Essential Service Facilities, Group I
Excavation - Water Retention
Golf Courses, Golf Course Accessory and Associated uses, including but not limited to:
- Clubhouse
- Locker Rooms
- Maintenance Facility
- Pro Shop
- Snack Bar and other uses normal and necessary to the golf course
- Snack Bar at the ninth hole or other appropriate location

Helistop - located on clubhouse parcel for emergency use only

Home Occupations (Subject to standards in LDC Section 34-1772)
Irrigation Wells (Essential services)
Public and private parks, playgrounds, play fields and commonly owned open space
Real Estate Sales Office for The Brooks project only, (subject to Condition 34)
Recreational Facilities, Private
Recreational Hall, Private
Signs, in compliance with The Brooks Sign Schedule
Swimming Pools, Tennis Courts or other community recreational amenities
Temporary Agricultural uses (subject to Condition 35)
Temporary Sales and/or Construction Office
Any residential activity comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "R" District

b. COMMERCIAL "C"

1) Permitted Principal Uses and Structures

Administrative Offices
ALF (Assisted Living Facility) - Density in accordance with Section 34-1494
Animals:
- Clinic (Section 34-1321)
- Animal Kennel, when enclosed within a building

ATM (Automatic Teller Machine)
Automobile Repair and Service, Group 1 [Section 34-622(c)(2)]
Banks and Financial Establishments, Groups I and II [Section 34-622(c)(3)]
Bar or Cocktail Lounge - Limited to one (in compliance with LDC Section 34-1261 et seq.)
Broadcast Studio, Commercial Radio and Television (Section 34-1441)
Building Material Sales [Section 34-622(c)(4)]
Business Services, Groups I and II [Section 34-622(c)(5)]
Car Wash
Caretaker's residence
Caterers
Civic and Governmental Services
Cleaning and Maintenance Services [Section 34-622(c)(7)]
Clothing Stores [Section 34-622(c)(7)]
Clubs: Country, Commercial, Fraternal: The following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises (in compliance with LDC Sec. 34-1261 et seq.)
Contractors and Builders, Group I

Convenience Food and Beverage Stores
Cultural Facilities [Section 34-622(c)(10)]
Day Care Center: Adult, Child
Department Store
Drive-Through Facility for any Permitted Use
Drugstore, Pharmacy
Emergency Medical Service (ambulance station)
Emergency Operations Center
Essential Services [Section 34-1611]
Essential Service Facilities, Group I [Sections 34-622(c)(13) and 34-1611]
Excavation:
- Water Retention [Section 34-1651]
Fences, Walls
Fire Station
Food and Beverage Service, Limited
Food Stores, Group I
Gasoline Dispensing System, Special
Hardware Store
Health Care Facility, Groups I, II and III
Health Club or Spa
Helistop
Hobby, Toy, Game Shops [Section 34-622(c)(21)]
Hotel, Motel - limited to 120 rooms
Household and Office Furnishings, Groups I and II
Insurance Companies [Section 34-622(c)(23)]
Irrigation Wells (Essential Services)
Laundry & Dry Cleaning, Group II (excluding Plant)
Massage Establishments
Medical Office
Message Answering Service
Non-store Retailers, All Groups [Section 34-622(c)(30)]
Outdoor Display of Merchandise (in compliance with LDC Section 34-3004)
Package Store (in compliance with LDC Section 34-1261)
Paint, Glass, and Wallpaper
Parcel and Express Service
Parks, Public or Private, Groups I and II
Parking Lot:
- Accessory
- Garage, Public Parking
Personal Services, Groups I and III
Pet Services
Pet Shop
Photo Finishing Laboratory
Place of Worship
Police or Sheriff's Station

Post Office
Printing and Publishing [Section 34-622(c)(38)]
Real Estate Sales and Rental, for The Brooks project only
Religious Facilities [Section 34-2051]
Rental or Leasing Establishments: Group II
Repair Shops, Groups I, II and III
Research & Development Laboratories, Groups II & IV [Section 34-622(c)(41)]
Restaurants, Fast Food
Restaurants, Groups I, II, III and IV
Schools, Commercial [Section 34-622(c)(45)]
Schools, Non-commercial
- Lee County School District
- Other
Self-service Fuel Pumps and Station
Signs, in compliance with The Brooks Sign Schedule
Specialty Retail Shops, Groups I and II
Storage, Indoor only
Studios [Section 34-622(c)(49)]
Supermarket
Temporary Uses excluding flea markets (Section 34-3041)
Theater, Indoor
Towers, Communication - only when accessory to a permitted use: 50 feet or less in height
Variety Store
Wholesale Establishment, Group III
Any commercial use or professional service comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in the "C" district

2) Permitted Accessory Uses and Structures

Accessory uses and structures customarily associated with the uses permitted in this district

c. TOWN CENTER "TC"

1) Permitted Principal Uses and Structures:

Administrative Offices
ALF (Assisted Living Facility) - Density in accordance with Section 34-1494
Animals:
- Clinic
ATM (Automatic Teller Machine)
Banks and Financial Establishments, Groups I and II
Bar and Cocktail Lounge - Limited to one (in compliance with LDC Section 34-1261 et seq.)

Business Services, Groups I and II
Car Wash
Caretaker's Residence
Caterers
Civic and Governmental Services
Cleaning and Maintenance Services
Clothing Stores, General
Clubs: Country, Commercial, Fraternal, Private - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises (In compliance with LDC Section 34-1261 et seq.)
Convenience Food and Beverage Stores
Cultural Facilities
Day Care Center, Adult, Child
Department Store
Drive-Through Facility for any permitted use
Drug Store, Pharmacy
Dwelling Units:
Multi-Family Low Rise (minimum setback of 100 feet from the northeast property line)
Other Residential uses may be permitted as ancillary only to any permitted commercial use subject to review at Final Plan Approval
Entrance Gate, Gatehouse
Essential Services
Essential Service Facilities, Group I
Excavation:
- Water Retention

Fences, Walls
Food and Beverage Services, limited
Food Stores, Group I
Gasoline Dispensing System, Special
General and Professional Offices
Hardware Store
Health Care Facility, Group III
Health Club or Spa
Helistop - limited to emergency use only
Hobby, Toy, Game Shops
Hotel, Motel - limited to 120 rooms
Insurance Companies
Irrigation Wells (Essential services)
Laundry or Dry Cleaning, Group II - excluding Plant
Massage Establishments

Medical Office
Message Answering Service
Package Store
Parcel and Express Services
Parks, Public or Private, All Groups
Parking Lot:
- Accessory
- Garage, Public Parking - limited to two stories and not abutting residential land use

Personal Services, Groups I and III
Pet Services
Pet Shop
Photo Finishing Laboratory
Place of Worship
Post Office
Real Estate Sales Office for The Brooks project only (subject to Condition 34)
Recreation - Personal, Private or Public
Recreation Hall
Religious Facilities
Rental or Leasing Establishments, Group II
Restaurants, Groups I, II, III and IV
Restaurants, Fast Food
Self-Service Fuel Pumps and Station
Signs, in compliance with The Brooks Sign Schedule
Specialty Retail Shops, Groups I and II
Studios
Supermarket
Temporary Agricultural Uses (subject to Condition 35)
Theater, Indoor or Outdoor
Variety Store
Any commercial use or professional service which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "TC" District

2) Permitted Accessory Uses and Structures

Accessory uses and structures customarily associated with the uses permitted in this district

d. RECREATION, OPEN SPACE, GOLF COURSE, BUFFERS & LAKES "RO"

1) Permitted Principal Uses and Structures

Athletic Club
Biking, hiking, fishing piers and nature trails
Clubs, Private

Consumption on premises, limited to clubs and golf course uses
Equestrian and jogging paths
Golf Clubhouse - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Golf Course
Golf Maintenance Facility
Irrigation Wells
Parks, Playgrounds, Observation Towers, etc.
Pump Station
Real Estate Sales Office for The Brooks project only (subject to Condition 34)
Shelters, Restrooms, Showers, etc.
Temporary Agricultural Uses (subject to Condition 35)
Tennis and Basketball Courts, etc.
Tennis Clubhouses
Water Management Facilities
Any open space activity which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "RO" District

2) Permitted Accessory Uses and Structures

Ancillary Commercial Establishments - including gift shops, golf and tennis equipment sales, restaurants, cocktail lounges, and similar uses located within the clubhouse(s)
Maintenance Shops and Equipment Storage
Pro-Shop, Practice Driving Range and other customary accessory uses of golf courses, tennis clubs or other recreational facilities
Shuffleboard Courts, Swimming Pools and other types of facilities intended for recreation
Signs, in compliance with The Brooks Sign Schedule

e. CONSERVATION "CO"

1) Permitted Principal Uses and Structures

Interpretative centers, rain shelters, gazebos
Nature and foot trails, including boardwalks and jogging paths
Other activities for recreation, conservation and observation, when approved by the Director of the Lee County Department of Community Development
Paths, boardwalks and bridges to provide access from the uplands to the wetland for pedestrians and minor maintenance equipment, and to allow fishing piers, observation towers and golf cart crossings
Recreational shelters, restroom facilities, passive parks, picnic areas

Water Management Facilities
Wildlife Management
Any open space activity which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "CO" District

2) Permitted Accessory Uses and Structures

Accessory uses & structures customarily associated with the uses permitted in this district
Signs, in compliance with The Brooks Sign Schedule

3) Property Development Regulations:

a) **Residential "R":**

MINIMUM LOT DIMENSIONS

Residential Uses	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Single-Family Detached	5,500	100	55
Patio Homes	3,500	100	50
Two-Family Attached	4,000	100	35
Zero Lot Line	4,000	80	35
Townhouse	2,800	80	30
Multi-Family: Low-Rise Mid-Rise	6,500 10,000	80 100	80 100
ALF (5)	22,500	150	150
Clubhouse Area/Recreational Facility	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial/Office (per schedule of uses)	7,500	75	100

MINIMUM SETBACKS

Residential Uses	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Single-Family Detached	5	**10	20/*12	20	10	**10
Patio Homes	0	**10	20*/12	20	10	**10
Two-Family	0	**10	20/*12	20	10	**10
Attached		**10	20/*12	20	10	**10
Zero Lot Line	0					
1st side	0					
2nd side	0	**10	*12	20	10	**10
Townhouse						
1st side	0					
2nd side						
Multi-Family						
Low-Rise	10	10	20	20	10	**10
Mid-Rise	15	10	20	20	10	**10
ALF (5)	15	20	20	0	15	25

Clubhouse area/ recreational area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	0
Pool Deck	5	5	10	0	10	5
Non residential uses (per schedule of uses)	15	20	20	0	10	0

* with side entry garage ** 5 ft. for accessory structure (pool/lanai)

Residential Uses	Maximum Height (ft.)	Number of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Single-Family Detached	45	3	10	55
Patio Homes	45	3	10	55
Two-Family Attached	45	3	10	55
Zero Lot Line	45	3	10	55
Townhouse	45	3	20	55
Multi-Family: Low-Rise High-Rise	 50 75	 4 7	 20 30	 55 55
ALF (5)	65	5	20	55
Clubhouse Area/ Recreational Facility	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Non residential uses (per Schedule of Uses)	45	3	15	45

b. Commercial "C"

MINIMUM LOT DIMENSIONS

Commercial	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial			
Office	7,500	100	75
Retail	7,500	100	75
Hotel	22,500	150	150
Community Use	7,500	100	75

MINIMUM SETBACKS

Commercial	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Water-body (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	0
Pool Deck	5	5	10	0	10	5
Commercial						
Office	15	20	20	0	10	20
Retail	15	20	20	0	10	20
Hotel	15	20	20	0	15	25
Community Use	15	20	20	0	10	20

Commercial	Maximum Height (ft.)	No. of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial				
Office	65	5	15	45
Retail	45	5	15	45
Hotel	75	5	20	45
Community Use	65	5	15	45

c. **TOWN CENTER "TC":**

MINIMUM LOT DIMENSIONS

Town Center	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial:			
Office	7,500	100	75
Retail	7,500	100	75
Hotel	22,500	150	150
Community Use	7,500	100	75
Multi-Family, Low-rise	6,500	80	80
ALF	22,500	150	150

MINIMUM SETBACKS

Town Center	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	5	10	0
Pool Deck	5	5	10	5	10	5
Commercial:						
Office	15	20	20	0	10	20
Retail	15	20	20	0	10	20
Hotel	15	20	20	0	15	25
Community Use	15	20	20	0	10	20
Multi-Family Low-rise	10	10	20	20	10	10
ALF	15	20	20	0	15	25

Town Center	Maximum Height (ft.)	Number of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial				
Office	65	5	15	45
Retail	45	3	15	45
Hotel	65	5	20	45
Community Use	65	5	15	45
Multi-Family, Low-rise	50	4	20	55
ALF	65	5	20	55

d. **RECREATION, OPEN SPACE, GOLF COURSE, BUFFERS & LAKES -"RO":**

MINIMUM LOT DIMENSIONS

Recreation, Open Space, Golf Course, Buffers & Lakes	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial/Office (per Schedule of Uses)	7,500	100	75

MINIMUM SETBACKS

Recreation, open space, golf course, buffers & lakes	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	5
Pool Deck	5	5	10	5	10	5
Commercial/Office (per schedule of uses)	15	20	20	0	10	0

Recreation, Open Space, Golf Course, Buffers and Lakes	Maximum Height (ft.)	No. of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial/Office per Schedule of Uses	45	3	15	45

4. Deviation (1) requests relief from LDC Sections 10-8(2) (Traffic Pattern) and 34-2013(a) (Access) which require all parking lots to be designed to permit vehicles exiting the parking lot to enter the street right-of-way or easement in a forward motion, to allow individual parking spaces to back onto right-of-way or easement for common access drives and private local roads. The requested deviation is **APPROVED** subject to the following conditions:

   (a) this deviation will apply to private internal local roads and accessways only;
   (b) the design and posted speed will be 20 mph or less;
   (c) the visual clear zone will be in accordance with the visibility triangle criteria set forth in LDC Section 34-3131; and
   (d) where determined to be practical by the design engineer, traffic calming devices as identified in the ITE Residential Street Design and Traffic Control book will be provided.

5. Deviation (2) seeks to deviate from LDC Section 10-285 (Connection Separation) which requires a minimum 125-foot spacing between driveway accesses to a local road, to allow two connections for each short cul-de-sac (eyebrows), at a spacing of less than 125 feet. The requested deviation is **APPROVED** with the condition that:

   (a) each "eyebrow" must be provided with signage indicating one-way traffic in a counter-clockwise direction;
   (b) the minimum separation will be 60 feet;
   (c) it applies only to private local roads; and
   (d) it is approved only for those typical situations including, but not limited to, those designated in "Examples for Deviation (2)" attached as Exhibit E to the Staff Report.

6. Deviation (3) seeks to deviate from LDC Section 10-291(3)(b) (Access to Street) which requires, where practical, any residential development of least five± acres to provide

two or more means of ingress and egress, to allow only one means of ingress and egress. The requested deviation is **APPROVED** subject to the following conditions:

(a) an emergency turnaround of adequate dimension is provided for emergency service providers within each development pod;
(b) each multi-family pod with one means of ingress and egress will not exceed 150 units; and
(c) the local Fire and Emergency Service District must provide a letter of approval prior to local Development Order approval.

7. Deviation (4) seeks to deviate from LDC Section 10-296(b), Table 3 (Specifications for Privately Maintained Streets) which requires a right-of-way width of 35 feet for a two-way closed drainage, rear lot drainage, or inverted crown, to allow a right-of-way width to coincide with the back of curb for local private roads. The requested deviation is **APPROVED** provided the required drainage and utility easements are located outside of the right-of-way and adequate provisions are made for road drainage and utilities.

8. Deviation (5) seeks to deviate from LDC Section 10-296, Table 4(7)(c) (Minimum Specifications for Street Improvements) which requires wearing surfaces for local and access roads for Class A development be 1½-inch asphaltic concrete of Florida Department of Transportation Type S-1, to allow for decorative pavers within private local and public arterial roadways. The requested deviation is **APPROVED for local, private roads** provided that the structural number of the proposed alternate cross-section will equal or exceed the structural number of a "standard" Class A local road flexible pavement cross-section. The requested deviation is **APPROVED for public arterial roads** subject to Lee County Division of Transportation approval.

9. Deviation (6) seeks to deviate from LDC Section 10-296(m)(4)(a) (Privately Maintained Accessways) which allows privately maintained accessways that meet criteria outlined in item (m)(4)(a) to be exempt from the minimum right-of-way widths specified in 10-296(b), to permit accessways that provide access up to 150 residential units and 300 parking spaces to be exempt from the minimum right-of-way widths as specified in 10-296(b). The requested deviation is **APPROVED** subject to the following conditions:

(a) the design and posted speed will be 20 mph or less;
(b) each multi-family pod with one means of ingress and egress will not exceed 150 units;
(c) this deviation will apply to private internal local roads and accessways only; and,
(d) where determined to be practical by the design engineer, traffic calming devices as identified in the ITE Residential Street Design and Traffic Control book will be provided.

10. Deviation (7) seeks to deviate from LDC Section 10-329(e)(1)(a) (Excavations for Water Retention and Detention) to allow lake setbacks from rights-of-way as follows:

    a. Where local private streets meet the requirements of this document, a 25-foot lake setback as measured from the back of curb to the edge of water control elevation will be provided; and

    b. Where adequate elements for the protection of wayward vehicles are provided, a zero-foot setback from the back of the curb to the edge of the water control elevation will be provided.

    The requested deviation is **APPROVED** with the condition that the Developer provides elements for the protection of wayward vehicles such as guardrails, berms, swales, non-mountable curbs, etc., as determined by the Director of Development Services.

11. Deviation (8) seeks to deviate from LDC Section 10-329(e)(3) (Excavations for Water Retention and Detention) which requires the maximum depth of excavation not to exceed 12 feet, to allow a depth not to exceed 20 feet as supported by the hydrogeological report identified in The Brooks ADA, Question 14. The requested deviation is **APPROVED** for a maximum lake depth of 20 feet or to the confining layer, whichever occurs first, subject to implementation of the lake management plan entitled "The Brooks of Bonita Springs Management Program For Lakes Excavated To A Depth Greater Than 12 Feet - June 5, 1997," zoning counter stamped June 5, 1997. This plan must be a component of the engineering and design of The Brooks of Bonita Springs, be incorporated into the local Development Order, and be implemented prior to approval of any Certificate of Compliance (CC) for any portion of the development to which it applies.

12. Deviation (9) seeks to deviate from LDC Section 10-329)e)(4) (Excavations for Water Retention and Detention) which requires excavations to be sloped at four horizontal to one vertical to a water depth of four feet below the dry season water table and two horizontal to one vertical thereafter, to allow for lake slope to conform to South Florida Water Management District (SFWMD) permit. The requested deviation is **APPROVED**.

13. Deviation (10) seeks to deviate from LDC Section 10-355(a)(1) (Easements, Location of Water and Sewer Lines) which requires a 10-foot-wide public utility easement on both sides of a roadway, to allow the public utility easement on one side only. The requested deviation is APPROVED if all of the applicable utility companies state, in writing, that the easement may be eliminated.

14. Deviation (11) seeks to deviate from LDC Sections and 10-417(b)(2)f. (Installation of Plant Materials; Protection from Encroachment) which requires that no portion of a buffer area consisting of trees and shrubs be located in an easement, to allow planted

buffers in easements. The requested deviation is **APPROVED** provided that, if any required buffer or landscape strip plantings installed within easements must be removed, then the Developer or homeowners' association must replace these plantings with like size and species at no expense to Lee County. The requirement must be clearly stated in the homeowners' documents.

15. Deviation (12) seeks to deviate from LDC Sections 10-415(b)(1), 10-415(b)(2) and 10-415(c)(1) (Landscaping) which prohibit buffers within the right-of-way, to allow landscaping to be located within rights-of-way that exceed the minimum requirements of this document by 10 feet or more. The requested deviation is **APPROVED** subject to Lee County Division of Transportation approval including, but not limited to, provisions for maintenance and compliance with clear zone regulations. These buffer areas may not be counted toward the required open space calculations.

16. Deviation (13) seeks relief from LDC Section 10-418 (Stormwater Ponds) to allow lake littoral planting requirements to be met on the project site on an overall basis. The requested deviation is **APPROVED** provided that lake littoral planting requirements must be met on the overall project site with each lake containing, at a minimum, 50 percent of its normal LDC requirement. Additionally, The Brooks mitigation area will include: the creation of a meandering flow-way interconnecting wetlands, provide shallow ponds with littoral shelves for wading birds and birds of prey, enhancement of existing herbaceous wetlands, construction of osprey platforms in hammocks, the establishment of willow areas and flag ponds, and the establishment of vegetated upland buffers along portions of the wetland system.

17. Deviation (14) seeks to deviate from LDC Chapter 30, Signs to allow signage in conformance with The Brooks Signage Program. The requested deviation is **APPROVED** subject to compliance with The Brooks Sign Schedule as attached.

18. Deviation (15) seeks to deviate from LDC Section 34-935(b)(2) (Minimum Setbacks of Structures, Buildings and Pavement from Development Perimeter Boundaries) which requires that internal pavement be no closer than 25 feet to the development perimeter, to allow a 15-foot minimum. The requested deviation is **APPROVED** but applies to development perimeter (external project boundary) only.

19. Structures which exceed three stories or 45 feet in height must be set back a minimum of 100 feet from the north project boundary.

20. Structures which exceed two stories or 35 feet in height must be set back a minimum of 100 feet from the south project boundary.

21. A Management Plan per the requirements of LDC Section 10-474 must be approved prior to local Development Order approval for any portion of The Brooks of Bonita Springs DRI site on which a Lee County listed species per LDC Appendix H has been identified.

22. The design for the golf course and residential areas will incorporate the retention of large slash pines for utilization as perch trees for bald eagles. This requirement will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

23. The Open Space Table shown on the Master Concept Plan is hereby adopted. This table must be demonstrated in compliance at each local Development Order submittal. There can be no lessening of the indigenous open space areas as provided on this table. No parcel which has an open space requirement may provide less than 10 percent open space, and no water body may be used to meet this minimum 10 percent open space requirement.

24. Each multi-family development parcel which contains structures that exceed 45 feet in height must provide a minimum of five trees per 100 linear feet along each side lot line. Additionally, any lot line that abuts a single family or two-family residential development parcel must be planted with a 50 percent opaque landscape buffer that may incorporate the required trees. Setbacks for structures over 45 feet in height which abut non multi-family residential uses will be as follows:

Side Setback:	50 feet
Rear Setback:	35 feet
Front/Road:	35 feet
Waterbody:	25 feet
Golf Course:	25 feet
Preserve:	25 feet

25. Access to the development over and across the existing Seminole Gulf Railway is subject to approval by Seminole Gulf Railway.

26. The maximum number of ALF (Assisted Living Facility) units shall not exceed 500 units or beds - density equivalents to be calculated in accordance with LDC Section 34-1494.

27. During the next four years, Lee County will undertake, to the extent legally permissible, any amendment to the 2010 Overlay, or its successor, necessary to accommodate the buildout of The Brooks as set forth in the DRI phasing schedule. Lee County will cause these amendments to occur in a timely manner so development of The Brooks will not be impeded by the 2010 Overlay, or its successor. Nothing in this condition will be interpreted to cause the County to be liable for a failure to accomplish these amendments if the failure is the result of a refusal by any State or Regional agency to approve such a change.

28. This development must comply with all of the requirements of the Lee County Land Development Code at the time of local Development Order approval, except as may be granted by deviation as part of this planned development.

29. Retail Commercial development at US 41 will be limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet or less) until such time as the Coconut Road Extension has been designed and built to operate as an arterial road, and it has been connected to Three Oaks Parkway. It will then be allowed to develop to a maximum of 150,000 square feet of retail uses as delineated in the Schedule of Uses for this parcel.

30. Retail commercial development at the Town Center will be limited to the intensity allowed for Minor Commercial (30,000 square feet) until such time as the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway and the Coconut Road Extension. It will then be allowed to develop to a maximum of 100,000 square feet of retail uses as delineated in the Schedule of uses for this parcel.

31. Internal improvement capital costs will be borne by the Developer, a UCDD, a private utility or some other legal entity which has the ability to levy an assessment or otherwise raise revenues to pay the internal improvement capital costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the capital cost of internal improvements.

32. The operating and maintenance costs of the water and sewer systems will be paid by the Developer who connects to the utility system, and the users of the system who pay the fees and tariffs levied by the utility. However, if the portion of the operating and maintenance costs of the water and sewer system attributable to the Developer who connects to the utility system, or the users of the system, falls below the requirements of the PDDO, the Developer of The Brooks, a UCDD, a property owners' association, or some other legal entity will be responsible for the payment. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the cost of operation and maintenance.

33. The Developer must provide the County with fiscal monitoring reports that identify the taxable value of the development by use codes. Taxable value means the actual taxable value assigned to the property in the development by the Lee County Property Appraisers Office. The report must be submitted when the certificate of occupancy for the 2600th unit is issued. A second report must be submitted at the end of the second 5-year period, which is the end of second phase, if the fiscal monitoring report at the end of the first phase indicates that the project is not fiscally positive and a second report is required as part of the mitigation condition.

These reports are intended to allow the County to determine whether the total taxable value is 25% less than, equal to, or exceeds the total taxable value of $510,180,000.00, which was contained in the fiscal analysis tables that were attached to the June 2, 1997 letter from Fishkind & Associates, to the Division of Budget Services, Lee County.

If these reports demonstrate that the taxable values are 25% less than equal to, or exceeded, no further action is required. If these reports indicate that the actual taxable values are more than 25% below the taxable values projected in the tables, the Developer must conduct a new fiscal impact analysis (using the actual budgets of Lee County, including the Sheriff's budget, the Lee County District School Board, and the Estero Fire and Rescue District) utilizing the methodology of the modified per capita approach as outlined in the Applicants' document entitled "Revised Fiscal Impacts of The Brooks of Bonita Springs," prepared by Fishkind & Associates, Inc. and dated May 19, 1997 (Applicant's Exhibit 59).

If this new analysis indicates that the fiscal impact to the County is positive or neutral, no further action is required. If this new analysis indicates that the fiscal impact to the County is negative, the County, the Applicant and other affected parties will try to reach a mutually agreed upon fiscal mitigation plan which fully mitigates the negative fiscal impacts at the sole cost of the Developer and the property owners within the development. If the Developer or the property owners do not concur with the County Staff's fiscal mitigation plan, they have the right to avail themselves of any remedy allowed them under the County's LDC. No additional Development Orders will be issued to those portions of the project located within the Rural land use category, by the County, until the fiscal mitigation plan is implemented. If such a plan cannot be mutually agreed upon, the County reserves the right to create a taxing entity on the development, such as a Municipal Services Taxing Unit (MSTU) or Municipal Services Benefit Unit (MSBU), to address the identified negative fiscal impacts.

34. When the last or final certificate of occupancy for the last residential unit within a particular community or area is issued, the Real Estate Sales Office use located in or associated with that community must be discontinued. No sales for developments outside of The Brooks may occur within the residential real estate office.

35. Cattle grazing (which is an existing agricultural use on a portion of the property), and a proposed non-commercial tree nursery, for the exclusive use of The Brooks of Bonita Springs, are permitted within the following areas until these areas are developed: Residential (R), Recreation/Open Space/Golf/Buffer (RO), and Towncenter (TC). Cattle grazing is also permitted within the identified Conservation (CO) areas, until such time as the R, RO, or TC areas adjacent to the CO areas are developed. These agricultural uses are further limited to those portions of the site that have an existing agricultural tax exemption as of June 25, 1997.

The areas which have the tax exemption as of June 25, 1997 are legally identified as follows:

All of Sections 2, 3, 10 and 11, Township 47 South, Range 25 East, Lee County, Florida, lying east of the Seminole Gulf Railroad, west of Interstate Highway 75 and south of Williams Road.

LESS AND EXCEPT therefrom:
All that part of Sections 2, 3, 10 and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
BEGINNING at the southwest corner of said Section 10,
Thence along the south line of said Section 10 in the following two (2) described courses;

1. South 88°50'19" West 2664.18 feet;
2. South 88°50'37" West 2540.14 feet to the easterly right-of-way line of Seaboard Coastline Railroad;

Thence leaving said south line of Section 10, along said easterly right-of-way line of Seaboard Coastline Railroad, North 00°59'47" West 6010.75 feet;
Thence leaving said right-of-way line, South 73°35'15" East 457.66 feet;
Thence North 85°18'36" East 1675.18 feet;
Thence South 81°35'06" East 1297.84 feet;
Thence North 31°35'30" East 359.66 feet;
Thence Northeasterly and easterly 642.94 feet along the arc of a tangential circular curve concave to the southeast, having a radius of 800.00 feet, through a central angle of 46°02'41" and being subtended by a chord which bears North 54°36'55" East 625.78 feet;
Thence North 77°38'21" East 253.20 feet;
Thence North 13°14'05" East 538.91 feet;
Thence South 81°30'32" East 137.72 feet;
Thence North 82°07'16" East 160.18 feet;
Thence South 31°52'23" East 335.93 feet;
Thence North 40°23'26" East 382.59 feet;
Thence North 23°55'39" East 580.19 feet;
Thence North 45°00'00" East 684.13 feet to a point on the westerly right-of-way line of assumed Three Oaks Boulevard Extension;
Thence along said westerly right-of-way line in the following four (4) described courses;

1. South 45°00'00" East 803.17 feet;
2. Southeasterly, southerly and southwesterly, 3300.70 feet along the arc of a tangential circular curve concave to the west, having a radius of 2350.00 feet, through a central angle of 80°28'30" and being subtended by a chord which bears South 04°45'45" East 3036.00 feet to a point of reverse curvature;
3. Southwesterly and southerly, 1389.94 feet along the arc of a tangential circular curve concave to the southeast, having a radius of 2150.00 feet, through a central

angle of 37°02'27" and being subtended by a chord which bears South 16°57'17" West 1365.86 feet;

4. South 01°33'57" East 3238.37 feet to the south line of said Section 11;

Thence leaving said westerly right-of-way line, along said south line of Section 11, North 82°29'27" West 1112.95 feet to the **POINT OF BEGINNING** of the parcel less and excepted;

Subject to easements and restrictions of record.

Containing 1,494.09 net acres more or less.

Bearings are based on the South line of said Section 11, being North 82°29'27" West.

No other type of agricultural use is permitted within these areas and no agricultural use is permitted elsewhere within The Brooks of Bonita Springs DRI.

CO areas that are utilized for cattle must be surveyed for the presence of tropical soda apple Solanum viarum (TSA) commencing from the date of zoning approval. Any TSA found must be immediately eradicated and all CO areas must be maintained free of TSA. No native tree removal, clearing & grubbing, excavation, or other development activities may occur unless such activity is reviewed and approved in accordance with all applicable Lee County regulations as if no agricultural uses.

SECTION C. Master Concept Plan:

A four-page reduced copy of the Master Concept Plan is attached and incorporated into this resolution by reference.

SECTION D. FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested MPD zoning:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.

2. The MPD zoning:

   a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;

   b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;

   c) is compatible with existing or planned uses in the surrounding area; and

   d) will not adversely affect environmentally critical areas or natural resources.

3. Approval of the request will not unduly burden existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.

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

5. The proposed use or mix of uses is appropriate at the subject location.

6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.

7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

8. The deviations granted:

   a) enhance the objectives of the planned development; and

   b) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

The foregoing resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Manning, and seconded by Commissioner Judah and, upon being put to a vote, the result was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 25th day of August, 1997.

ATTEST:
CHARLIE GREEN, CLERK

BY: Ruth Trynitzer
Deputy Clerk

FILED

SEP 9 1997

CLERK CIRCUIT COURT
BY Ruth Trynitzer D.C.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Chairman

Approved as to form by:

_____
County Attorney's Office

06/27/97 FRI 11:32 FAX 941498119 BONITA BAY P&D 002

RECEIVED
JUN 27 1997
ZONING COUNTER

THE BROOKS
SIGN SCHEDULE

SIGN TYPE	MAX. HT SIGN AREA	MAX. COPY AREA	MAX. LETTER SIZE	SEE NOTES	LOCATIONS
A. MAIN IDENTITY - MAJOR	16' - 0"	210 SF	36"	4,5,6,8	Intersection - US 41 and Coconut Road
B. MAIN IDENTITY - LESSER	12' - 0"	125 SF	36"	4,5,6,8	Williams Rd./ River Ranc Three Oaks/North & Sou Property Line
C. COMMUNITY IDENTITY	11' - 0"	105 SF	24'	1,3,5,6,8, or 9, 18	Individual Development Parcels
D. PARCEL/AREA ENTRY	10' - 0"	40	14"	1,2,3,5,6,8, or 9,18	Individual Parcels
E. TOWN CENTER IDENTITY	18' - 0"	200 SF	24"	1 or 2,3,5,6,11,12, 16	Town Center
F. FACILITY ID/MAJOR AMENITY	6' - 6"	24 SF	10"	1,3,5,6,8,9	Clubhouses/Major Amenities
G. VEHICULAR DIRECTIONAL	5' - 3"	13 SF	6"	2,3,5,6	Throughout
H. PEDESTRIAN/GOLF CART DIRECTIONAL	5' - 0"	4 SF	6"	2,3,5,6	Throughout
I. STREET IDENTITY	10' - 0"	2 SF	6"	2,5,6,19,20	Throughout
J. VEHICULAR REGULATORY	7' - 2"	6.25 SF	8"	2,5,6,15,19,20	Throughout
K. RETAIL/COMMERCIAL/OFFICE-MAJOR	20' - 0"	200 SF	18"	2,4,5,6,13,16	US 41
L. RETAIL/COMMERCIAL/OFFICE-LESSER	14' - 0"	200 SF	16"	2,3,5,6,14,16	Coconut Road

NOTES:

1. Zero foot setback from R.O.W. All identification signs proposed to be located zero feet from public right-of-way must be reviewed and approved by Lee County Departme of Transportation (LDOT) at time of permitting.
2. Within the private R.O.W. only when located within a median of an internal non-county local road. These signs must be reviewed and approved by Lee County Developme Services Division at time of local Development Order.
3. Signs will be setback a minimum of 30" from back of curb when located within the median of a private road or entrance.
4. Signs will be setback a minimum of 36" from public right-of-way.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
7. Copy Area represents signage panel only (excluding logo).
8. Two single faced signs equal in size and located on each side of the entrance way.
9. In lieu of two single faced signs, a double faced sign equal in size on both faces located in a median and perpendicular to the right-of-way.
11 Two double faced signs with a maximum of 200 square feet of copy area each may be located on Coconut Road and one double faced sign with a maximum of 200 square feet may be permitted on Three Oaks Parkway. These signs may be located within a median at each entrance way into the Town Center.

7-W-Broksign

12. In lieu of the double faced signs, single faced signs equal size and not to exceed 150 square feet of sign area may be located on each side of each entrance way. These Signs may be located zero feet from the right-of-way if approved by LDOT at time of permitting.
13. One double faced sign along U.S. 41 at Commercial Center.
14. One double face sign along Coconut Road at the Commercial Center.
15. The height of Vehicular Regulatory signs will be determined by the design speed of the roadway.
16. The identification Signage proposed for the U.S. 41 Commercial and the Town Center will serve as nonresidential subdivision identification signage only, and is not intended to preclude additional signage permitted in accordance with the LDC. Except that additional permanent ground mounted signage will not be permitted adjacent to U.S. 41, Coconut Road and Three Oaks Parkway. This does not prohibit the main identity signage for the overall Brooks development located at the intersection of U.S. 41 and Coconut Road.
17. All other signs shall meet the regulations set forth in Chapter 30 of the Land Development Code.
18. The Community identity and Parcel Area Entry are clarified as follows:
    Community -Those residential development parcels (df per LDC) within The Brooks that are bounded by and identified at entrances from Coconut Road, Three Oaks Parky and Williams Road.
    Parcel - Those development parcels that are sub-units of the larger Communities as defined above.
19. Signs will be setback a minimum of 36" from back of curb.
20. To be standard LDOT signs within right-of-way of Coconut Road, Three Oaks Parkway and Williams Road. Any deviation from LDOT standards must be approved by LDOT.

7-W-Broksign
-100-005 PLCOD

06/27/97 FRI 11:33 FAX 94149811 BONITA BAY P&D 004

A. MAIN IDENTITY - MAJOR

4. Signs will be setback a minimum of 36" from public right-of-way.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
8. Two single faced signs equal in size and located on each side of the entrance way. Or:

B. MAIN IDENTITY - LESSER

4. Signs will be setback a minimum of 36" from public right-of-way.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
8. Two single faced signs equal in size and located on each side of the entrance way. Or:

C. COMMUNITY IDENTITY

1. Zero foot setback from R.O.W. All identification signs proposed to be located zero feet from public right-of-way must be reviewed and approved by Lee County Departmen of Transportation (LDOT) at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median of a private road or entrance.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
8. Two single faced signs equal in size and located on each side of the entrance way. Or:
9. In lieu of two single faced signs, a double faced sign equal in size on both faces located in a median and perpendicular to the right-of-way.
18. The Community identity and Parcel Area Entry are clarified as follows:
    Community - Those residential development parcels (df per LDC) within The Brooks that are bounded by and identified at entrances from Coconut Road, Three Oaks Parkw and Williams Road.
    Parcel - Those development parcels that are sub-units of the larger Communities as defined above.

D. PARCEL/AREA ENTRY

1. Zero foot setback from R.O.W. All identification signs proposed to be located zero feet from public right-of-way must be reviewed and approved by Lee County Departmer of Transportation (LDOT) at time of permitting.
2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median of a private road or entrance.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
8. Two single faced signs equal in size and located on each side of the entrance way. Or:
9. In lieu of two single faced signs, a double faced sign equal in size on both faces located in a median and perpendicular to the right-of-way.
18. The Community identity and Parcel Area Entry are clarified as follows:
    Community - Those residential development parcels (df per LDC) within The Brooks that are bounded by and identified at entrances from Coconut Road, Three Oaks Parkw and Williams Road.
    Parcel - Those development parcels that are sub-units of the larger Communities as defined above.

7-W-Broksign
-100-095 PI.COD

06/27/97 FRI 11:33 FAX 94149811 BONITA BAY P&D

E. TOWN CENTER IDENTITY

1. Zero foot setback from R.O.W. All identification signs proposed to be located zero feet from public right-of-way must be reviewed and approved by Lee County Departmen of Transportation (LDOT) at time of permitting. Or:
2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
11. Two double faced signs with a maximum of 200 square feet of copy area each may be located on Coconut Road and one double faced sign with a maximum of 200 square feet may be permitted on Three Oaks Parkway. These signs may be located within a median at each entrance way.
12. In lieu of the double faced signs, single faced signs equal size and not to exceed 150 square feet of sign area may be located on each side of each entrance way. These signs may be located zero feet from the right-of-way if approved by LDOT at time of permitting.
16. The identification Signage proposed for the U.S. 41 Commercial and the Town Center will serve as nonresidential subdivision identification signage only, and is not intended to preclude additional signage permitted in accordance with the LDC. Except that additional permanent ground mounted signage will not be permitted adjacent to U.S. 41, Coconut Road and Three Oaks Parkway. This does not prohibit the main identity signage for the overall Brooks development located at the intersection of U.S. 41 and Coconut Road.

F. FACILITY ID/MAJOR AMENITY

1. Zero foot setback from R.O.W. All identification signs proposed to be located zero feet from public right-of-way must be reviewed and approved by Lee County Departmen of Transportation (LDOT) at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
8. Two single faced signs equal in size and located on each side of the entrance way.
9. In lieu of two single faced signs, a double faced sign equal in size on both faces located in a median and perpendicular to the right-of-way.

G. VEHICULAR DIRECTIONAL

2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.

H. PEDESTRIAN/GOLF CART DIRECTIONAL

2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.

I. STREET IDENTITY

2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
4. Signs will be setback a minimum of 36" from back of curb.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.

7-W-Broksign

06/27/97 FRI 11:34 FAX 94149811 BONITA BAY P&D 006

19. Signs will be setback a minimum of 36" from back of curb.
20. To be standard LDOT signs within right-of-way of Coconut Road, Three Oaks Parkway and Williams Road. Any deviation from LDOT standards must be approved by LDOT.

J. VEHICLUAR REGULATORY

2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
4. Signs will be setback a minimum of 36" from back of curb.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
15. The height of Vehicular Regulatory signs will be determined by thedesign speed of the roadway.
19. Signs will be setback a minimum of 36" from back of curb.
20. To be standard LDOT signs within right-of-way of Coconut Road, Three Oaks Parkway and Williams Road. Any deviation from LDOT standards must be approved by LDOT.

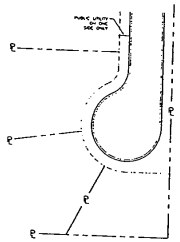
K. RETAIL/COMMERCIAL/OFFICE-MAJOR

2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
4. Signs will be setback a minimum of 36" for back of curb.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
13. One double faced sign along U.S. 41 at Commercial Center.
16. The identification Signage proposed for the U.S. 41 Commercial and the Town Center will serve as nonresidential subdivision identification signage only, and is not intended to preclude additional signage permitted in accordance with the LDC. Except that additional permanent ground mounted signage will not be permitted adjacent to U.S. 41, Coconut Road and Three Oaks Parkway. This does not prohibit the main identity signage for the overall Brooks development located at the intersection of U.S. 41 and Coconut Road.

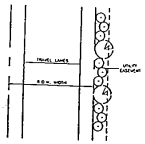
L. RETAIL/COMMERCIAL/OFFICE-LESSER

2. Within the R.O.W. only when located within a median of an internal local road. These signs must be reviewed and approved by LDOT at time of permitting.
3. Signs will be setback a minimum of 30" from back of curb when located within the median.
5. All signs must meet the visibility triangle requirements of Section 30-93, LDC.
6. Height of signs must be measured in accordance with Section 30-93 LDC.
14. One double face sign along Coconut Road at the Commercial Center.
16. The identification Signage proposed for the U.S. 41 Commercial and the Town Center will serve as nonresidential subdivision identification signage only, and is not intended to preclude additional signage permitted in accordance with the LDC. Except that additional permanent ground mounted signage will not be permitted adjacent to U.S. 41, Coconut Road and Three Oaks Parkway. This does not prohibit the main identity signage for the overall Brooks development located at the intersection of U.S. 41 and Coconut Road.

DEVIATION 9, EXHIBIT WILL BE PROVIDED AT TIME OF WATER MANAGEMENT PERMIT ISSUANCE



DEVIATION 10
N.T.S.



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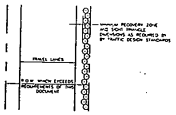
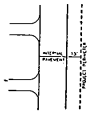


DEVIATION 12
N.T.S.

DEVIATION 13 ILLUSTRATION NOT REQUIRED

DEVIATION 14 ILLUSTRATION TO BE PROVIDED IN BROOKS SIGNAGE PROGRAM



DEVIATION 15
N.T.S.

APPROVED
Master Concept Plan
Site Plan # 97-037X Part of 97
Subject to conditions in Resolution Z-97-037
Zoning Case # 96-07-016-002 Part of
96-07-016-102 Part

RECEIVED
MAY 30 1997
PLANNING & ZONING

PRINTED
MAY 30 1997

PROJECT #
PROJECT TYPE

WILSON MILLER BARTON & PEEK INC.

Planning & Landscape Architecture Division

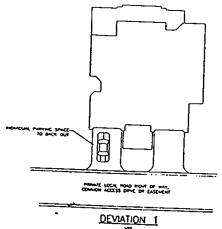
Engineers · Surveyors
Environmental Consultants
Planners
Landscape Architects
Construction Managers

Corporate Headquarters
Miami Professional Center
Suite 200
2200 Bird Bay Drive
Miami, Florida 33132
(305)263-8126 Fax (305)263-3716

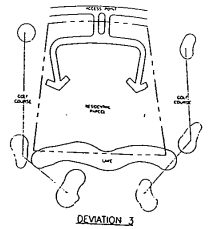
BROOKS OF BONITA SPRINGS
EXHIBIT IV-F
MASTER CONCEPT PLAN - REZONING
PREPARED FOR: LONG BAY PARTNERS, L.L.C.

WILSON MILLER BARTON & PEEK, INC.

SEC/TWP/RGE	30/47S/25E
Designed by:	WMBP
Drawn by:	DWP/SAG
Checked by:	DLC/MDS
Approved by:	
Date:	7/96
Scale:	N.T.S.
Project #:	0774-03
WO #:	36603
Sheet 4 of 6	

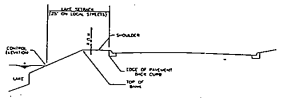


DEVIATION 1

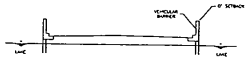


DEVIATION 3

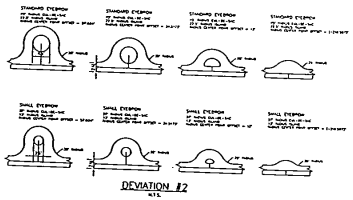
DEVIATIONS 6 ILLUSTRATION NOT REQUIRED



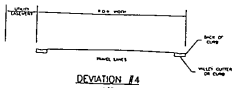
DEVIATION 7 (A-B)



DEVIATION 7 (C)

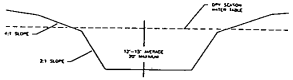


DEVIATION #2



DEVIATION #4

DEVIATION 5 ILLUSTRATION NOT REQUIRED



DEVIATION 8

APPROVED
Master Concept Plan
Site Plan # 93-132 Page 3 of 4
Subject to conditions in Resolution Z-97-037
Zoning Case # 96-CZ-050-03E etc/
96-97-030-03E etc/

RECEIVED
MAY 30 1997
PERMIT CENTER

PRINTED
MAY 30 1997

PROJECT #
PROJECT TYPE

WILSON
MILLER
BARTON
& PEEK
INC.

Planning
& Landscape
Architecture
Division

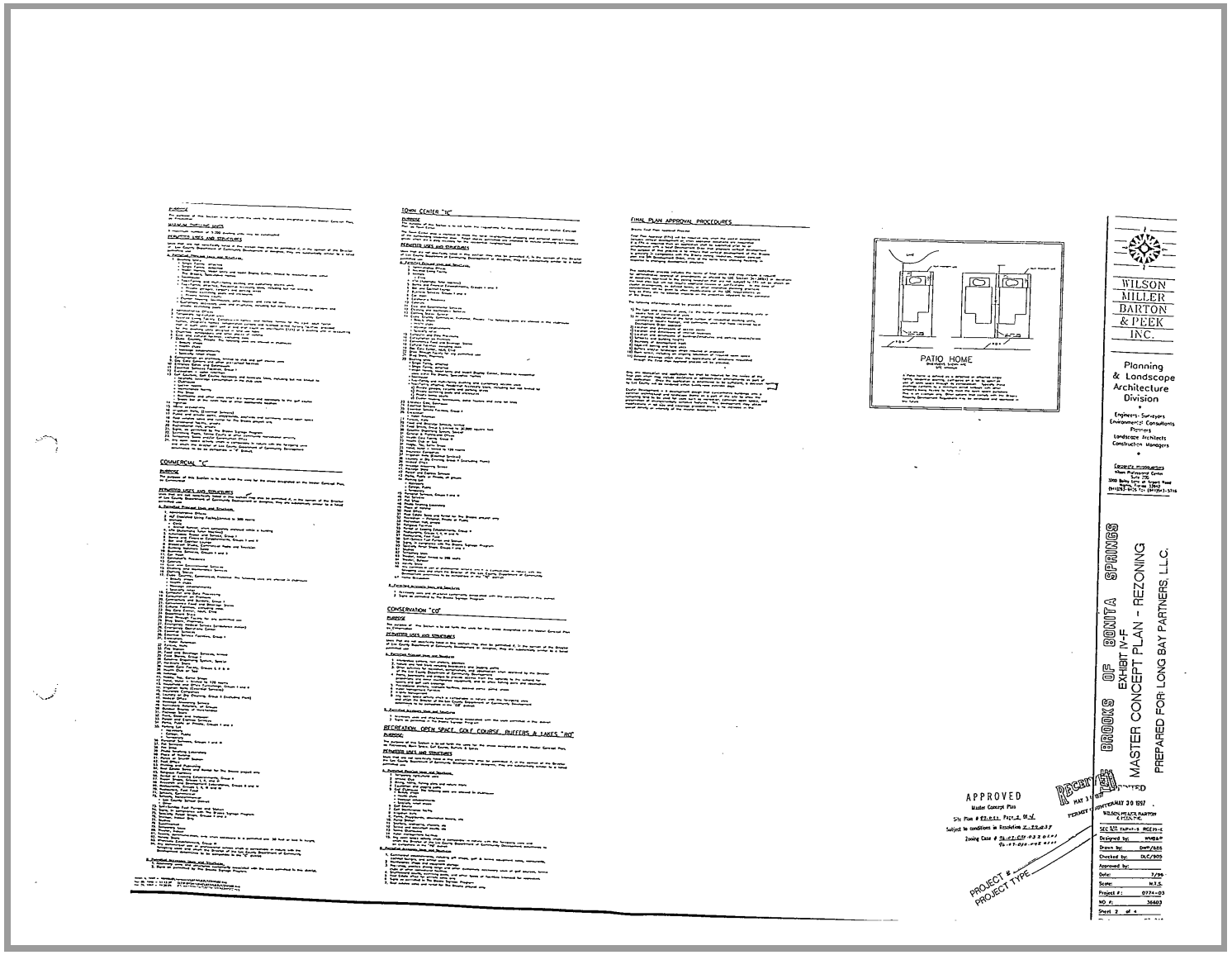
Engineers· Surveyors
Environmental Consultants
Planners
Landscape Architects
Construction Managers

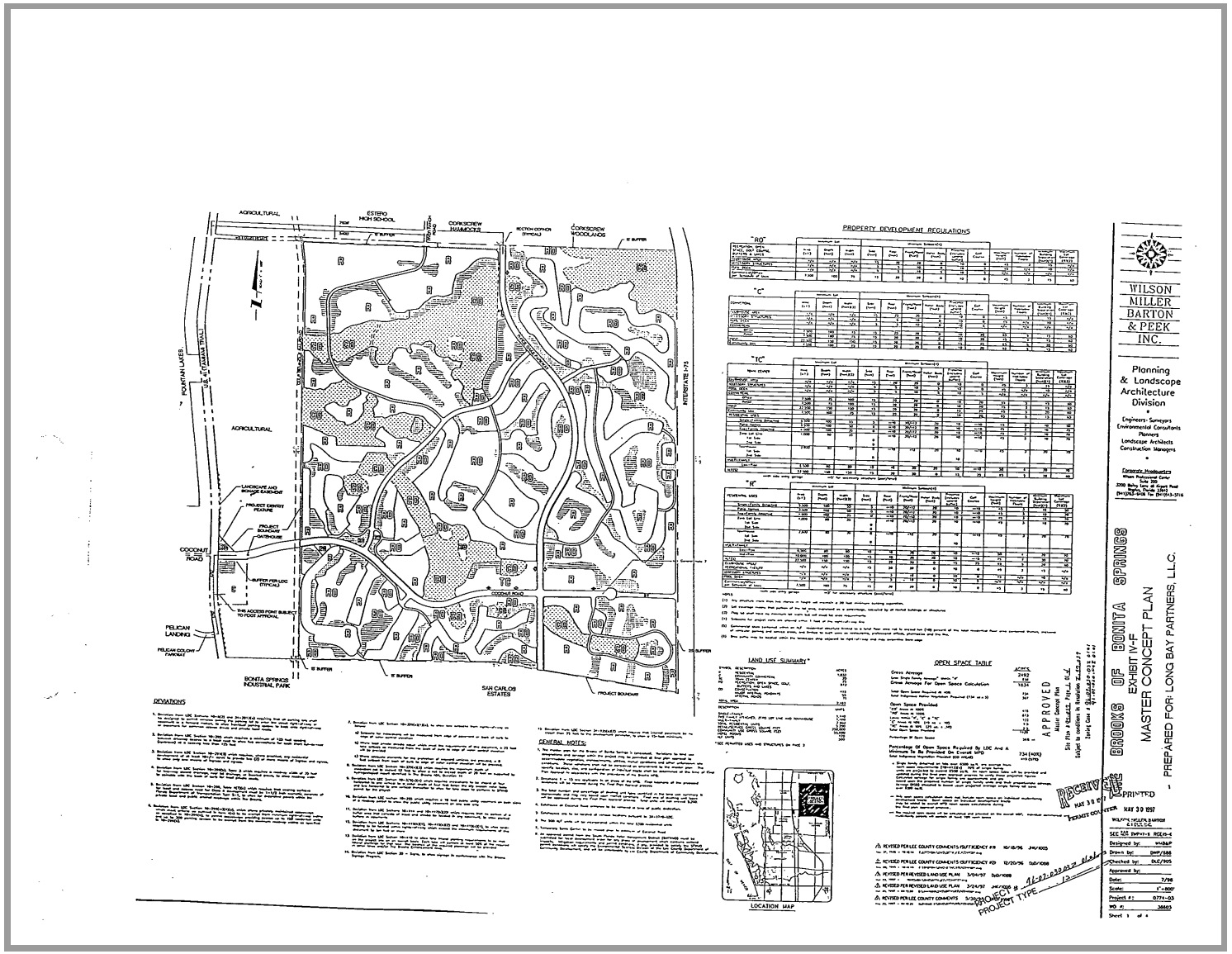
Corporate Headquarters
Wilson Professional Center
Suite 200
3200 Bailey Park at Airport Road
Austin, Texas 78741
(512)451-1143 Fax (512)451-3718

BROOKS OF BONITA SPRINGS
EXHIBIT IV-F
MASTER CONCEPT PLAN - REZONING
PREPARED FOR: LONG BAY PARTNERS, L.L.C.

WILSON MILLER BARTON & PEEK, INC.

Sec 5,6,7,8 T47S-R-25	RC23-4
Designed by:	WMBP
Drawn by:	DWP/RDG
Checked by:	RLC/WO
Approved by:	
Date:	7/96
Scale:	N.T.S.
Project #:	0774-03
WO #:	36003
Sheet 3 of 4	


COMMERCIAL "C"
CONSERVATION "CO"
FINAL PLAN APPROVAL PROCEDURES
PATIO HOME
WILSON
MILLER
BARTON
& PEEK
INC.
Planning
& Landscape
Architecture
Division
BROOKS OF BONITA SPRINGS
EXHIBIT IV-F
MASTER CONCEPT PLAN - REZONING
PREPARED FOR: LONG BAY PARTNERS, L.L.C.
APPROVED
Master Concept Plan
PROJECT #
PROJECT TYPE


PROPERTY DEVELOPMENT REGULATIONS
"RO"
"C"
"IC"
"R"
LAND USE SUMMARY
OPEN SPACE TABLE
DEVIATIONS
GENERAL NOTES:
LOCATION MAP
WILSON MILLER BARTON & PEEK INC.
Planning & Landscape Architecture Division
BROOKS OF BONITA SPRINGS
EXHIBIT IV-F
MASTER CONCEPT PLAN
PREPARED FOR: LONG BAY PARTNERS, L.L.C.
APPROVED
RECEIVED
PROJECT TYPE 13

DCL File

DEVELOPMENT ORDER
FOR
THE BROOKS OF BONITA SPRINGS
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #07-9697-133

LET IT BE KNOWN THAT, PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, HAS HEARD AT A PUBLIC HEARING CONVENED ON AUGUST 25, 1997, THE APPLICATION FOR DEVELOPMENT APPROVAL FOR THE BROOKS OF BONITA SPRINGS (HEREAFTER REFERRED TO AS THE BROOKS) DRI, A MIXED USE DEVELOPMENT IN LEE COUNTY WHICH INCLUDES APPROXIMATELY 2,492± ACRES TO BE DEVELOPED IN ACCORDANCE WITH THE APPLICATION SUBMITTED TO LEE COUNTY ON July 3, 1996 BY THE OWNER/APPLICANT, LONG BAY PARTNERS, L.L.C.

WHEREAS, the Board of County Commissioners of Lee County, Florida, has considered the report and recommendations of the Southwest Florida Regional Planning Council, the Lee County Staff, the Lee County Hearing Examiner, the application and sufficiency submittals, and the documents and comments made on the record in public hearing, and after full consideration of those reports, recommendations, documents and comments, the Board of County Commissioners of Lee County, Florida, finds and determines that:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Brooks is a master planned community located in unincorporated south Lee County west of I-75, north of San Carlos Estates, east of U.S. 41 and south of Corkscrew Road. The property includes 2,492± acres. The Brooks is a mixed use development that will consist of: 5,200 residential units, 250,000 square feet of retail/service/office gross floor area, 120 hotel units, and a maximum of 55,000 square feet of gross floor area of community facilities; the community facilities may include community association meeting space, education and training facilities oriented toward the residents' daily needs, dining, recreation, entertainment, civic and community uses. In addition, there will be 873 acres of active and passive recreation areas that include open space, buffer, golf, tennis, swimming and lakes. At buildout, the development will provide approximately 416 acres of conservation lands (forested and open wetlands and wetland flow-way restoration) and 126 acres of internal and public arterial road right-of-ways.

The phasing schedule includes two 5-year phases. Site preparation will commence in 1997. Residential construction is scheduled to commence in 1998. The buildout date is December 31, 2007.

Water supply and wastewater treatment will be provided by Bonita Springs Utilities, Inc.

B. The factual findings, conclusions of law, conditions and other terms of this Development Order apply to the property described more completely below:

PARCEL 1

A portion of the South Half (S½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,542.33 feet;
THENCE run S88°02'34"W for a distance of 1,221.61 feet to the POINT OF BEGINNING of the herein described parcel of land;
THENCE continue S88°02'34"W for a distance of 750.33 feet to a point on the Easterly right-of-way line of US Highway No. 41 (State Road No. 45, a 200-foot right-of-way);
THENCE run S00°15'56"E along said Easterly right-of-way line for a distance of 553.06 feet to the beginning of a tangential circular curve, concave Easterly;
THENCE run Southerly along said Easterly right-of-way line, and along the arc of said curve to the left, having a radius of 5,605.39 feet, through a central angle of 06°12'58", subtended by a chord of 607.83 feet, at a bearing of S03°22'24"E, for a distance of 608.13 feet;
THENCE run N88°07'51"E for a distance of 747.23 feet to a point of intersection with a non-tangential circular curve, concave Easterly, whose radius point bears N82°31'42"E a distance of 3,909.60 feet therefrom;
THENCE run Northerly along the arc of said curve to the right having a radius of 3,909.60 feet through a central angle of 08°29'31", subtended by a chord of 578.92 feet, at a bearing of N03°13'32"W, for a distance of 579.45 feet to the end of said curve;
THENCE run N00°15'56"W for a distance of 583.09 feet to the POINT OF BEGINNING.
Containing 19.948 acres, more or less.
Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W.

PARCEL 2

A portion of the North Half (N½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Southeast corner of Section 09, Township 47 South, Range 25 East, Lee County Florida;
THENCE run N00°57'23"W along the East line of said Section 09 for a distance of 2,674.19 feet to the East Quarter corner of said Section 09;
THENCE run N01°15'50"W along the East line of said Section 09 for a distance of 68.17 feet;
THENCE run S88°02'34"W for a distance of 1,555.19 feet to the POINT OF BEGINNING of the herein described parcel of land;

THENCE continue S88°02'34"W for a distance of 413.96 feet to a point on the Easterly right-of-way line of US Highway 41 (State Road No. 45, a 200 foot right-of-way);
THENCE run N00°15'56"W along said Easterly right-of-way line for a distance of 415.00 feet;
THENCE run S46°02'16"E for a distance of 577.45 feet to the POINT OF BEGINNING.
Containing 1.971 acres, more or less.
Bearings hereinabove mentioned are based on the East line of the Southeast Quarter (SE¼) of Section 09, Township 47 South, Range 25 East as being N00°57'23"W.

PARCEL 3

A parcel of land located in Sections 02, 03, 10, and 11, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Commence at the Northwest corner of Section 03, Township 47 South, Range 25 East, Lee County, Florida;
THENCE run S00°46'22"E along the West line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 100.02 feet to a point 100.00 feet South of, as measured at right angles to, the North line of the Northwest Quarter (NW¼) of said Section 03;
THENCE run N89°51'03"E parallel with the North line of the Northwest Quarter (NW¼) of said Section 03 for a distance of 23.35 feet to a point on the South right-of-way line of Williams Road, a 100.00 foot right-of-way, the same being the POINT OF BEGINNING of the parcel of land herein described;
THENCE continue N89°51'03"E along said parallel line and along said South right-of-way line for a distance of 2,623.11 feet;
THENCE run N89°51'33"E parallel with the North line of the Northeast Quarter (NE¼) of said Section 03 and along said right-of-way line for a distance of 975.29 feet;
THENCE run N00°08'27"W along said right-of-way line for a distance of 100.00 feet to a point on the North line of the Northeast Quarter (NE¼) of said Section 03;
THENCE run N89°51'33"E along the North line of the Northeast Quarter (NE¼) of said Section 03 for a distance of 1,664.48 feet to the Northeast corner of said Section 03, the same being the Northwest corner of Section 02, Township 47 South, Range 25 East;
THENCE run N89°51'16"E along the North line of the Northwest Quarter (NW¼) of said Section 02 for a distance of 2,641.95 feet;
THENCE run N89°50'12"E along the North line of the Northeast Quarter (NE¼) of said Section 02 for a distance of 2,026.48 feet to a point on the West right-of-way line of Interstate 75, a 410-foot right-of-way, the same being a point on a circular curve, concave Westerly, whose radius point bears S79°55'57"W a distance of 5,567.58 feet therefrom;
THENCE run Southerly along said right-of-way line and along the arc of said curve to the right, having a radius of 5,567.58 feet, through a central angle

of 08°30'06", subtended by a chord of 825.37 feet, at a bearing of S05°49'00"E for a distance of 826.13 feet to the end of said curve;
THENCE run S01°33'57"E along said right-of-way line for a distance of 4,512.58 feet to a point on the North line of the Northeast Quarter (NE¼) of Section 11, Township 47 South, Range 25 East;
THENCE continue S01°33'57"E along said right-of-way line for a distance of 5,977.28 feet to a point on the South line of said Section 11;
THENCE run N82°32'38"W along the South line of the Southeast Quarter (SE¼) of said Section 11 for a distance of 2,165.51 feet;
THENCE run N82°29'27"W along the South line of the Southwest Quarter (SW¼) of Section 11 for a distance of 2,698.44 feet to the Southwest corner of said Section 11, the same being the Southeast corner of Section 10, Township 47 South, Range 25 East;
THENCE run S88°50'19"W along the South line of the Southeast Quarter (SE¼) of said Section 10 for a distance of 2,664.18 feet;
THENCE run S88°50'37"W along the South line of the Southwest Quarter (SW¼) of said Section 10 for a distance of 2,540.14 feet to a point on the Easterly right-of-way line of the Seaboard Coastline Railroad right-of-way, a 130.00 foot right-of-way;
THENCE run N00°59'47"W along said Easterly right-of-way line for a distance of 5,341.51 feet to a point on the North line of the Northwest Quarter (NW¼) of said Section 10;
THENCE continue N00°59'47"W along said Easterly right-of-way line for a distance of 2,692.12 feet;
THENCE run N00°56'59"W along said Easterly right-of-way line for a distance of 1,590.73 feet to the beginning of a tangential circular curve, concave Westerly;
THENCE run Northerly along said Easterly right-of-way line and along the arc of said curve to the left, having a radius of 5,771.38 feet through a central angle of 09°31'27", subtended by a chord of 958.37 feet at a bearing of N05°42'42"W for a distance of 959.37 feet to the end of said curve;
THENCE run N10°28'26"W along said Easterly right-of-way line for a distance of 77.72 feet to the POINT OF BEGINNING.
Containing 2,470.384 acres, more or less.
Bearings hereinabove mentioned refer to the North line of the Northwest Quarter (NW¼) of Section 03, Township 47 South, Range 25 East, Lee County Florida, as being N89°51'03"E.

C. The property was zoned AG-2, and coincident with the approval of this Development Order the property will be rezoned to Mixed Use Planned Development. The property is currently in active agricultural use. Agricultural uses may continue on those portions of the site not under development.

D. The Application for Development Approval (ADA) for The Brooks is consistent with the requirements of Section 380.06, Florida Statutes, and was found sufficient by the Southwest Florida Regional Planning Council on March 20, 1997.

E. The development is not located in an area designated as an Area of Critical State Concern under the provision of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development plan. The development is consistent with the State Comprehensive Plan if developed in accordance with the conditions set forth herein.

G. The development has been reviewed by the Southwest Florida Regional Planning Council (SWFRPC) and is the subject of the report and recommendations adopted by that body on March 20, 1997. The SWFRPC report and recommendations were subsequently forwarded to Lee County pursuant to Section 380.06, Florida Statutes. The development, as proposed in the ADA and modified by this Development Order, is generally consistent with the report and recommendations of the SWFRPC pursuant to Section 380.06(11), Florida Statutes.

H. The development is located in the Rural, Wetlands, and Suburban future land use categories and the development, as proposed, is consistent with the Planned Development District Option set forth in the Lee Plan for the Rural future land use category. The project, as conditioned herein, is consistent with the Lee County Comprehensive Plan, and Lee County's Land Development Code.

I. The conditions set forth below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

II. ACTION ON THE REQUEST AND THE CONDITIONS OF APPROVAL.

NOW THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting duly advertised, constituted and assembled August 25, 1997, that the Development of Regional Impact Application for Development Approval submitted by Long Bay Partners, L.L.C., for the project known as The Brooks of Bonita Springs (The Brooks), is hereby Approved subject to the conditions, restrictions and limitations that follow. For the purpose of this Development Order, the term "Developer" refers to Long Bay Partners, L.L.C., and includes all of its successors or assigns, and all references to County Ordinances or other regulations, includes future amendments.

A. AFFORDABLE HOUSING

1. The Developer surveyed whether there was a sufficient number of housing units available to meet the demands of 747 employees at buildout (2007). Based on this survey, found to be sufficient, The Brooks has no regionally significant impact on low and moderate income housing.

2. If the Developer files a Notice of Proposed Change that extends the buildout date of the DRI beyond 2007, the Developer must reanalyze its impacts on low and moderate income housing, if the development subject to the extension includes commercial development. The analysis is limited to the low and moderate housing impact of the total commercial development. If the analysis indicates that there will be regionally significant

impacts, the Developer must mitigate those impacts in accordance with applicable regulations.

B. ENERGY

The Developer will utilize the energy conservation measures outlined in the ADA.

C. HURRICANE PREPAREDNESS

1. The Brooks, at its current elevation, is located in a Category Three area pursuant to the SLOSH model. This is not a high hazard hurricane impact area, and the impacts to hotel/motels are only considered in high hazard areas. The DRI is in a "Hurricane Vulnerability Zone" (9J-2.0256(2)(c), F.A.C.). Due to the project's location in a category three area of Lee County, the Developer has the option of mitigating its impacts under Rule 9J-2.0256, F.A.C., or Rule 9J-2.0257, F.A.C. The Developer has chosen to mitigate the regional hurricane preparedness impacts by selecting the option of elevating the first floor of all residential units above the category three flood level, pursuant to Rule 9J-2.0257(6)(b), F.A.C. The units must be elevated at or above 16.6 feet, NGVD, the level designated for a Category Three area. If they are not so elevated, the Developer may not use the 9J-2.0257, F.A.C. option to mitigate its impacts. If they are elevated at or above 16.6 feet, NGVD, they will be treated as if they were in a Category Four flood level, and they will be considered to be outside of the hurricane vulnerability zone as defined by Rule 9J-2.0256, F.A.C.

2. The Developer will provide 20,000 square feet of on-site shelter space. Ten thousand square feet will be constructed in Phase I, and ten thousand square feet will be constructed in Phase II. The on-site shelter space will be used exclusively by residents of The Brooks and their guests, and they will be located within the club house(s) and must meet the following criteria:

(a) All shelter buildings must be elevated at or above the 16.6 feet, NGVD;

(b) All shelter buildings must be constructed in accordance with the requirements in Rule 9J-2.0257(6)(e), F.A.C., to withstand winds of at least one hundred twenty (120) miles per hour;

(c) All windows in shelter buildings must be shuttered;

(d) All shelter buildings must be equipped with an emergency power generator with adequate capacity to handle the following:

(1) ventilation fans;

(2) emergency lighting;

(3) life safety equipment (i.e., intercom, fire and smoke alarms);

(4) refrigeration and cooking equipment;

(e) All shelters must have an auxiliary potable water supply.

3. Pursuant to Policy 79.2.2 of the Lee Plan, all landowners within The Brooks must pay an All-Hazards Tax for hurricane shelters.

4. The Developer must establish a public information program with the Property Owners' Association for the purpose of educating the development's residents regarding the potential hurricane threat. The Developer will do the following:

a. The various Property Owners' Associations must host an annual educational seminar, and will be responsible for obtaining the place for the seminar and for the provision of invitations to the homeowners. The time will be coordinated with the Lee County Emergency Services staff, who will provide the education and information at the program. The public information program will advise the residents of the location of The Brooks in a Special Hurricane Preparedness District and of the difficulty of evacuation in the event of an impending hurricane, the availability and location of hurricane shelters and the identification of steps to minimize property damage and to protect human life. Lee County Emergency Services staff will provide additional information regarding natural disasters if appropriate.

b. The Developer will also provide one, or more, coordinated preparedness plan(s) for the residential areas within the DRI. The hurricane preparedness plan(s) must address and include: a) operational procedures for the warning and notification of residents and visitors prior to and during a hurricane watch and warning period; b) a public information program, described above; c) identification of who is responsible for the implementation of the approved evacuation plan; d) identification of the County's hurricane evacuation routes and shelters; and e) how the private security force, if any, will be integrated with the local Sheriff's personnel and the Division of Public Safety. The preparedness plan(s) must be developed in cooperation with the Lee County Emergency Management officials and must be found sufficient by those officials prior to the issuance of the first residential certificate of occupancy. Lee County Emergency Management Services will review the preparedness plan(s), and any revisions or addendums thereto, and will provide written objections or a verification of approval within fifteen (15) days.

5. Prior to the issuance of a local Development Order, the Developer of the hotel must submit a hurricane preparedness plan for the hotel to Lee County. Prior to the issuance of the Certificate of Occupancy for the hotel, the written preparedness plan(s) must be approved by Lee County Emergency Management. Lee County Emergency Management will review the preparedness plan(s), and any resubmittals and addendums, and will provide written comments that identify the deficiencies in the plan(s), resubmittals or addenda within 15 days. If no deficiencies are identified, Lee County Emergency Management will issue a written approval within 15 days.

6. When property is conveyed, the Developer must include a disclosure statement in the form of a covenant in the deed which states that the property is located in

a hurricane vulnerability zone, that the hurricane evacuation clearance time for the County is high, and that shelter space is limited.

D. STORMWATER MANAGEMENT

1. The Developer must modify the existing agricultural construction and operation permit (#36-00288-5), to address the construction and operation of the surface water management system for the development approved by this Development Order and the project's proposed impacts to isolated wetlands, "waters of the state" and "other surface waters." Review and approval of the application will be in accordance with Chapter 40E, F.A.C. and the South Florida Water Management District (SFWMD) Basis of Review. The Developer will provide the County with copies of the modified permit.

2. The Developer must also obtain a SFWMD water use permit for certain dewatering activities proposed for the construction of project lakes, roads and building foundations. The Developer will provide the County with copies of the water use permit.

3. If needed, the Developer must obtain a consumptive use permit, in accordance with Chapter 40E, F.A.C., and the SFWMD Basis of Review. The Developer will provide the County with copies of the consumptive use permit.

4. At the time of permit application, the Developer and the SFWMD will determine whether the surface water management system must comply with discharge criteria for Outstanding Florida Waters.

5. An analysis of the method and routes proposed for off-site discharges will be required at the time of permit application. The analysis must include particular emphasis on control elevations, on-site storage, delineation of watershed boundaries, and the adequacy of off-site conveyances to accommodate the anticipated discharges from the project site. The analysis must include construction level detail. In order for District staff to determine whether the proposed discharges to Outstanding Florida Waters are classified as "direct" or "indirect," the Developer must submit construction level drawings showing the proposed conveyance methods at the time of permit application.

6. The Developer will establish a legal operating entity in accordance with the SFWMD Basis of Review and Lee County Land Development Code (LDC), to maintain all internal storm water management lakes, ditches and wetlands. Easements, common areas or other legal mechanisms may be utilized to ensure there is sufficient access to the storm water management areas.

7. The Developer must remove all silt barriers, hay bales, anchor soil, and accumulated silt, upon completion of construction, and stabilization of slide slopes.

8. Where applicable, the final stormwater management plan must consider measures to reduce runoff rates and volumes, including, but not limited to, fixed control structures, perforated pipes, and grass swale conveyances. The Developer must use swales rather than closed systems whenever practical.

9. On-site stormwater management lakes must include littoral zones. The location and extent of the littoral zones must be consistent with the requirements set forth in the surface water management permit issued by the SFWMD, as well as the local Development Order issued by Lee County. The SFWMD Basis of Review and County planned development resolution will dictate the required type, massing, and survival rate of vegetation in the littoral zones.

10. The Developer must conduct annual inspections of the Master Stormwater Management System and the on-site preserved/enhanced wetland areas to ensure that these areas are maintained in keeping with the final approved designs, and that the water management system is capable of accomplishing the level of stormwater storage and treatment for which it was intended.

11. If the stormwater management system impacts the habitats of state or federally listed plant and animal habitats on-site, these impacts will be evaluated during the review of any surface water management or ERP permit issued by the SFWMD, any dredge and fill permit issued by the Army Corps of Engineers (ACOE) and any local Development Order issued by Lee County. Impacts will be evaluated and mitigated in accordance with ACOE, SFWMD/DEP, and Lee County regulations.

12. The Developer, the UCDD, or the successors and assigns, must regularly vacuum sweep all privately owned internal streets and parking areas. The Developer will also encourage private parcel owners to regularly vacuum sweep their respective streets and parking areas.

13. The Developer must provide dry detention or retention pretreatment in the areas adjacent to commercial uses unless the Developer can provide reasonable assurances to the SFWMD that hazardous materials will not enter the project's surface water management system. The assurances may be in the form of deed restrictions, recorded lease agreements, or other legal instrument acceptable to SFWMD and the County.

E. TRANSPORTATION

1. Significant Impact

a. The traffic impact assessment for the project assumes the development parameters set forth below:

	Phase I (2002)	Buildout (2007)
Residential		
--Single Family	600 D.U.	1,140 D.U.
--Multi Family/Single Family-Attached	2,000 D.U.	4,060 D.U.
Non-Residential		
--Service/Retail/Office (Town Center)	10,000 sq. ft.	100,000 sq. ft.
--Community Use (Town Center)	15,000 sq. ft.	50,000 sq. ft.
--General Retail (Community Center)	100,000 sq. ft.	150,000 sq. ft.
--Community Use (Community Center)	5,000 sq. ft.	5,000 sq. ft.

--Hotel	0 Rooms	120 Rooms
--Golf Course	36 Holes	72 Holes

b. The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at project Build out (2007). The Brooks DRI is projected to significantly and adversely impact the following roadways and intersections:

Roadways:

	Needed Improvement
Corkscrew Road	
--Sandy Lane to Three Oaks Parkway	Widen to 4 lanes
--Three Oaks Parkway to I-75	Widen to 4 lanes
U.S. 41	
--Bonita Beach Road to W. Terry Street	Widen to 6 lanes
--Corkscrew Road to Koreshan Boulevard	Widen to 6 lanes
--Koreshan Boulevard to San Carlos Boulevard	Widen to 6 lanes
--San Carlos Boulevard to Alico Road	Widen to 6 lanes
--Alico Road to Island Park Road	6 lanes plus alternate facility*
--Island Park Road to Jamaica Bay West	6 lanes plus alternate facility*
--Jamaica Bay West to Six Mile Parkway	6 lanes plus alternate facility*
Bonita Beach Road	
--Imperial Street to I-75	Widen to 6 lanes

** Metro Parkway Extension (6 lanes)*

Intersections:

US 41/Six Mile Cypress Parkway	Intersection Improvements
US 41/Island Park Road	Intersection Improvements
US 41/Alico Road	Intersection Improvements
US 41/San Carlos Boulevard	Intersection Improvements
US 41/Koreshan Boulevard	Intersection Improvements
US 41/Corkscrew Road	Intersection Improvements
US 41/Williams Road	Intersection Improvements
US 41/Coconut Road (Partially site-related)	Intersection Improvements
US 41/Old 41/Pelican Landing Parkway	Intersection Improvements
US 41/W. Terry Street	Intersection Improvements
US 41/Bonita Beach Road	Intersection Improvements
Corkscrew Road/Three Oaks Parkway	Intersection Improvements
Corkscrew Road/I-75 West Ramps	Intersection Improvements
Corkscrew Road/I-75 East Ramps	Intersection Improvements

2. Mitigation

a. The total proportionate share obligation to mitigate The Brooks DRI's transportation impacts on the non-site related roads and intersections set forth in Section E.1.b. above is estimated to be $9,198,000, and the total estimated road impact fees to be generated by the project are $7,863,240. To satisfy the proportionate share obligation, the Developer must choose one of the two mitigation options identified below. The Developer must select one mitigation option and notify the County in writing prior to the granting of the first building permit for the first permanent residential or commercial structure, except for the sales center. The selection of Option 2 must be accompanied by a Local Government Development Agreement pursuant to Section 163.3220, Florida Statutes, and Chapter 2, Article III of the Lee County Land Development Code. Once an option has been selected, any request to change the mitigation option, including changing from one option to the other, must be accompanied by the filing of a Notice of Proposed Change and an analysis as to whether the change constitutes a substantial deviation.

b. Mitigation Option 1

1) Within 150 days of adoption of this DRI Development Order, but no later than January 1, 1998, the Developer must provide to the County a schedule for the dedication of certain right of way to the County. The schedule shall reflect the Developer's acquisition of the property. Right of way to be dedicated shall include the following : 150 feet of right-of-way for the extension of Coconut Road from U.S. 41 to the eastern property line, 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway, and 150 feet of right-of-way for the establishment of the Three Oaks Parkway extension from the south property line to the north property line, following the general alignments identified in the Master Plan (Map H). The actual alignments will need to be reviewed and approved by Lee County DOT prior to dedication. The Developer must also dedicate the expanded right-of-way (3.5 acres) at the eastern property line to allow for an eventual Coconut Road overpass over I-75. If the identified right-of-way is not provided as specified in the schedule, further building permits shall be suspended until that dedication occurs.

Although the appraisals will be completed at the time of dedication, the value of the right-of-way will be based on its appraised value at the time of DRI approval, without the enhanced value created by DRI and zoning approval. The Developer's proposed mitigation plan dated April 22, 1997 estimates the value to be 80 cents per square foot. The value of the Coconut Road right-of-way will be based on the following:

a) U.S. 41 to Three Oaks Parkway, (9,000 ± feet), 80 feet non-creditable and 70 feet creditable.

b) Three Oaks Parkway to Southeast Parcel Entrance, (2,000± feet), 80 feet non-creditable and 70 feet creditable.

c) Southeast Parcel Entrance to I-75 (1,600± feet), 150 feet creditable.

d) I-75 overpass quadrants at a total of 3.5 acres, creditable.

Consistent with the Land Development Code, there will be no impact fee credits or credits against the proportionate share obligation for the non-creditable component of these right-of-way dedications. The 150-foot right-of-way dedicated for Three Oaks Parkway and the 100-foot right-of-way dedicated for Williams Road are fully creditable; any additional right-of-way required for site-related improvements, as determined by the Lee County Engineer, is not creditable.

2) The total estimated value of the rights-of-way for the three roads, factoring out the non-creditable portion of Coconut Road, is $2,842,000 (assuming DRI approval and right-of-way dedication in 1997). The precise value will be verified through proper appraisals. The value of the creditable (non site-related) portion of the right-of-way will be subtracted from the $9,198,000 proportionate share obligation. Subtracting the estimated $2,842,000 right-of-way value from the $9,198,000 proportionate share obligation equals $6,356,000, or $1,507,240 less than the estimated impact fee revenue projected through project Build out ($7,863,240). The estimated $1,507,240 difference will be issued to the Developer in the form of road impact fee credits. These credits may be used to defray the estimated $7,863,240 in impact fees or transferred in accordance with the Land Development Code. In any event, the remaining proportionate share obligation will be addressed at the time of building permit issuance for each unit of development. At that time, the Developer may pay the impact fees in cash or redeem whatever impact fee credits he may have.

3) All development within The Brooks DRI will be subject to the County's Concurrency Management System in effect at the time building permits are requested.

4) If the Land Development Code Chapter governing roads impact fees is repealed, reduced or made unenforceable by court petition, The Brooks DRI will continue to pay, per individual permit, an amount equivalent to roads impact fees in effect prior to such repeal, reduction or court petition. If the Developer submits an independent fee study in accordance with Chapter 2 of the Land Development Code in an effort to reduce impact fees, he must file a Notice of Proposed Change to the DRI Development Order and conduct an analysis of whether the requested change in anticipated revenues constitutes a substantial deviation. In any case, the overall $9,198,000 obligation must be met, unless the scope of development is reduced. If road impact fees are increased, the Developer shall get credit for those increases against the total $9,198,000 obligation.

5) The County will apply the roads impact fees paid by The Brooks DRI under Mitigation Option 1 toward the non-site related improvements identified in Section E.1.b. In the alternative, the County will apply the fees toward improvements that relieve those roadways, provided those improvements are deemed necessary to maintain the County's adopted level of service standards. If the improvements identified in Section E.1.b. are ultimately funded through other sources, in whole or in part, or deemed unnecessary to maintain the adopted level of service standards, Lee County may apply the impact fees paid

by The Brooks to other improvements consistent with the requirements of Chapter 2 of the Lee County Land Development Code.

c. Mitigation Option 2

Phase I

1) Within 180 days of adoption of this DRI Development Order, but no later than February 1, 1998, the Developer must provide to the County a Development Agreement specifying the schedule for certain right-of-way dedication and roadway construction in lieu of the payment of road impact fees. Building permits for permanent residential or commercial structures (except for the sales center) within The Brooks cannot be issued until this Development Agreement is executed by both parties. The right-of-way dedication and construction schedule shall reflect the Developer's acquisition of the property, design of the improvements and construction of those improvements, as well as commitments made in this Development Order. On-site right-of-way to be dedicated shall include the following: 150 feet of right-of-way for the extension of Coconut Road from U.S. 41 to the eastern property line, 100 feet of right-of-way for the extension of Williams Road from River Ranch Road to Three Oaks Parkway, and 150 feet of right-of-way for the establishment of the Three Oaks Parkway extension from the south property line to the north property line, following the general alignments identified in the Master Plan (Map H). The actual alignment will need to be reviewed and approved by Lee County DOT prior to dedication. The Developer must also dedicate the expanded right-of-way (3.5 acres) at the eastern property line to allow for an eventual Coconut Road overpass over I-75.

Off-site right-of-way to be dedicated includes all or part of the Developer-owned land between Williams Road and Corkscrew Road along the general alignment of the Three Oaks Parkway extension. As part of the Development Agreement submittal the Developer must provide to Lee County the necessary documentation identifying the property he is offering for the Three Oaks extension. The Lee County Division of Transportation will then make a determination as to how much of the property is usable for the extension.

2) As part of the submittal of the proposed Development Agreement, the Developer must provide an appraiser's estimate of value or range of value for the rights-of-way to be dedicated, including the off-site right-of-way for the Three Oaks extension from Williams Road to Coconut Road. These values will be based on the value at the time of DRI approval, without the enhanced value created by the DRI and zoning approval, and will be used to determine the amount of cash payment that may be required to complete the mitigation requirements for Phase I.

Actual value of the rights-of-way will be determined at the time of dedication through proper appraisals using the following parameter: the value of the right-of-way will be based on its appraised value at the time of DRI approval, without the enhanced value created by DRI and zoning approval. The Developer's proposed mitigation plan dated April 22, 1997 estimates the value to be 80 cents per square foot. The value of the Coconut Road right-of-way will be based on the following:

a) U.S. 41 to Three Oaks Parkway, (9,000± feet), 80 feet non-creditable and 70 feet creditable.

b) Three Oaks Parkway to Southeast Parcel Entrance, (2,000± feet) 80 feet non-creditable and 70 feet creditable.

c) Southeast Parcel Entrance to I-75 (1,600± feet) 150 feet creditable.

d) I-75 overpass quadrants at a total of 3.5 acres, creditable.

Consistent with the Land Development Code, there will be no impact fee credits or credits against the proportionate share obligation for the non-creditable component of these right-of-way dedications. The 150-foot right-of-way dedicated for Three Oaks Parkway and the 100-foot right-of-way dedicated for Williams Road are fully creditable; any additional right-of-way required for site-related improvements, as determined by the Lee County Engineer, is not creditable. The total estimated value of the rights-of-way for the three on-site roads, factoring out the non-creditable portion of Coconut Road, is $2,842,000 (assuming DRI approval and right-of-way dedication in 1997).

3) Coincident with the acceptance by Lee County of the Development Agreement but no later than February 1, 1998 or the issuance of the first building permit for the first permanent residential or commercial structure (except for the sales center), the Developer shall do the following:

a) Dedicate to the County 150 feet of right-of-way for Coconut Road from U.S. 41 to future Three Oaks Parkway.

b) Dedicate to the County all, or a portion, of the property owned by the Developer along the general alignment of the Three Oaks Parkway Extension from Williams Road to Corkscrew Road. The amount of land to be dedicated will be based on the Lee County determination referenced in Section E.2.c.(1).

c) Utilizing the values provided by an appraiser, estimate the total value of all right-of-way dedications to be made during Phase I, both on-site (Coconut Road from U.S. 41 to the east property line including the expanded right-of-way at I-75, Three Oaks Parkway from the south property line to Williams Road, and Williams Road from River Ranch Road to Three Oaks Parkway) and off-site (Three Oaks Parkway from Williams Road to Corkscrew Road). The Developer will then submit a cash payment for the difference between estimated Phase I impact fees ($3,777,270) and the value of the right-of-way dedications (estimated at $3,381,000 if all of the off-site Three Oaks property is utilized). At the time of dedication, the actual value for the rights-of-way will be based on an appraisal using certain valuation parameters noted in Section E.2.c.(2). If, upon completion of the right-of-way dedications and establishment of actual value, it is determined that the initial cash payment made by the Developer was insufficient to equal a total mitigation value of $3,777,270, then: 1) an additional cash payment must be made to reach the $3,777,270 total,

or 2) design plans as specified under Phase II for one or more of the identified roads (i.e., Williams Road, Coconut Road or Three Oaks Parkway) will be provided in lieu of all or a portion of the difference; or 3) no further building permits will be issued. If the initial cash payment results in a total Phase I mitigation value in excess of $3,777,270, then the difference will be applied to the Phase II mitigation requirements or reimbursed in the form of road impact fee credits, whichever is agreed upon by both Lee County and the Developer.

This cash payment will be applied by Lee County toward the improvements to be mutually agreed upon and specified in the Development Agreement.

4) Coincident with the 650th residential building permit, the Developer shall dedicate to the County 150 feet of right-of-way for Three Oaks Parkway from the south property line to the north property line.

5) Coincident with the 1300th residential building permit, the Developer shall dedicate to the County the balance of the right-of-way as described above.

6) If the right-of-way dedications and payments specified in Sections E.2.c.(1) through c.(5) above are made as described, in the time frames noted, The Brooks will not pay road impact fees and the level of development for Phase I of The Brooks DRI as identified in Section E.1.a. shall be exempt from the County's concurrency management requirements. If the dedications and payments are not made as described, then no further building permits will be issued until the Developer makes those dedications and payments.

Phase II

7) Before the end of calendar year 2002 or the initiation of any Phase II residential or commercial building permits, whichever is earlier, the Developer must provide to Lee County for review and approval design plans consistent with County standards for the following improvements:

a) Three Oaks Parkway as a 4-lane urban arterial expandable to six lanes from the south property line to the north property line.

b) Williams Road as a 2-lane rural collector from River Ranch Road to Three Oaks Parkway.

The design work will include any necessary permitting. The value of the designs and permitting must be verified and approved by Lee County, through the submittal of billing documents from the Developer's design consultant. The value is currently estimated at a total of $614,000 ($526,000 for Three Oaks Parkway, and $88,000 for Williams Road). The actual value is creditable against the total proportionate share amount of $9,198,000.

8) Within twelve months after design approval by Lee County and permit approval, the Developer shall initiate construction of the extension of Three Oaks Parkway from the project's southern property line to the northern property line. The

Developer must construct this roadway consistent with the approved design plans. The estimated construction cost of this improvement is $4,556,000 (excluding design, permitting and right-of-way costs) which is creditable against the proportionate share amount.

9) Within twenty-four months after design approval by Lee County and permit approval, the Developer must also initiate construction of the extension of Williams Road from River Ranch Road east to Three Oaks Parkway. The Developer must construct the Williams Road extension consistent with the approved design plans. The estimated construction cost of this improvement is $281,000 (excluding design, permitting and right-of-way costs) which is creditable against the proportionate share amount.

10) Upon completion of the Three Oaks Parkway and Williams Road extensions, the Developer must calculate the actual construction costs of the improvements to those roadways (including design and permitting) and add those costs to the value of the Phase I non site-related right-of-way dedications and cash payments. The Developer must then pay the balance, if any, of the proportionate share assessment in cash. (This is the difference between the total proportionate share obligation and the mitigation to date). This cash payment will be applied toward the improvements to be mutually agreed upon and specified in the Development Agreement.

If the actual costs and payments identified above exceed the proportionate share amount, the Developer would get the difference in road impact fee credits. In lieu of the cash payment, if any, as described above, the Developer may reduce the scope of the development within The Brooks.

11) If the construction and payments specified in Sections E.2.c.(7) through c.(10) above are made as described in the time frames noted, and the development schedule and impact levels remain consistent with the Development Order and substantial deviation criteria, the level of development for Build out identified in Section E.1.a. will be exempt from the County's concurrency management requirements. If the Developer does not complete the referenced construction and does not make the payments as described, then no further building permits will be issued until the Developer completes the construction and makes the payments identified.

12) A 2-lane road extending Coconut Road from U.S. 41 to Three Oaks Parkway is required by the development for site-related purposes. Four lanes on that corridor were identified as needed by 2020 in a recent County planning study, in conjunction with an extension of that corridor east over the interstate, but that need would not likely exist before 2010 (except as may be created by development of The Brooks). The Developer has proposed building at least part of the Coconut Road extension as four lanes as part of his mitigation plan, for credit against the proportionate share obligation (after subtracting the non-creditable portion). The estimated differential cost of building four lanes instead of two (excluding right-of-way) from U.S. 41 to Three Oaks Parkway is $1,307,000. This represents the amount potentially creditable against the proportionate share obligation. However, the premature nature of the improvement requires a reduction in the amount creditable. If credit against the proportionate share obligation for the 4-lane improvement is requested prior to 2010, then the amount creditable against the proportionate share obligation shall be reduced at a rate of 3 percent per year for every year before 2010 the

request is made. Any credits issued will be deducted from the cash payment obligations identified to vest the project from concurrency for Buildout. The referenced segment of Coconut Road must be constructed to County standards, with design plans submitted to the County for review and approval.

13) Due to concerns regarding the effect of construction traffic, Lee County will not accept for maintenance any roads constructed by the Developer under Mitigation Option 2 until the overall development is 80 percent complete, as estimated from the entire development mix. Acceptance of Coconut Road includes the railroad crossing. The roadways must meet the County's standards in effect at the time the roadways were designed.

3. Access and Site-Related Improvements

a. The Developer is fully responsible for the following site-related roadway and intersection improvements: all intersection improvements, including signalization, turn lanes and deceleration lanes, deemed necessary by the County Engineer and consistent with the Lee County Land Development Code for the project's access points onto U.S. 41, Williams Road, Coconut Road, and Three Oaks Parkway. As site-related improvements, they are not eligible for credit against impact fees or the project's proportionate share obligation.

b. The Developer is also required to make any improvements, including signalization, turn lanes and deceleration lanes, deemed necessary by FDOT and the County Engineer at the intersection of Coconut Road and U.S. 41. The County Engineer, consistent with the Lee County Land Development Code, will determine the percentage of costs of these improvements that are site-related and, therefore, the obligation of the Developer. That percentage deemed site-related will not be eligible for credit against impact fees or for credit against the project's proportionate share obligation.

c. The access point onto U.S. 41 for the Community Center must be located and developed consistent with FDOT's access management classification for U.S. 41, unless otherwise approved by the FDOT.

d. The Brooks' access onto Williams Road will be aligned with River Ranch Road. Once the Developer applies to connect to Williams Road, the School District of Lee County will be included in the review process, and their comments and concerns will be considered by the County's Department of Community Development.

4. Annual Monitoring Report

a. The Developer must submit an annual monitoring report to the following entities for review and approval: Lee County Division of Transportation, the Florida Department of Transportation (FDOT), the Florida Department of Community Affairs (FDCA), and the Southwest Florida Regional Planning Council (SWFRPC). The first monitoring report will be submitted one year after the approval of the DRI Development Order unless no buildings have been occupied. If the Developer contends that a traffic monitoring report is not required because no traffic impacts have been created, he must indicate so in writing to

the above review agencies. Once the development is required to submit a traffic monitoring report, it must be submitted annually thereafter.

b. The monitoring program will measure the project's actual external roadway impacts, the level of service condition on the impacted roads and intersections, and determine the timing for needed improvements. The monitoring program will be designed in cooperation with the Lee County Division of Transportation, FDOT, the SWFRPC and FDCA prior to submittal of the first report. The methodology of the annual traffic monitoring report may be revised if agreed upon by all parties.

c. The annual traffic monitoring report must contain the following information:

1) P.M. peak hour traffic counts with turning movements at the project's access points onto U.S. 41, Williams Road, Coconut Road, and Three Oaks Parkway, and on the external road segments and intersections identified in Section E.1.b.

2) A comparison of field measured project traffic volumes to the project trip generation assumed in the DRI analysis. The Developer will need to specify in the methodology how the internal interaction will be measured, particularly for the Town Center.

3) Estimated existing levels of service and needed improvements for the roads and intersections specified in Section E.4.c.(1) above.

4) Estimated future levels of service and needed improvements, based on a one-year projection of future volumes, for the roads and intersections specified in Section E.4.c.(1) above.

5) A summary of the status of road improvements assumed in the ADA to be committed by Lee County and FDOT as set forth below:

Roadways	Improvement	Construction Schedule
Corkscrew Road --I-75 to Treeline Ave.	4 lanes	FY 95/96
Alico Road --US 41 to I-75 --I-75 to Treeline Ave.	4 lanes 4 lanes	FY 97/98 FY 95/96
Treeline Ave. --Corkscrew Road to Alico Road	4 lanes	FY 95/96
US 41 --Alico Rd. to Daniels Parkway	6 lanes	FY 96/97

Construction

Intersection	Improvement	Schedule
US 41/Corkscrew Road	Turn lanes	FY 96/97
Corkscrew Road/Three Oaks Pkwy.	Turn lanes/Signalization	FY 96/97

d. If the annual monitoring report reveals that the project trip generation exceeds the thresholds identified in 380.06(19)(b)15, Florida Statutes, then the provisions regarding substantial deviations will take effect under either mitigation option. If the project is deemed to be a substantial deviation, the Developer must then undergo additional DRI review. This review, if required, must reanalyze the project impacts on the County road network and specifically evaluate the potential project impacts on I-75 from Alico Road to Daniels Parkway and on Old U.S. 41 from Rosemary Drive to U.S. 41.

Under Mitigation Option 1, if the annual monitoring report confirms that the peak season, p.m. peak hour traffic on the significantly impacted roadways exceeds the level of service standards adopted by Lee County, and the project is utilizing five percent or more of the adopted level of service standard service volume, then further local Development Orders, building permits and certificates of occupancy will not be granted until the standards of the County's concurrency management system have been met. Through the end of 1999, this means that adequate district-wide level of service capacity must be available. After 1999, this means that significantly impacted individual links must be operating at the adopted level of service or an improvement to achieve the adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program, unless an alternative concurrency system has been established for all or part of Lee County. The Brooks will comply with the County's concurrency management system in effect at the time.

5. Other

a. The Brooks includes a Town Center intended to primarily serve the commercial retail/service and office needs of the community. The Town Center is anticipated to internally capture a portion of the total trips, which will help reduce the project's traffic impacts on the public roadway network. The following conditions apply to the Town Center:

1) The Town Center may not exceed 100,000 square feet of office/retail/service gross floor area. Retail commercial development at the Town Center will be limited to Minor Commercial (30,000 square feet) until the Coconut Road Extension is open and connected to Three Oaks Parkway, and the Town Center has access to Three Oaks Parkway, and the Coconut Road Extension. The Town Center may not exceed 50,000 square feet of gross floor area of community uses; and

2) The uses within the Town Center will be governed by the planned development zoning; and

3) Single use buildings may not exceed 30,000 square feet of gross leasable area.

b. The Brooks includes a Community Commercial Center located at the southeast quadrant of the proposed intersection of the Coconut Road extension and U.S. 41. The Community Commercial Center is limited to the intensity allowed in Neighborhood Commercial Centers (100,000 square feet) until such time as the Coconut Road extension is designed and open as an arterial roadway.

c. The Developer will provide for efficient pedestrian and bicycle movement within The Brooks through the provision of a system of interconnecting sidewalks and bike paths that link the various pods of development.

d. If routes are established by Lee County, the Developer will accommodate local or express transit service with bus stops on public roadways and reasonably sized and located in commercial areas.

F. VEGETATION AND WILDLIFE/WETLANDS

1. Where practical, and where consistent with the permit issued by the SFWMD, the Developer will construct shallow lakes with wetland plantings in an effort to create additional wildlife habitat value.

2. The Developer will incorporate a 24-inch-diameter wildlife crossing under each arterial roadway crossing of wetlands by placing a culvert adjacent to the upland/wetland boundary. In addition to the wildlife crossing, the Developer will place additional culvert(s) under the roadway crossing, as needed, to provide a hydraulic connection between wetlands pursuant to the SFWMD regulations. There is currently a lime rock farm road at the roadway crossing between Wetlands 8 and 10, and the Developer will install approximately .9 acres of wetland herbaceous plants and shrubs in this area. The plantings will extend from the current northern/southern wetland boundaries up to the edge of the new east/west road.

3. There will be a total of 416 conservation acres; post development.

4. Approximately 300 of the 416 conservation acres will be wetland enhancement. The Developer will implement the enhancement of wetlands in phases in accordance with the permits issued by the ACOE and SFWMD. A portion of the wetland enhancement is intended to mitigate the project's impacts to approximately 33.5 acres of ACOE and SFWMD jurisdictional wetlands.

5. The Developer will eradicate invasive exotic vegetation from the site on a phased basis, in accordance with the local Development Order approvals and ACOE and SFWMD permit requirements. Invasive exotics are those species identified in the Lee County Land Development Code and tropical soda apple (*Solanum viarum)*. Once the invasive exotics have been eradicated, the site must be maintained in accordance with County regulations to prevent the return of invasive exotics.

6. Where feasible, the surface water management system will incorporate the wetlands to assure appropriate hydroperiods and seasonal water elevations. Hydroperiods, seasonal water elevations, and the incorporation of wetlands into the surface

water management system will be evaluated by the SFWMD during the review of the District permit application(s).

7. In addition to the conservation areas identified in the open space table, the Developer will, to the extent possible, retain the existing native plant communities located in the areas designated as open space on Map H. This condition will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

8. The design for the golf course and residential areas will incorporate the retention of large slash pines for utilization as perch trees for bald eagles. This requirement will not be interpreted in a manner to impair good golf course design, nor may it result in the loss of residential lots.

9. The Brooks enhancement area will include the following items to enhance wildlife habitat: a meandering flow-way interconnecting wetlands, shallow ponds with littoral shelves for wading birds and birds of prey, enhancement of existing herbaceous wetlands, osprey platforms in hammocks, establishment of willow areas and flag ponds, and vegetated upland buffers along portions of the wetland system.

G. WASTEWATER MANAGEMENT/WATER SUPPLY

1. The Developer will obtain a SFWMD permit for groundwater withdrawals for landscape irrigation, and for dewatering needed to construct the project lakes, roads or building foundations.

2. The Developer will utilize water conserving devices and methods necessary to meet the criteria established in the water conservation plan of the public water supply permit issued to Bonita Springs Utilities (BSU). If the Developer obtains potable water from a different provider, then the Developer must conform to the water conservation plan of the alternate provider.

3. The Developer will coordinate with BSU or other water supplier to ensure that adequate potable water is available to meet the demands of the project.

4. The Developer will provide verification to the SFWMD that the Developer's plumbing and irrigation designs are consistent with the District rules.

5. The Brooks will be served by BSU with potable water and wastewater treatment. If BSU cannot provide potable water or wastewater treatment, then the Developer must obtain service from an alternate provider with capacity or construct on-site interim facilities. Interim facilities constructed on-site must be built to DEP standards. Any interim facilities constructed by the Developer must be dismantled at the Developer's expense when service by BSU facilities is available. In any event the Developer must demonstrate at the time of final local Development Order approval, that sufficient potable water and wastewater treatment capacity is available.

6. If the Developer uses treated effluent for irrigation, the Developer must buffer the on-site lakes, preserved wetlands and stormwater management system from

possible effluent contamination in accordance with applicable SFWMD regulations. The Developer must isolate the effluent containment ponds from the on-site wetlands and water management lakes if it cannot be demonstrated that the water quality in these ponds is as good as the quality of water in its natural condition.

7. Septic systems utilized in conjunction with construction trailers, sales offices and model homes will be temporary. Except for golf course or recreational rest stations, permanent septic systems are prohibited. When it is feasible to connect the temporary uses to the regional wastewater treatment facilities all temporary septic systems will be abandoned or removed by a licensed septic system firm, in accordance with all applicable regulations.

8. The Developer must submit copies of all local Development Order plans that include potable water or wastewater distribution systems, to BSU (or alternate provider). BSU will review the plans for compliance with the BSU specifications manual. The Developer must also submit all construction plans for irrigation facilities to Resource Conservation Systems for review and approval prior to the commencement of construction.

9. Lee County will evaluate all potable water facilities, to ensure that the facilities are properly sized to meet average, peak day, and fire flow demands in accordance with the LDC. Lee County will consult with the appropriate Fire Protection District to confirm that the fire flow demands will be satisfied by the proposed potable water facility.

10. For all non-potable water purposes, the Developer must use the lowest quality of water available that is acceptable for the intended purpose.

11. This Development Order specifically incorporates the Developer's commitments set forth in the ADA and subsequent sufficiency road information relating to Questions 10, 14, 17 and 18 (General Project Description, Water, Water Supply and Wastewater Management respectively)

H. FIRE

The Developer will pay fire/EMS impact fees in accordance with the Fire and Emergency Service Impact fee ordinance.

I. FISCAL

1. Internal improvement capital costs will be borne by the Developer, a UCDD, a private utility or some other legal entity which has the ability to levy an assessment or otherwise raise revenues to pay the internal improvement capital costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the capital cost internal improvements.

2. The operating and maintenance costs of the water and sewer will be addressed by payment of the required assessments, charges, and fees to BSU. BSU,

through its rate structure, charges the user for its share of the maintenance costs. The internal roads, landscaping, recreation areas, drainage, security, street lights and other on-site infrastructure shall be operated and maintained by the Developer, a UCDD, a property owners' association or some other legal entity which has the ability to levy an assessment or otherwise raise revenue to pay the cost of operation and maintenance.

3. The Developer must provide the County with fiscal monitoring reports that identify the taxable value of the development by use codes. Taxable value means the actual taxable value assigned to the property in the development by the Lee County Property Appraisers Office. The report must be submitted when the certificate of occupancy of the 2600th unit is issued. A second report must be submitted at the end of the second 5-year period, which is the end of second phase, if the fiscal monitoring report at the end of the first phase indicates that the project is not fiscally positive and a second report is required as part of the mitigation condition.

These reports are intended to allow the County to determine whether the total taxable value is 25% less than, equal to, or exceeds the total taxable value of $510,180,000.00, which was contained in the fiscal analysis tables that were attached to the June 2, 1997 letter from Fishkind & Associates, to the Division of Budget Services, Lee County. [Table 2, Exhibit A, attached to this Development Order]

If these reports demonstrate that the taxable values are 25% less than, equal to or exceeded, no further action is required. If these reports indicate that the actual taxable values are more than 25% below the taxable values projected in the tables, the Developer must conduct a new fiscal impact analysis (using the actual budgets of Lee County, including the Sheriff's budget, the Lee County District School Board, and the Estero Fire and Rescue District) utilizing the methodology of the modified per capita approach as outlined in the applicant's document "Revised Fiscal Impacts of The Brooks of Bonita Springs" dated May 19, 1997. [Applicant's Exhibit 59 to the Hearing Examiner Recommendation]

If this new analysis indicates that the fiscal impact to the County is positive or neutral, no further action is required. If this new analysis indicates that the fiscal impact to the County is negative, the County, the applicant and other affected parties will try to reach a mutually agreed upon fiscal mitigation plan which fully mitigates the negative fiscal impacts at the sole cost of the Developer and the Property Owners within the development. If the Developer or the Property Owners do not concur with the County staff fiscal mitigation plan, then they have the right to avail themselves of any remedy allowed them under the County's LDC. No additional Development Orders will be issued to those portions of the project located within the Rural land use category, by the County, until the fiscal mitigation plan is implemented. If such a plan cannot be mutually agreed upon, the County reserves the right to create a taxing entity on the development, such as a Municipal Services Taxing Unit (MSTU) or Municipal Services Benefit Unit (MSBU), to address the identified negative fiscal impacts.

III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

1. This Development Order constitutes a resolution of Lee County adopted by the Board of County Commissioners in response to the DRI ADA filed for The Brooks of Bonita Springs DRI.

2. All commitments and impact mitigating actions volunteered by the Developer in the ADA and supplementary documents that are not in conflict with conditions or stipulations specifically enumerated above are incorporated by reference into this Development Order. These documents include, but are not limited to the following:

(a) The Brooks of Bonita Springs Application for Development Approval, stamped received on July 3, 1996.

(b) The Brooks of Bonita Springs DRI sufficiency responses, stamped received on October 1996, December 1996, and January 1997.

3. Map H, stamped received on March 7, 1997 is attached hereto as Exhibit "A," and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and the location of internal roadways may be modified by the Developer to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. However, this provision may not be used to reduce the size of wetland preserve areas. It is understood that the precise wetland boundaries are determined by the South Florida Water Management District, as delegated by the Department of Environmental Protection.

4. The Development Order is binding upon the Developer(s), and its assignees or successors in interest. Where the Development Order refers to lot owners, business owners or other specific reference, those provisions are binding on the entities or individuals referenced. Those portions of this Development Order that clearly apply only to the project developer are binding upon any builder/developer who acquires a tract of land within the DRI.

5. The terms and conditions set out in this Development Order constitute a basis upon which the Developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Development Order.

6. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party by action at law or equity. All costs of those proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

7. During the next four years, Lee County will undertake, to the extent legally permissible, any amendment to the 2010 overlay, or its successor, necessary to accommodate the buildout of The Brooks as set forth in the DRI phasing schedule. Lee County will cause these amendments to occur in a timely manner so development of The Brooks will not be impeded by the 2010 Overlay, or its successor. Nothing in this condition will be interpreted to cause the county to be liable for a failure to accomplish these amendments if the failure is the result of a refusal by any state or regional agency to approve such a charge.

8. At the time of local Development Order approval, the development outlined in the Local Development Order application will be evaluated for consistency with the Lee

County Concurrency Management Plan, except for transportation concurrency. Transportation concurrency is addressed by condition II.E.6.

9. References to governmental agencies will be construed to mean future instrumentalities that may be created and designed as successors in interest to, or which otherwise possesses the powers and duties of the referenced governmental agencies in existence on the effective date of this Development Order.

10. If any portion or section of this Development Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, that decision will not affect the remaining portions or sections of the Development Order, which will remain in full force and effect.

11. This Development Order does not negate the Developer's responsibility to comply with all applicable federal, state, regional and local regulations.

12. Subsequent requests for local development permits do not require further review pursuant to Section 380.06, Florida Statutes, unless the Board of County Commissioners, after due notice and hearing, make the following findings:

(a) There is a substantial deviation from the terms or conditions of this Development Order; or

(b) The period of effectiveness of this Development Order has expired. Any request to extend the effectiveness of this Development Order will be evaluated based on the criteria for the extension of the buildout date set forth in Section 380.06(19), Florida Statutes.

Upon a finding that either of the above has occurred, the Board must order a termination of all development activity in the development affected by the substantial deviation or expiration of the Development Order until such time as a new DRI Application for Development Approval, Notice of Substantial Deviation or Notice of Proposed Change has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes.

13. The project has a buildout date of 2007 and a termination date of 2012. This term is based on a 10-year buildout and the recognition that a local Development Order, which is valid for five years, may be obtained in the tenth year.

14. The administrative director of the Lee County Department of Community Development, or their designee, will be the local official responsible for assuring compliance with this Development Order.

15. The project will not be subject to down-zoning, unit density reduction, intensity reduction or prohibition of development until 2012. If the County demonstrates that substantial changes have occurred in the conditions underlying the approval of the Development Order, then a down-zoning, unit density reduction or prohibition of development may occur. No down-zoning, density or intensity reduction can occur without sufficient notice to the Developer and an opportunity to be heard. These changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the Developer, or that the change is clearly

established by Lee County to be essential to the preservation of the public health, safety and welfare.

16. The Developer, or its successor(s) in title will submit a report annually to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06(18), Florida Statutes. The Developer must inform successors in title to the undeveloped portion of the real property covered by the Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

17. The County will forward certified copies of this Development Order to the SWFRPC, the Developer and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the Developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Development Order was offered by Commissioner Manning, and seconded by Commissioner Judah and upon a poll of the members present, the vote was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 25th day of August, 1997.

FILED

SEP 9 1997

CLERK, CIRCUIT COURT
BY Ruth T. D.C.

ATTEST:

Charlie Green, Clerk

By: Ruth Ingmire
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
(Chairman)

APPROVED AS TO FORM

BY: _____
County Attorney's Office

G:\LU\ZONING\RE\BROOKSDO.WPD (09/04/97)

PAGE 26 OF 26

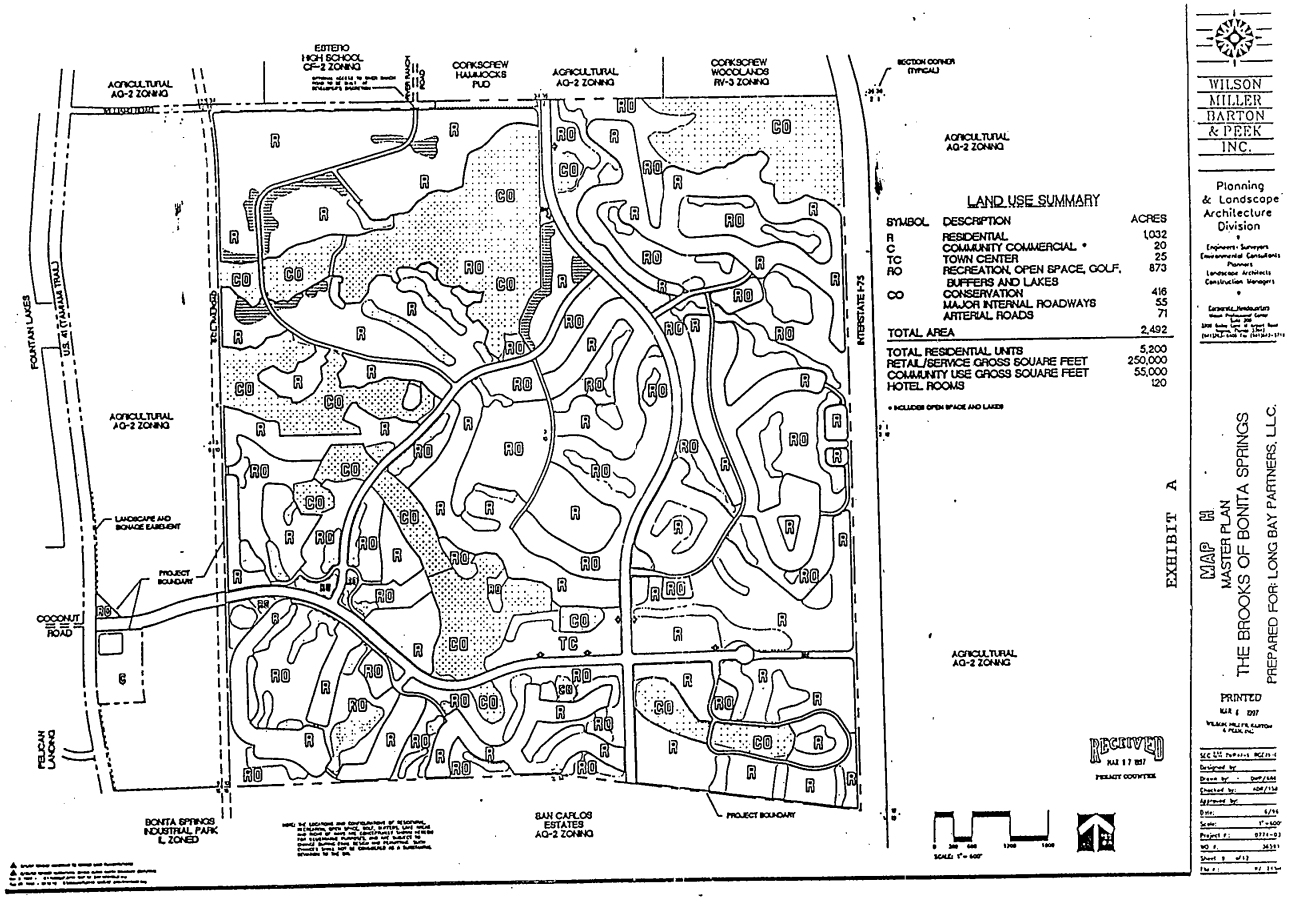

AGRICULTURAL AG-2 ZONING
ESTERO HIGH SCHOOL CF-2 ZONING
CONKSCREW HAMMOCKS PUD
CONKSCREW WOODLANDS RV-3 ZONING
SECTION CORNER (TYPICAL)
FOUNTAIN LAKES
US 41 (TAMIAMI TRAIL)
LANDSCAPE AND SIGNAGE EASEMENT
PROJECT BOUNDARY
COCONUT CREEK ROAD
PELICAN LANDING
BONITA SPRINGS INDUSTRIAL PARK IL ZONED
SAN CARLOS ESTATES AG-2 ZONING
INTERSTATE I-75
LAND USE SUMMARY
SYMBOL DESCRIPTION ACRES
R RESIDENTIAL 1,032
C COMMUNITY COMMERCIAL * 20
TC TOWN CENTER 25
RO RECREATION, OPEN SPACE, GOLF, BUFFERS AND LAKES 873
CO CONSERVATION 416
MAJOR INTERNAL ROADWAYS 55
ARTERIAL ROADS 71
TOTAL AREA 2,492
TOTAL RESIDENTIAL UNITS 5,200
RETAIL/SERVICE GROSS SQUARE FEET 250,000
COMMUNITY USE GROSS SQUARE FEET 55,000
HOTEL ROOMS 120
* INCLUDES OPEN SPACE AND LAKES
RECEIVED
MAR 17 1997
PERMIT CENTER
SCALE: 1" = 600'
EXHIBIT A
WILSON MILLER BARTON & PEEK INC.
Planning & Landscape Architecture Division
MAP H
MASTER PLAN
THE BROOKS OF BONITA SPRINGS
PREPARED FOR: LONG BAY PARTNERS, L.L.C.
PRINTED
MAR 6 1997

Table 4: Fiscal Impact Detail For Development – Lee County

	1998	1999	2000	2001	Final Yr Ph 1	2002	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Revenues															
Taxes - Unincorporated	$286,999	$825,480	$1,520,130	$2,224,773	$2,891,338	$3,593,747	$4,231,775	$4,947,593	$5,480,523	$5,779,477	5,779,477	5,779,477	5,779,477	5,779,477	$5,779,477
Taxes - Incorporated	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0					$0
Utility Service Taxes	$4,853	$15,450	$28,983	$41,535	$56,576	$69,690	$81,761	$95,368	$105,925	$114,054	114,054	114,054	114,054	114,054	$114,054
Licenses & permits	$1,584	$5,042	$9,458	$13,555	$18,463	$22,743	$26,682	$31,123	$34,568	$37,221	37,221	37,221	37,221	37,221	$37,221
Intergovernment	$33,473	$112,288	$209,970	$301,261	$395,595	$478,670	$568,440	$658,818	$737,329	$791,191	791,191	791,191	791,191	791,191	$791,191
Sales Tax	$1,959	$6,572	$12,289	$17,632	$23,154	$29,080	$34,334	$39,624	$44,219	$47,371	47,371	47,371	47,371	47,371	$47,371
Gas Tax	$2,009	$6,739	$12,602	$18,081	$23,742	$28,728	$34,116	$39,540	$44,252	$47,484	47,484	47,484	47,484	47,484	$47,484
Resort tax	$0	$0	$0	$0	$0	$57,947	$57,947	$57,947	$57,947	$57,947	57,947	57,947	57,947	57,947	$57,947
Impact Fees	$1,414,755	$3,094,369	$3,996,789	$3,679,644	$4,563,807	$4,305,680	$3,546,616	$3,918,979	$3,079,173	$2,498,033	$0	$0	$0	$0	$0
Charges for Services	$7,855	$25,009	$46,914	$67,231	$91,578	$112,806	$132,344	$154,370	$171,458	$184,616	184,616	184,616	184,616	184,616	$184,616
Fines & Forfeitures	$2,870	$9,138	$17,141	$24,564	$33,460	$41,216	$48,354	$56,402	$62,645	$67,453	67,453	67,453	67,453	67,453	$67,453
Misc. Revenue	$15,075	$47,995	$90,032	$129,023	$175,748	$216,488	$253,982	$296,253	$329,048	$354,298	354,298	354,298	354,298	354,298	$354,298
Non-Operating	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	0	0	0	0	$0
Non-Revenue	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Reserve	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Use of Fund Balance	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total Revenues	$1,771,432	$4,148,083	$5,944,308	$6,517,298	$8,273,480	$8,958,784	$9,016,351	$10,296,017	$10,147,084	$9,979,146	$7,481,113	$7,481,113	$7,481,113	$7,481,113	$7,481,113
Expenditures															
General Government	$41,588	$131,588	$246,835	$353,825	$484,075	$594,914	$697,424	$814,535	$904,187	$2,094,713					
Public Safety	$89,128	$283,762	$532,297	$762,022	$1,039,069	$1,279,928	$1,501,615	$1,751,520	$1,945,411	$974,169	974,169	974,169	974,169	974,169	$974,169
Sheriff	$58,610	$188,600	$350,035	$501,626	$683,284	$841,671	$987,451	$1,151,792	$1,279,288	$2,094,713	2,094,713	2,094,713	2,094,713	2,094,713	$2,094,713
Detention/Corrections	$12,596	$40,101	$75,224	$107,802	$146,841	$180,879	$212,208	$247,526	$274,925	$1,377,467	1,377,467	1,377,467	1,377,467	1,377,467	$1,377,467
Emergency/Ambulance/ME	$18,140	$51,388	$96,362	$138,130	$188,162	$231,770	$271,924	$317,160	$352,290	$296,025	296,025	296,025	296,025	296,025	$296,025
Other Public Safety	$1,783	$5,675	$10,648	$15,256	$20,781	$25,599	$30,032	$35,031	$38,808	$379,326	379,326	379,326	379,326	379,326	$379,326
Economic Environment	$1,648	$5,529	$10,339	$14,834	$19,479	$23,570	$27,990	$32,440	$36,306	$41,894	41,894	41,894	41,894	41,894	$41,894
Physical Environment	$12,225	$38,920	$73,008	$104,626	$142,515	$175,550	$205,958	$240,233	$266,825	$38,958	38,958	38,958	38,958	38,958	$38,958
Human Services	$15,011	$51,252	$96,043	$137,802	$180,952	$218,951	$260,013	$301,354	$337,266	$287,303	287,303	287,303	287,303	287,303	$287,303
Transportation	$563,589	$593,265	$631,158	$666,306	$708,425	$745,148	$778,049	$817,053	$846,614	$361,903	361,903	361,903	361,903	361,903	$361,903
Culture & Recreation	$44,070	$147,835	$276,439	$396,631	$520,828	$630,202	$748,390	$867,379	$970,743	$319,377	319,377	319,377	319,377	319,377	$319,377
Capital Projects	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,041,656	1,041,656	1,041,656	1,041,656	1,041,656	$1,041,656
Debt Service	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	0	0	0	0	$0
Non-Operating	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	0	0	0	0	$0
Interfund Transfers	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Reserve	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total Expenditures	$767,560	$1,252,281	$1,866,221	$2,436,845	$3,095,342	$3,668,263	$4,220,335	$4,824,522	$5,307,351	$5,668,079	$5,118,079	$5,118,079	$5,118,079	$5,118,079	$5,118,079
Net Fiscal Impact	$1,003,873	$2,895,822	$4,078,087	$4,080,453	$5,178,117	$5,288,530	$4,796,016	$5,471,495	$4,839,733	$4,311,067	$2,363,034	$2,363,034	$2,363,034	$2,363,034	$2,363,034
Cumulative Fiscal Impact	$1,003,873	$3,899,695	$7,977,782	$12,058,235	$17,236,353	$22,524,883	$27,320,899	$32,792,394	$37,632,127	$41,943,194	$44,306,229	$46,669,263	$49,032,297	$51,395,332	$53,758,366

Exhibit "A"

Fishkind & As ... s, Inc.

Table 2: Development Property Values

	1998	1999	2000	2001	Final Yr Ph 1	2003	2004	2005	2006	Final Yr Ph 2	Stabilized Yr 1	Stabilized Yr 2	Stabilized Yr 3	Stabilized Yr 4	Stabilized Yr 5
Lee County Development															
Residential Development															
Single-Family Detached	$18,600,678	$58,557,690	$112,292,982	$168,028,274	$206,674,200	$252,142,524	$303,122,160	$354,101,796	$392,680,980	$392,680,980	392,680,980	392,680,980	392,680,980	392,680,980	$392,680,980
Single-Family Attached	$7,761,216	$29,751,328	$59,178,272	$87,960,448	$113,184,400	$139,378,504	$168,159,680	$197,587,824	$220,224,504	$236,070,320	236,070,320	236,070,320	236,070,320	236,070,320	$236,070,320
Multifamily	$14,669,524	$47,738,112	$85,530,784	$118,599,372	$161,613,400	$192,941,536	$225,761,488	$258,581,440	$291,401,392	$323,226,800	323,226,800	323,226,800	323,226,800	323,226,800	$323,226,800
Total Residential Value *	$41,031,418	$136,047,130	$257,003,038	$372,588,094	$481,472,000	$584,462,564	$697,043,328	$810,270,860	$904,306,876	$951,978,100	951,978,100	951,978,100	951,978,100	951,978,100	$951,978,100
Commercial Development															
Retail (sq. ft.)	$0	$0	$0	$0	$8,732,253	$8,659,072	$8,659,072	$8,659,072	$8,659,072	$8,659,072	8,659,072	8,659,072	8,659,072	8,659,072	$8,659,072
Community (sq. ft.)	$850,840	$859,840	$1,609,840	$1,609,840	$1,609,840	$3,219,680	$3,219,680	$3,219,680	$3,219,680	$3,969,680	3,969,680	3,969,680	3,969,680	3,969,680	$3,969,680
General Retail (sq. ft.)	$0	$0	$865,907	$865,907	$865,907	$4,329,536	$4,329,536	$8,659,072	$8,659,072	$12,988,608	$12,988,608	$12,988,608	$12,988,608	$12,988,608	$12,988,608
Hotel (rooms)	$0	$0	$0	$0	$0	$7,200,000	$7,200,000	$7,200,000	$7,200,000	$7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	$7,200,000
Golf (holes)	$5,000,000	$5,000,000	$5,000,000	$10,000,000	$10,000,000	$15,000,000	$15,000,000	$20,000,000	$20,000,000	$20,000,000	20,000,000	20,000,000	20,000,000	20,000,000	$20,000,000
Total Commercial Value	$5,859,840	$5,859,840	$7,475,747	$12,475,747	$21,208,000	$38,408,288	$38,408,288	$47,737,824	$47,737,824	$52,817,360	52,817,360	52,817,360	52,817,360	52,817,360	$52,817,360
Total Value - Lee County	$46,891,258	$141,906,970	$264,478,785	$385,063,841	$502,680,000	$622,870,852	$735,451,616	$858,008,684	$952,044,700	$1,004,795,460	$1,004,795,460	$1,004,795,460	$1,004,795,460	$1,004,795,460	$1,004,795,460

* assumes 58.4 percent of all residences have Homestead Exemption

Fishkind & Associates, Inc.

Charlie Green
Clerk Of Circuit Court
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby Certify that the above and foregoing, is a true and correct copy of a Development Order for The Brooks of Bonita Springs a Development of Regional Impact, adopted by the Board of Lee County Commissioners, at their meeting held on the 25th day of August, 1997.

Given under my hand and seal, at Fort Myers, Florida, this 9th day of September, 1997.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By: Ruth Fryman
Deputy Clerk

Clerk of County Court - Comptroller - Auditor - Recorder - Custodian Of All County Funds
P.O. Box 2469 Fort Myers, Florida 33902-2469 (941) 335-2283 Fax: (941) 335-2440

EXHIBIT "B"

ADMINISTRATIVE APPROVAL ADD2007-00064

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION

DATE: April 30, 2007

TO: WHOM IT MAY CONCERN

FROM: Donna Hock
Administrative Assistant

RE: Administrative Amendment

Case Number	Case Name
ADD2007-00064	Brooks Town Center

cc: Mr. Charles Krebs.
Mr. Bobby Stewart
Mr. Matt Noble
Mr. Chick Jakacki
Ms. Julie Dalton
DCI file

RECEIVED
MAY 0 1 2007
HOLE MONTES, INC.

ADMINISTRATIVE AMENDMENT (FPA) - ADD2007-00064

ADMINISTRATIVE AMENDMENT
LEE COUNTY, FLORIDA

WHEREAS, TOP-CR Associates, LLC & TOP-CR Associates, Inc. filed an application for Final Zoning Plan Approval to a Mixed-Use Planned Development on a project known as Brooks Town Center for 80,000 square feet of retail uses on 9.55 acres of property located at the Northwest corner of Coconut Road and Three Oaks Parkway, described more particularly as:

LEGAL DESCRIPTION: In Section 11, Township 47 South, Range 25 East, Lee County, Florida:

SEE ATTACHED TWO-PAGE "EXHIBIT A"

WHEREAS, the property was originally rezoned in Resolution Z-97-037, with subsequent amendments in Z-99-076, ADD2000-00008, ADD2001-00128, ADD2002-00016, Z-02-006, and Bluesheet #20020469; and

WHEREAS, the subject property is located in the Rural Future Land Use Category as designated by the Lee Plan; and

WHEREAS, Long Bay Partners, the owner of the subject property, has authorized Charlie Krebs to act as agent for the case for Final Plan Approval; and

WHEREAS, the subject property is located in the Town Center designation on the Master Concept Plan for The Brooks MPD; and

WHEREAS, permitted uses in the Town Center designation include *Banks and Financial Establishments, Groups I and II*, *Supermarkets*, and *Restaurants, Groups I, II, III and IV*; and

WHEREAS, Condition 1.b of Resolution Z-97-037 requires Final Plan Approval when proposed development includes vertical development; and

WHEREAS, Condition 1.c of Resolution Z-97-037 requires specific information about the proposed uses, as well as information about the site plan and the surrounding properties; and

WHEREAS, Condition 1.c also requires an ongoing tabulation of the total number of commercial square footage that have received local Development Order approval; and

WHEREAS, the applicant has provided a Land Use Summary for the Town Center category, which indicates the amount of square footage previously approved, proposed, and remaining to be developed; and

WHEREAS, a copy of this table is attached as "Attachment B;" and

WHEREAS, the applicant has filed an application for Final Plan Approval for 80,000 square feet of retail uses on a 9.55± acre property at the Northwest corner of Coconut Road and Three Oaks Parkway; and

WHEREAS, the 80,000 feet will be broken up into a proposed Bank, Restaurant, Supermarket (with adjoining strip commercial center), and a smaller retail strip center; and

WHEREAS, a minimum of 10% open space is required in the Town Center, as depicted on the Master Concept Plan for The Brooks; and

WHEREAS, the two-page Master Development Plan, "Attachment A," indicates that 17.3% open space will be provided on the subject property; and

WHEREAS, the Master Development Plan also indicates the locations of the proposed Bank, Restaurant, and two separate strip commercial centers; and

WHEREAS, the Lee County Land Development Code provides for certain administrative changes to planned development master concept plans and planned unit development final development plans; and

WHEREAS, the subject application and plans have been reviewed by the Lee County Department of Community Development in accordance with applicable regulations for compliance with all terms of the administrative approval procedures; and

WHEREAS, it is found that the proposed amendment does not increase density or intensity within the development; does not decrease buffers or open space required by the LDC; does not underutilize public resources or infrastructure; does not reduce total open space, buffering, landscaping or preservation areas; and does not otherwise adversely impact on surrounding land uses.

NOW, THEREFORE, IT IS HEREBY DETERMINED that the application for Final Zoning Plan Approval to the Planned Development for 80,000 square feet of retail development on 9.55± acres in the Town Center is **APPROVED with the following conditions:**

1. **The Development must be in substantial compliance with the 2-page Master Development Plan, by Hole Montes, dated March 15, 2007, stamped received by Community Development on March 26, 2007.**

2. **Final Zoning Plan ADD2007-00064 is hereby APPROVED and adopted. A reduced copy is attached hereto as "Attachment A".**

DULY SIGNED this 27th day of April, A.D., 2007.

BY: Pam Houck

Pam Houck, Director
Division of Zoning
Department of Community Development

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS
LANDSCAPE ARCHITECTURE

6200 Whiskey Creek Drive • Fort Myers, Florida 33919 • Phone: 239.985.1200 • Fax: 239.985.1259

Exh. AA-3.C.1

EXHIBIT A

HM PROJECT #2006056
3/23/2007
REF. DWG. #D-55
Page 1 of 1

LEGAL DESCRIPTION:

ALL THAT PART OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT E OF SHADOW WOOD AT THE BROOKS UNIT FIVE, AS RECORDED IN PLAT BOOK 65, PAGES 23 THROUGH 28, LEE COUNTY, FLORIDA; THENCE S.01°33'57"E., A DISTANCE OF 563.70 FEET ALONG THE WEST RIGHT OF WAY OF THREE OAKS PARKWAY TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD OF 70.71 FEET, A CHORD BEARING OF S.43°26'03"W., AN ARC DISTANCE OF 78.54 FEET TO A POINT ON THE NORTH RIGHT OF WAY OF COCONUT ROAD; THENCE S.88°26'03"W., ALONG THE NORTH RIGHT OF WAY OF COCONUT ROAD A DISTANCE OF 870.87 FEET; THENCE, LEAVING SAID NORTH RIGHT OF WAY N.01°34'02"W., A DISTANCE OF 382.26 FEET TO A POINT ON THE SOUTH LINE OF TRACT C-1 OF SHADOW WOOD AT THE BROOKS UNIT THREE; THENCE S.87°34"35'E., ALONG SAID SOUTH LINE OF TRACT C-1 A DISTANCE OF 258.81 FEET; THENCE N.85°58'28"E., A DISTANCE OF 143.76 FEET; THENCE N.58°20'16"E., A DISTANCE OF 30.84 FEET; THENCE N.01°33'57"W., A DISTANCE OF 17.34 FEET; THENCE N.58°20'16"E., A DISTANCE OF 72.17 FEET; THENCE N.43°47'40"E., A DISTANCE OF 195.02 FEET; THENCE N.02°43'41"E., A DISTANCE OF 2.63 FEET; THENCE N.48°31'36"E., A DISTANCE OF 54.00 FEET TO A SOUTHEAST CORNER OF TRACT C-1, AND THE SOUTHWEST CORNER OF TRACT E; THENCE N.88°26'03"E., ALONG THE SOUTH LINE OF TRACT E A DISTANCE OF 249.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.95 ACRES, MORE OR LESS.

Applicant's Legal Checked
by 29MAR07

RECEIVED
MAR 29 2007
COMMUNITY DEVELOPMENT

ADD 2007-00064

C:\Documents and Settings\darlenedenton\Local Settings\Temporary Internet Files\OLK38\06056BND.doc

Naples • Fort Myers • Venice

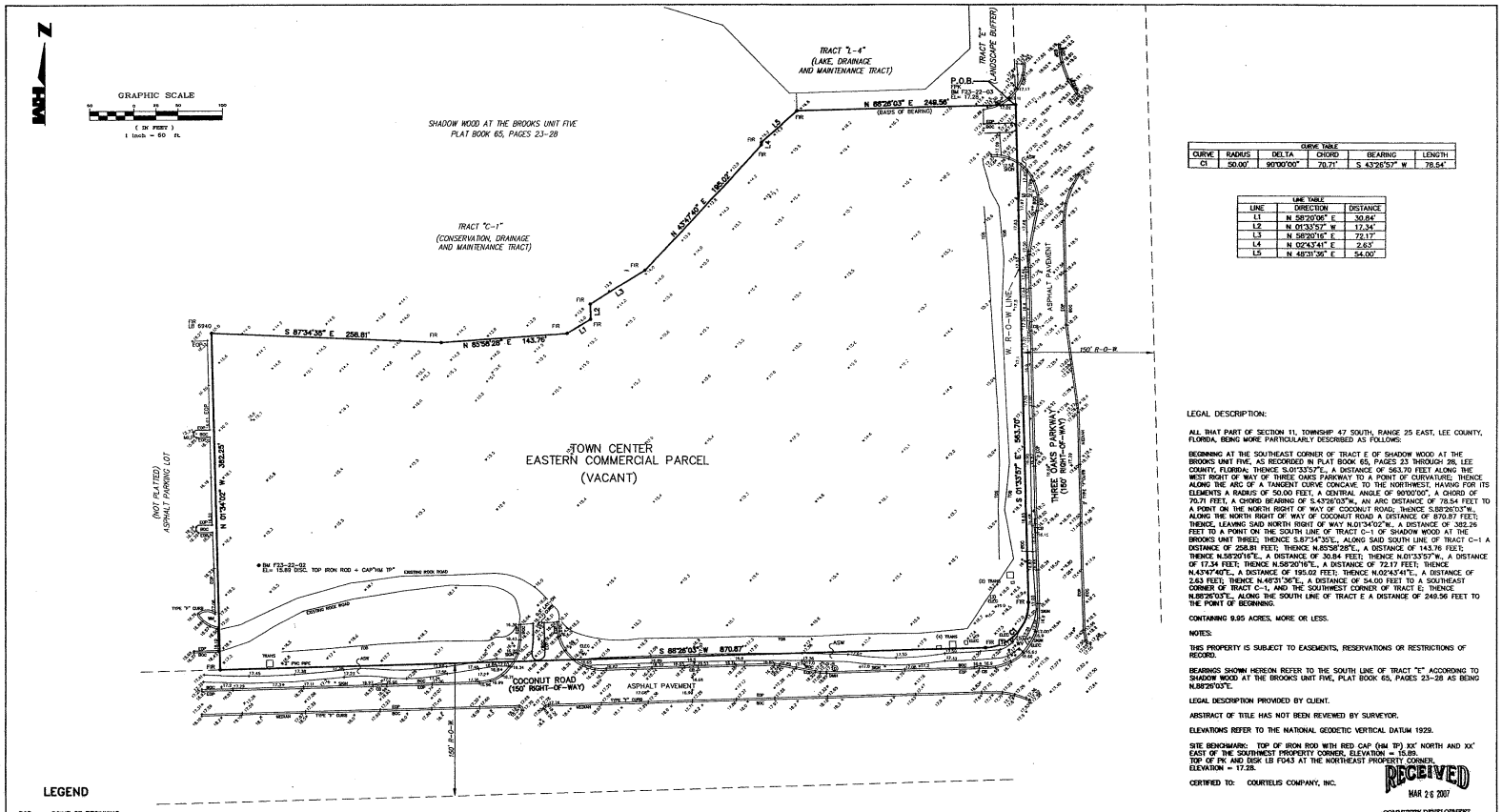
ATTACHMENT B

LAND USE SUMMARY: DOS2007-00028

11-47-25-00-00001.0180 & A PORTION OF 11-47-25-00-00001.0010

SYMBOL	DESCRIPTION	TOTAL UNITS PER MPD/DRI & AMENDMENT	UNITS PREVIOUSLY APPROVED	UNITS THIS APPROVAL	UNITS REMAINING
TC	TOWN CENTER				
	COMMUNITY USE SQUARE FEET	50,000	35,575	0	17,425
	SERVICE/RETAIL/OFFICE SQUARE FEET [RETAIL SQUARE FEET]	120,000	40,000 [10,000]	*80,000	0

*PROPOSED SQUARE FOOTAGE



CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	50.00'	90°00'00"	70.71'	S 43°26'57" W	78.54'

LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 58°20'06" E	30.84'
L2	N 01°33'57" W	17.34'
L3	N 58°20'16" E	72.17'
L4	N 02°43'41" E	2.63'
L5	N 48°31'36" E	54.00'

LEGAL DESCRIPTION:

ALL THAT PART OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT E OF SHADOW WOOD AT THE BROOKS UNIT FIVE, AS RECORDED IN PLAT BOOK 65, PAGES 23 THROUGH 28, LEE COUNTY, FLORIDA; THENCE S.01°33'57"E., A DISTANCE OF 563.70 FEET ALONG THE WEST RIGHT OF WAY OF THREE OAKS PARKWAY TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING FOR ITS ELEMENTS A RADIUS OF 50.00 FEET; A CENTRAL ANGLE OF 90°00'00", A CHORD OF 70.71 FEET, A CHORD BEARING OF S.43°26'03"W., AN ARC DISTANCE OF 78.54 FEET TO A POINT ON THE NORTH RIGHT OF WAY OF COCONUT ROAD; THENCE S.88°26'03"W., ALONG THE NORTH RIGHT OF WAY OF COCONUT ROAD A DISTANCE OF 870.87 FEET; THENCE, LEAVING SAID NORTH RIGHT OF WAY N.01°34'02"W., A DISTANCE OF 382.26 FEET TO A POINT ON THE SOUTH LINE OF TRACT C-1 OF SHADOW WOOD AT THE BROOKS UNIT THREE; THENCE S.87°34'35"E., ALONG SAID SOUTH LINE OF TRACT C-1 A DISTANCE OF 258.81 FEET; THENCE N.85°58'28"E., A DISTANCE OF 143.76 FEET; THENCE N.58°20'16"E., A DISTANCE OF 30.84 FEET; THENCE N.01°33'57"W., A DISTANCE OF 17.34 FEET; THENCE N.58°20'16"E., A DISTANCE OF 72.17 FEET; THENCE N.43°47'40"E., A DISTANCE OF 195.02 FEET; THENCE N.02°43'41"E., A DISTANCE OF 2.63 FEET; THENCE N.48°31'36"E., A DISTANCE OF 54.00 FEET TO A SOUTHEAST CORNER OF TRACT C-1; AND THE SOUTHWEST CORNER OF TRACT E; THENCE N.88°26'03"E., ALONG THE SOUTH LINE OF TRACT E A DISTANCE OF 249.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.95 ACRES, MORE OR LESS.

NOTES:

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE SOUTH LINE OF TRACT "E" ACCORDING TO SHADOW WOOD AT THE BROOKS UNIT FIVE, PLAT BOOK 65, PAGES 23-28 AS BEING N.88°26'03"E.

LEGAL DESCRIPTION PROVIDED BY CLIENT.

ABSTRACT OF TITLE HAS NOT BEEN REVIEWED BY SURVEYOR.

ELEVATIONS REFER TO THE NATIONAL GEODETIC VERTICAL DATUM 1929.

SITE BENCHMARK: TOP OF IRON ROD WITH RED CAP (HM TP) XX' NORTH AND XX' EAST OF THE SOUTHWEST PROPERTY CORNER, ELEVATION = 15.89.
TOP OF PK AND DISK LB F043 AT THE NORTHEAST PROPERTY CORNER, ELEVATION = 17.28.

CERTIFIED TO: COURTELIS COMPANY, INC.

RECEIVED
MAR 26 2007
COMMUNITY DEVELOPMENT

I HEREBY CERTIFY THAT THIS SKETCH OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY DIRECTION ON 06/28/2006. I FURTHER CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA PURSUANT TO CHAPTER 61G17-6, F.A.C.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION NUMBER LB 1772

ADD 2007-00064

BY _____ P.S.M. #6130
JERRY L. REFELMACHER STATE OF FLORIDA

LEGEND

POB	POINT OF BEGINNING
FPK	FOUND P.K. NAIL W/DISC-LBF043
SIR	SET IRON ROD, 5/8" W/CAP LB 1772
FIR	FOUND IRON ROD W/ CAP LBF043
EOP	EDGE OF PAVEMENT
BOC	BACK OF CURB
TOS	TOE OF SLOPE
TOB	TOP OF BANK
ASW	ASPHALT SIDEWALK
R-O-W	RIGHT-OF-WAY
ELEC	ELECTRICAL BOX
MLP	METAL LIGHT POLE
TRANS	CONCRETE TRANSFORMER PAD
T	TELEPHONE BOX
WM	WATER METER
WV	WATER VALVE
CB	CATCH BASIN
DMH	DRAINAGE MANHOLE

FIELD BOOK F23/07-12 F22/47							
4							
3							
2							
1							
LETTER	REVISIONS	DATE	REV BY				

BROOKS TOWNCENTER

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

PARTY CHIEF: B.HARRISON	DATE: 6/27/06	
DRAWN BY: J.R.D.	DATE: 06/27/06	
CHECKED BY: J.L.P.	DATE: 06-28-06	
SEC-TWN-RGE 11-47-25	HORIZONTAL SCALE 1"=50'	

HOLE MONTES
ENGINEERS-PLANNERS-SURVEYORS

6202F Presidential Court
Ft. Myers, FL. 33919
Phone: (239) 985-1200
Florida Certificate of Authorization No.1772

BOUNDARY & TOPOGRAPHIC SURVEY

Exh. AA-3.C.2

DRAWING NO.	D-55
PROJECT NO.	06.056
REFERENCE NO.	06.056 BND

Final Plan Approval Submittal for

BROOKS TOWN CENTER

Zoning Res. #Z-02-006
DRI2001-00006
DCI2001-00043
DRI Development Order #07-9697-133

11-47-25-00-00001.0180 &
A PORTION OF 11-47-25-00-00001.0010
LEE COUNTY, FLORIDA

ATTACHMENT A

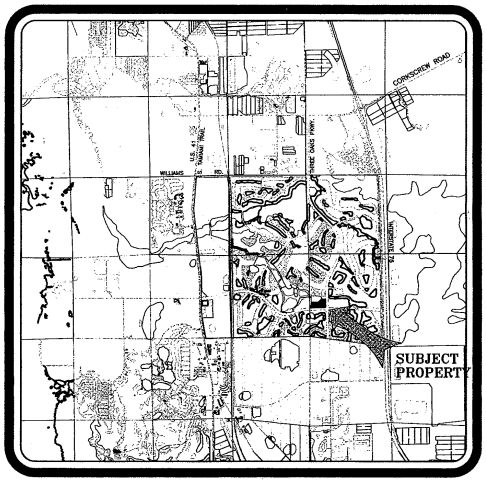
APPROVED
Final Plan Approval
for _____ Planned Development
Subject to Case # ADD2007-00064
Date 4/27/07

APPROVAL HISTORY

LEE COUNTY NUMBER	DATE APPROVED	DESCRIPTION
Res. #Z-97-037 DRI #07-9697-133	08/25/97	The Brooks DRI/MPD. BCC Appvd. DBC from AG-2 to MPD. Appvd. DRI State D.O. for ±2,492 Acres, 5,200 D.U.'s and 250,000 sq.ft. Commercial, subject to conditions.
Res. #Z-99-076 Case #96-07-030.032 02.01 Case #96-07-030.042 02.01	12/06/99	DBC from AG-2 to MPD with conditions.
ADD2000-00008	04/10/00	Final Plan Approval Amendment for Lighthouse Bay, Tract 7, with conditions.
ADD2001-00138	10/10/01	Administrative Approval to Amend the MCP, with conditions.
ADD2002-00016	03/27/02	Approved for encroachment of eave for 2 ft. along Eastern side lot line for Parcel #11472509000B0440, subject to conditions.
Res. #Z-02-006 DRI #2001-00006 DCI #2001-00043	04/01/02	Approval to amend The Brooks of Bonita Springs DRI, State D.O. #07-9697-133, subject to conditions.
BLUESHEET #20020469	05/14/02	Approved amendment to existing Development Agreement, Brooks of Bonita Springs DRI.

LAND USE SUMMARY

DESCRIPTION	Per Res. #Z-97-037 State DRI #07-9697-133 Total Units	Per Res. #Z-02-006 State DRI #07-9697-133 (Second D.O. Amendment) Total Units
RESIDENTIAL		
Single Family Residential	1,140 d.u.	1,600 d.u.
Multi-family Residential	4,060 d.u.	2,000 d.u.
Total Residential Units	5,200 d.u.	3,600 d.u.
TOWN CENTER		
Service / Retail / Office	100,000 sq.ft.	120,000 sq.ft.
Community Use	50,000 sq.ft.	50,000 sq.ft.
Total	150,000 sq.ft.	170,000 sq.ft.m
COMMUNITY CENTER		
Retail	150,000 sq.ft.	150,000 sq.ft.
Office	5,000 sq.ft.	5,000 sq.ft.
Total	155,000 sq.ft.	155,000 sq.ft.m
HOTEL		
Hotel (total units)	120	120
GOLF COURSE		
Golf Course (No. of Holes)	72	72
RECREATION, LAKES, AND BUFFERS		
Active / Passive Recreation Areas	±873 Ac.	±890 Ac.
CONSERVATION		
Conservation Areas	±416 Ac.	±419 Ac.
RIGHT-OF-WAYS		
Internal / Public Road (Arterial)	±126 Ac.	±130 Ac.



OPEN SPACE TABLE

	Per Res. #Z-02-006 State DRI #07-9697-133 (Second D.O. Amendment)	Per This Submittal
GROSS PROJECT AGREAGE	±2,532 Ac.	No Change Proposed
LESS Single Family Acreage within "R" Areas	± 674 Ac.	No Change Proposed
Gross Acreage for Open Space Calculations	±1,858 Ac.	No Change Proposed
OPEN SPACE REQUIRED:		
Total Open Space Required (@ 40% of ±1,858 Ac.)	±743 Ac.	No Change Proposed
Total Indigenous Native Vegetation Required (@ ±743 Ac. x 0.5)	±372 Ac.	No Change Proposed
OPEN SPACE PROVIDED:		
Conservation Areas ("CO")(@ 100%)	±419.0 Ac.	No Change Proposed
Recreation, Open Space, Golf Course, Buffers and Lakes ("RO")(@ 100%)	±890.0 Ac.	No Change Proposed
Lakes within "R", "C" & "TC" Areas	±132.0 Ac.	No Change Proposed
Commercial Areas ("C")(@ 10%)(±15 Ac. x 0.10)	±1.5 Ac.	No Change Proposed
Town Center Area ("TC")(@ 10%)(±25 Ac. x 0.10)	±2.5 Ac.	
Total Open Space Provided	±1,445.0 Ac.	
Percentage of Open Space	** 56%	
Percentage of Open Space required by the L.C.L.D.C., and a minimum to be provided on the overall MPD	±743 Ac. (40%)	
Total Indigenous Vegetation Provided ("CO" Areas)	±419 Ac. (57%)	

** This Open Space calculation does not include open space on individual multi-family development tracts. Open Space on individual development tracts may added to overall MPD open space calculations during the final plan approval process.

This submittal covers a portion (±9.95 Ac.) of the previously approved Town Center Area ("TC")(±25 Ac.) (±9.95 Ac. x 0.17) = ±1.69 Ac.

RECEIVED
MAR 26 2007
COMMUNITY DEVELOPMENT

ADD 2007-00064

PREPARED BY :

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS

6200 Whiskey Creek Drive
Fort Myers, FL. 33919
Phone : (239) 985-1200
Florida Certificate of Authorization No.1772
Naples · Fort Myers · Venice · Englewood

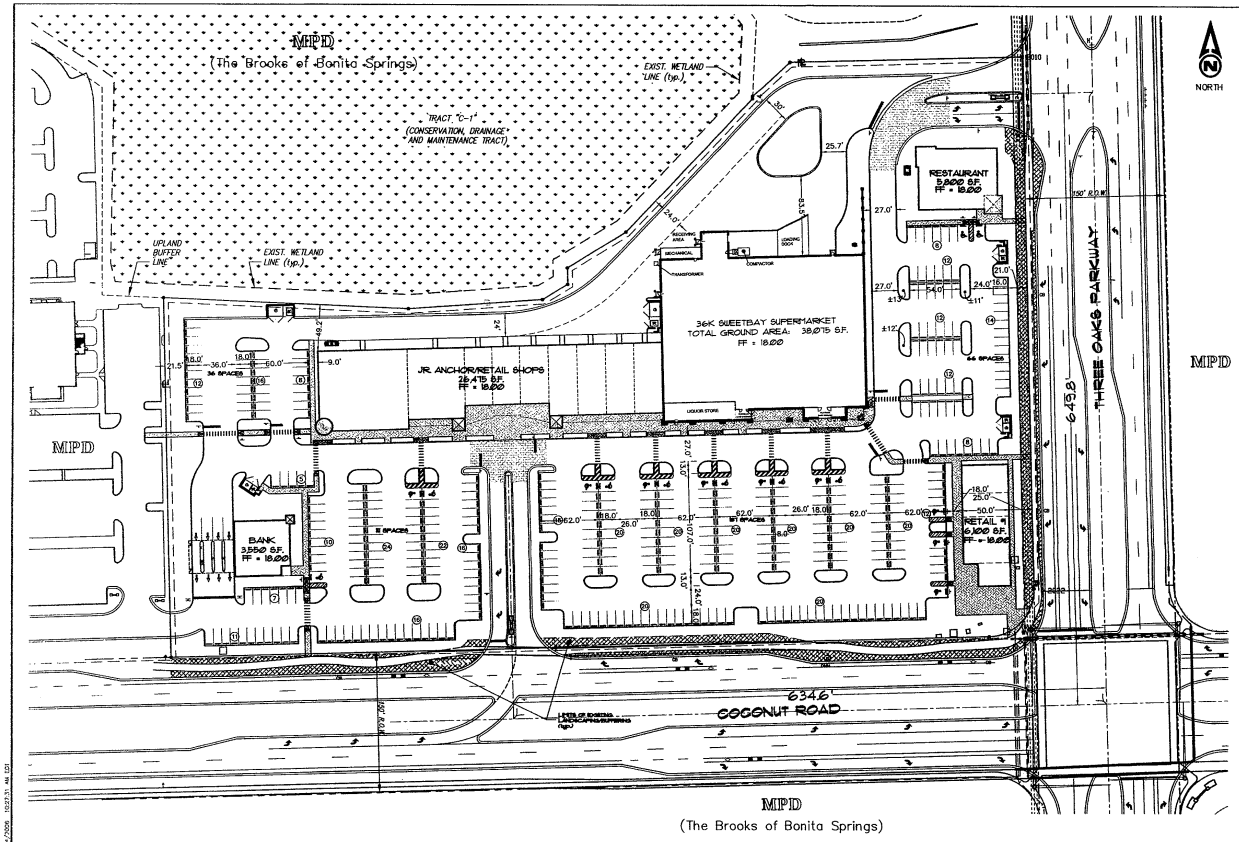
PROPERTY OWNER:

LONG BAY PARTNERS L.L.C.

9990 Coconut Road, Suite 200
Bonita Springs, Florida 34135-8488
Ph. No.: (239) 495-1000

Exh. H-4.C

DEVELOPER: Courtelis Company, Mr. Elias Vassiliaros, Exec. Vice President, 703 Waterford Way, Suite 800, Miami, FL 33126-6077, Ph.: (305) 261-4330	These drawings are not approved unless signed and sealed below: Charles L. Knabb, P.E. Florida Professional Engineer Registration #39953 Date: 3/26/07	REFERENCE NO. 0656D_CVR	DRAWING NO. 1132-01
		PROJECT NO. 06.56-D	SHEET NO. 1 OF 2



GENERAL DEVELOPMENT NOTE:

Based on the SFWMD General Permit #36-00288-S-02 and the U.S.D.A. Soil Conservation Service Soil Survey of Lee County, Florida, it is anticipated that this site may be used safely for building purposes, without undue danger from flood or adverse soil or foundation conditions. Subject to properly engineered and constructed corrective measures, including but not limited to site fill, drainage, water management and sewage disposal facilities.

EXOTICS MAINTENANCE PLAN:

The site was previously cleared as part of D.O. #005****-*****, and is maintained in a mowed state. Therefore, there are no exotics on the subject property.

PROJECT DATA:

Buildings	80,000 sq.ft.	± 1.84 Ac.	18.4%
Impervious Surface Areas	263,993 sq.ft.	± 6.06 Ac.	60.9%
Open Space Areas	74,848 sq.ft.	± 1.72 Ac.	17.3%
Green Areas	14,598 sq.ft.	± 0.33 Ac.	3.4%
Total Site	433,439 sq.ft.	±9.95 Ac.	100.0%

THE BROOKS OF BONITA SPRINGS
RES #Z-97-037

(DRI #96-07-030.03Z 01.01 & #96-07-030.04Z 01.01)

Proposed Land Use: Commercial – TOWN CENTER

Minimum Lot Dimensions:

	Office	Retail
Area (min.)	7,500	7,500
Depth (min.)	100	100
Width (min.)	75	75

Minimum Setbacks: (in ft.)

	Office	Retail
Front/Road:	20	20
Side:	15	15
Rear:	20	20
Waterbody:	0	0
Golf Course	20	20
Preserve (incl. Upland Buffer)	10	10
Minimum Building Ht. (in ft.)	65	45
Number of Habitable Floors	5	3
Minimum Building Separation (in ft.)	15	15
Minimum Lot Coverage	45%	45%

APPROVED
Final Plan Approval
for _____ Planned Development
Subject to Case # ADD2007-00064
Date 4/27/07

RECEIVED
MAR 29 2007
COMMUNITY DEVELOPMENT
ADD 2007 00064

DCI2001-00043
DRI 2001-00006
Zoning Res. #Z-02-006

NUMBER	REVISIONS	DATE
1		
2		
3		
4		
5		

BROOKS TOWN CENTER
BONITA BAY GROUP & COURTELIS DEVELOPMENT

DESIGNED BY: C.R.B.	DATE: 07/27/06	
DRAWN BY: C.R.B.	DATE: 07/27/06	
CHECKED BY: C.L.K.	DATE: 07/06	
VERTICAL SCALE:	HORIZONTAL SCALE: 1"= 50'	

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS

6200 Whiskey Creek Drive
Fort Myers, FL. 33919
Phone : (239) 985-1200
Florida Certificate of Authorization No.1772
Naples · Fort Myers · Venice · Englewood

Final Plan Approval
Master Development Plan

These drawings are not approved unless signed and sealed below.
Charles L. Kinn, P.E.
Florida Professional Engineer
Registration #
Date

REFERENCE NO. 0656B_FPA	DRAWING NO. 1132-02
PROJECT NO. 06.56-B	SHEET NO. 2 of 2

EXHIBIT "C"

RESOLUTION Z-13-009

RESOLUTION NUMBER Z-13-009

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Oakbrook Properties, Inc., filed an application on behalf of the property owner, Funnel Land Investment, LLC., to amend the Brooks DRI Development Order; and

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner, Laura B. Belflower, was advertised and held on May 15, 2013; and

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case #DRI2012-00019 and DCI2012-00039 and recommended APPROVAL of the Request; and

WHEREAS, a second public hearing was advertised and held on August 19, 2013 before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request for:

1. DRI2012-00019: Notice of Proposed Change (NOPC) seeking:

   a. an increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;

   b. removal of DRI DO conditions regarding dedication of ROW from Three Oaks Parkway to The Brooks eastern property line for the extension of Coconut Road and overpass over I-75;

   c. extension of the DRI Buildout and Termination Dates;

   d. revisions to the DRI Map H to:

      i. eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential);

      ii. update Land Use Summary table per requests; and

081913Z

iii. update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

2. DCI2012-00039: Amend existing MPD zoning to:

a. increase in residential MF units (from 2,000 to 2,200 MF units) resulting in a total of 3,800 SF/MF units;

b. revisions to the zoning Master Concept Plan (MCP) to i) eliminate the RO designation (Recreation, Open Space, Golf, Buffers and Lakes) at the end of the existing Coconut Road east of Three Oaks Parkway and replace it with a R designation (Residential); ii) eliminate MF (Mid-rise) from schedule of uses; iii) update Land Use Summary and Open Space Tables per requests; and iv) update surrounding land use labeling, all for the parcel described as the Funnel Parcel.

The property is located in the Rural Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

DRI2012-00019:

Subject to the provisions of the Fifth Amendment to the DRI Development Order attached hereto as Exhibit E.

DCI2012-00039:

1. Development of the subject property, along with all property within The Brooks, must be consistent with the original zoning approval adopted in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006. All Administrative Approvals granted after the adoption of Zoning Resolution Z-97-037, as amended, also remain in full force and effect, except the use of multi-family mid-rise is not a permitted use and this use is removed from the approved schedule of uses and property development regulations on the Master Concept Plan (MCP).

2. Development of the subject property (an irregularly shaped 38± acre parcel at the eastern end of Coconut Road) within the existing MPD is also subject to the following:

a. Master Concept Plan

The development of the subject 38± acre tract must be consistent with the one-page Master Concept Plan entitled "The Brooks of Bonita Springs MPD, Master Concept Plan," stamped received FEB 08, 2013, last revised 1/25/2013 (Exhibit C), except as modified by the conditions below. This development must comply with all requirements of the Lee County 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 MCP are subsequently pursued, appropriate approvals will be necessary.

b. Uses and Site Development Regulations

All uses and property development regulations may be found in Zoning Resolution Z-97-037, as subsequently amended by Zoning Resolutions Z-99-076 and Z-02-006.

c. Solid Waste Management

As part of any local development order approval for vertical development on the subject property, the development order plans must include facilities in compliance with LDC §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.

d. Agricultural Uses

Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:

i. Bona fide agricultural uses consisting of the raising and cultivation of hay for livestock, that was in existence on the subject 38± acre tract when the application for this project was filed, may continue in the areas depicted on Exhibit D until a local development order is approved for the area containing the agricultural uses.

ii. Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed, but those areas may not be cleared or expanded. Violations of this condition will require restoration in accordance with LDC §10-423. This prohibition of clearing or expansion of agricultural use is not intended to preclude County approved requests for removal of invasive exotic vegetation.

iii. Prior to issuance of a local development order for the portion that contains the agricultural use, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

(1) Termination of all agricultural use on the property included in the local development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the property that specifically provides:

(a) the date the agricultural uses ceased;

(b) the legal description of the property subject to the local development order approval;

(c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow agricultural uses on the property until the property is re-zoned to permit agricultural uses; and

(d) that the affidavit constitutes a covenant between the owner and the County that is binding on the owner, their assignees and successors in interest.

The affidavit must be properly recorded in the public records of the County at the owner's expense.

(2) Proof of termination of the agricultural tax exemption for the portion of the property included in the local development order application/approval. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

SECTION C. DEVIATIONS:

All deviations granted as part of the original and subsequent amending Zoning Resolutions and all deviations granted as part of all administrative actions referred to in Condition 1 above remain in full force and effect.

As part of this application, the applicant seeks to add the following deviation:

Deviation (1) seeks relief from the LDC §10-291(3) requirement to provide residential development of more than five acres must provide more than one means of ingress or egress for the development, to allow only one means of access to the development. This deviation is APPROVED.

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

Exhibit A: Legal description of the property
Exhibit B: Zoning Map (with the subject parcel indicated)
Exhibit C: The Master Concept Plan
Exhibit D: Bona Fide Agricultural Uses
Exhibit E: Fifth Amendment to the Brooks DRI Development Order

SECTION E. FINDINGS AND CONCLUSIONS:

For the DRI Amendment:

1. The requests, as conditioned, do not create new or additional unreviewed regional impacts, and do not constitute a Substantial Deviation, as that term is defined in §380.06(19) of the Florida Statutes.

2. The changes to the DRI Development Order to remove the requirements to dedicate the right-of-way for the extension of Coconut Road and to provide an approach for a flyover bridge are consistent with the requirements of the DRI, and do not trigger additional review, because the actual proportionate share for the development has been provided and those requirements have already been satisfied.

3. The amendments to the DRI Map H are not regionally impacting or significant enough to require additional DRI review.

4. The amendments to the DRI Development Order to extend the DRI build-out and termination dates do not require additional regional review because the extensions are less than the five year extension considered under §380.06(19), Florida Statutes, to not constitute a substantial deviation.

For the MPD Amendment

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.

2. The rezoning, as approved:

   a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;

   b. is consistent with the densities, intensities and general uses set forth in the Lee Plan;

   c. is compatible with existing or planned uses in the surrounding area;

   d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and

   e. will not adversely affect environmentally critical areas or natural resources.

3. The rezoning satisfies the following criteria:

   a. the proposed use or mix of uses is appropriate at the subject location;

   b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and

c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

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

5. The approved deviation, as conditioned, enhances achievement of the planned development objectives, and preserves and promotes the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

Commissioner Manning made a motion to adopt the foregoing resolution, seconded by Commissioner Hall. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of August, 2013.

ATTEST:
LINDA DOGGETT, CLERK

BY: Joyce Townsend
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Cecil L Pendergrass, Chair

Approved as to form by:

_____
Michael D. Jacob
Assistant County Attorney
County Attorney's Office

BOARD OF COUNTY COMMISSIONERS SEAL LEE COUNTY, FLORIDA

RECEIVED
AUG 26 -2013
mw
MINUTES OFFICE

Case No. DRI2012-00019 & DCI2012-00039

Z-13-009
Page 6 of 6

DRI 2012-00019

HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS
LANDSCAPE ARCHITECTS

RECEIVED
SEP 28 2012
COMMUNITY DEVELOPMENT

950 Encore Way • Naples, Florida 34110 • Phone: 239.254.2000 • Fax: 239.254.2099

HM PROJECT #2011062
9/27/2012
REF. DWG. #B-6792
Page 1 of 1

LEGAL DESCRIPTION:

A PORTION OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°52'50" W., ALONG THE NORTH LINE OF SAID SECTION 11, FOR A DISTANCE OF 520.13 FEET TO A POINT ON THE WESTERLY RIGHT- OF-WAY LINE OF INTERSTATE HIGHWAY 75, A 410 FOOT WIDE RIGHT-OF-WAY; THENCE RUN S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,238.06 FEET TO THE **POINT OF BEGINNING** OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,748.29 FEET; THENCE CONTINUE S.01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2,651.71 FEET; THENCE RUN N.7°35'29 W. FOR A DISTANCE OF 905.00 FEET; THENCE RUN N.34°02'13" W. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 84°26'27" W. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N.01°33'57" W. FOR A DISTANCE OF 150.00 FEET; THENCE RUN N.81°18'33" E. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N.30°54'19" E. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N.04°27'35" E. FOR A DISTANCE OF 905.00 FEET TO THE **POINT OF BEGINNING**, CONTAINING 38.051 ACRES, MORE OR LESS.

BEARINGS REFER TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S.89°52'20" W.

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas M. Murphy
THOMAS M. MURPHY

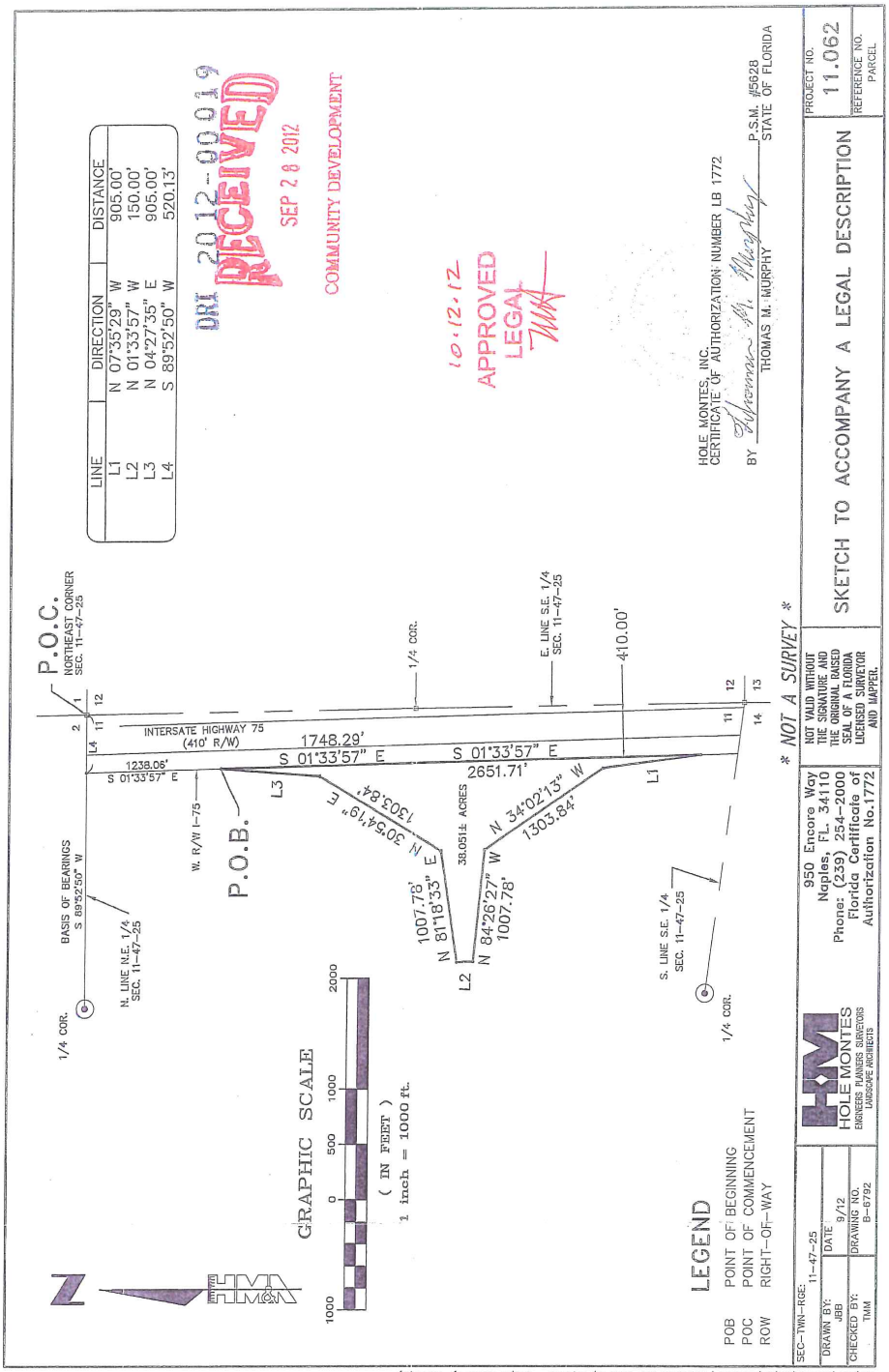
P.S.M. #5628
STATE OF FLORIDA

10·12·12
APPROVED
LEGAL

EXHIBIT A

H:\2011\2011062\WP\SU\LEGALS\legal B-6792.doc

Naples • Fort Myers


P.O.C.
NORTHEAST CORNER SEC. 11-47-25
INTERSATE HIGHWAY 75 (410' R/W)
1748.29'
S 01°33'57" E
S 01°33'57" E
1238.06'
S 01°33'57" E
2651.71'
BASIS OF BEARINGS S 89°52'50" W
N. LINE N.E. 1/4 SEC. 11-47-25
1/4 COR.
W. R/W I-75
P.O.B.
L3
N 30°54'19" E
1503.84'
38.051± ACRES
N 81°18'33" E
1007.78'
L2
N 84°26'27" W
1007.78'
N 34°02'13" W
1303.84'
L1
1/4 COR.
E. LINE S.E. 1/4 SEC. 11-47-25
410.00'
S. LINE S.E. 1/4 SEC. 11-47-25
1/4 COR.
GRAPHIC SCALE
(IN FEET)
1 inch = 1000 ft.
LEGEND
POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
ROW RIGHT-OF-WAY
LINE DIRECTION DISTANCE
L1 N 07°35'29" W 905.00'
L2 N 01°33'57" W 150.00'
L3 N 04°27'35" E 905.00'
L4 S 89°52'50" W 520.13'
DRI 2012-00019
RECEIVED
SEP 28 2012
COMMUNITY DEVELOPMENT
10.12.12
APPROVED
LEGAL
HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION: NUMBER LB 1772
BY THOMAS M. MURPHY P.S.M. #5628 STATE OF FLORIDA
* NOT A SURVEY *
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION
PROJECT NO. 11.062
REFERENCE NO. PARCEL
HOLE MONTES
ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS
950 Encore Way
Naples, FL. 34110
Phone: (239) 254-2000
Florida Certificate of Authorization No.1772
SEC-TWN-RGE: 11-47-25
DRAWN BY: JBB
DATE 9/12
CHECKED BY: TMM
DRAWING NO. B-6792

DRI2012-00019 & DCI2012-00039

Zoning Map

3/14/2013

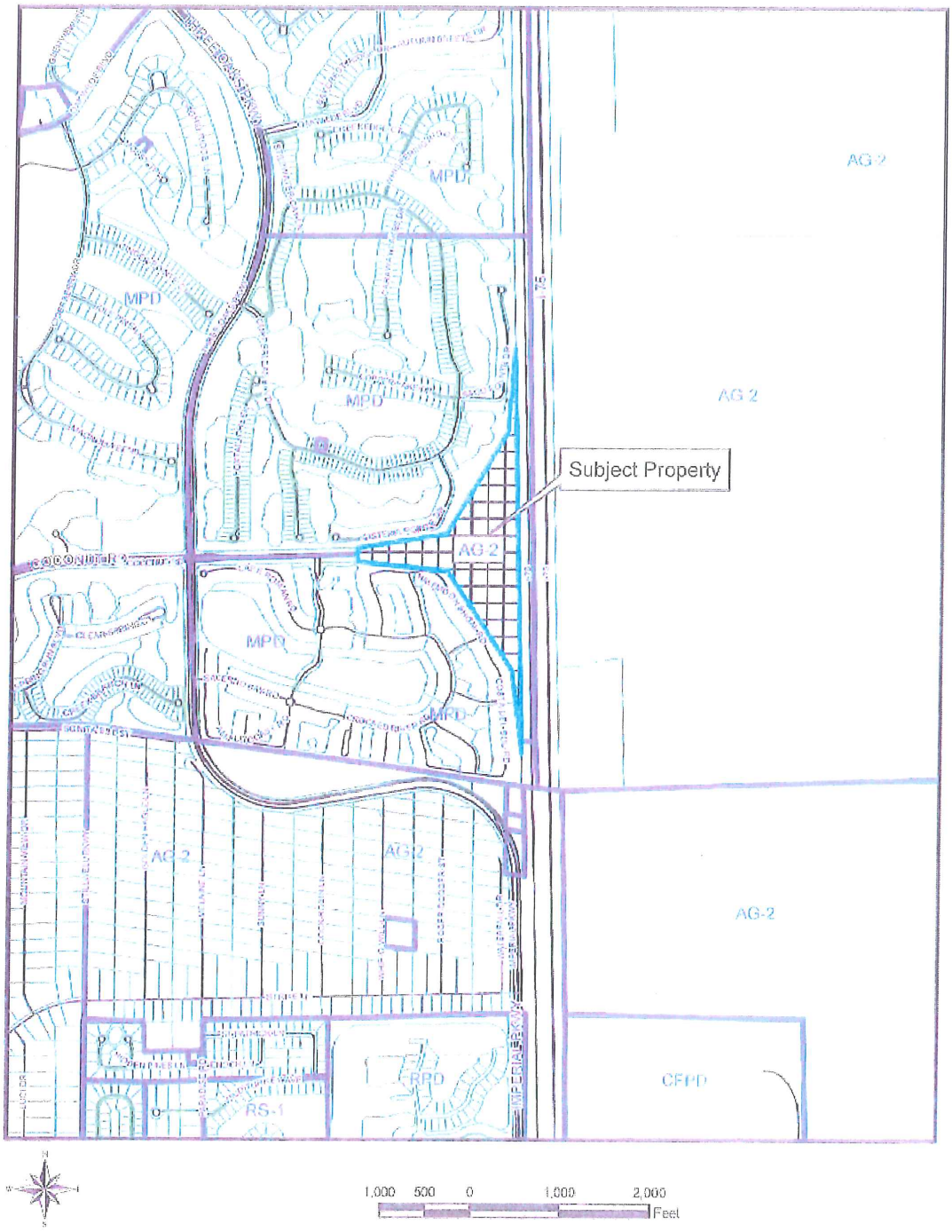
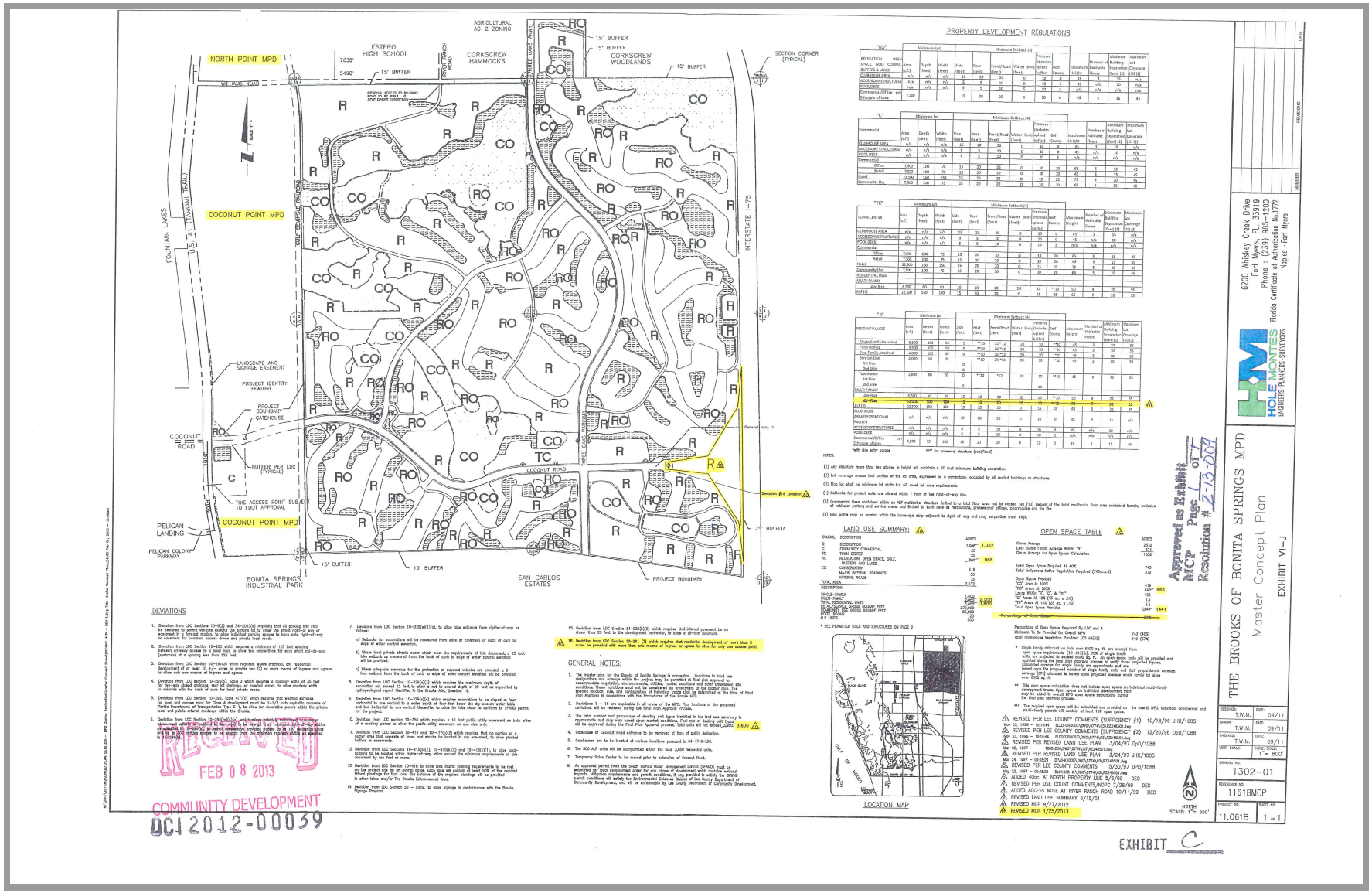


EXHIBIT B


NORTH POINT MPD
COCONUT POINT MPD
ESTERO HIGH SCHOOL
CORKSCREW HAMMOCKS
CORKSCREW WOODLANDS
AGRICULTURAL AG-2 ZONING
15' BUFFER
SECTION CORNER (TYPICAL)
INTERSTATE I-75
FOUNTAIN LAKES
LANDSCAPE AND DRAINAGE EASEMENT
PROJECT IDENTITY FEATURE
PROJECT BOUNDARY
GATEHOUSE
COCONUT ROAD
BUFFER PER LDC (TYPICAL)
THIS ACCESS POINT SUBJECT TO FDOT APPROVAL
PELICAN LANDING
PELICAN COLONY PARKWAY
BONITA SPRINGS INDUSTRIAL PARK
SAN CARLOS ESTATES
PROJECT BOUNDARY
Deviation #10 Location
PROPERTY DEVELOPMENT REGULATIONS
"RO"
"CC"
"TC"
"R"
LAND USE SUMMARY
OPEN SPACE TABLE
DEVIATIONS
GENERAL NOTES
LOCATION MAP
Approved as Exhibit Page 1 of 1 MCP Resolution # Z-13-009
THE BROOKS OF BONITA SPRINGS MPD
Master Concept Plan
EXHIBIT VI-J
HOLE MONTES
ENGINEERS · PLANNERS · SURVEYORS
6200 Whiskey Creek Drive
Fort Myers, FL 33919
Phone: 239-277-7700
Florida Certificate of Authorization No.1772
Naples · Fort Myers
1302-01
1161BMCP
11.061B
1 of 1
EXHIBIT C
RECEIVED FEB 08 2013
COMMUNITY DEVELOPMENT
DCI2012-00039

BONA FIDE AGRICULTURAL USE AT THE TIME OF ZONING APPLICATION AFFIDAVIT

WHEREAS, Section 34-202(b)(7), Lee County Land Development Code, requires property located in an agricultural zoning district at the time a zoning application is filed to include an existing agricultural use affidavit; and

WHEREAS, the affidavit, pursuant to the Land Development Code, must identify the property in question with specificity, and the affidavit must identify whether or not a bona fide agricultural use is in existence on the property at the time the application was filed.

STATE OF FLORIDA
COUNTY OF LEE

BEFORE ME, the undersigned notary public on this 29th day of JANUARY, 2013, personally appeared **Ned Dewhirst**, who is personally known to me or who produced a Drivers License as identification and who, after first being duly sworn, deposes and says that:

1. The property that is subject of the zoning application is described more completely on the attached Exhibit "A".
2. That I am the authorized representative of the **Funnel Land Investment, LLC** that owns the property described in Exhibit "A".
3. The property in question has planned development zoning. The property was in agricultural use prior to the approval of the Brooks DRI and associated zoning.
4. The property is in agricultural use and the use is a legal non-conforming use.
5. The agricultural use of the subject property is the raising and cultivation of hay for livestock.
6. The agricultural activity is occurring entirely within the area identified on the attached Exhibit "A".
7. The affiant intends to continue the existing agricultural activity subsequent to the amendment to the zoning and the DRI DO.

FURTHER AFFIANT SAYETH NAUGHT.

FEB 08 2013
COMMUNITY DEVELOPMENT
DCI2012-00039

EXHIBIT D

Funnel Land Investment, LLC

By: _____

Name: Ned Dewhirst
Title: SR VP Oakbrook Properties, Inc.

SWORN TO and subscribed before me on the date and year first above written.

(Notary Seal)

Vicki Pierson
Signature of Notary Public

VICKI PIERSON
(Print, type of stamp commissioned name of Notary Public)

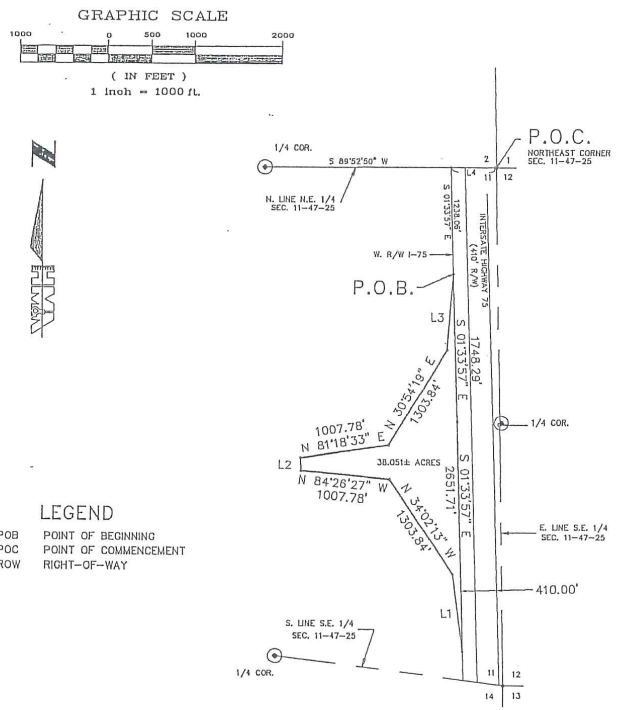
Commission No.

VICKI PIERSON
MY COMMISSION # EE 066963
EXPIRES: March 6, 2015
Bonded Thru Notary Public Underwriters

FEB 0 8 2013

COMMUNITY DEVELOPMENT

DCI 2012-00039



LEGEND

POB POINT OF BEGINNING
POC POINT OF COMMENCEMENT
ROW RIGHT-OF-WAY

LINE	DIRECTION	DISTANCE
L1	N 07°35'29" W	905.00'
L2	N 01°33'57" W	150.00'
L3	N 04°27'35" E	905.00'
L4	S 89°52'50" W	520.13'

PROPERTY DESCRIPTION

A PORTION OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S. 89°52'50" W., ALONG THE NORTH LINE OF SAID SECTION 11, FOR A DISTANCE OF 520.13 FEET TO A POINT ON THE WESTERLY, RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 75, A 410 FOOT RIGHT-OF-WAY; THENCE RUN S. 01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,238.06 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S. 01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 1,748.29 FEET; TEHNCE CONTINUE S. 01°33'57" E., ALONG SAID RIGHT-OF-WAY LINE, FOR A DISTANCE OF 2,651.71 FEET; THENCE RUN N. 7°35'29 W. FOR A DISTANCE OF 905.00 FEET; THENCE RUN N. 34°02'13" W. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 84°26'27" W. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N. 01°33'57" W. FOR A DISTANCE OF 150.00 FEET; THENCE RUN N. 81°18'33" E. FOR A DISTANCE OF 1,007.78 FEET; THENCE RUN N. 30°54'19" E. FOR A DISTANCE OF 1,303.84 FEET; THENCE RUN N. 04°27'35" E. FOR A DISTANCE OF 905.00 FEET TO THE POINT OF BEGINNING, CONTAINING 38.051 ACRES, MORE OR LESS.

BEARINGS REFER TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S. 89°52'20" W.

THIS SKETCH IS NOT VALID WITHOUT SURVEYOR'S SIGNATURE AND RAISED SEAL.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

LEGAL DESCRIPTION COMPILED FROM SURVEYS PREPARED BY DENI AND ASSOCIATES ON 9/14/95 AND 12/24/86.

HOLE, MONTES & ASSOCIATES, INC.

BY _____ P.L.S. #5090
JAMES B. BURNS STATE OF FLORIDA

NOT A SURVEY

HOLE MONTES & ASSOCIATES
ENGINEERS / PLANNERS / SURVEYORS
10550 ABERNATHY STREET
BONITA SPRINGS, FLORIDA 33923
(941) 992-0795

SKETCH AND LEGAL DESCRIPTION
OF A PORTION OF SECTION 11,
TOWNSHIP 47 SOUTH, RANGE 25 EAST
LEE COUNTY FLORIDA

REVISION No.	DESCRIPTION	DATE
	REVISIONS	

DRAWN BY: J.B.B.	DATE 4/96	SECTION 11		PROJECT No. 95.85X
	F.B.	TOWNSHIP 47		
CHECKED BY: J.B.B.	PAGE	RANGE 25		DRAWING No. B-1795-1
	REFERENCE 9585XCHG			

Exh. "A"

FEB 08 2013
COMMUNITY DEVELOPMENT
DCI2012-00039

EXHIBIT "D"

Mary Gibbs Letter Dated September 17, 2020

The Village of ESTERO
www.Estero-fl.gov

William Ribble
Mayor
District One

Katy Errington
Vice Mayor
District Four

Howard Levitan
District Two

Jon McLain
District Three

James Boesch
District Five

Nick Batos
District Six

Jim Wilson
District Seven

Steve Sarkozy
Village Manager

Burt Saunders
Village Attorney

September 17, 2020

Ms. Paula McMichael, AICP
Director of Planning
Hole Montes
6200 Whiskey Creek Dr.
Fort Myers, FL 33919

Re: The Brooks Town Center
Hole Montes File No. 2020.027

Dear Ms. McMichael:

We have been advised by the Village's attorneys that this applicant has commenced a lawsuit against the Village to have the court determine the process under which this application must be reviewed and processed. Given the applicant has called into question the procedure and process to be followed by the Village, and the process and procedure will not be established for this application until the court decides the case or the applicant and other plaintiffs dismiss this lawsuit, it is neither appropriate nor prudent for the Village to further process the application during this period where the applicant is questioning the process. We would imagine that you and your applicant-client would agree.

Further, because this matter is in litigation, any communication between the applicant and/or the plaintiffs and the Village regarding this application must only be through, or with the express prior consent of, the Village's attorneys.

Sincerely,

Mary Gibbs

Mary Gibbs, FAICP
Community Development Director
Village of Estero

cc: Nancy E. Stroud, Village Land Use Attorney

Village of Estero
9401 Corkscrew Palms Circle • Estero, Florida 33928
Phone: (239) 221-5035 | Fax: (239) 494-5343

REASON FOR APPEAL

The reason for the appeal is the property owner, applicant and developer disagree with the process the Community Development Director is requiring to obtain Final Plan Approval. The applicant, property owner and developer submit that the Community Development Director erred in determining that the appropriate process to obtain Final Plan Approval would be the minor planned development zoning process. The reason the Applicant requested Final Plan Approval is because it is a condition of the Mixed Use Planned Development Zoning. The zoning condition states:

> Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development. **The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan, and DRI Development Order, while at the same time allowing flexibility in response to changing development practices** (emphasis added).

The items that must be addressed as part of the Final Plan Approval are included in the zoning conditions, a copy of which is attached hereto and made a part hereof as Exhibit "A". As noted, the developer must submit for Final Plan Approval prior to vertical development. There have been numerous Final Plan Approvals and amendments thereto issued for The Brooks of Bonita Springs, State DRI#07-9697-133. The explicitly stated purpose of the FPA is to ensure compliance with the DRI DO, the Master Concept Plan and the Zoning Resolution. If the use requested as part of the FPA application is consistent with the list of permitted uses in the Zoning Resolution, no amendment to the planned development zoning resolution is required or contemplated by the plain meaning of the language found in the approving resolution.

The Zoning Resolution includes a list of "Permitted Principal Uses and Structures for the TOWN CENTER "TC". The list of permitted uses is attached hereto and made a part hereof as Exhibit "B". The list of Permitted Principal Uses includes Dwelling Units: Multi-Family Low Rise (minimum setback of 100 feet from the northeast property line). The Community Development Director has submitted that contrary to the express language of the zoning resolution, Multi-Family is not a permitted use because a prior FPA administrative review for consistency with the DRI DO, zoning resolution and Master Concept plan effectively amended the planned development and limited the uses to the commercial retail uses that have been constructed, and eliminated all other uses. No LDC provisions were provided, and none can be found,which support this erroneous interpretation. This erroneous interpretation is contrary to the

County's application of this condition, as well as generally understood equity as applied to zoning entitlements.

The Final Plan Approval process was an administrative process under the County's jurisdiction. The Village eliminated many administrative review and approval processes in Ordinance 2015-01. The Village determined the process for Final Plan Approval in Case Number ADD2017-EO12. A copy of the staff report and the minutes of March 20, 2018, Planning and Zoning Board are attached hereto and made a part here of as Exhibits "C" and "D", respectively. Despite the Village's determination in case ADD2017-E012 as to what the process would be for Final Plan Approval in the Village, the Village did not follow the prescribed procedure for the vertical expansion of the Private Recreational Facilities, health club, located in The Brooks and also subject to the conditions contained in Resolution Z-97-037. The Village did not require any Final Plan Approval for the vertical development of the expansion to the health club in the Town Center. The Community Development Director's interpretation is contrary to and inconsistent with the Village's prior interpretation of the process for Final Plan Approval.

The objectionable interpretation is set forth in the July 27, 2020, letter that submits the property owner/applicant must file for a Minor Planned Development to obtain Final Plan Approval for Multi-family uses in the Town Center. The letter is in error because multi-family is a permitted use in the Town Center as provided for in Resolution Z-97-037 as amended. Resolution Z-97-037 does not provide that all permitted uses are eliminated when a Final Plan Approval is issued. The list of permitted uses was confirmed subsequent to the issuance of the Final Plan Approval in 2013 when Resolution Z-13-009 was adopted after a public hearing. The 2013 Zoning Resolution continues to reflect multi-family and other permitted uses, along with property development regulations for the multi-family in the Town Center. The list of Town Center property development regulations is attached hereto and made a part hereof as Exhibit "E". There was no indication that the only uses that could be developed in the developed portion of the Town Center were commercial retail uses.

The Town Center property is vested for the land uses and development regulations sought under the Final Plan Approval application pursuant to FL 2015-193 and Sections 163.3167(5) and 380.06(8) of the Florida Statutes. Policy FLU-1.7.1., provides that nothing contained in the Village Comprehensive Plan shall modify or abridge the law of vested rights under the Florida Statutes and that Developments of Regional Impact, such as The Brooks, retain the statutory vested rights provided for in Sections 163.3167(5) and 380.06, Florida Statues. The Community Development Director's interpretation is contrary to and inconsistent with both the Statutory provisions cited, but also the Village's express language found in its comprehensive plan.

There were no provisions in the Transitional Land Development Code, the applicable Zoning Resolutions, the DRI Development Order, as amended, ADD 2007-00064, and the local development order approved under Chapter Ten of the Transitional Land Development Code that act to eliminate all permitted uses other than those initially constructed once a property owner obtains Final Plan Approval and develops

the property. There are no provisions in the Land Development Code, the Zoning Resolution, the DRI DO, or ADD2007-00064 that provided that permitted uses, previously approved, can only be restored after undergoing a rezoning of the property. Section 34-378 of the Transitional Land Development Code provided that the conditions associated with the zoning, including the permitted uses and property development regulations, run with the land and remain in effect in perpetuity until a new zoning action is taken. Final Plan Approval is not a zoning action that provides for a change in the land use of the subject property, but rather a process mandated by the approving resolution for the express purpose of assuring that specific, proposed development will be consistent with the adopted resolution. Thus, the right to multi-family remains in effect in perpetuity until changed by virtue of an application for that purpose and approved at a public hearing. A Final Plan Approval does not change the terms and conditions set forth in the approved Zoning Resolution. Section 34-381, Transitional Land Development Code, provides that rights conferred by an approved Zoning Resolution will remain valid until vacated by operation of Florida Law or in accordance with the applicable comprehensive plan.

There is no precedent for a Final Plan Approval operating to vacate approved permitted uses. Dr. David Depew, an established expert in zoning, planning, and Developments of Regional Impact, has evaluated the decision of the Director. The affidavit of Dr. David Depew identifies the reason for the appeal from an expert planning perspective and addresses the erroneous interpretation. Dr. Depew's analysis was based upon the land development code in effect at the time the erroneous interpretation was made, and is properly framed in its analysis. The fact that the current land development code, described as the "Adopted version January 27, 2021," establishes a new set of procedures regarding the Final Plan Approval process (Section 2-501.F.) is irrelevant to the current situation. Such language was neither pending nor reasonably contemplated at the time the erroneous interpretation was made by the Director of Community Development.

For the purpose of discussion, however, it is noted that the following criteria are established in Section 2-501.D.2.E. and F. of the land development code.

> "E. Subsequent applications for a development approval or permit within an approved PD district may include minor amendments to the PD Master Concept Plan without the need for Village Council review and approval. The PZDB is authorized to review and decide whether to approve, approve with conditions, or deny minor amendments. The minor amendments shall include only the changes that do not increase height or density, do not change uses, and do not change the conditions of approval.
>
> F. Subsequent applications for a development approval or permit within an approved PD district may include administrative amendments to the PD Master Concept Plan, without the need to amend the PD Master Concept Plan, provided such deviations do not include changes to height, density, or intensity, and are limited to changes that the Director determines:
>
> 1. Address technical considerations that could not reasonably be anticipated during the planned development approval process; and

2. Have no material effect on the character of the approved PD district, and the basic concept and terms of the PD Master Concept Plan. These may include, but are not limited to, the following:

(a) Structural alterations that do not significantly affect the basic size, form, style, and appearance of principal structures;

(b) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site of the change;

(c) Minor changes in the location or configuration of buildings, parking areas, landscaping, or other site features;

(d) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the Village's utility and storm water management systems;

(e) Increases of five percent or less in the total number of parking spaces;

(f) Do not reduce total open space or indigenous native vegetation required by the LDC;

(g) Do not reduce the total area or quality of vegetative buffers or landscaping; and

(h) Do not adversely impact surrounding land uses."

The requested FPA is consistent with all applicable provisions found in the current LDC language, despite the fact that those provisions are not properly applied to the current situation. The requested FPA did not change the prior approving resolution's grant of the maximum height of structures, did not increase the overall density of the approved MPD, did not change any uses already granted to the TC property which was the subject of the request, and did not change any of the conditions found in the approving resolution. More specifically, the request provided for a redevelopment of a portion of the TC property resulting from changed market conditions that were unforeseen at the time of the original approval. The modifications to the site plan requested would have resulted in no material changes from that which was included in the original approval for the TC area. There were no structural alterations proposed that would have resulted in a structure that was significantly different in architectural style or form from the existing structures, modifications to internal circulation were minor, and access to the development from off-site was not changed, there were no significant changes in the configuration of the buildings proposed or of the parking areas, landscaping or other site features, there were no increases in parking spaces proposed, there was no decrease in open space or indigenous vegetation, there was no decrease in the total area or quality of vegetative buffers or landscaping, and there were no adverse impacts to surrounding land uses. The proposed redevelopment was entirely internal to the MPD, and was consistent with the existing structure style as well as the already approved uses.

b) **APPROVES with conditions** the requested rezoning from AG-2 to MPD as follows:

SECTION A. CONDITIONS:

The MPD zoning and Master Concept Plan are subject to the following conditions:

1.a. The development of the subject property shall be in accordance with the four-page Master Concept Plan for the project, entitled "Master Concept Plan prepared for Long Bay Partners, L.L.C.", prepared by Wilson, Miller, Barton & Peek, Inc., Project #0774-03, printed May 30, 1997, stamped "Received May 30, 1997" by the Permit Counter, except as modified herein. Unless specifically approved as part of this rezoning, development must be in accordance with all applicable local development regulations, including the Development of Regional Impact Development Order. No deviations from the Land Development Code are granted unless specifically identified herein.

1.b. Final Plan Approval (FPA) will be required only when the parcel development includes vertical (structural) development or when additional deviations are requested. If FPA is required, then the Developer must file an application prior to, or simultaneous with, a local Development Order that proposes vertical development. The purpose of this process is to ensure that vertical development of The Brooks is generally in compliance with The Brooks Zoning Resolution, Master Concept Plan and DRI Development Order, while at the same time allowing flexibility in response to changing development practices. Once the application is determined to be sufficient, a decision by Lee County will be rendered within 21 calendar days.

1.c. The following information must be provided in the application for Final Plan Approval:

1) the type and amount of uses, i.e., the number of residential dwelling units or square feet of commercial uses;
2) an ongoing tabulation of the total number of residential dwelling units, commercial square footage, and community uses that have received local Development Order approval;
3) location and dimensions of access points;
4) location and dimensions of internal roadways;
5) location and dimensions of buildings/structures and parking spaces/areas;
6) setbacks and building heights;
7) boundary of development tract;
8) adjacent zoning and land uses;
9) buffers and landscape strips required or proposed;
10) open space, including an ongoing tabulation of required open space; and
11) detail drawings showing the application of deviations.

EXHIBIT "B"

RESOLUTION Z-97-037 TOWN CENTER TC
LIST OF PERMITTED USES

Post Office
Printing and Publishing [Section 34-622(c)(38)]
Real Estate Sales and Rental, for The Brooks project only
Religious Facilities [Section 34-2051]
Rental or Leasing Establishments: Group II
Repair Shops, Groups I, II and III
Research & Development Laboratories, Groups II & IV [Section 34-622(c)(41)]
Restaurants, Fast Food
Restaurants, Groups I, II, III and IV
Schools, Commercial [Section 34-622(c)(45)]
Schools, Non-commercial
- Lee County School District
- Other
Self-service Fuel Pumps and Station
Signs, in compliance with The Brooks Sign Schedule
Specialty Retail Shops, Groups I and II
Storage, Indoor only
Studios [Section 34-622(c)(49)]
Supermarket
Temporary Uses excluding flea markets (Section 34-3041)
Theater, Indoor
Towers, Communication - only when accessory to a permitted use: 50 feet or less in height
Variety Store
Wholesale Establishment, Group III
Any commercial use or professional service comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in the "C" district

2) Permitted Accessory Uses and Structures

Accessory uses and structures customarily associated with the uses permitted in this district

c. TOWN CENTER "TC"

1) Permitted Principal Uses and Structures:

Administrative Offices
ALF (Assisted Living Facility) - Density in accordance with Section 34-1494
Animals:
- Clinic
ATM (Automatic Teller Machine)
Banks and Financial Establishments, Groups I and II
Bar and Cocktail Lounge - Limited to one (in compliance with LDC Section 34-1261 et seq.)

Business Services, Groups I and II
Car Wash
Caretaker's Residence
Caterers
Civic and Governmental Services
Cleaning and Maintenance Services
Clothing Stores, General
Clubs: Country, Commercial, Fraternal, Private - the following ancillary uses are allowed in the clubhouse:
- Beauty Shops
- Health Clubs
- Massage Establishments
- Specialty Retail

Consumption on Premises (In compliance with LDC Section 34-1261 et seq.)
Convenience Food and Beverage Stores
Cultural Facilities
Day Care Center, Adult, Child
Department Store
Drive-Through Facility for any permitted use
Drug Store, Pharmacy
Dwelling Units:
Multi-Family Low Rise (minimum setback of 100 feet from the northeast property line)
Other Residential uses may be permitted as ancillary only to any permitted commercial use subject to review at Final Plan Approval
Entrance Gate, Gatehouse
Essential Services
Essential Service Facilities, Group I
Excavation:
- Water Retention

Fences, Walls
Food and Beverage Services, limited
Food Stores, Group I
Gasoline Dispensing System, Special
General and Professional Offices
Hardware Store
Health Care Facility, Group III
Health Club or Spa
Helistop - limited to emergency use only
Hobby, Toy, Game Shops
Hotel, Motel - limited to 120 rooms
Insurance Companies
Irrigation Wells (Essential services)
Laundry or Dry Cleaning, Group II - excluding Plant
Massage Establishments

Medical Office
Message Answering Service
Package Store
Parcel and Express Services
Parks, Public or Private, All Groups
Parking Lot:
- Accessory
- Garage, Public Parking - limited to two stories and not abutting residential land use

Personal Services, Groups I and III
Pet Services
Pet Shop
Photo Finishing Laboratory
Place of Worship
Post Office
Real Estate Sales Office for The Brooks project only (subject to Condition 34)
Recreation - Personal, Private or Public
Recreation Hall
Religious Facilities
Rental or Leasing Establishments, Group II
Restaurants, Groups I, II, III and IV
Restaurants, Fast Food
Self-Service Fuel Pumps and Station
Signs, in compliance with The Brooks Sign Schedule
Specialty Retail Shops, Groups I and II
Studios
Supermarket
Temporary Agricultural Uses (subject to Condition 35)
Theater, Indoor or Outdoor
Variety Store
Any commercial use or professional service which is comparable in nature with the foregoing uses and which the Director of the Lee County Department of Community Development determines to be compatible in "TC" District

2) Permitted Accessory Uses and Structures

Accessory uses and structures customarily associated with the uses permitted in this district

d. RECREATION, OPEN SPACE, GOLF COURSE, BUFFERS & LAKES "RO"

1) Permitted Principal Uses and Structures

Athletic Club
Biking, hiking, fishing piers and nature trails
Clubs, Private

EXHIBIT "C"

STAFF REPORT FOR FINAL PLAN APPROVAL
CASE NUMBER ADD2017-E012

VILLAGE OF ESTERO

Zoning

STAFF REPORT

PROJECT NAME:	**COCONUT SQUARE LOT 5 HOTEL**
CASE TYPE:	**FINAL PLAN APPROVAL**
CASE NUMBER:	**ADD2017-E012**
PLANNING & ZONING BOARD DATE:	**MARCH 20, 2018 (CONTINUED FROM FEBRUARY 20, 2018)**
VILLAGE COUNCIL DATE:	**APRIL 11, 2018**

REQUEST AND STAFF RECOMMENDATION

This is a request for final plan approval with one deviation for the development of a proposed 128-room hotel located at 23400 Walden Center Drive south of Coconut Road.

Staff recommends approval with conditions in Village Resolution 2018-06. The Planning and Zoning Board reviewed the request on March 20, 2018 and also recommended approval with conditions.

APPLICATION SUMMARY

Applicant: ComTerra Development, LLC

Request: Final plan approval for the development of a 128-room, 5-story, hotel. The applicant also requests a deviation from Section 10-261 (a) of the Land Development Code (LDC) for trash enclosure size requirements.

Location: The property is located at 23400 Walden Center Drive and near the southwest corner of Coconut Road and US 41 and in Area D of the Pelican Landing Development. The applicant indicates the STRAP number is 09-47-25-E3-31000.0050.

FUTURE LAND USE

Village Center

PUBLIC INFORMATION MEETING

A Public Information meeting was held at the Planning and Zoning Board on January 16, 2018. Meeting notes from the applicant are attached.

PROJECT HISTORY

The property is a 2.6 acre site which is part of the 2,100 acre Pelican Landing Development of Regional Impact (DRI). The larger site was originally rezoned by Lee County in Resolution Z-94-014 from Agricultural (AG-2), Residential Planned Development (RPD), Residential Two-Family Conservation District (TFC-2) and Marine Industrial District (IM) to Residential Planned Development (RPD) and Commercial Planned Development (CPD). The subject property is located in Area D on the Master Concept Plan. A subsequent Resolution Z-97-073 was approved on November 17, 1997 (County Case 95-01-050.04Z06.01). This resolution added a hotel as a permitted use in the CPD district (Tract D only). A fourth amendment for the Pelican Landing DRI was approved on November 21, 1997 (attached). This amendment reduced the retail square footage and total parking spaces and increased the increased the number of hotel units from 450 to 750. A permitted maximum height of 95 feet was approved in Resolution Z-94-014.

A Development Order application was recently submitted to the Village for review. A public information meeting was held at the Design Review Board on March 28, 2018.

STAFF ANALYSIS

Project Description

The Final Plan Approval request is for a proposed hotel on 2.6 acres located near the southwest corner of Coconut Road and US 41. The site is part of the larger Pelican Landing DRI development which consists of approximately 2,100 acres. The proposed hotel will include 128 rooms (5 stories). On-site amenities will include a pool, business center, and inside and outside gathering areas.

Final Plan Approval

The applicant requested Final Plan Approval for the proposed hotel on a parcel which was designated as "Residential Planned Development/Commercial Planned Development" on the Master Concept Plan. Due to the overall size of the development and limited specificity of the master concept plan, Condition 1 of resolution Z-94-014 requires a final zoning plan approval.

As stated in Condition 1 of Resolution Z-94-014, *"As a prerequisite to approval of any local Development Order for property located within the Commercial Planned Development and Residential Planned Development, approval of a Final Zoning Plan must be received which specifies the type, intensity and configuration of development for a particular site. The objective of this process is to ensure compliance with the DRI Development Order, Zoning Resolution, and Land Development Code, to allow detailed review of deviations conceptually approved herein, while allowing the development flexibility to respond to changing conditions."*

Condition 18 of Resolution Z-94-014 requires the following information for submittal of a Final Zoning Plan:

- Uses: type and amount, number of dwellings or square feet of commercial use
- Location and dimensions of internal roadways
- Location and dimensions of buildings and structures
- Boundary of development tract
- Adjacent zoning and land uses
- Master Concept Plan detail for the Final Zoning Plan

- A cumulative analysis of the total number of dwelling units, hotel units, commercial square footage and marina development that have received local Development Order approval.

The Final Zoning Plan Master Concept Plan includes the information specified above, as well as an "Entitlement Inventory Table" that depicts 750 maximum hotel units for Pelican Landing. To date, there are 578 units remaining, with 128 proposed in this application. The table should be revised to show the 450 units allocated to the Hyatt Regency, and the resultant remaining 172 units.

The proposed hotel site is located in the Commercial Planned Development Zoning District and located in Tract D on the Master Concept Plan which was approved with Resolution Z-94-014. Forty-one (41) permitted commercial uses were listed under Tract D of the CPD. A hotel use was not listed as a permitted use in this tract in this resolution.

Resolution Z-97-073 amended Resolution Z-94-014 which added a hotel (Area D only) to the CPD to the schedule of permitted uses.

Master Concept Plan

The Final Zoning Plan for the hotel parcel shows a 128 room hotel with 5 stories. Some of the on-site features include a pool, common outdoor gathering area, onsite parking to include 154 parking spaces (required by the Land Development Code), a porte-cochere at entrance to hotel, pedestrian connectivity, landscaped buffers, dumpster enclosure and stormwater management areas.

Surrounding Property

The properties located to the north across Coconut Road are vacant and zoned as Mixed Planned Development (MPD). Properties to the west are zoned as Commercial Planned Development (CPD) and Commercial (CS-2) and developed with commercial buildings. Existing residential multi-family condominiums are located to the south with a designation of RPD-CPD and existing commercial development is located to the east.

The Tides at Pelican Landing, an existing multi-family residential complex is located to the south of the proposed hotel. The residential buildings comprising the Tides consist of 3 stories with a height of 45 feet. The closest multi-family building is located 115 feet southwest of the proposed hotel site. The hotel at a height of 5 stories with a maximum allowable height of 95 feet is taller than the closest residential building in the Tides. The fourth amendment for the Pelican Landing DRI permits a maximum building height of 95 feet.

Village Center

The property is located in the Village Center Land Use Category. The applicant believes the proposed project is vested under the terms of the DRI Development Order, but has also provided information to show that the proposed project is compliant with the Village Center land use and land development code regulations. The Village Center Land Use category requires a rezoning under the new Village Center standards if the DRI density is increased by 10% of the approved density, or if an increase in intensity is requested. The applicant is not requesting an increase in intensity or density beyond what is permitted in its DRI and zoning resolution.

The proposed hotel includes onsite sidewalks with connectivity to building entrances and on-site features. These features include a building entrance with pavers and a covered porte-cochere,

enhanced landscaping, covered outdoor patio, pool area, interior seating areas, business center, and a shaded pedestrian seating area with public access adjacent to the existing pond on-site. A sidewalk is also proposed along the perimeter of the site which will connect to the existing sidewalk on Coconut Road. This sidewalk will provide public access to the site and also provide connection to the Lee Tran facilities and the Coconut Point life style center located across US 41.

Deviation

The Applicant has requested a deviation from Section 10-261 (a) of the Land Development Code for refuse and solid waste facilities. The proposed hotel building consists of an estimated gross building area of 90,000 square feet. Based on the provisions in this section a trash enclosure with 750 square feet in area would be required for the proposed hotel. The applicant proposes a 288 square feet trash enclosure rather than the 750 square feet required by the Land Development Code.

The application and the deviation request from Section 10-261 (a through e) of the Land Development Code was reviewed by Lee County Solid Waste. The County confirmed that the trash enclosure was compliant with the requirements of Section 10-261 (b through e). The County staff indicated that this size is similar to other hotels with similar foot prints and capacity. As the waste hauler will pick up trash at least twice a week the proposed size should not pose any threat to the environment or human health.

Staff recommends approval of the deviation request for a 228 square feet trash enclosure.

FINDINGS

Based on review of the Land Development Code, Comprehensive Plan and previous resolutions, Staff offers the following:

1. The Final Zoning Plan is compliant with the allowed uses and conditions in Resolutions Z-94-014 and Z-97-073.

2. The Final Zoning Plan is compliant with the Pelican Landing DRI Development Order.

3. The deviation meets the criteria of the Land Development Code.

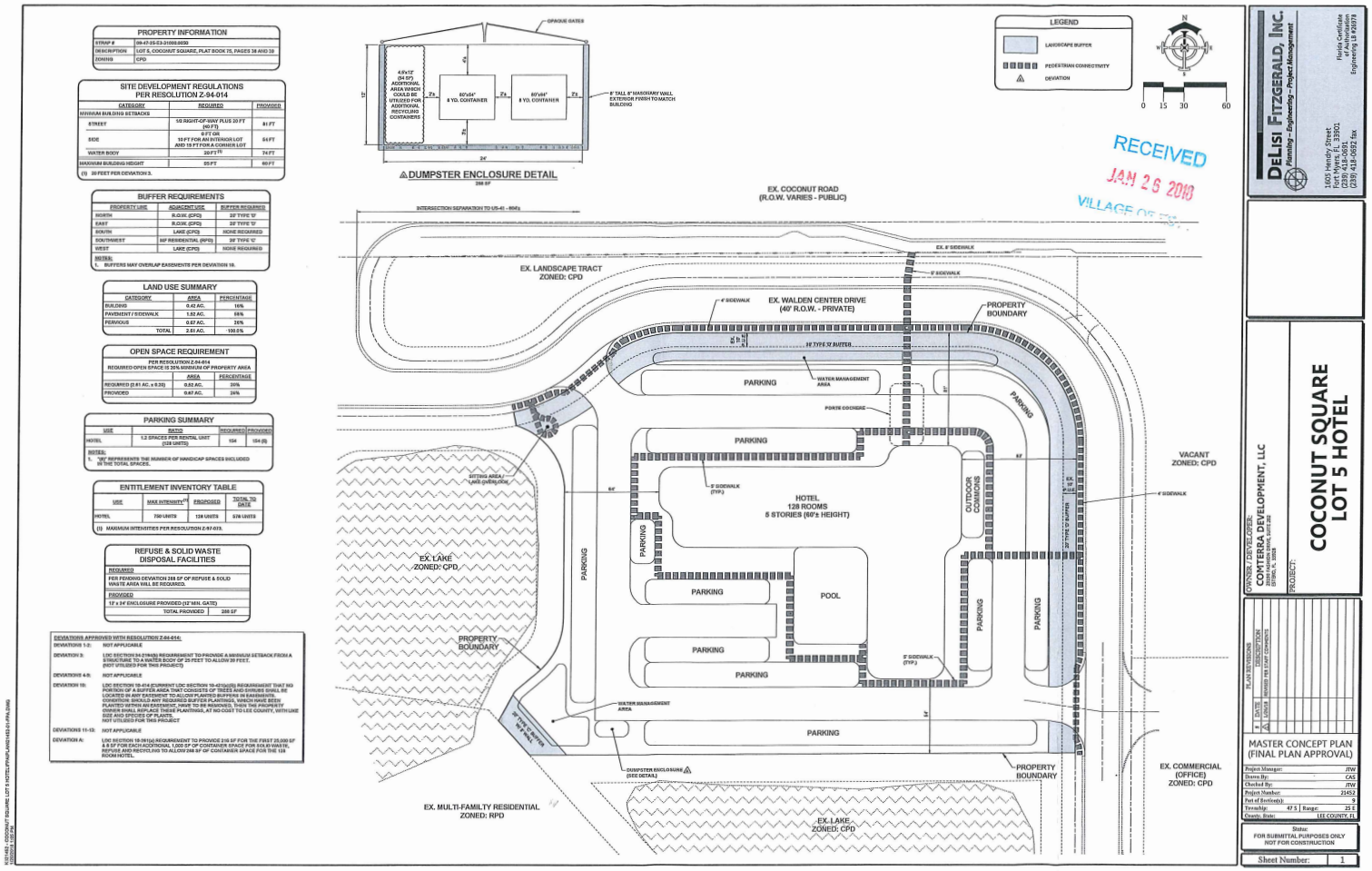
CONDITIONS

Conditions of approval are included in Village Council Resolution 2018-06.

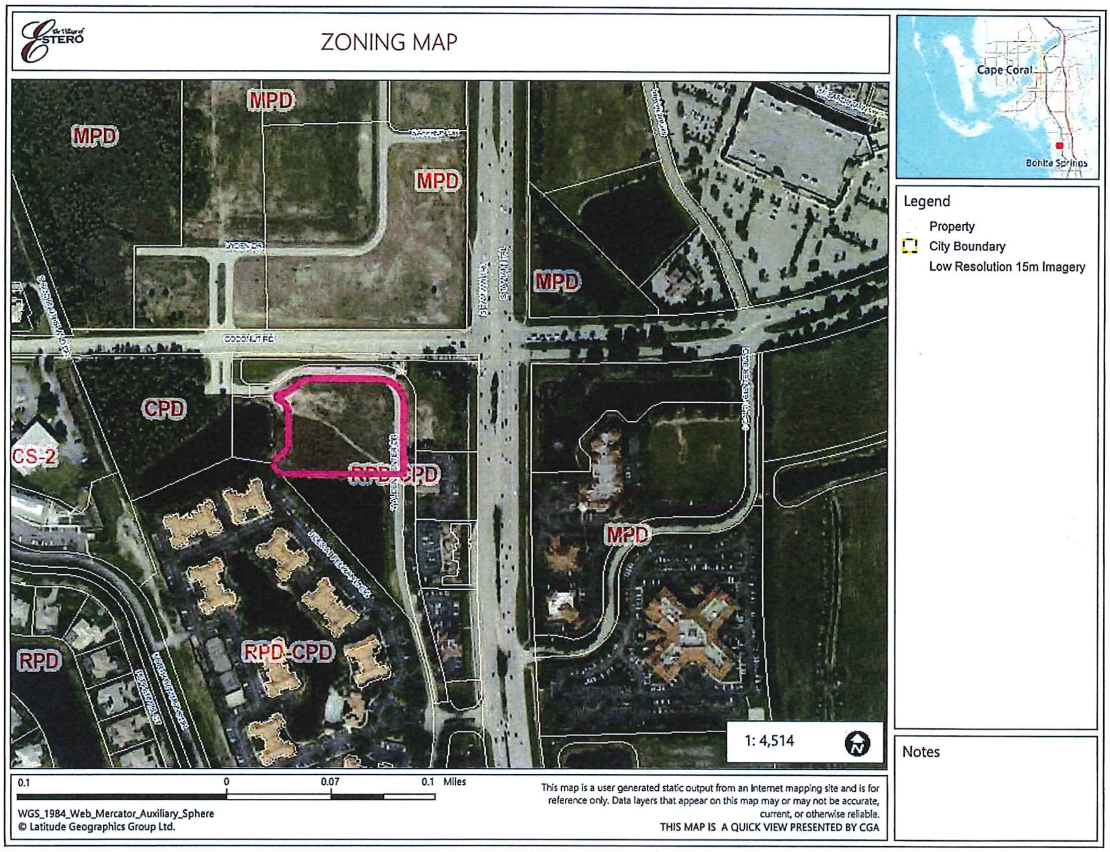
ATTACHMENTS

A. Zoning Map
B. Final Zoning Plan Master Concept Plan dated January 26, 2018
C. Planning and Zoning Board Minutes of March 20, 2018, and Applicant's Meeting Minutes from January 16, 2018 Planning and Zoning Board
D. Resolution Z-94-014
E. Resolution Z-97-073
F. Applicant's Deviation Request
G. Lee County Solid Waste (e-mail)
H. Fourth DRI Development Order Amendment (1997)
I. Initial DRI Development Order (1994)

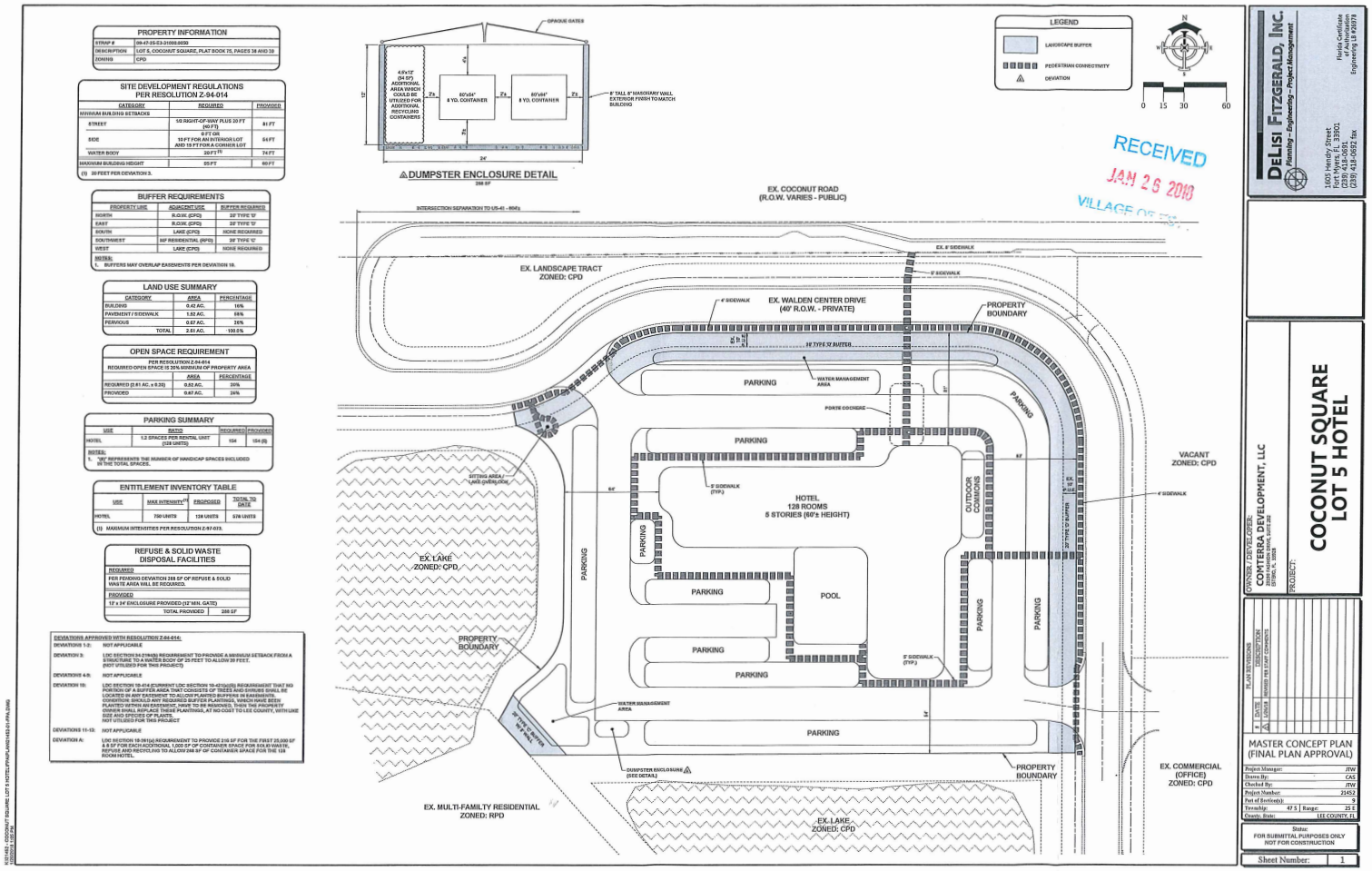
Exhibit A


PROPERTY INFORMATION
STRAP #
DESCRIPTION
ZONING
SITE DEVELOPMENT REGULATIONS PER RESOLUTION Z-94-014
CATEGORY
REQUIRED
PROVIDED
BUFFER REQUIREMENTS
PROPERTY LINE
ADJACENT USE
BUFFER REQUIRED
LAND USE SUMMARY
CATEGORY
AREA
PERCENTAGE
BUILDING
PAVEMENT / SIDEWALK
PERVIOUS
TOTAL
OPEN SPACE REQUIREMENT
PARKING SUMMARY
USE
RATIO
REQUIRED
PROVIDED
HOTEL
ENTITLEMENT INVENTORY TABLE
MAX INTENSITY
PROPOSED
TOTAL TO DATE
REFUSE & SOLID WASTE DISPOSAL FACILITIES
DEVIATIONS APPROVED WITH RESOLUTION Z-94-014:
DUMPSTER ENCLOSURE DETAIL
LEGEND
LANDSCAPE BUFFER
PEDESTRIAN CONNECTIVITY
DEVIATION
RECEIVED
JAN 26 2018
VILLAGE OF ESR
EX. COCONUT ROAD (R.O.W. VARIES - PUBLIC)
EX. LANDSCAPE TRACT ZONED: CPD
EX. WALDEN CENTER DRIVE (40' R.O.W. - PRIVATE)
PROPERTY BOUNDARY
PARKING
WATER MANAGEMENT AREA
PORTE COCHERE
HOTEL 128 ROOMS 5 STORIES (60'± HEIGHT)
OUTDOOR COMMONS
POOL
VACANT ZONED: CPD
EX. LAKE ZONED: CPD
EX. MULTI-FAMILTY RESIDENTIAL ZONED: RPD
EX. COMMERCIAL (OFFICE) ZONED: CPD
DUMPSTER ENCLOSURE (SEE DETAIL)
DELISI FITZGERALD, INC.
Planning – Engineering – Project Management
1605 Hendry Street
Fort Myers, FL 33901
(239) 418-0651
(239) 418-0652 fax
Florida Certificate of Authorization Engineering 5180
OWNER / DEVELOPER:
COMTERRA DEVELOPMENT, LLC
PROJECT:
COCONUT SQUARE LOT 5 HOTEL
MASTER CONCEPT PLAN (FINAL PLAN APPROVAL)
Project Manager: JTW
Drawn By: CAS
Checked By: JTW
Project Number: 21452
Part of Section(s): 9
Township: 47 S
Range: 25 E
County, State: LEE COUNTY, FL
Status:
FOR SUBMITTAL PURPOSES ONLY
NOT FOR CONSTRUCTION
Sheet Number: 1

Attachment A



Attachment B



Attachment C

MARCH 20, 2018 PLANNING AND ZONING BOARD MEETING EXCERPT

DRAFT

FINAL ACTION AGENDA/MINUTES

Planning and Zoning Board Meeting

Village of Estero
9401 Corkscrew Palms Circle
Estero, FL 33928
March 20, 2018
5:30 p.m.

(b) Public Hearings:

Chairman Wood provided information regarding Board business and quasi-judicial hearings. All audience members and staff providing testimony for all hearings were sworn in by Land Use Counsel Stroud. No ex parte communications or conflicts of interest were noted.

(1) Comterra Development, LLC/Coconut Square Lot 5 Hotel Final Plan Approval (ADD2017-E012) (District 1). *Continued from February 20th meeting.* 2340 Walden Center Drive, west of US 41 and south of Coconut Road and approximately 250 feet west of the intersection of Coconut Road and US 41. Applicant is proposing a 128-room hotel in the northwest area of the Pelican Landing DRI. The Pelican Landing zoning resolution requires a Final Plan Approval to verify conformance with the resolution. Public Information Meeting was held January 16, 2018.

Community Development Director Gibbs explained that this item was continued from last month because a question arose on whether the Planning and Zoning Board could provide a decision on this item. She stated that after consultation with Land Use Counsel Stroud, it was determined that the Planning and Zoning Board will provide a recommendation for the Village Council. Ms. Gibbs then provided a brief introduction.

Presentation/Information by: John T. Wojdak, P.E., DeLisi Fitzgerald, Inc., and Neale Montgomery, Esq., Pavese Law Firm.

Mr. Wojdak presented an overview of the project, its current entitlements, and described the deviations requested on the project.

Board Questions or Comments: Questions were asked and comments were given regarding parking; ingress/egress of the property to and from US 41; overbuild of hotels in the Village; and stormwater management.

Public Comment:

Bob Palma and Veglia Palma, Meadowbrook, both expressed concerns on the proposed hotel and spoke against the project.

Vicki Olsen, 23710 Merono Ct, #201, as resident of Estero and a representative of the Coconut Road West Coalition, Estero, expressed concern regarding traffic on Coconut Road and urged the Board to look at the traffic implications at the intersection of Coconut Road and US 41 prior to approving this project.

Neal Montgomery responded to concerns expressed during Public Comment and explained the project approval process with both Lee County and the Village of Estero.

Board Member Naratil noted that if the name of the hotel was divulged, the fears of the residents could be alleviated.

Motion: Move to recommend that Council approve with conditions outlined in the draft resolution: 1) the terms and conditions of Zoning Resolutions Z-94-014 and Z-97-073 remain in full force, except as modified; 2) the development of the hotel and amenities must be in substantial compliance with the 1-page Master Concept Plan, by DeLisi Fitzgerald, Inc., stamped received on January 26, 2018; 3) the deviation from Section 10-261 of the Land Development Code for a 288 square foot trash enclosure is approved; and 4) if it is determined that inaccurate or misleading information was provided to staff or the Planning and Zoning Board or if this decision does not comply with the LDC when rendered, then at any time the Planning and Zoning Board may issue a modified decision that complies with the Code or revoke the decision. If the approval is revoked, the applicant may seek the necessary approvals by filing an application for public hearing in accordance with Chapter 34.

Motion by: Board Member Campos
Seconded by: Board Member Gargano

Action: Recommended that Council approve with conditions outlined in the draft resolution: 1) the terms and conditions of Zoning Resolutions Z-94-014 and Z-97-073 remain in full force, except as modified; 2) the development of the hotel and amenities must be in substantial compliance with the 1-page Master Concept Plan, by DeLisi Fitzgerald, Inc., stamped received on January 26, 2018; 3) the deviation from Section 10-261 of the Land Development Code for a 288 square foot trash enclosure is approved; and 4) if it is determined that inaccurate or misleading information was provided to staff or the

Planning and Zoning Board or if this decision does not comply with the LDC when rendered, then at any time the Planning and Zoning Board may issue a modified decision that complies with the Code or revoke the decision. If the approval is revoked, the applicant may seek the necessary approvals by filing an application for public hearing in accordance with Chapter 34.

Vote:
Aye: Unanimous
Nay:
Abstentions:

Attachment C a.

DELISI FITZGERALD, INC.
Planning – Engineering – Project Management

Public Informational Session Summary

Date: January 16, 2018

Location: Village of Estero , Council Chambers
9401 Corkscrew Palms Circle, Estero, FL 33928

Coconut Square Lot 5 Presenter: John Wojdak, P.E., Engineering Consultant

Other Team Members present: Jose Fernandez, Architect Consultant
Greg Diserio, Landscape Consultant
Mike Liggins, Comterra Development
Neale Montgomery, Legal Counsel

John Wojdak of Delisi Fitzgerald began the discussion of the Final Plan Approval for the Coconut Square Lot 5 Hotel by introducing the representative and consultants present at the meeting. Once all the representatives were introduced Wojdak went on to provide an overview of the property which included:

- Located on Walden Center Drive near Coconut Road and US 41
- 2.6 acres in size
- Within the Pelican Landing DRI (Area D)
- CDP Zoning

After the overview Wojdak explained the application was for Final Plan Approval, a process created in the late 90's for large scale DRI/PUD projects to provide a more detailed zoning review at the time of development.

Wojdak then provided an overview of the existing entitlements for the subject parcel:

- Zoned CPD
- Maximum Height 95'
- Buffers required per LDC
- 750 Maximum Hotel Rooms in Pelican Landing (450 Existing)
- Surrounding roadway and lakes constructed under DOS 98-03-072

Following the entitlement overview, Wojdak presented the proposed plan which includes a national flag hotel with 128 hotel rooms, 5 stories and the necessary parking, stormwater and utility infrastructure. Buffers are provided per the LDC. The site also includes an offsite sidewalk along the sites frontage on Walden Center Drive with two connections to the internal sidewalk network around

the hotel and a connection to the existing sidewalk on Coconut Road. A pedestrian shaded sitting area is also being provided as a site amenity. There is also a deviation from 10-261 for the dumpster enclosure size that has been reviewed by Lee County solid waste.

The few comments from the board are as follows:

1. What is the distance between the Walden Center Drive intersection on Coconut Road and US 41.
   Wojdak noted it was greater than 660' but did not know the exact distance.

2. A Board member asked about the total number of hotel rooms in Pelican Landing and if that included the Hyatt Resort.
   Wojdak responded the existing 450 room are all the Coconut Point Hyatt.

The Board asked if anyone from the public had any comments:

1. A resident from a community west of the project on Coconut Road commented the project would add traffic to Coconut Road and could be a problem during a hurricane.
   Ms. Montgomery responded noting the proposed hotel rooms are vested as part of the Pelican Landing DRI and also noted hotel typically do not take reservations and will evacuate their hotel quite early when a storm is imminent so the use would not contribute to evacuation traffic in the event of a hurricane.

The public information session was closed after hearing the comments and suggestions from the board.

Attachment D

RESOLUTION NUMBER Z-94-014

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Pelican Landing Communities, Inc., formerly Westinghouse Bayside Communities, Inc., in reference to Pelican Landing DRI and Pelican Landing CPD/RPD, has properly filed an application for:

a) Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) on 2,100± acres known as Pelican Landing, State DRI #1-9293-121; and

b) A rezoning of a portion of the DRI from AG-2, RPD, TFC-2 and IM to Residential Planned Development and Commercial Planned Development districts, to permit 2,616 dwelling units, 520,000 square feet of office commercial and a 450 unit convention hotel on a total of 1,121.5± acres. Building heights are proposed to range from 35 feet above average grade to 200 feet above flood elevation; and

WHEREAS, the subject property is located between US 41 and Estero Bay, north of Spring Creek to north and south of Coconut Road, described more particularly as:

LEGAL DESCRIPTION: In Sections 05, 07, 08, 09, 16, 17, 18, 20, and 21, Township 47 South, Range 25 East, and Sections 13 and 24, Township 47 South, Range 24 East, Lee County, Florida:

DRI Parcel 1
A tract or parcel of land lying in Sections 08, 09, 16, 17, 20 and 21, Township 47 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

Beginning at a concrete monument marking the Northeast corner of said Section 20, run S00°35'25"E along the East line of said section for 2,659.47 feet to the Southeast corner of the Northeast Quarter (NE1/4) of said section;
THENCE run N88°52'49"E along the North line of the Southwest Quarter (SW1/4) of said Section 21 for 2,040.41 feet;
THENCE run S00°51'35"E for 801.04 feet to the waters of Spring Creek;
THENCE run along Spring Creek for 3,630 feet, more or less to an intersection of the East line of said Section 20 and the approximate centerline of Spring Creek;
THENCE run along said centerline the following courses:
S78°50'00"W for 181.31 feet,
N34°24'12"W for 230.22 feet,
N30°59'12"W for 174.93 feet,
N24°25'16"E for 120.83 feet,
S65°47'43"E for 219.32 feet,
N18°24'43"E for 158.11 feet,
N75°11'47"W for 351.71 feet,
N65°09'33"W for 451.88 feet,
N84°18'44"W for 351.75 feet,
N66°54'31"W for 445.79 feet,
S63°24'43"W for 134.16 feet,
S03°23'22"E for 170.29 feet,
S50°30'17"W for 220.23 feet,
N84°49'43"W for 331.36 feet,
S62°13'07"W for 214.71 feet,
S22°08'36"W for 291.55 feet,
S72°15'11"W for 131.22 feet to an intersection with the East line of the Southwest Quarter (SW1/4) of said Section 20;
THENCE run N00°50'19"W along said East line for 520.00 feet to the Northeast corner of said fraction;
THENCE run S89°58'37"W along the North line of said fraction for 290.00 feet to an intersection with the approximate centerline of the most Easterly branch of said Spring Creek;

continued...

THENCE run along said centerline the following courses:
N09°13'28"W for 137.34 feet,
N29°08'22"W for 590.59 feet,
N38°31'58"W for 278.03 feet,
N65°16'43"W for 254.95 feet,
N37°18'28"W for 286.01 feet,
N32°51'05"E for 252.39 feet,
N20°11'00"E for 236.69 feet,
N27°23'47"W for 369.25 feet,
N89°15'43"E for 50 feet, more or less to the Easterly shore of said Spring Creek;
THENCE run along said Easterly shore for 1,220 feet, more or less to an intersection with the North line of said Section 20;
THENCE run N89°15'13"E along said North line of said Section for 970 feet, more or less to a concrete monument marking the Northwest corner of the Northeast Quarter (NE1/4) of said Section 20;
THENCE run N00°31'30"E along the West line of the Southeast Quarter (SE1/4) of said Section 17 for 2,644.38 feet to an intersection with the South line of Spring Creek Road as described in Deed Book 305 at Page 276, Lee County Records;
THENCE run S89°58'35"E along said South line for 739.45 feet;
THENCE run N00°07'58"E for 30.00 feet to an intersection with the North line of the Southeast Quarter (SE1/4) of said Section 17;
THENCE run S89°58'35"E along the North line of said fraction for 375.91 feet to the Southeast corner of lands described in Official Record Book 1713 at Page 1188 of said Public Records;
THENCE run N00°41'04"W for 668.20 feet to the Northeast corner of said lands;
THENCE run N89°50'32"W along the North line of said lands for 366.38 feet to the Easterly line of said Spring Creek Road (50 feet wide);
THENCE run N00°07'58"E for 2,007.04 feet to an intersection with the South line of the Southeast Quarter (SE1/4) of said Section 08;
THENCE continue N00°07'17"E along said East line for 343.54 feet;
THENCE run S89°38'58"E for 10.00 feet;
THENCE run N00°07'17"E along said East line for 849.27 feet to the Southwest corner of lands described in Official Record Book 2039 at Page 3364 said Public Records;
THENCE run S89°21'02"E along the South line of said lands for 189.98 feet;
THENCE run N00°07'17"E along the East line of said lands for 125.01 feet;
THENCE run N89°21'02"W along the North line of said lands for 199.98 feet to an intersection with the Easterly line of said Spring Creek Road;
THENCE run N00°07'17"E along said East line for 1,292.76 feet to an intersection with the South line of Coconut Road (50 feet wide);
THENCE run S89°16'14"E along said South line for 1,802.38 feet to an intersection with the West line of said Section 09;
THENCE run N00°39'58"W along said West line for 25.00 feet to a concrete monument marking the Northwest corner of the Southwest Quarter (SW1/4) of said Section;
THENCE continue along said West line N00°39'58"W for 5.00 feet to an intersection with the South line of said Coconut Road as described in Official Record Book 1738 at Page 2538, said Public Records;
THENCE run S89°35'50"E along said South line for 3,164.37 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S00°10'56"W along said West line for 621.81 feet to a POINT OF CURVATURE;
THENCE run Southerly and Southeasterly along said West line, along the arc of a curve to the left of radius 5,797.58 feet (chord bearing S04°57'34"E) (chord 1,039.14 feet) (delta 10°17'00") for 1,040.54 feet to a POINT OF TANGENCY;
THENCE run S10°06'04"E along said Westerly line for 938.08 feet to an intersection with the North line of the Northeast Quarter (NE1/4) of said Section 16;
THENCE run S89°23'00"W along said North line for 708.94 feet to the Northwest corner of said Northeast Quarter (NE1/4) of Section 16;

continued...

THENCE run S00°02'54"W along said West line of the Northeast Quarter (NE1/4) for 2,643.98 feet to the Southwest corner of the Northeast Quarter (NE1/4) of said Section;
THENCE run N89°10'38"E along the South line of said fraction for 538.06 feet;
THENCE run S00°06'43"E for 1,085.91 feet;
THENCE run N89°06'43"E for 744.41 feet to an intersection with the West line of said Tamiami Trail;
THENCE run Southerly along said West line, along the arc of a non-tangent curve to the right of radius 5,619.58 feet (chord bearing S00°22'05"E) (chord 50.21 feet) (delta 00°30'42") for 50.21 feet to a POINT OF TANGENCY;
THENCE run S00°06'43"E along said West line for 49.81 feet;
THENCE run S89°06'43"W for 300.00 feet;
THENCE run S00°06'43"E for 1,445.82 feet to an intersection with the South line of the Southeast Quarter (SE1/4) of said Section 16;
THENCE run S89°16'54"W along said South line of said fraction for 989.41 feet to the Southeast corner of the Southwest Quarter (SW1/4) of said Section 16;
THENCE run S88°38'34"W along said South line of said Southwest Quarter (SW1/4) for 2,627.98 feet to the POINT OF BEGINNING.

ALSO

DRI Parcel 2
A tract or parcel of land lying in Sections 07, 08, 17 and 18 which tract or parcel is described as follows:

From a railroad spike marking the Northwest corner of the Southwest Quarter (SW1/4) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.
From said POINT OF BEGINNING run S89°16'14"E along said South line for 3,253.00 feet to an intersection with the West line of Spring Creek Road;
THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;
THENCE run S00°07'58"W along said West line for 2,646.47 feet;
THENCE run N89°58'35"W along the North line of Coconut Road for 689.04 feet to an intersection with the East line of the Northwest Quarter (NW1/4) of said Section 17;
THENCE run N89°59'08"W along said North line for 404.79 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;
THENCE run N01°31'36"E along the East line of said lands for 960.34 feet;
THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE1/4) of said Section 18;
THENCE continue N89°59'08"W for 1,840 feet more or less to the waters of Estero Bay;
THENCE run Northerly along the waters of Estero Bay for 8,300 feet more or less to an intersection with the North line of the South Half (S1/2) of Government Lot 2 of said Section 07;
THENCE run N89°32'15"E along the North line of said Government Lot 2 for 545 feet more or less to the Northwest corner of lands described in Official Record Book 1895 at Page 3817 of said Public Records;
THENCE run S08°50'45"E along the West line of said lands for 199.50 feet;
THENCE run N89°32'15"E along the South line of said lands for 247.50 feet;
THENCE run N89°35'27"E for 666.22 feet;
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;
THENCE run S01°07'45"E along said West line for 488.63 feet;
THENCE run N89°40'05"E along the South line of said Coconut Road for 24.69 feet to the POINT OF BEGINNING.

continued ...

LESS and EXCEPT lands described in Official Record Book 1677 at Page 3516 of the Public Records of Lee County, Florida.

ALSO:

DRI Parcel 3

A tract or parcel of land lying in Sections 05 and 08, Township 47 South, Range 25 East, Lee County, Florida, consisting of Lots 8B, 9B, 10B, 11B, 12B, 21B, 22B, 23B, 24B and 25B of FLORIDA GULF LAND COMPANY SUBDIVISION as recorded in Plat Book 1 at Page 59 of the Public Records of Lee County, also Lot 8, Block 14 of ELDORADO ACRES (an Unrecorded Subdivision), as shown in Deed Book 310 at Page 183 of the Public Records of Lee County;

ALSO the East Three-quarters (E-3/4) of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of said Section 05;
ALSO the East Two-thirds (E-2/3) of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of said Section 05;
ALSO the East Two-thirds (E-2/3) of the Western Half (W1/2) of the Northwest Quarter (NW1/4) of said Section 08; being more particularly described by metes and bounds as follows:

From the Northwest corner of the Southwest Quarter (SW1/4) of said Section 08 run S89°16'14"E along the North line of said Southwest Quarter (SW1/4) for 422.61 feet;
THENCE run N01°05'22"W for 40.02 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING continue N01°05'22"W for 2,610.06 feet;
THENCE run N01°22'23"W for 1,304.41 feet;
THENCE run N89°56'22"W for 107.12 feet;
THENCE run N01°22'55"W for 1,303.87 feet;
THENCE run N89°34'15"E for 2,593.81 feet;
THENCE run S00°26'45"E for 2,655.42 feet;
THENCE run N88°48'50"W along the North line of said Section 08 for 322.66 feet;
THENCE run N89°25'01"W for 587.55 feet;
THENCE run S00°50'16"E for 132.58 feet;
THENCE run N89°11'54"W for 75.00 feet;
THENCE run N00°50'16"W for 132.30 feet;
THENCE run N89°25'01"W for 610.69 feet;
THENCE run S01°00'35"E for 2,612.12 feet to an intersection with the North right-of-way line of Coconut Road;
THENCE run N89°16'14"W along said North right-of-way line for 845.23 feet to the POINT OF BEGINNING.

ALSO

DRI Parcel 4

All of Government Lot 1, Section 07, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at a concrete monument marking the Northeast corner of Government Lot 1 of said Section 07, run S01°07'45"E along the East line of said Section 07 for 1,324.52 feet to the Southeast corner of said Government Lot 1;
THENCE run S89°33'42"W along the South line of said Government Lot for 1,747.82 feet to a concrete post at the waters of Estero Bay;
THENCE run Northerly and Westerly along the waters of Estero Bay to an intersection with the North line of said Section 07;
THENCE run N89°48'31"E along said North line for 2,575 feet more or less to the POINT OF BEGINNING.

Containing 2,409 acres, more or less.
Bearings hereinabove mentioned are based on the East boundary line of Pelican's Nest Unit No. 1 as recorded in Plat Book 41 at Pages 58 through 60 of the Public Records of Lee County, Florida.

AND

continued...

DRI Beach Parcel

A tract or parcel of land lying in Government Lot 3, Section 13, and Government Lot 2, Section 24, Township 47 South, Range 24 East, Big Hickory Island, Lee County, Florida, which tract or parcel is described as follows:

From the center of a turnaround on SR 865 (Bonita Beach Road) being S.R.D. Station 19184.75 and N24°28'41"W along the northern prolongation of said centerline of SR 865 for 266.00 feet;
THENCE run S62°26'49"W for 98.40 feet;
THENCE run N27°33'11"W for 1,863.42 feet;
THENCE run N20°00'41"W for 1,403.30 feet;
THENCE run N65°00'00"E for 313.91 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING run N18°55'11"W for 97.51 feet,
N22°26'23"W for 100.53 feet,
N23°09'50"W for 100.14 feet,
N14°51'19"W for 73.01 feet,
N27°40'10"W for 88.01 feet,
N29°33'57"W for 46.01 feet,
N22°14'53"W for 47.27 feet,
N20°39'23"W for 46.98 feet,
N11°15'38"W for 29.80 feet,
N26°10'46"W for 46.87 feet,
N09°09'45"W for 48.26 feet,
N17°35'56"W for 46.04 feet,
N12°49'07"W for 50.04 feet,
N29°20'48"W for 69.12 feet,
N20°48'58"W for 63.82 feet;
THENCE run N79°23'51"W for 247 feet more or less to an intersection with the Approximate Mean High Water Line of the Gulf of Mexico;
THENCE run Northerly and Northeasterly along said waters for 1,140 feet more or less to an intersection with the South line of lands described in Official Record Book 198 at Page 188 of the Public Records of Lee County, Florida;
THENCE run along said South line, along the arc of a curve to the right of radius 12,000.00 feet for 783 feet to an intersection with the Waters of New Pass;
THENCE run Southerly, Easterly, Southwesterly and Southerly along said waters for 4,080 feet more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet more or less to the POINT OF BEGINNING.

AND

From said POINT OF BEGINNING run S13°03'59"E for 94.16 feet;
THENCE run S19°13'48"E for 50.64 feet;
THENCE run S04°34'15"E for 54.63 feet;
THENCE run S24°53'12"E for 50.09 feet;
THENCE run S27°10'29"E for 50.01 feet;
THENCE run S31°01'44"E for 42.51 feet to an intersection with the South line of lands described in Official Record Book 2246 at Page 4413 of the Lee County Records;
THENCE run N65°00'00"E along said South line for 134 feet, more or less to the waters of Estero Bay;
THENCE Northerly along said waters for 358 feet, more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet, more or less to the POINT OF BEGINNING.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

RPD Parcel 1

Tracts or parcels lying in Section 05 and Section 08, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows and all consisting of 203.85 acres, more or less.

continued...

Lots 8B, 9B, 10B, 11B, 12B, and Lots 21B, 22B, 23B, 24B, and 25B of Florida Gulf Land Company's Subdivision, all in Section 05, Lee County, Florida (recorded in Plat Book 1 at Page 59), consisting of 100 acres more or less.

ALSO:

The East Three-Quarters (E-3/4) of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4), of said Section 05, consisting of 30 acres, more or less.

ALSO:

The East Two-Thirds (E-2/3) of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4), of said Section 05, consisting of 26.67 acres, more or less.

The East Two-Thirds (E-2/3) of the West Half (W1/2) of the Northwest Quarter (NW1/4) of said Section 08, consisting of approximately 53.55 acres, more or less, less the Southerly 40.00 feet for the right-of-way of Coconut Road.

RPD Parcel 2

All of Government Lot 1, Section 07, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at a concrete monument marking the Northeast corner of Government Lot 1 of said Section 07 run S01°07'45"E along the East line of said Section 07 for 1,324.52 feet to the Southeast corner of said Government Lot 1;
THENCE run S89°33'42"W along the South line of said Government Lot 1 for 1,747.82 feet to a concrete post at the waters of Estero Bay;
THENCE run Northerly and Westerly along the waters of Estero Bay to an intersection with the North line of said Section 07;
THENCE run N89°48'31"E along said North line for 2,575 feet, more or less to the POINT OF BEGINNING.

Containing 60 acres, more or less.

RPD Parcel 3

A tract or parcel of land lying in Sections 07, 08, 17 and 18, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

From a railroad spike marking the Northwest corner of the Southwest Quarter (SW1/4) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide);
THENCE run S89°16'14"E along said South line for 1,478.58 feet to the POINT OF BEGINNING;
THENCE continue S89°16'14"E along said South line for 1,774.42 feet to an intersection with the West line of Spring Creek Road as described in County Commissioners Minute Book 6 at Page 210, Public Records, Lee County, Florida;
THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;
THENCE run S00°07'58"W along said West line for 1,612.27 feet;
THENCE run N89°52'02"W for 5.00 feet to a point on a curve;
THENCE along the arc of a non-tangent curve to the right of radius 1,070.00 feet (delta 91°03'07") (chord bearing S45°39'32"W) (chord 1,527.04 feet) for 1,700.40 feet;
THENCE run N01°31'36"E for 33.48 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;
THENCE continue N01°31'36"E along the East line of said lands for 960.34 feet;
THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE1/4) of said Section 18;

continued...

THENCE continue N89°59'08"W for 1,840 feet, more or less, to the waters of Estero Bay;
THENCE run Northerly along the waters of Estero Bay for 6,490 feet, more or less, to an intersection with the South line of Government Lot 2, of said Section 07;
THENCE run N89°40'05"E along said South line for 745 feet, more or less;
THENCE run S00°19'55"E for 650.00 feet;
THENCE run N89°40'05"E for 1,107.21 feet to an intersection with the West line of said Section 08;
THENCE run S00°23'24"E along the West line of said Section for 375.11 feet;
THENCE run S89°15'18"E for 1,458.78 feet;
THENCE run N00°44'42"E for 1,000.00 feet to an intersection with the South line of said Coconut Road and said POINT OF BEGINNING.

Containing 513.7 acres, more or less.

RPD Parcel 4
A tract or parcel of land lying in Sections 08, 09, 16 and 17, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

From a concrete monument marking the Northwest corner of the Southwest Quarter (SW1/4) of said Section 09 run N00°41'48"W along the West line of said Section 09 for 5.00 feet to an intersection with the South line of Coconut Road (50 feet wide) as described in Official Record Book 1738 at Page 2538, Public Records, Lee County, Florida;
THENCE run S89°35'50"E along said South line for 1,549.14 feet to a POINT OF CUSP;
THENCE run along the arc of a curve to the left of radius 30.00 feet (delta 90°00'00") (chord bearing S45°24'10"W) (chord 42.43 feet) for 47.12 feet to a POINT OF TANGENCY;
THENCE run S00°24'10"W for 336.31 feet to a POINT OF CURVATURE;
THENCE run along the arc of the curve to the left of radius 270.00 feet (delta 90°00'00") (chord bearing S44°35'50"E) (chord 381.84 feet) for 424.12 feet to a POINT OF TANGENCY;
THENCE run S89°35'50"E for 99.41 feet to a POINT OF CURVATURE;
THENCE run along the arc of a curve to the right of radius 530.00 feet (delta 27°42'00") (chord bearing S75°44'50"E) (chord 253.74 feet) for 256.23 feet;
THENCE run S20°53'52"E for 1,008.12 feet to a point on a non-tangent curve;
THENCE run along the arc of a curve to the left of radius 840.00 feet (delta 34°20'28") (chord bearing N66°42'56"W) (chord 495.96 feet) for 503.47 feet to a POINT OF COMPOUND CURVATURE;
THENCE along the arc of a curve to the left of radius 1,652.50 feet (delta 21°34'22") (chord bearing S85°19'39"W) (chord 618.53 feet) for 622.20 feet;
THENCE S15°27'32"E along a radial line for 10.00 feet to a point on a non-tangent curve;
THENCE along the arc of a curve to the left of radius 1,642.50 feet (delta 34°59'45") (chord bearing S57°02'36"W) (chord 987.70 feet) for 1,003.22 feet to a POINT OF COMPOUND CURVATURE;
THENCE along the arc of a curve to the left of radius 1,120.00 feet (delta 21°31'30") (chord bearing S28°55'59"W) (chord 412.53 feet) for 414.90 feet to a POINT OF REVERSE CURVATURE;
THENCE along the arc of a curve to the right of radius 935.00 feet (delta 43°04'19") (chord bearing S39°51'23"W) (chord 686.45 feet) for 702.88 feet to a POINT OF COMPOUND CURVATURE;
THENCE along the arc of a curve to the right of radius 2,760.00 feet (delta 24°20'33") (chord bearing S73°33'49"W) (chord 1,163.81 feet) for 1,172.61 feet;
THENCE N20°00'00"W for 580.12 feet;
THENCE N89°52'02"W for 657.66 feet to an intersection with the East line of Spring Creek Road as described in County Commissioners Minute Book 6 at Page 210, Public Records, Lee County, Florida;

continued...

THENCE run N00°07'58"E along said East line for 240.32 feet to an intersection with the South line of the Southeast Quarter (SE1/4) of said Section 08;
THENCE continue N00°07'17"E along said East line for 343.49 feet;
THENCE run S89°38'58"E for 10.00 feet;
THENCE run N00°07'17"E along said East line for 499.94 feet to the Southwest corner of lands described in Official Record Book 428 at Page 349, said Public Records;
THENCE run S89°21'02"E along the South line of said lands for 536.00 feet;
THENCE run N00°07'17"E along the East line of said lands for 474.33 feet;
THENCE run N89°21'02"W along the North line of said lands for 546.00 feet to an intersection with the Easterly line of said Spring Creek Road;
THENCE run N00°07'17"E along said East line for 1,292.76 feet to an intersection with the South line of said Coconut Road;
THENCE run S89°16'14"E along the South line of said Coconut Road 1,802.38 feet to an intersection with the West line of said Section 09;
THENCE run N00°41'48"W along said West line for 25.00 feet to the POINT OF BEGINNING.

Containing 222.36 acres, more or less.

CPD Parcel 1
A tract or parcel of land lying in Sections 07 and 08, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

From a railroad spike marking the Northwest corner of the Southwest Quarter (SW1/4) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.

From said POINT OF BEGINNING run S89°16'14"E along said South line for 1,478.58 feet;
THENCE run S00°44'42"W for 1,000.00 feet;
THENCE run N89°15'18"W for 1,458.78 feet to an intersection with the West line of said Section 08;
THENCE run N00°23'24"W along said West Section line for 375.11 feet;
THENCE run S89°40'05"W for 1,107.21 feet;
THENCE run N00°19'55"W for 650.00 feet to an intersection with the South line of Government Lot 2 of said Section 07;
THENCE run S89°40'05"W along said South line for 745 feet, more or less, to an intersection with the waters of Estero Bay;
THENCE run along the waters of Estero Bay for 1,810 feet, more or less, to a point which intercepts the North line of the South Half (S1/2) of said Government Lot 2;
THENCE run N89°32'15"E along said North line of the South Half (S1/2) of said Government Lot 2 for 545 feet, more or less, to the Northwest corner of lands described in Official Record Book 1895 at Page 3817, Public Records, Lee County, Florida;
THENCE S08°50'45"E along the West line of said lands for 199.50 feet;
THENCE N89°32'15"E along the South line of said lands for 247.50 feet;
THENCE run N89°35'27"E for 666.22 feet;
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;
THENCE run S01°07'45"E along said West line for 488.63 feet to an intersection with the South line of said Coconut Road;
THENCE run N89°40'05"E along the South line of said Coconut Road for 24.55 feet to the POINT OF BEGINNING.

LESS and EXCEPT lands described in Official Record Book 1677 at Page 3516, Public Records, Lee County, Florida.

Containing 72.8 acres, more or less.

continued...

CPD Parcel 2

A tract or parcel of land lying in the South Half (S1/2) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
From the Northwest corner of the Southwest Quarter (SW1/4) of said Section 09 run N00°41'48"W for 5.00 feet to the South right-of-way line of Coconut Road (50 foot right-of-way);
THENCE run S89°35'50"E for 1,863.14 feet to the POINT OF BEGINNING.

From said POINT OF BEGINNING continue S89°35'50"E along said South right-of-way line for 1,301.22 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S00°10'56"W along said West line for 621.81 feet to a POINT OF CURVATURE;
THENCE run Southerly and Southeasterly along the arc of a curve to the left of radius 5,797.58 feet (delta 10°17'00") (chord bearing S04°57'34"E) (chord 1,039.14 feet) for 1,040.54 feet to a POINT OF TANGENCY;
THENCE run S10°06'04"E along said Westerly line for 230.98 feet;
THENCE run S79°53'56"W for 70.57 feet to a POINT OF CURVATURE;
THENCE run along the arc of a curve to the right of radius 650.00 feet (delta 49°49'26") (chord bearing N75°11'21"W) (chord 547.59 feet) for 565.23 feet to a POINT OF REVERSE CURVATURE;
THENCE along the arc of a curve to the left of radius 840.00 feet (delta 16°23'49") (chord bearing N58°28'33"W) (chord 239.57 feet) for 240.39 feet;
THENCE run N20°53'52"W for 1,756.27 feet to an intersection with the South line of said Coconut Road and the POINT OF BEGINNING.

Containing 41.09 acres, more or less.

CPD Parcel 3

A tract or parcel of land lying in the Southeast Quarter (SE1/4) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at the Southwest corner of the Southeast Quarter (SE1/4) of said Section 09 run N01°00'24"W along the West line of said Southeast Quarter (SE1/4) for 587.77 feet to a point on a non-tangent curve;
THENCE along the arc of a curve to the left of radius 850.00 feet (delta 39°04'25") (chord bearing S80°33'52"E) (chord 568.50 feet) for 579.67 feet to a POINT OF TANGENCY;
THENCE run N79°53'56"E for 70.57 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S10°06'04"E along said West line for 507.09 feet to an intersection with the South line of said Section 09;
THENCE run S89°23'00"W along said South line for 708.94 feet to the POINT OF BEGINNING.

Containing 7.73 acres, more or less.

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on May 31, 1994, and subsequently continued to June 1, 2, 3, 1994; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners on August 29, 1994; and the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE the rezoning of AG-2, RPD, TFC-2, and IM to RPD and CPD districts with the following conditions and deviations:

1. The development of the subject property shall be in accordance with the three-page Master Concept Plan for Pelican Landing RPD/CPD, stamped received on May 16, 1994, except as modified by the conditions herein. Unless specifically approved as part of this rezoning, development shall be in accordance with all applicable local development regulations, including the Pelican Landing Development of Regional Impact Development Order. No deviations from the Land Development Code are granted unless specifically identified herein.

   As a prerequisite to approval of any local Development Order for property located within the Commercial Planned Development and Residential Planned Development, approval of a Final Zoning Plan must be received which specifies the type, intensity and configuration of development for the particular site. The objective of the process is to ensure compliance with the DRI Development Order, Zoning Resolution, and Land Development Code, to allow detailed review of deviations conceptually approved herein, while allowing the development flexibility to respond to changing conditions. Application materials shall be the same as for an Administrative Amendment supplemented per Condition 18.b. Any substantial change in the type, intensity, or configuration of development within the RPD/CPD will require further review through a public hearing. The necessity of said review shall be determined by the Director of Community Development.

<u>Commercial Planned Development</u>

2. Permitted uses in CPD land development Area A: Marina

   Administrative Offices
   Bait and Tackle Shop
   Boat Parts Store
   Cocktail Lounge, only in conjunction with a restaurant
   Club, Private
   Consumption on Premises, only in conjunction with a restaurant
   Food Store, Group I
   Fishhouse
   Specialty Retail, Group I
   Marina (df) including those uses defined with a maximum 150 space dry boat storage building and 48 wet slips
   Rental and Charter Facilities for Boats, limited to residents and guests in Pelican Landing
   Restaurants, Standard
   Sale of Fuel and Lubricants
   School, Commercial limited to sailing, water safety and other marine oriented schools
   Shower and Restroom Facilities

   The following property development regulations shall apply to CPD land development Area A: Marina

   a. Minimum building setbacks for all Marina/Commercial District uses:

Street	-	1/2 right-of-way plus 20 feet
Side	-	10 feet
Water Body	-	0 feet
Wetlands	-	20 feet

   b. Minimum distance between buildings:

Single story buildings	-	10 feet
Multiple story buildings	-	20 feet
Multiple story buildings with sprinkler systems	-	15 feet

   c. Maximum building height - 45 feet above minimum flood elevation

   d. Dry boat storage shall be limited to a height of 45 feet.

e. Prior to any local Development Order for the marina, a parking plan shall be submitted which demonstrates location and adequacy of parking and methods of vehicular and pedestrian movement. County staff shall ensure protection of public safety and compliance with applicable standards. Should vacation of a portion of Coconut Road not occur, developer shall be restricted accordingly.

f. Live-aboards (defined by Ordinance 85-21, as amended) and personal watercraft (defined by Ordinance 90-15, as amended) are prohibited.

g. Marina sanitation facilities are required.

3. Permitted uses in CPD land development Area B:

Hotel/Convention Center (per Ord.):

Hotel or Motel, Convention
Hotel or Motel Accessory Uses - including, but not limited to:
- Tennis Courts
- Swimming Pools
- Bar or Cocktail Lounge
- ATM within the Hotel or Other Building
- Consumption on Premises and
- Package Store within the Hotel or Motel
- Conference Meeting Rooms

Club, Private
Resort
Restaurant, Standard - Groups I, II and III with Consumption on Premises
Specialty Retail Shops - Groups I and II
Business Services - Group I (excluding blood banks, blood donor stations, bail bonding, check exchange, detective agencies)
Studios
Dwelling Units, including but not limited to:
- Two Family Attached
- Townhouse
- Duplex
- Multiple Family Building

Residential Accessory Uses, including but not limited to:
- private garages, carports and parking areas
- private swimming pools and enclosures
- private tennis courts

Model Homes, Model Units and Model Display Center - limited to residential uses within Pelican Landing
Home Occupation
Entrance Gates and Gatehouses

The following property development regulations shall apply to CPD land development Area B: Hotel and Conference Center:

a. Minimum building setbacks:

Street	-	1/2 right-of-way plus 20 feet
Side	-	0 feet or 10 feet for an interior lot and 15 feet for a corner lot
Water Body	-	20 feet
Wetlands	-	20 feet

b. Minimum distance between buildings:

Single story buildings	-	10 feet
Multiple story buildings	-	20 feet
Multiple story buildings with sprinkler systems	-	15 feet

c. Maximum building height - no more than 20 habitable floors

d. Development of CPD Area B for Hotel and Conference Center shall comply with Condition 12 (High Rise Development Regulations).

4. Permitted Uses in CPD land development Area C: Office

Administrative Offices
Bank and Financial Establishments - Group I and II
Day Care (child/adult)
Food and Beverage Service
Insurance Companies
Library
Medical Office
Business Services - Group I (excluding blood banks, blood donor stations, bail bonding, check exchange, detective agencies)
Pharmacy
Post Office
Restaurants
Business Services - Group II (no outdoor storage of vehicles or equipment is permitted)
Contractors and Builders - Group I (no storage facilities permitted)
Cultural Facilities, limited to Art Gallery or Museum
Health Care Facilities - Group III
Personal Services - Group II (health club or beauty spa only)
Commercial School, limited to:
- Art School
- Business School
- Clerical
- Computer Drafting
- Law
- Real Estate
- Aerobics

Social Services - Group I (limited to family and marriage counseling or nutritionists counseling)

The following property development regulations shall apply to CPD land development Area C: Office

a. Minimum building setbacks:

Street	-	1/2 right-of-way plus 20 feet
Side	-	0 feet or 10 feet for an interior lot and 15 feet for a corner lot
Water Body	-	25 feet
Wetlands	-	20 feet

b. Minimum distance between buildings:

Single story buildings	-	10 feet
Multiple story buildings	-	20 feet
Multiple story buildings with sprinkler systems	-	15 feet

c. Maximum building height - 95 feet above minimum flood elevation, with no more than 8 habitable floors

5. Permitted Uses in CPD land development Area D: Mixed Use Commercial

Administrative Offices
Business Services - Group I (excluding blood banks, blood donor stations, bail bonding, check exchange, detective agencies)
Business Services - Group II (no outdoor storage of vehicles or equipment)
Banks and Financial Establishments - Groups I and II with drive-thru
Broadcasting Studio
Commercial Radio and Television
Place of Worship
Religious Facilities
Private Club
Food Store - Group I
Repair Shops - Groups I and II
Restaurant, Standard - Groups I, II and III with consumption on premises
Specialty Retail Shops - Groups I, II and III

Used Merchandise Shops - Group I
Pharmacy and Drug Stores
Commercial School
Social Services - Group I (excluding Public Welfare Centers)
Studios
Health Care Facilities - Group III
Adult Congregate Living Facilities
Insurance Companies
Medical Office
Standard Offices
Cocktail Lounge
Consumption on Premises
Package Store
Automobile Service Station
Self-Service Fuel Pumps
Convenience Food and Beverage Store
Residential Uses, including but not limited to:
- Two family attached
- Townhouse
- Duplex
- Multi-family building

Residential Accessory Uses, including
- Private garages, carports, parking areas
- Swimming pools, tennis courts
- Model Homes, Model Units and Model Display Centers
- Home Occupation

Clothing Stores, General
Contractors and Builders - Group I (no outdoor storage of heavy equipment)
Cultural Facilities (limited to Art Galleries, Museums)
Hobby, Toy, Game Shops
Household/Office Furnishings - Groups I and II
Personal Services - Group I
(excluding coin operated laundries Laundromat)
Personal Services - Group II (limited to hearing aids, optical supplies and other similar health related devices (excluding massage establishments, massage parlors, steam or Turkish baths)
Personal Services - Group IV (limited to debt counseling, portrait copying, and tax return service)
Recreation, Commercial (limited to Health Club)
Theatres

The following property development regulations shall apply to CPD Area D: Mixed Use Commercial

a. Minimum building setbacks:

Street	-	1/2 right-of-way plus 20 feet
Side	-	0 feet or 10 feet for an interior lot and 15 feet for a corner lot
Water Body	-	20 feet (0 feet for seawalled/bulkheaded, manmade water bodies)
Wetlands	-	20 feet

b. Minimum distance between buildings:

Single story buildings	-	10 feet
Multiple story buildings	-	20 feet
Multiple story buildings with sprinkler systems	-	15 feet

c. Maximum building height - 95 feet above minimum flood elevation with no more than 8 habitable floors

6. Permitted uses in CPD land development Area E: Retail

Administrative Offices
Club, Private
Food Store - Group I

Personal Services - Groups I (limited to ATM,beauty shop only) and II (limited to Health Club only)
Restaurant, Standard - Groups I, II and III with consumption on premises
Specialty Retail Shops - Groups I, II and III
Studios
Cocktail Lounge, only in conjunction with a restaurant
Multiple Family Residential Uses, including but not limited to:
- Two family attached
- Townhouse
- Duplex
- Multiple family building

Residential Accessory Uses, including but not limited to:
- Private garages, carports and parking areas
- Private swimming pools and enclosures
- Private tennis courts

Model Homes, Model Units and Model Display Center, limited to residential uses within Pelican Landing
Home Occupation
Entrance Gates and Gatehouses
Used Merchandise, Group I, excluding Pawn Shops

The following property development regulations shall apply to CPD Area E:

a. Minimum building setbacks:

Internal Streets	-	1/2 right-of-way plus 20 feet
Side and	-	0 feet or 10 feet for an interior lot 15 feet for a corner lot
Water Body	-	20 feet (0 feet for seawalled/bulkheaded, manmade water bodies)
Wetlands	-	20 feet

b. Minimum distance between buildings:

Single story buildings	-	10 feet
Multiple story buildings	-	20 feet
Multiple story buildings with sprinkler systems	-	15 feet

c. Maximum building height - 75 feet above minimum flood elevation

7. The following property development regulations apply to residential uses permitted in CPD Areas B, D, and E:

The residential uses in the CPD land development areas shall be permitted only when in conjunction with at least 50,000 square feet or more of commercial uses.

a. Minimum building setbacks:

Street	-	1/2 right-of-way plus 20 feet
Side	-	0 feet or 10 feet for an interior lot and 15 feet for a corner lot
Water Body	-	20 feet
Wetlands	-	20 feet

b. Minimum distance between buildings:

Single story buildings	-	10 feet
Multiple story buildings	-	20 feet
Multiple story buildings with sprinkler systems	-	15 feet

c. Maximum building height - 75 feet above minimum flood elevation in CPD Areas B & E; 95 feet above minimum flood elevation in CPD Area D

Residential Planned Development

8. Permitted uses in RPD land development Area A:

Zero lot line, Single-Family, Two-Family Attached
Residential Accessory Uses, including but not limited to:
- Private garages, carports and parking areas
- Private swimming pools and enclosures
- Private tennis courts

Model Homes, Model Units and Model Display Center, limited to residential uses within Pelican Landing
Speculative Home
Temporary Sales and/or Construction Office
Administrative Offices
Home Occupation
Entrance Gates and Gatehouses
Public and Private Parks, Playgrounds, Tot Lots, Community Swimming Pools, Tennis Courts or other community recreational amenity, Playfields and Commonly Owned Open Space
Essential Services
Signs

9. Permitted Uses in RPD land development Areas B, C, D and F:

Residential Uses, including but not limited to:
- Zero lot line
- Two family attached
- Townhouse
- Duplex
- Single family
- Multiple family buildings

Residential Accessory Uses, including but not limited to:
- Private garages, carports and parking areas
- Private swimming pools and enclosures
- Private tennis courts
- Private boat docks (where permitted by DRI Development Order)

Model Homes, Model Units and Model Display Center, limited to residential uses within Pelican Landing
Temporary Sales and/or Construction Office
Administrative Offices
Golf Courses, Golf Course Accessory and Associate Uses, including but not limited to:
- Club house
- Maintenance facility
- Pro shop
- Alcoholic beverage consumption in the club house
- Snack bar at the ninth hole or other appropriate location
- Ball washers
- Restrooms and other uses which are normal and accessory to the golf course

Club, country
Club, private
Home Occupation
Entrance Gates and Gatehouse
Public and Private Parks
Playground, Tot Lots
Community Swimming Pools
Tennis Courts or other community recreational amenity
Playfields
Essential Services
Essential Service Facilities
Signs
Excavation-water retention

10. Permitted uses in RPD land development Area E:

Residential uses, including but not limited to:
- Zero Lot Line
- Two Family
- Town House

- Duplex
- Single Family
- Multiple Family Buildings

Residential Accessory Uses, including but not limited to:

- Private garages, carports and parking areas
- Private swimming pools and enclosures
- Private tennis courts

Private Parks, Playgrounds, Tot Lots
Community Swimming Pools
Tennis Courts or other community recreational amenity
Playfields
Essential Services
Signs

11. The following property development regulations shall apply to RPD Areas A, B, C, D and E:

a. Minimum Lot Area and Dimensions:

Zero Lot Line Units	Single Family Units
Area = 5,000 square feet	Area = 5,000 square feet
Width = 40 feet	Width = 40 feet
Depth = 100 feet	Depth = 100 feet

Multi-Family
Area = 2,000 square feet per dwelling unit,
minimum lot size - 10,000 square feet
Width = 100 feet
Depth = 100 feet

Two-Family Attached and Townhouse
Area = 4,000 square feet per dwelling unit
Width = 32 feet
Depth = 100 feet

Duplex
Area = 14,000 square feet
Width = 90 feet
Depth = 100 feet

b. Minimum Setbacks

Zero Lot Line Units
Street = 20 feet or 15 feet for side entry garages
Side = 10 feet on one side, 0 feet on opposite site
Rear = 15 feet for building, 3 feet for pool, deck and enclosure
Waterbody = 20 feet

Single-Family Units
Street = 15 feet
Side = 5 feet
Rear = 15 feet for building,
0 feet for pool, deck and enclosure
Waterbody = 20 feet

Multi-Family
Street = 20 feet
Side Yard = 20 feet
Rear Yard = 20 feet
Waterbody = 20 feet

Two-Family Attached and Townhouse
Street = 20 feet
Side Yard = 5 feet (no side setback required from common side lot line)
Rear = 15 feet
Waterbody = 20 feet

Duplex
Street = 1/2 ROW + 20 feet
(except for cul-de-sac 1/2 ROW + 15)
Side = 7 feet (no side setback required from common side lot line)
Rear = 20 feet
Waterbody = 20 feet

c. Building heights:

RPD Areas B and D located in the Outlying Suburban land use category shall have a maximum building height of 75 feet above minimum flood elevation with no more than 6 habitable stories.

RPD Areas A, C and D located in the Urban Community land use category shall have maximum building height of 95 feet above minimum flood elevation with no more than 8 habitable stories.

RPD Area E located in the Outlying Suburban land use category shall have a maximum building height of 75 feet above minimum flood elevation with no more than 6 habitable floors.

12. Deviation (12) is approved for RPD Area F, and CPD Area B. These areas may be developed with a maximum building height exceeding 75 feet above minimum flood elevation only if in compliance with the following development regulations. All buildings 45 feet in height or less shall comply with normal setbacks required of conventional multi-family zoning districts. All buildings over 45 feet shall provide one foot of setback from the Pelican Landing perimeter property line for every foot of elevation. In recognition of the wetlands north of Coconut Road, the setback for structures in excess of 75 feet in CPD Area B and the RPD Area F that is adjacent to Coconut Road may be per LDC Section 34-2174.

The regulations set forth below in 12.a through 12.e apply to the development of buildings greater than 75 feet above minimum flood elevation:

a. Minimum Lot Area and Dimensions:

Lot Size	10,000 square feet
Lot Area per Unit	1,000 square feet
Width	100 feet
Depth	100 feet

b. Minimum Setbacks

Private Road	25 feet
Side Yard	50 feet
Rear Yard	10 feet
Waterbody	20 feet

c. A minimum building separation of 125 feet shall be provided between those buildings above 75 feet.

d. A maximum of 8 residential buildings and one hotel building with a height of greater than 75 feet, above minimum flood elevation may be permitted. Such buildings may be located within RPD Area F (residential) and CPD Area B (Hotel).

e. A minimum of 15% open space shall be provided for each multi-family building site that is or exceeds 75 feet in height.

ECO-PARK

13. Permitted Uses in Eco-Park (RPD AREA G):

Uses permitted in the Eco-Park District are limited to activities which make this area available for resource-based recreational activities, enjoyment of nature and educational enrichment, including but not limited to:

Picnic areas, trails, benches, boardwalks, biking/jogging trails, vita course, bird viewing blinds/towers and interpretative facilities, signs, on-going maintenance and removal of exotic vegetation and compliance with management plan required per FGFWFC.

INTERFACE AREA

14.a. Permitted Uses in the Interface Area:

Uses permitted in the Interface Area are limited to golf courses, developed to the guidelines similar to the New York Audubon Society Standards and any related appurtenances or uses, stormwater management; and created wetland marsh and any other created vegetative system or lake system which will promote wildlife diversity, activities which make this area available for resource-based recreational activities, enjoyment of nature and education enrichment, including but not limited to:

Picnic areas, trails, benches, boardwalks, biking/jogging trails, vita course, bird viewing blinds/towers and interpretive facilities, signs, access to the southern segmented ridge, on-going maintenance and removal of invasive exotic vegetation and compliance with the wildlife diversity monitoring plan prepared in conjunction with the Lee County School Board Department of Environmental Education.

b. The Zoning Master Concept Plan shall be adjusted, including revisions to the legal description. The changes shall reflect the terms of this condition and be consistent with the exhibit entitled "Pelican Landing Interface Area Illustration", stamped received August 26, 1994. The shifts in the zoning Master Concept Plan will allow for the Interface Area described above. The western boundary of the Interface Area is the jurisdictional mangrove wetland line. The Interface area is 100 feet in width at the north and south ends of the property, and it is approximately 500 feet in width elsewhere. The creation of the Interface Area will cause Residential Development Area F to shift to the east. RPD Area F will begin at the eastern boundary line of the Interface Area. The CPD Area B (the hotel use) will shift to the west to the present location of CPD Area E/RPD Area E and RPD Area B on the May 16, 1994, Zoning Master Concept Plan, and shall be a third alternative development scenario for that property. RPD Area D, located west of Spring Creek Drive, will be reduced in size due to the relocation of RPD Area F. That portion of the former CPD Area B that does not become the Interface Area will become an RPD Area F. The internal traffic circulation will be adjusted to accommodate the revised design. The southern upland area (proposed RPD Area E) bounded by the south property line, with estuarine wetlands and upland buffers to the west, and the oak hammock to the east shall be redesignated Residential Development Area E. No development can occur within CPD Areas E or B, or RPD Areas E, F, or D until a final zoning plan approval is obtained through the final administrative review process which properly reflects the Interface Area as described herein.

c. The Interface Area will serve two purposes. First, it allows for a buffer area or interface between the residential high-rise development areas and the jurisdictional mangrove wetlands to the west. The buffering function will also extend to some of the interior wetland and upland systems. Residential units within Residential Development Area F shall be located a minimum of 500 feet from the jurisdictional mangrove area, except for the RPD Area F located at the site of the former CPD Area B (hotel site). No golf course uses shall be located any closer to the jurisdictional mangrove system than 100 feet. Secondly, the Interface Area will provide habitat and a vegetative corridor which will enable wildlife to safely access the onsite interior wetland systems.

d. All invasive exotic vegetation shall be removed from the Interface Area. The invasive exotic removal process shall coincide with the construction of a surface water management system within the Interface Area.

e. Where necessary, a vegetation restoration program shall commence subsequent to the removal of the invasive exotics. The program should facilitate diversity in wildlife. The revegetation shall commence within six months of invasive exotic removal. Vegetation to facilitate wildlife diversity shall be used in the restorative planting.

f. Where appropriate, and subject to permitting approval, the developer will construct "kidney filter" marshes for additional water quality treatment prior to final outfall. These marshes will most likely be located in areas currently infested with invasive exotic vegetation, and will be replanted with plant species such as juncus and spartina grass, cabbage palms and slash pines.

g. The developer has volunteered to monitor the Interface Area to assess its effectiveness in facilitating wildlife diversity. Information on flora and fauna produced for the DRI shall be the baseline data for the monitoring. The database shall be updated through a program of Winter/ Summer monitoring. The monitoring shall generally consist of looking for, and reporting on, evidence of foraging, nesting, scat, and other territorial markings. This monitoring program shall be for a period of five years from the commencement of development activity in the Interface Area. The information gathered through the monitoring program shall be provided to the Lee County Division of Natural Resources Management and the Lee County Schools, Department of Environmental Education.

h. Subject to permitting approval, the treated stormwater from the Residential and Commercial Development Areas will be conveyed across the Interface Area via a series of excavated lakes and created marsh areas that will emphasize both the water management function and the improvement of wildlife diversity within the Interface Area. The lakes will be designed and located to mimic natural flows and to enhance wildlife values.

i. The access to the southern segmented ridge has been shifted to the south to the location previously approved by the BOCC in Resolution #Z-88-193. There are less wetland impacts with the southerly access.

GENERAL/ADMINISTRATION

15. All conditions relating to the Development of Regional Impact Development Order are hereby incorporated by this action. If conflicting conditions exist between this approval and the DRI Development Order, the more restrictive shall apply.

16. Transportation mitigation shall be provided as outlined in the Development of Regional Impact Development Order. However, site related improvements may be required at the time of local Development Order in accordance with the provisions of the Land Development Code. Also, a Traffic Impact Statement (TIS) shall be submitted with each application for a local Development Order. The TIS must include:

a. The trip generation data for the type of development being proposed, using the trip generation rates in the latest edition of ITE, Trip Generation or those of the Lee County FSUTMS.

b. The distribution of traffic at the entrance(s) to that specific area to be developed.

c. An analysis of the need for turn lanes or other site related improvements at the entrance(s) to that specific area to be developed based upon the projected future volume of traffic on the street being accessed. Projected future volume represents volumes at buildout of the DRI.

d. An analysis of each intersection of a minor collector with the same or higher functionally classified road internally to Pelican Landing that is influenced by traffic from that proposed development. Influence is measured as project traffic as 5% or more of Level of Service D service volume. That analysis to be based on existing traffic counts, plus traffic from the specific development.

e. A table showing each segment of minor collectors and higher classified roads influenced by the proposed development, traffic volumes with specific development, and the capacity of the road segment at LOS E.

f. A table showing the cumulative development parameters for the entire Pelican Landing DRI. Development parameters to be categorized consistent with the categories identified in the original DRI.

17. The development shall comply with the Lee Plan's 2010 Overlay as it may be amended, and pursuant to DRI Development Order Condition III.14.

18.a. Prior to any development within that area legally described as Pelican Landing RPD/CPD (that property rezoned as a result of this action) the applicant must revise the MCP to reflect the final decision by the Lee County Board of County Commissioners regarding this rezoning and DRI approval.

b. Prior to any local Development Order approval within the land development areas delineated on the MCP as revised, pursuant to the final decision by the Lee County Board of County Commissioners, the developer must receive approval of a Final Zoning Plan.

The following information shall be provided:

- Uses: type and amount, i.e. number of dwelling units or square feet of commercial use
- access
- location and dimensions of internal roadways
- location and dimensions of buildings/structures
- boundary of development tract
- adjacent zoning and land uses
- Master Concept Plan
- A cumulative analysis of the total number of dwelling units, hotel units, commercial square footage and marina development that have received local Development Order approval (to be compared to the amount of development approved pursuant to the DRI and this rezoning).

19. The density of the residential units within both the RPD and CPD districts approved by this rezoning shall be flexible regarding the distribution of the residential dwelling units as long as they do not exceed the following parameters:

a. Those lands located within the Urban Community land use category per the Lee Plan shall be permitted a maximum of 350 residential units.

b. Those lands located within the Outlying Suburban land use category per the Lee Plan shall be permitted a maximum of 2,266 residential units.

20. The maximum amount of commercial square footage within the RPD and CPD districts approved by this rezoning shall be as stated below:

a. Those lands located within the Urban Community land use category per the Lee Plan shall be permitted a maximum of 390,000 square feet of floor area of retail use and 125,000 square feet of office use.

b. Those lands located within the Outlying Suburban land use category per the Lee Plan shall be permitted a maximum of 110,000 square feet of floor area of retail use and 45,000 square feet of office use. Of the retail uses, up to 20,000 square feet may be permitted if ancillary to the marina and up to 30,000 square feet may be permitted if ancillary to the hotel. Up to 60,000 square feet may be developed within CPD Areas E. Prior to approval of any Administrative Amendment for commercial use ancillary to the marina or hotel, the developer shall demonstrate that the retail is in fact ancillary to the principal use.

ENVIRONMENTAL

21. Open space commitments shall be consistent with the open space table on the Master Concept Plan as restated below:

Indigenous Open Space in Preserve:
Upland Preserve 106.13± acres
(Eco-Park, Indian Mound, Northern & Southern Upland "Islands" and Historical Cemetery)
Wetland Preserve 371.19± acres
(Freshwater and Saltwater)

Golf Course Open Space:
Golf Course 100.00± acres minimum
(To include extra indigenous preservation where possible)

Commercial Open Space to be Provided by Percentage:

All Commercial (except Marina Parcel)	20% minimum on each lot, tract or outparcel
Marina Parcel	10% of tract

Residential Private Open Space to be Provided by Percentage:

All Single-Family lots	10% minimum
Multi-Family Parcels	15% minimum

22. If a proposed bald eagle management plan includes development within 750 feet of an eagle's nest, the plan must be submitted to the Lee County Eagle Technical Advisory Committee (ETAC). ETAC will review the plan and forward recommendations to the FGFWFC and USFWS.

23. As a condition of approval, the County and FGFWFC shall review and approve the results of all studies and surveys required for implementation of a Final Management Plan required by the preliminary management plan approved as part of local Development Order 90-10-003.00D. These approvals shall be obtained prior to Certificate of Compliance for local Development Order #90-10-003.00D, or new/amended local Development Orders on the beach park.

24. The area identified as the Pelican Landing Eco-Park on the Master Concept Plan will be set aside as a 78± acre preserve area of xeric scrub and pine flatwoods to mitigate the impacts to gopher tortoise habitat.

25. The developer shall obtain an Incidental Take Permit prior to development within any gopher tortoise habitat areas. The gopher tortoises addressed by the Incidental Take Permit must be relocated to the Eco-Park, or other appropriate open space areas within Pelican Landing.

26. Should any orchids, wild pine air plants, Florida Coontie, Catesby's lilies, leather ferns, royal ferns, or cabbage palms with golden polypody and shoestring ferns be located within development areas, then best efforts must be used to relocate these plants to open space and landscaped areas.

27. All areas designated as Preserve on the adopted Master Concept Plan and the DRI Map H must remain undeveloped and be owned, maintained, and managed by a Uniform Community Improvement District or other similar legal entity. No lot lines shall be allowed within any Preserve area. The following uses are permitted within Preserves: habitat management activities, hiking and nature study, outdoor education, recreational fishing, gates and fencing, and boardwalks. Trimming of mangroves for visual access shall be prohibited in wetland areas #14 and 21 (as identified in DRI ADA) and Bay Cedar Phase II (along Spring Creek).

28. Boardwalk location and alignment within "Preserve Areas" shall be submitted to and approved by the Division of Natural Resources Management prior to construction. The maximum width must be limited to that which

is adequate for pedestrian and handicap access. With the exception of wheelchairs, motorized vehicle use is prohibited. Nothing herein prohibits the developer from seeking permits in the future to establish a tramway via an alignment which proceeds as directly as feasible from the hotel to Coconut Point.

29. As part of local Development Order approval for any phase of the development, an invasive exotic vegetation removal and maintenance plan must be submitted to the Division of Natural Resources Management for approval. At a minimum, this plan must be structured to provide for the phased removal of invasive exotic vegetation and maintenance to control exotic re-invasion within the wetland and upland preserve areas. Removal within preserve areas may be done on a pro rata basis as phased local Development Orders are obtained.

30. The developer must incorporate native vegetation into the design of future golf holes, open space and landscaped areas, where feasible.

31. The developer must design the golf course and conduct maintenance, which includes fertilization and irrigation, in a manner which is sensitive to the water and nutrient needs of the native xeric vegetation in and around the golf course. However, this condition will not be interpreted in a manner which forces the applicant to jeopardize the health and viability of the golf course.

32. Areas identified as saltern (FLUCCS Designation 720) must be preserved and protected from human activity through the installation of signage or other measures. Areas identified as Cabbage Palm Hammock (FLUCCS 428, also included in areas identified as 433) may be developed using techniques designed to avoid impacts and retain the native vegetative community as much as possible.

33. Deviation (9) - Withdrawn. Deviations (3) and (7) are hereby approved. Deviations (1), (2), (4), (5), (6), (8), (10), (11), (12) and (13) are hereby approved, with conditions.

Deviation (1) is a request to deviate from the requirement that properties which exhibit soils, hydrology and vegetation characteristic of saltwater inundation or freshwater ponding be subject to certain additional regulations and ordinances, Zoning Ordinance Section 202.11.B.1.b.1 [LDC Section 34-1574], Development Standards Ordinance Section 7.C.4. [LDC Section 10-253] and Ordinance 86-31 Section 6.03 [LDC Section 14-298], to allow access road crossings. Deviation (1) is hereby APPROVED with the following conditions:

a. A maximum of 1.74± acres of Lee County jurisdictional wetlands may be impacted within the entire Pelican Landing DRI. A mitigation plan, subject to Division of Natural Resources Management approval, must be submitted prior to local Development Order approval for each wetland impact. Each mitigation plan must include the following minimum criteria:

   1) The designated mitigation ratio of 5:1, 5:1 acres of mitigation for each acre of impact.

   2) Replacement plants of like species as those removed.

   3) The number of replacement plants. Ratios shall be determined by the proposed size of the replacement plants (the closer the size of the replacement plant to that of the removed plant, the smaller the replacement ratio).

   4) An exotic removal maintenance plan.

   5) A monitoring plan.

Deviation (2) is a request to deviate from the requirement that all parking lots shall be designed so as to permit vehicles exiting the

parking lot to enter the street right-of-way or easement in a forward motion, Zoning Ordinance Section 202.16.C.1. [LDC Section 34-2013(a)], to allow individual parking spaces to back onto right-of-way easement. Deviation (2) is hereby APPROVED with the following condition:

This deviation shall apply to guest parking internal to the residential development areas.

Deviation (3) is a request to deviate from the minimum setback from a structure to a water body of 25 feet, Zoning Ordinance Section 202.18.B.4.b. [LDC Section 34-2194(b)] to allow 20 feet. Deviation (3) is hereby APPROVED.

Deviation (4) is a request to deviate from the minimum setback from a structure to a seawalled natural body of water of 25 feet, Zoning Ordinance Section 202.18.B.4.b. [LDC 34-2194(b)], to 0 feet. Deviation (4) is hereby APPROVED with the following condition:

This deviation shall apply to the marina site only.

Deviation (5) is a request to deviate from the requirement that internal roads with drives shall not be closer to the development perimeters than 25 feet, Zoning Ordinance Section 480.04.B.1. [LDC Section 34-935(b)(1)], to 15-foot minimum. Deviation (5) is hereby APPROVED with the following condition:

This deviation shall only apply to development perimeters internal to the Pelican Landing DRI.

Deviation (6) is a request to deviate from the requirement that all buildings shall set back from the development perimeter at a distance of 25 feet, Zoning Ordinance Section 480.04.B.1. [LDC Section 34-935(b)(1)], to 15 feet. Deviation (6) is hereby APPROVED with the following condition:

This deviation shall only apply to development perimeters internal to the Pelican Landing DRI.

Deviation (7) is a request to deviate from the requirement that recreation centers and ancillary facilities shall be located at least 40 feet away from any residential dwelling, Zoning Ordinance Section 526.G.2.c.6. [LDC Section 34-2474 (b)(6)], to allow a minimum of 20 feet. Deviation (7) is hereby APPROVED.

Deviation (8) is a request to deviate from the requirement that a roadway width of 35 feet for two-way closed drainage, rear lot drainage, or inverted crown, Development Standards Ordinance Table 9-3 [LDC Section 10-296(b) Table 3.], to allow roadway width to coincide with back of curb. Deviation (8) is hereby APPROVED with the following condition:

This deviation shall only apply to roads classified as local streets within each of the RPD development areas.

DEVIATION (9) IS WITHDRAWN.

Deviation (10) is a request to deviate from the requirement that no portion of a buffer area that consists of trees and shrubs shall be located in any easement, Development Standards Ordinance Section 13.D.1. [LDC Section 10-414], to allow planted buffers in easements. (The maintenance and replacement responsibility shall rest with the developer or homeowner's association or the improvement district). Deviation (10) is hereby APPROVED with the following condition:

Should any required buffer plantings, which have been planted within an easement, have to be removed, then the property owner shall replace these plantings, at no cost to Lee County, with like size and species of plants.

Deviation (11) is a request to deviate from the Lee County Sign Ordinance 85-26, as amended, Section IV.B.2. [LDC Section 30-152], which requires identification signs to be set back a minimum of 15 feet from any right-of-way or easement, to 0 feet. Deviation (11) is hereby APPROVED with the following conditions:

A minimum sight distance of 200 feet shall be maintained, and this shall only be permitted on a right-of-way internal to the overall Pelican Landing development.

Deviation (12) is a request to deviate from the requirement limiting the height of buildings in the Residential Planned Development zoning category within the Outlying Suburban land use category of 45 feet, Zoning Ordinance Section 480.04.F.3.e. [LDC Section 34-935(f)(3)(e)], to allow 20 stories over parking. Deviation (12) is hereby APPROVED subject to condition 12.

Deviation (13) is a request to deviate from the minimum setback from a non-roofed structure to a seawalled artificial body of water, Zoning Ordinance Section 202.18.B.4. [LDC Section 34-2194], to allow a 0-foot setback. Deviation (13) is hereby APPROVED with the following condition:

The required lake maintenance easement shall be provided.

Site Plan 94-014 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings and conclusions were made in conjunction with this approval of RPD and CPD zoning:

A. That Estero Bay is an aquatic preserve and an Outstanding Florida Water.

B. That the mangrove wetlands on the western edge of Applicant's property are not contained with the aquatic preserve, but are part of the estuarine ecosystem that supplies waters to Estero Bay.

C. That the proposed development constitutes a Development of Regional Impact (DRI) under the provisions of Section 380.06, Florida Statutes, and that all adverse impacts are appropriately conditioned in the DRI Development Order.

D. That the eastern portion of the DRI has been developing pursuant to a Preliminary Development Agreement with the Florida Department of Community Affairs.

E. That the westernmost uplands portion of the DRI site lies in a FEMA Zone A Flood Zone, and is susceptible to being flooded in a minimal tropical storm or severe coastal storm event.

F. That there is no error or ambiguity which must be corrected by the approval of the DRI or the CPD/RPD rezoning.

G. That the area surrounding the DRI site is being developed with several large mixed residential/commercial developments, which make approval of this DRI and RPD/CPD appropriate.

H. That the RPD/CPD zoning, as conditioned herein, will not have an adverse effect on the intent of the Zoning chapter of the Land Development Code.

I. That the RPD/CPD zoning, as conditioned herein, is consistent with the Goals, Objectives, Policies and intent of the Lee Plan, and with the densities, intensities, and general uses set forth in the Lee Plan.

J. That the RPD/CPD zoning, as conditioned herein, meets or exceeds all performance and locational standards set forth for the proposed uses.

K. That the RPD/CPD zoning, as conditioned herein, will protect, conserve or preserve environmentally critical areas and natural resources.

L. That the RPD/CPD zoning, as conditioned herein, will be compatible with existing or planned uses, and will not cause damage, hazard, nuisance or other detriment to persons or property.

M. That the RPD/CPD zoning, as conditioned herein, will not place an undue burden upon the transportation or other services and facilities, and will be served by streets having the capacity to carry traffic generated by the development.

N. That the RPD/CPD zoning, as conditioned herein, will comply with all other applicable general zoning provisions and supplemental regulations pertaining to the uses, as set forth in the Land Development Code.

O. That the proposed mix of uses, as conditioned herein, is appropriate at the subject location.

P. That the recommended conditions in the DRI Development Order and the RPD/CPD zoning and other applicable Lee County regulations provide sufficient safeguards to the public interests.

Q. That all recommended conditions in the DRI Development Order and the RPD/CPD zoning are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

R. That each approved deviation enhances the achievement of the objectives of the planned development.

S. That each approved deviation preserves and promotes the general intent of the Zoning chapter of the Land Development Code to protect the public health, safety and welfare.

T. That the Lee Plan Amendment of the 2010 Overlay reallocating residential and commercial acreages from the subdistricts containing the Westinghouse/Gateway DRI must be approved prior to the approval of this DRI and CPD/RPD zoning.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner John E. Manning, and seconded by Commissioner Douglas R. St. Cerny and, upon being put to a vote, the result was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Nay
Franklin B. Mann	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 29th day of August, A.D., 1994.

ATTEST:
CHARLIE GREEN, CLERK

BY: Ruth Tryman
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Ray Judah
Chairman

FILED

SEP 28 1994

CLERK CIRCUIT COURT
BY Ruth Tryman D.C.

Approved as to form by:

Donna Marie Collins
County Attorney's Office

HEARING NUMBER 94-04-05-DRI-01
(10875)

RESOLUTION NUMBER Z-94-014
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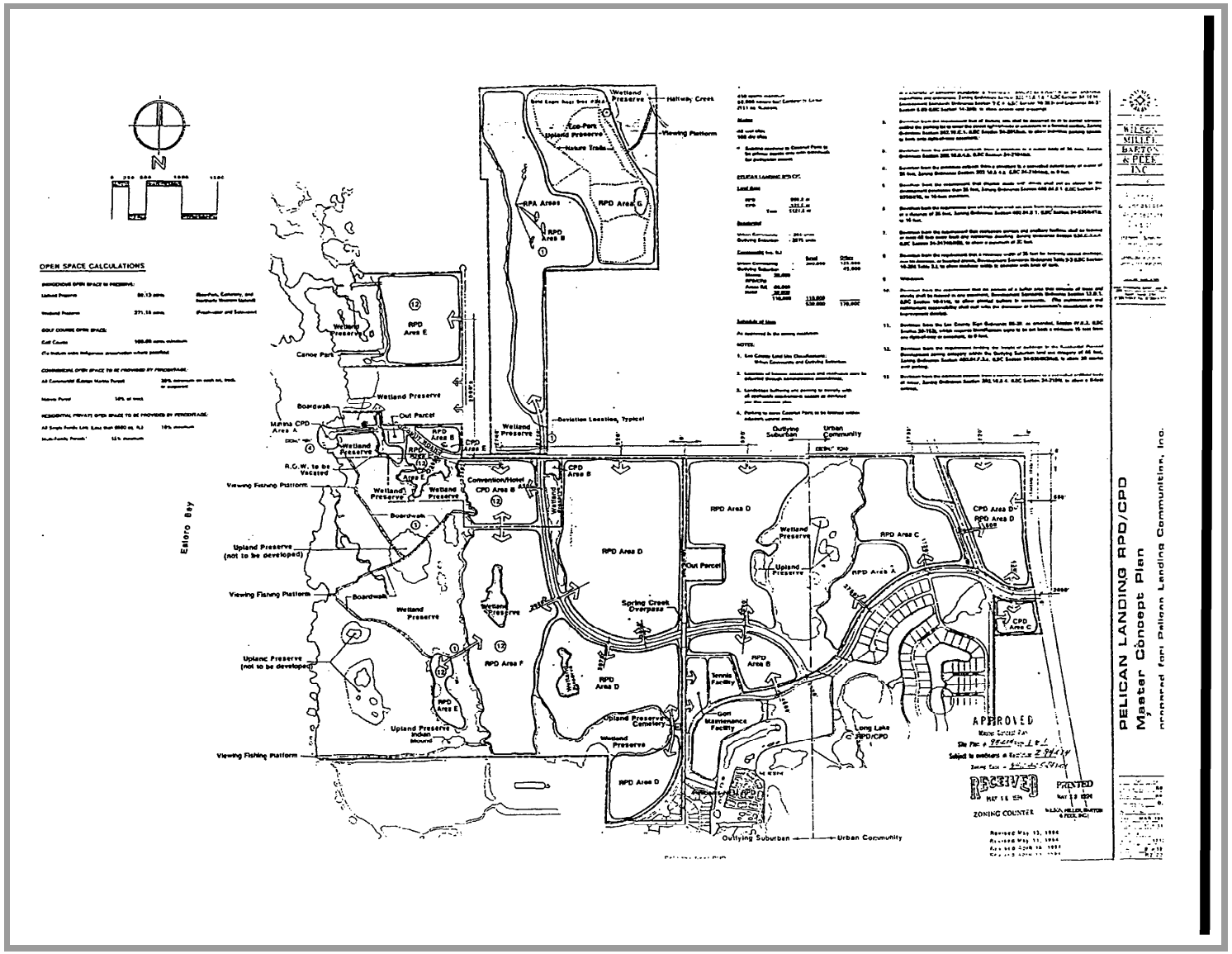
OPEN SPACE CALCULATIONS
PELICAN LANDING RPD/CPD
Master Concept Plan
Wetland Preserve
Hallway Creek
Viewing Platform
Eco-Park
Upland Preserve
Nature Trails
RPD Area G
RPA Areas
RPD Area B
RPD Area E
Canoe Park
Boardwalk
Out Parcel
Marina CPD Area A
RPD Area B
CPD Area E
Deviation Leasing, Typical
Outlying Suburban
Urban Community
R.O.W. to be Vacated
Viewing Fishing Platform
Convention/Hotel
CPD Area B
CPD Area B
RPD Area D
Estero Bay
Upland Preserve (not to be developed)
Spring Creek Overpass
RPD Area A
RPD Area C
CPD Area D
RPD Area D
Tennis Facility
RPD Area B
Golf Maintenance Facility
RPD Area F
RPD Area E
Upland Preserve Cemetery
Long Lake CPD/CPD
Viewing Fishing Platform
APPROVED
RECEIVED
ZONING COUNTER
PRINTED

Attachment E

RESOLUTION NUMBER Z-97-073

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, WCI Communities, L.P. in reference to Pelican Landing, filed an application for:

a) An amendment to the Pelican Landing DRI Development Order #1-9293-121, as amended, and DRI Map H, as amended, to acknowledge the conversion of commercial retail floor area to hotel units and a reduction in the total number of parking spaces; and

b) A finding of no substantial deviation under the provisions of Section 380.06(19), Florida Statutes; and

c) An amendment to the Pelican Landing RPD/CPD approval, and the corresponding Master Concept Plan, to add hotel/motel as a permitted use in RPD/CPD Area D; and

WHEREAS, the subject property is located at 28300 S Tamiami Trail, Bonita Springs, and is described more particularly as:

LEGAL DESCRIPTION: In Sections 05, 07, 08, 09, 16, 17, 18, 20, and 21, Township 47 South, Range 25 East, and Sections 13 and 24, Township 47 South, Range 24 East, Lee County, Florida:

PARCEL 1

A tract or parcel of land lying in Sections 08, 09, 16, 17, 20 and 21, Township 47 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:
Beginning at a concrete monument marking the Northeast corner of said Section 20, run S00°35'25"E along the East line of said section for 2,659.47 feet to the Southeast corner of the Northeast Quarter (NE¼) of said section;
THENCE run N88°52'49"E along the North line of the Southwest Quarter (SW¼) of said Section 21 for 2,040.41 feet;
THENCE run S00°51'35"E for 801.04 feet to the waters of Spring Creek;
THENCE run along Spring Creek for 3,630 feet, more or less to an intersection of the East line of said Section 20 and the approximate centerline of Spring Creek;
THENCE run along said centerline the following courses:
S78°50'00"W for 181.31 feet;
N34°24'12"W for 230.22 feet;
N30°59'12"W for 174.93 feet;
N24°25'16"E for 120.83 feet;
S65°47'43"E for 219.32 feet;

N18°24'43"E for 158.11 feet;
N75°11'47"W for 351.71 feet;
N65°09'33"W for 451.88 feet;
N84°18'44"W for 351.75 feet;
N66°54'31"W for 445.79 feet;
S63°24'43"W for 134.16 feet;
S03°23'22"E for 170.29 feet;
S50°30'17"W for 220.23 feet;
N84°49'43"W for 331.36 feet;
S62°13'07"W for 214.71 feet;
S22°08'36"W for 291.55 feet;
S72°15'11"W for 131.22 feet to an intersection with the East line of the Southwest Quarter (SW¼) of said Section 20;
THENCE run N00°50'19"W along said East line for 520.00 feet to the Northeast corner of said fraction;
THENCE run S89°58'37"W along the North line of said fraction for 290.00 feet to an intersection with the approximate centerline of the most Easterly branch of said Spring Creek;
THENCE run along said centerline the following courses:
N09°13'28"W for 137.34 feet;
N29°08'22"W for 590.59 feet;
N38°31'58"W for 278.03 feet;
N65°16'43"W for 254.95 feet;
N37°18'28"W for 286.01 feet;
N32°51'05"E for 252.39 feet;
N20°11'00"E for 236.69 feet;
N27°23'47"W for 369.25 feet;
N89°15'43"E for 50 feet, more or less to the Easterly shore of said Spring Creek;
THENCE run along said Easterly shore for 1,220 feet, more or less to an intersection with the North line of said Section 20;
THENCE run N89°15'13"E along said North line of said Section for 970 feet, more or less to a concrete monument marking the Northwest corner of the Northeast Quarter (NE¼) of said Section 20;
THENCE run N00°31'30"E along the West line of the Southeast Quarter (SE¼) of said Section 17 for 2,644.38 feet to an intersection with the South line of Spring Creek Road as described in Deed Book 305 at Page 276, Lee County Records;
THENCE run S89°58'35"E along said South line for 739.45 feet;
THENCE run N00°07'58"E for 30.00 feet to an intersection with the North line of the Southeast Quarter (SE¼) of said Section 17;
THENCE run S89°58'35"E along the North line of said fraction for 375.91 feet to the Southeast corner of lands described in Official Record Book 1713 at Page 1188 of said Public Records;

THENCE run N00°41'04"W for 668.20 feet to the Northeast corner of said lands;
THENCE run N89°50'32"W along the North line of said lands for 366.38 feet to the Easterly line of said Spring Creek Road (50 feet wide);
THENCE run N00°07'58"E for 2,007.04 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 08;
THENCE continue N00°07'17"E along said East line for 343.54 feet;
THENCE run S89°38'58"E for 10.00 feet;
THENCE run N00°07'17"E along said East line for 849.27 feet to the Southwest corner of lands described in Official Record Book 2039 at Page 3364 said Public Records;
THENCE run S89°21'02"E along the South line of said lands for 189.98 feet;
THENCE run N00°07'17"E along the East line of said lands for 125.01 feet;
THENCE run N89°21'02"W along the North line of said lands for 199.98 feet to an intersection with the Easterly line of said Spring Creek Road;
THENCE run N00°07'17"E along said East line for 1,292.76 feet to an intersection with the South line of Coconut Road (50 feet wide);
THENCE run S89°16'14"E along said South line for 1,802.38 feet to an intersection with the West line of said Section 09;
THENCE run N00°39'58"W along said West line for 25.00 feet to a concrete monument marking the Northwest corner of the Southwest Quarter (SW¼) of said Section;
THENCE continue along said West line N00°39'58"W for 5.00 feet to an intersection with the South line of said Coconut Road as described in Official Record Book 1738 at Page 2538, said Public Records;
THENCE run S89°35'50"E along said South line for 3,164.37 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S00°10'56"W along said West line for 621.81 feet to a Point of Curvature;
THENCE run Southerly and Southeasterly along said West line, along the arc of a curve to the left of radius 5,797.58 feet (chord bearing S04°57'34"E) (chord 1,039.14 feet) (delta 10°17'00") for 1,040.54 feet to a Point of Tangency;
THENCE run S10°06'04"E along said Westerly line for 938.08 feet to an intersection with the North line of the Northeast Quarter (NE¼) of said Section 16;
THENCE run S89°23'00"W along said North line for 708.94 feet to the Northwest corner of said Northeast Quarter (NE¼) of Section 16;
THENCE run S00°02'54"W along said West line of the Northeast Quarter (NE¼) for 2,643.98 feet to the Southwest corner of the Northeast Quarter (NE¼) of said Section;
THENCE run N89°10'38"E along the South line of said fraction for 538.06 feet;
THENCE run S00°06'43"E for 1,085.91 feet;

THENCE run N89°06'43"E for 744.41 feet to an intersection with the West line of said Tamiami Trail;
THENCE run Southerly along said West line, along the arc of a non-tangent curve to the right of radius 5,619.58 feet (chord bearing S00°22'05"E) (chord 50.21 feet) (delta 00°30'42") for 50.21 feet to a Point of Tangency;
THENCE run S00°06'43"E along said West line for 49.81 feet;
THENCE run S89°06'43"W for 300.00 feet;
THENCE run S00°06'43"E for 1,445.82 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 16;
THENCE run S89°16'54"W along said South line of said fraction for 989.41 feet to the Southeast corner of the Southwest Quarter (SW¼) of said Section 16;
THENCE run S88°38'34"W along said South line of said Southwest Quarter (SW¼) for 2,627.98 feet to the POINT OF BEGINNING;
ALSO PARCEL 2:
A tract or parcel of land lying in Sections 07, 08, 17 and 18 which tract or parcel is described as follows:
From a railroad spike marking the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.
From said POINT OF BEGINNING run S89°16'14"E along said South line for 3,253.00 feet to an intersection with the West line of Spring Creek Road;
THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;
THENCE run S00°07'58"W along said West line for 2,646.47 feet;
THENCE run N89°58'35"W along the North line of Coconut Road for 689.04 feet to an intersection with the East line of the Northwest Quarter (NW¼) of said Section 17;
THENCE run N89°59'08"W along said North line for 404.79 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;
THENCE run N01°31'36"E along the East line of said lands for 960.34 feet;
THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE¼) of said Section 18;
THENCE continue N89°59'08"W for 1,840 feet more or less to the waters of Estero Bay;
THENCE run Northerly along the waters of Estero Bay for 8,300 feet more or less to an intersection with the North line of the South Half (S½) of Government Lot 2 of said Section 07;
THENCE run N89°32'15"E along the North line of said Government Lot 2 for 545 feet more or less to the Northwest corner of lands described in Official Record Book 1895 at Page 3817 of said Public Records;
THENCE run S08°50'45"E along the West line of said lands for 199.50 feet;

THENCE run N89°32'15"E along the South line of said lands for 247.50 feet;
THENCE run N89°35'27"E for 666.22 feet;
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;
THENCE run S01°07'45"E along said West line for 488.63 feet;
THENCE run N89°40'05"E along the South line of said Coconut Road for 24.69 feet to the POINT OF BEGINNING.
LESS AND EXCEPT lands described in Official Record Book 1677 at Page 3516 of the Public Records of Lee County, Florida;

ALSO PARCEL 3:

A tract or parcel of land lying in Sections 05 and 08, Township 47 South, Range 25 East, Lee County, Florida, consisting of Lots 8B, 9B, 10B, 11B, 12B, 21B, 22B, 23B, 24B and 25B of FLORIDA GULF LAND COMPANY SUBDIVISION as recorded in Plat Book 1 at Page 59 of the Public Records of Lee County, also Lot 8, Block 14 of ELDORADO ACRES (an Unrecorded Subdivision), as shown in Deed Book 310 at Page 183 of the Public Records of Lee County;

ALSO the East Three-quarters (E¾) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section 05;

ALSO the East Two-thirds (E⅔) of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of said Section 05;

ALSO the East Two-thirds (E⅔) of the Western Half (W½) of the Northwest Quarter (NW¼) of said Section 08; being more particularly described by metes and bounds as follows:

From the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S89°16'14"E along the North line of said Southwest Quarter (SW¼) for 422.61 feet;
THENCE run N01°05'22"W for 40.02 feet to the POINT OF BEGINNING;
From said POINT OF BEGINNING continue N01°05'22"W for 2,610.06 feet;
THENCE run N01°22'23"W for 1,304.41 feet;
THENCE run N89°56'22"W for 107.12 feet;
THENCE run N01°22'55"W for 1,303.87 feet;
THENCE run N89°34'15"E for 2,593.81 feet;
THENCE run S00°26'45"E for 2,655.42 feet;
THENCE run N88°48'50"W along the North line of said Section 08 for 322.66 feet;
THENCE run N89°25'01"W for 587.55 feet;
THENCE run S00°50'16"E for 132.58 feet;
THENCE run N89°11'54"W for 75.00 feet;
THENCE run N00°50'16"W for 132.30 feet;
THENCE run N89°25'01"W for 610.69 feet;
THENCE run S01°00'35"E for 2,612.12 feet to an intersection with the North right-of-way line of Coconut Road;
THENCE run N89°16'14"W along said North right-of-way line for 845.23 feet to the POINT OF BEGINNING;

ALSO PARCEL 4

All of Government Lot 1, Section 07, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
Beginning at a concrete monument marking the Northeast corner of Government Lot 1 of said Section 07, run S01°07'45"E along the East line of said Section 07 for 1,324.52 feet to the Southeast corner of said Government Lot 1;
THENCE run S89°33'42"W along the South line of said Government Lot for 1,747.82 feet to a concrete post at the waters of Estero Bay;
THENCE run Northerly and Westerly along the waters of Estero Bay to an intersection with the North line of said Section 07;
THENCE run N89°48'31"E along said North line for 2,575 feet more or less to the POINT OF BEGINNING;
Containing 2,409 acres, more or less.
Bearings hereinabove mentioned are based on the East boundary line of Pelican's Nest Unit No. 1 as recorded in Plat Book 41 at Pages 58 through 60 of the Public Records of Lee County, Florida.

ALSO BEACH PARCEL

A tract or parcel of land lying in Government Lot 3, Section 13, and Government Lot 2, Section 24, Township 47 South, Range 24 East, Big Hickory Island, Lee County, Florida, which tract or parcel is described as follows:
From the center of a turnaround on SR 865 (Bonita Beach Road) being S.R.D. Station 19184.75 and N24°28'41"W along the northern prolongation of said centerline of SR 865 for 266.00 feet;
THENCE run S62°26'49"W for 98.40 feet;
THENCE run N27°33'11"W for 1,863.42 feet;
THENCE run N20°00'41"W for 1,403.30 feet;
THENCE run N65°00'00"E for 313.91 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING run N18°55'11"W for 97.51 feet,
N22°26'23"W for 100.53 feet;
N23°09'50"W for 100.14 feet;
N14°51'19"W for 73.01 feet;
N27°40'10"W for 88.01 feet;
N29°33'57"W for 46.01 feet;
N22°14'53"W for 47.27 feet;
N20°39'23"W for 46.98 feet;
N11°15'38"W for 29.80 feet;
N26°10'46"W for 46.87 feet;
N09°09'45"W for 48.26 feet;
N17°35'56"W for 46.04 feet;
N12°49'07"W for 50.04 feet;
N29°20'48"W for 69.12 feet;
N20°48'58"W for 63.82 feet;

THENCE run N79°23'51"W for 247 feet more or less to an intersection with the Approximate Mean High Water Line of the Gulf of Mexico;
THENCE run Northerly and Northeasterly along said waters for 1,140 feet more or less to an intersection with the South line of lands described in Official Record Book 198 at Page 188 of the Public Records of Lee County, Florida;
THENCE run along said South line, along the arc of a curve to the right of radius 12,000.00 feet for 783 feet to an intersection with the Waters of New Pass;
THENCE run Southerly, Easterly, Southwesterly and Southerly along said waters for 4,080 feet more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet more or less to the POINT OF BEGINNING;
AND
From said POINT OF BEGINNING run S13°03'59"E for 94.16 feet;
THENCE run S19°13'48"E for 50.64 feet;
THENCE run S04°34'15"E for 54.63 feet;
THENCE run S24°53'12"E for 50.09 feet;
THENCE run S27°10'29"E for 50.01 feet;
THENCE run S31°01'44"E for 42.51 feet to an intersection with the South line of lands described in Official Record Book 2246 at Page 4413 of the Lee County Records;
THENCE run N65°00'00"E along said South line for 134 feet, more or less to the waters of Estero Bay;
THENCE Northerly along said waters for 358 feet, more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet, more or less to the POINT OF BEGINNING.
Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone;
ALSO Spring Creek West DRI Parcel
All of the Northwest Quarter (NW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;
ALSO included thereto: All of the Northeast Quarter (NE¼) lying West of Tamiami Trail (US 41) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;
ALSO included thereto: All of the East Half (E½) of the Southwest Quarter (SW¼) lying North of Spring Creek, LESS the East 600 feet thereof, Section 21, Township 47 South, Range 25 East, Lee County, Florida;
ALSO included thereto: All of the Southeast Quarter (SE¼) of Section 21, lying West of Tamiami Trail (US 41) and North of Spring Creek, Township 47 South, Range 25 East, Lee County, Florida;

Containing 273.1 acres, more or less;
AND: The East 600 feet of the East Half (E½) of the Southwest Quarter (SW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;
Parcel contains 9.7 acres, more or less.

RPD/CPD AREA "D"

A tract or parcel of land lying in the South Half (S½) of Section 09, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:
From the Northwest corner of the Southwest Quarter (SW¼) of said Section 09 run N00°41'48"W for 5.00 feet to the South right-of-way line of Coconut Road (50 foot right-of-way);
THENCE run S89°35'50"E for 1,863.14 feet to the centerline of a certain Florida Power and Light transmission line easement (100 feet wide) as described in Deed Book 229 at Page 48, Public Records, Lee County, Florida, and the POINT OF BEGINNING.
From said POINT OF BEGINNING continue S89°35'50"E along said South right-of-way line for 1,301.22 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S00°10'56"W along said West line for 621.81 feet to a Point of Curvature;
THENCE run along the arc of a curve to the left of radius 5,797.58 feet (delta 10°17'00") (chord bearing S04°57'34"E) (chord 1,039.14 feet) for 1,040.54 feet to a Point of Tangency;
THENCE run S10°06'04"E along said Westerly line for 230.98 feet;
THENCE run S79°53'56"W for 70.57 feet to a Point of Curvature;
THENCE run along the arc of a curve to the right of radius 650.00 feet (delta 49°49'26") (chord bearing N75°11'21"W) (chord 547.59 feet) for 565.23 feet to a Point of Reverse Curvature;
THENCE along the arc of a curve to the left of radius 840.00 feet (delta 22°49'21") (chord bearing N61°41'18"W) (chord 332.39 feet) for 334.60 feet to a point on a non-tangent curve;
THENCE along the arc of a curve to the left of radius 180.00 feet (delta 27°59'03") (chord bearing N06°54'21"W) (chord 87.04 feet) for 87.91 feet to a Point of Tangency on the Western line of said Florida Power and Light easement;
THENCE run N20°53'52"W along said Western easement line for 721.03 feet to a Point of Curvature;
THENCE along the arc of a curve to the left of radius 330.00 feet (delta 68°41'58") (chord bearing N55°14'51"W) (chord 372.40 feet) for 395.68 feet to a Point of Cusp;
THENCE run S89°35'50"E for 56.51 feet to a Point of Curvature;
THENCE run along the arc of a curve to the right of radius 530.00 feet (delta 27°42'00") (chord bearing S75°44'50"E) (chord 253.74 feet) for 256.23 feet to an intersection with said centerline of said easement;

THENCE run N20°53'52"W along said centerline for 748.16 feet to an intersection with the South line of said Coconut Road and the POINT OF BEGINNING.
Containing 42.44 acres, more or less; and

WHEREAS, WCI Communities, L.P., the owner of the subject parcel, authorized Pavese, Garner, Haverfield, Dalton, Harrison and Jensen to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on October 22, 1997 before the Lee County Hearing Examiner in Case Nos. 95-01-050.03Z 01.01 and 95-01-050.04Z 06.01, who gave full consideration to the evidence available; and

WHEREAS, a public hearing was advertised and held on November 17, 1997 before the Lee County Board of County Commissioners who gave full and complete consideration to the recommendations of staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS, that the Board:

a) **APPROVES** an amendment to the Pelican Landing DRI Development Order #1-9293-121;
b) makes a finding of NO SUBSTANTIAL DEVIATION; and
c) **APPROVES with conditions** the amendment to RPD/CPD Area D of the Pelican Landing RPD/CPD, as follows:

SECTION A. CONDITIONS:

The amendment to RPD/CPD Area D of the Pelican Landing RPD/CPD and Master Concept Plan are subject to the following conditions:

1. The development of this project must be in compliance with the one-page Master Concept Plan entitled "Pelican Landing RPD/CPD," as prepared by Wilson, Miller, Barton & Peek Inc., dated March 1994, last revised May 27, 1997, and stamped received at the permit counter on October 7, 1997; the Pelican Landing DRI Development Order #1-9293-121, as amended; and DRI Map H, last revised May 27, 1997, and stamped received at the permit counter on June 13, 1997.

2. All deviations and conditions approved by Resolutions Z-94-094, Z-95-061, and Z-96-055, except as specifically modified herein and by the amended Master Concept Plan, will remain in full force and effect.

3. The addition of a hotel as a permitted use is limited to RPD/CPD Area D only.

SECTION B. Master Concept Plan:

A one page reduced copy of the Master Concept Plan is attached and incorporated into this resolution by reference, as modified herein.

SECTION C. FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the planned development amendment:

1. The RPD/CPD Area D is a portion of the mixed use, 2100-acre Pelican Landing Development of Regional Impact, which was originally approved in 1994.

2. The Applicant has proven entitlement to the additional hotel/motel use in RPD/CPD Area D by demonstrating compliance with the Lee Plan, the Land Development Code, and Section 380.06, Florida Statutes, and other applicable codes or regulations.

3. The proposed hotel/motel use, as conditioned, will meet or exceed all performance and locational standards set forth for the potential use in the Land Development Code.

4. The proposed hotel/motel use, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

5. The proposed hotel/motel use, as conditioned, is compatible with existing or planned uses in the surrounding area.

6. Approval of the proposed hotel/motel, as conditioned, and the decrease of 78,950 square feet of retail commercial uses, will result in the addition of only 20 peak hour trips to the number of trips anticipated and approved for the overall DRI, which will not place an undue burden upon existing transportation or planned infrastructure facilities.

7. The development will be served by streets with the capacity to carry the traffic it generates, and will not result in an unacceptable level of service on those streets.

8. The Applicant will pay approximately $106,000 to $166,000 in road additional impact fees for the additional 20 peak hour trips resulting from the increase in hotel rooms. This amount will be added to the DRI's estimated road impact mitigation amount of $8,783,000, as calculated in the DRI Development Order.

9. The proposed hotel/motel use, as conditioned, will not adversely affect environmentally critical areas or natural resources.

10. The additional hotel/motel rooms, as conditioned, will not generate any additional mitigation for hurricane evacuation or shelter demand impacts, as the provisions of the

Hurricane Preparedness section of the DRI Development Order will adequately address any of those potential impacts.

11. The proposed use, as conditioned, is appropriate at the subject location.

12. The recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development, and will provide sufficient safeguard to the public interest.

13. That the proposed changes, as conditioned, will comply with the intent and provisions of the Concurrency Management Plan, as urban services, as defined in the Lee Plan, will be available and adequate to serve the proposed land use, or the development permits will not be issued.

14. Amendment of the DRI Development Order, specifically Map H and the Land Use Table/Summary, are necessitated by the provisions of Section 380.06, Florida Statutes, to reflect the changes in the development plan and any potential impacts resulting therefrom.

15. The proposed changes, as conditioned, do not constitute a Substantial Deviation under the provisions of Section 380.06(19), Florida Statutes, and do not warrant additional DRI review.

The foregoing resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner John E. Manning, and seconded by Commissioner Ray Judah and, upon being put to a vote, the result was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 17th day of November, 1997.

ATTEST:
CHARLIE GREEN, CLERK

BY: Lisa S. Pierce
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: John E. Albion
Vice Chairman

FILED

Approved as to form by:

NOV 21 1997

County Attorney's Office

CLERK, CIRCUIT COURT
BY Lisa S. Pierce D.C.

CASE NO. 95-01-050.04Z 06.01 & 95-01-050.03Z 01.01
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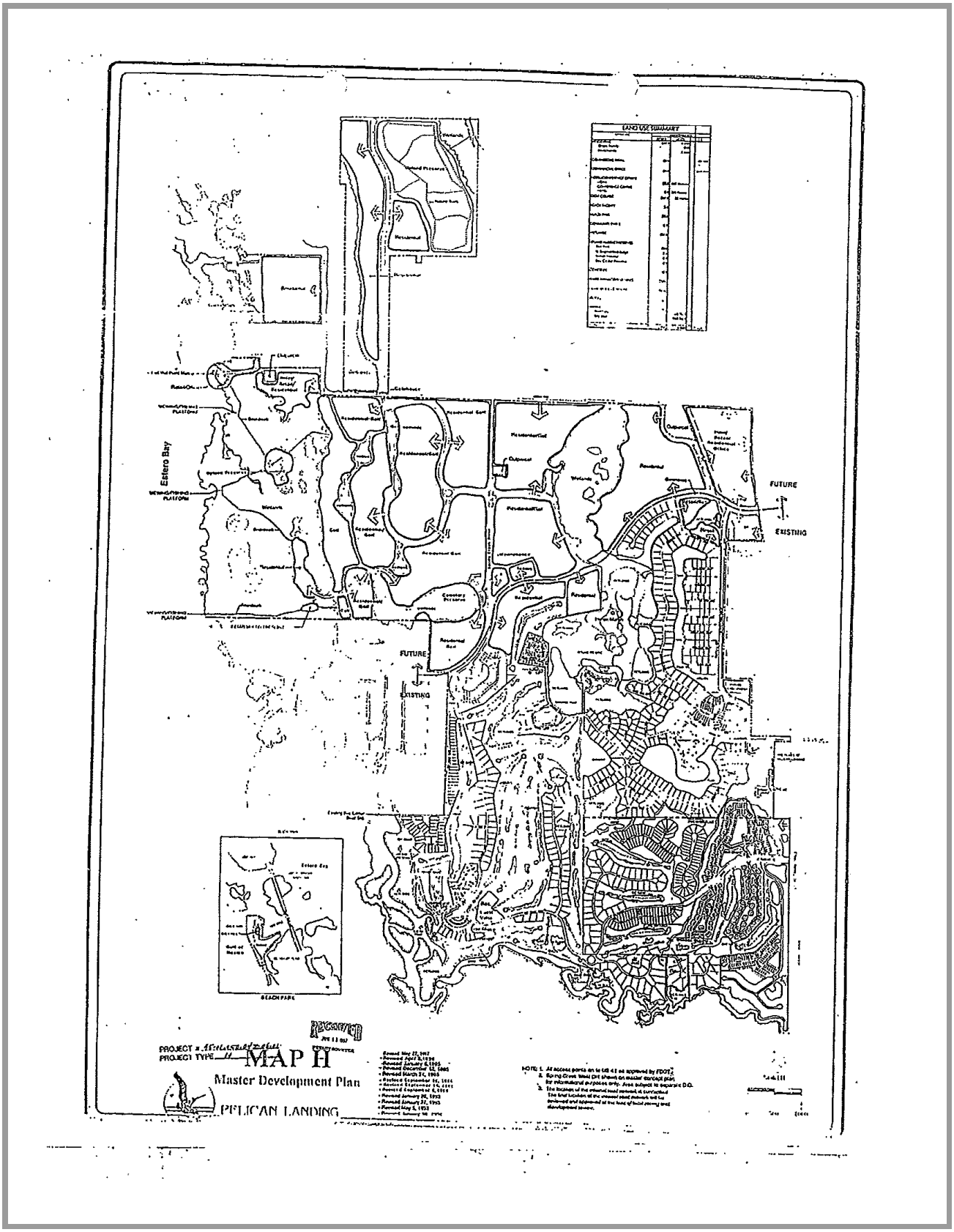
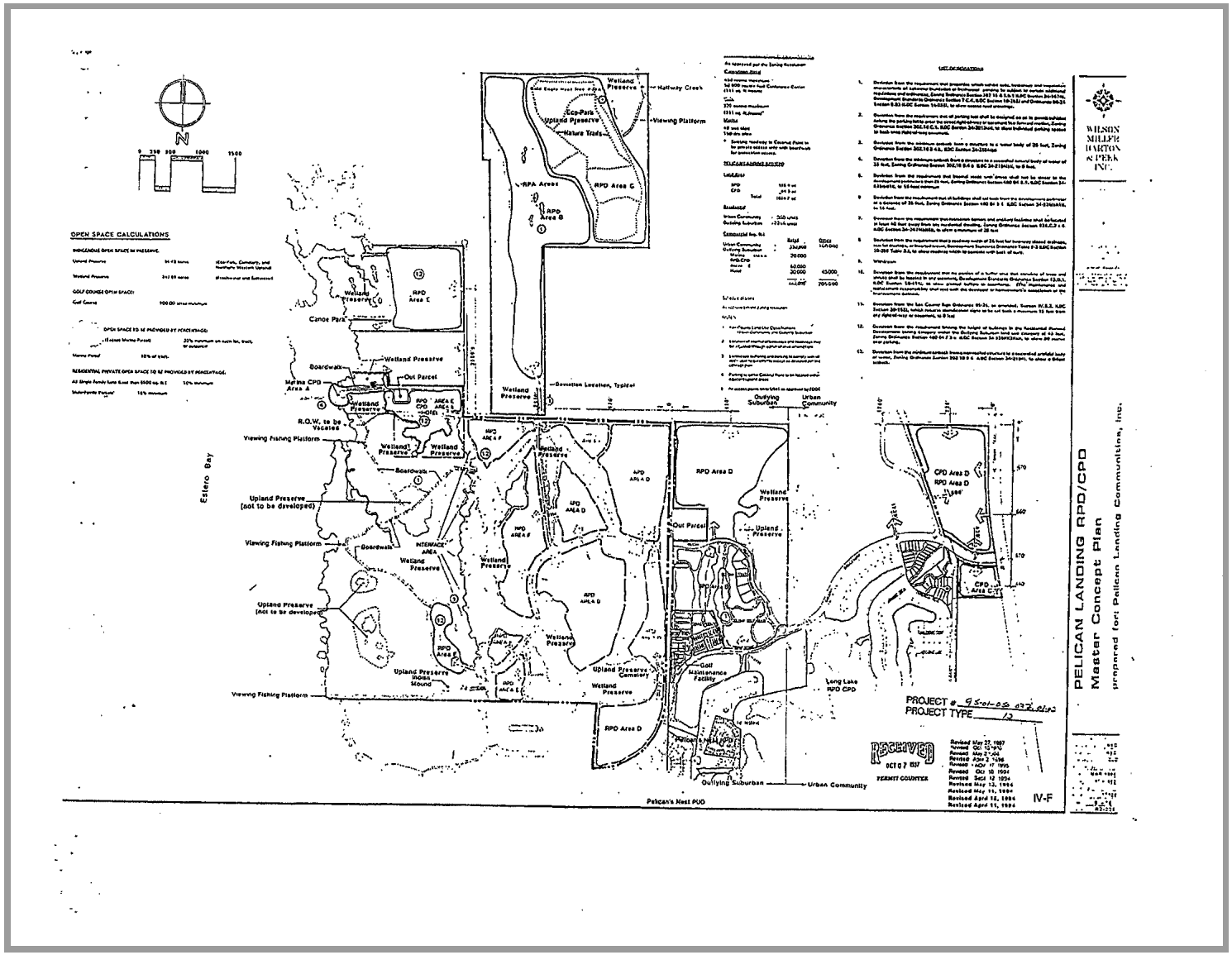
RESOLUTION NO. Z-97-073
Page 11 of 11


LAND USE SUMMARY
Estero Bay
FUTURE
EXISTING
FUTURE
EXISTING
BEACH PARK
PROJECT TYPE
MAP H
Master Development Plan
PELICAN LANDING


PELICAN LANDING RPD/CPD
Master Concept Plan
prepared for: Pelican Landing Communities, Inc.
WILSON MILLER BARTON & PEEK INC.
OPEN SPACE CALCULATIONS
Estero Bay
Pelican's Nest PUD
Eco-Park
Upland Preserve
Nature Trails
Viewing Platform
Hallway Creek
RPA Areas
RPD Area G
RPD Area B
RPD Area E
Canoe Park
Wetland Preserve
Boardwalk
Marina CPD Area A
Out Parcel
R.O.W. to be Vacated
Viewing Fishing Platform
Upland Preserve (not to be developed)
Upland Preserve Indian Mound
Upland Preserve Cemetery
Golf Maintenance Facility
Long Lake RPD CPD
RPD Area D
CPD Area D
CPD Area C
Outlying Suburban
Urban Community
PROJECT # 95-01-056 ADD.01.02
PROJECT TYPE 12
RECEIVED
OCT 07 1997
PERMIT CENTER
IV-F

Attachment F

DELISI FITZGERALD, INC.
Planning – Engineering – Project Management

COCONUT SQUARE LOT 5 HOTEL
PELICAN LANDING DRI (AREA D)
FINAL PLAN APPROVAL

Introduction:

The attached application is for Final Plan Approval for the proposed Coconut Square Lot 5 Hotel within the Pelican Landing DRI. The 2.6 acre site is located on Walden Center drive near the southwest corner of Coconut Road and US 41 within Area D of the Pelican Landing project.

The site is zoned CPD per Resolution Z-94-014. Resolution Z-97-073 modified Area D to allow Hotel as approved use and increased the overall number of hotel rooms allowed in the overall DRI from 450 to 750.

Condition 1 of the original resolution requires the submittal of a "Final Zoning Plan" which specifies the type, intensity and configuration of development for the particular parcel to ensure compliance with the DRI Development Order, Zoning Resolution and Land Development Code. Information necessary for this review is contained in this narrative, Master Concept Plan and Final Plan Approval application for the Estero Hyatt House.

Adjacent Uses:

The subject property was created in the late 1990's with the platting of a portion of Area D. The plat is known as Coconut Square, and was recorded in Plat Book 75, Page 38. The Plat created Walden Center Drive, several development parcels and the necessary stormwater management and common area tracts; the subject property is Lot 5.

The subject property is bordered on the north and east by Walden Center Drive, on the west and south by stormwater management lakes, and the southwest corner or bordered by existing multi-family residential.

Access:

The overall Coconut Square project created Walden Center Drive, which extended from a new driveway on Coconut Road, south to an access drive which connects to US41. The proposed hotel will connect directly to Walden Center Drive in two locations as shown on the MCP.

1605 Hendry Street • Fort Myers, FL 33901 • 239-418-0691 • 239-418-0692 fax

Pedestrian Connectivity:

The original DO for Coconut Square (DOS 98-03-072) did not include sidewalks along Walden Center Drive. Current LDC requirements (LDC 10-256(b) will require a sidewalk to be constructed along the project's Walden Center Drive frontage.

LDC 10-256(c)(1)d. will also require a connection to the existing pedestrian way and bikeway facilities. Crosswalk across Walden Center Drive and sidewalk connection to the existing sidewalk on Coconut Road, subject to approval by the POA/CDD, is proposed to meet this requirement.

An additional sidewalk pedestrian resting area is proposed in the northwest corner of the property overlooking the existing lake.

Phasing:

There is no phasing proposed with the Hotel.

Zoning Justification:

The Hotel is a proposed 128 standard room hotel. The CPD Zoning is Area D allows hotel use. The proposed site is also in compliance with the approved DRI Development Oder.

Deviations

The original zoning resolution included 13 deviations from the Land Development Code. Deviation 3 (allows a 20' water body setback) and 10 (allows buffer to overlap PUEs) are applicable to the subject property, however, the deviations are not utilized in the design of the project.

Deviations 1, 2, 4 -9 & 11-13 are not applicable the site.

An additional deviation is being requested related to the required area for solid waste per LDC 10-261(a). For 'commercial' uses, the LDC calculation requires 216 square feet of enclosure area for the first 25,000 square feet, plus an additional 8 square feet of storage for each additional 1,000 square feet building area. There is separate calculation based on number of units for residential uses.

Based on the estimated gross square feet of the hotel building (90,000 SF+/-), an enclosure of nearly 750 square feet would be required. The calculation in the LDC was developed focusing on retail/office type 'commercial' uses. When applied to the hotel building, the calculation yields an excessively large area.

The deviation is requested to allow an enclosure area of 288 square feet.

The intent of the request is to approve the minimum deviation necessary to provide an adequately sized dumpster enclosure which meets the access and clear opening

requirements. In an effort demonstrate the requested meets established evaluation criteria, the following is a summary of how the request is consistent Section LDC 10-104(b):

1. The request is based on sound engineering practices (not applicable to sections 10-352, 10-353 and division 7, article III, chapter 10): [Note: Criteria 3 & 5 not applicable to request]

   The proposed dumpster enclosure of 288 square feet is adequately sized. The existing Hyatt Place across US 41 has enclosure of approximately 240 square feet with no issues reported by their operations staff. The proposed 288 square feet can easily accommodate two 6 to 10 yard dumpster containers (typical size for commercial customers) as well as recycling containers.

2. The request is no less consistent with the health, safety, and welfare of abutting landowners and the general public than the standard from which the deviation is being requested:

   As noted above, the proposed area is adequate for the proposed containers. The other provisions of LDC 10-261 related to clear opening and vertical clearance will be met.

4. The granting of the deviation is not inconsistent with any specific policy directive of the Board of County Commissioners, any other ordinance or any Lee Plan provision:

   There is no known policy directive, ordinance or Lee Plan provision that would conflict with the request.

In addition to the above formal criteria, the proposed enclosure will be architecturally consistent with the proposed building. Providing a property sized enclosure avoid the visual impact of an excessively large enclosure. Eliminating the unnecessary enclosure area allows the remaining site improvements to be better planed and spread out across the site creating additional green areas.

It should also be noted, while the LDC dictates the referenced solid waste requirements, the Village of Estero, or Lee County, is not responsible for the waste hauling. Commercial uses must contract directly with the solid waste hauler. The calculation does not consider the ability of the developer to utilize a higher pick up frequency to reduce the area or containers necessary for solid waste.

The hotel will be managed by Interstate Hotels & Resorts who manage a global portfolio of 400 hotels and resorts which includes the local Hyatt Place at the Forum and South Seas Island Resort. Based on their experience, Interstate is anticipating 2-8 yard containers, picked up twice per week for this particular 128 room hotel. The included graphic demonstrates these facilities fit within the proposed 288 square feet enclosure.

Village Center Future Land Use Category

The development of Coconut Square Lot 5 with a hotel use is vested under the Pelican Landing DRI. Per Policy 19.8.4. Properties located in the village center area which have vested rights may proceed under the vested rights. Florida Statutes 163.3167, F.S. further protects this right stating, "nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380…"

Although the project as proposed is fully vested, it includes design elements and features consistent with the vision of the Village Center Future Land Use Category outlined in Objective 19.8 of the Village's Comprehensive Plan. The Policies under this objective and the corresponding Land Development Code provisions were developed to promote a walkable, connected aesthetically pleasing environment within the Village Center. The proposed Coconut Square Lot 5 Hotel has a network of onsite sidewalks connecting to the building entrances, the main entry of the building is enhanced with pavers and a covered porte-cochere, and enhanced landscaping is provided. Amenities include a covered outdoor patio, separate pool area, interior seating areas and a business center. A sidewalk is being constructed offsite along the parcels entire frontage on Walden Center Drive with a connection to the existing sidewalk on Coconut Road which will provide a pedestrian connection to existing Lee Tran facilitates and the Coconut Pointe lifestyle center across US 41. In addition, a shaded pedestrian seating area is proposed onsite adjacent to the existing pond which can be utilized by hotel quests as well as the other residents of Pelican Landing and employees and patrons of the nearby offices.

In summary, although not required, the project is consistent with the objective and policies of the Village Center.

Attachment G

From: Kantor, Brigitte
To: Ross Morgan
Subject: ADD2017-E012; Coconut Square Lot 5 Hotel Administrative Application
Date: Wednesday, December 13, 2017 8:47:23 AM

Hello Ross,
I have reviewed this application and the request for deviation from LDC10-261 and approve the proposed dumpster enclosure size with the planned square footage of 288 sqft. I have visited other hotels with similar footprint and room capacity and found that their enclosures are of similar size and pose no threat to the environment and human health. The applicant is correct, the waste hauler will likely perform the service at least twice a week (hotels generally serve food and as such are required by Ordinance 11-27 to have twice a week service) and service can be increased if that is not sufficient.

I see no problem granting this variance. Let me know if you have any questions.

Regards,
Brigitte

Brigitte Kantor | Manager, Public Utilities
Lee County Solid Waste Division
(239) 533-8000, Extension 38005 | fax: (239) 533-8025
BKantor@leegov.com
visit us on the web at www.leegov.com/solidwaste

Please note: Florida has a very broad public records law. Most written communications to or from County Employees and officials regarding County business are public records available to the public and media upon request. Your email communication may be subject to public disclosure.

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Attachment H

~~THIRD~~ FOURTH DEVELOPMENT ORDER
AMENDMENT
FOR

PELICAN LANDING

A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #1-9293-121
COUNTY CASE ~~#95-01-050.04Z 05.01~~ 95-01-050.04Z 06.01

WHEREAS, on ~~January 5, 1996~~ June 13, 1997, WCI Communities, L.P., the owner of the Pelican Landing Development of Regional Impact (DRI) requested an amendment to the original Development Order adopted August 29, 1994, as amended; and

~~WHEREAS, Section III. Condition 16 of the Development Order requires the Developer to incorporate Spring Creek West DRI into the Pelican Landing DRI by adding the land describes as Spring Creek West in Section I.B. and adding a new Findings of Fact/Conclusion of Law Section I.J.; and~~

WHEREAS, this document incorporates the Development Order Amendments for Pelican Landing DRI adopted: 1) March 22, 1995; 2) August 16, 1995, which incorporated the conditions of the Spring Creek West DRI as set forth in the Eighth Amendment to Spring Creek DRI #10-7677-9; 3) November 4, 1996; 4) and the conditions proposed for the ~~third~~ fourth amendment to the Pelican Landing DRI DO; and

WHEREAS, the amendments proposed to the Development Order are not a substantial deviation, as that term is defined and identified in Subsection 380.06(19)(e)2, Florida Statutes, and as such there is no need for further DRI review. The amendments ~~would~~ change the mix of uses while maintaining the same level of external traffic impacts. This Development Order Amendment ~~would~~ approves a reduction in the amount of retail square footage and total parking spaces~~,~~ and increases the total number of ~~residential units~~ hotel/motel units from 450 to 750 ~~and increase the amount of office square footage~~; and

WHEREAS, the proposed changes to the Pelican Landing DRI Development Order described in this document are consistent with the adopted Comprehensive Land Use Plan of Lee County and applicable local Land Development regulations; and

WHEREAS, the proposed changes to the Pelican Landing DRI Development Order will not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area; and

WHEREAS, the proposed changes are consistent with the State Comprehensive Plan~~.~~ ; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, has considered the report and recommendations of the Southwest Florida Regional Planning

Council, the Lee County Staff, the Lee County Hearing Examiner, the documents and comments upon the record made before the Board in public hearing, and, after full consideration of those reports, recommendations, comments, and documents, the Board of County Commissioners of Lee County, Florida, finds and determines that:

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. The "Pelican Landing DRI" is a partially built master planned community on ~~2,100±~~ 2,373± acres located approximately three miles north of the Lee/Collier County Line. The property is bounded on the west by Estero Bay, on the east by US 41, and on the south by Spring Creek. Coconut Road provides the general northern boundary of Pelican Landing; however, a part of the project is located north of Coconut Road.

The proposal is to construction 4,400 residential units, of which 665 are single-family and 3,735 multi-family, ~~540,000~~ 461,050 square feet of gross floor area of retail commercial, and 245,000 square feet of gross floor area of office commercial. The retail uses will provide up to ~~2,699~~ 2,310 parking spaces and the office uses will provide up to 820 parking spaces. The project will also include ~~450~~ 750 hotel/motel rooms, a 50,000 square foot conference center, 65 wet boat slips and 150 dry boat slips, various recreational amenities including, but not limited to: golf, tennis, canoe parks, and a beach park for the benefit of the owners in Pelican Landing. There are 87 acres of upland habitat preserve, 507 acres of salt and freshwater wetlands, 208 acres of water management lakes, 140 acres of public and private rights- of-way, 6 acres of utilities and a .11 acre cemetery site.

Water supply and wastewater treatment, and reclaimed water, when available, will be provided by Bonita Springs Utilities, Inc. The project buildout is the year 2002.

B. LEGAL DESCRIPTION: In Sections 05, 07, 08, 09, 16, 17, 18, 20, and 21, Township 47 South, Range 25 East, and Sections 13 and 24, Township 47 South, Range 24 East, Lee County, Florida:

PARCEL 1

A tract or parcel of land lying in Sections 08, 09, 16, 17, 20, and 21, Township 47 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

Beginning at a concrete monument marking the Northeast corner of said Section 20 run S00°35'25"E along the East line of said section for 2,659.47 feet to the Southeast corner of the Northeast Quarter (NE¼) of said section;
THENCE run N88°52'49"E along the North line of the Southwest Quarter (SW¼) of said Section 21 for 2,040.41 feet;
THENCE run S00°51'35"E for 801.04 feet to the waters of Spring Creek;
THENCE run along Spring Creek for 3,630 feet, more or less to an intersection of the East line of said Section 20 and the approximate centerline of Spring Creek;
THENCE run along said centerline the following courses:
S78°50'00"W for 181.31 feet,

N34°24'12"W for 230.22 feet,
N30°59'12"W for 174.93 feet,
N24°25'16"E for 120.83 feet,
S65°47'43"E for 219.32 feet,
N18°24'43"E for 158.11 feet,
N75°11'47"W for 351.71 feet,
N65°09'33"W for 451.88 feet,
N84°18'44"W for 351.75 feet,
N66°54'31"W for 445.79 feet,
S63°24'43"W for 134.16 feet,
S03°23'22"E for 170.29 feet,
S50°30'17"W for 220.23 feet,
N84°49'43"W for 331.36 feet,
S62°13'07"W for 214.71 feet,
S22°08'36"W for 291.55 feet,
S72°15'11"W for 131.22 feet to an intersection with the East line of the Southwest Quarter (SW¼) of said Section 20;
THENCE run N00°50'19"W along said East line for 520.00 feet to the Northeast corner of said fraction;
THENCE run S89°58'37"W along the North line of said fraction for 290.00 feet to an intersection with the approximate centerline of the most Easterly branch of said Spring Creek;
THENCE run along said centerline the following courses:
N09°13'28"W for 137.34 feet,
N29°08'22"W for 590.59 feet,
N38°31'58"W for 278.03 feet,
N65°16'43"W for 254.95 feet,
N37°18'28"W for 286.01 feet,
N32°51'05"E for 252.39 feet,
N20°11'00"E for 236.69 feet,
N27°23'47"W for 369.25 feet,
N89°15'43"E for 50 feet, more or less to the Easterly shore of said Spring Creek;
THENCE run along said Easterly shore for 1,220 feet, more or less to an intersection with the North line of said Section 20;
THENCE run N89°15'13"E along said North line of said Section for 970 feet, more or less to a concrete monument marking the Northwest corner of the Northeast Quarter (NE¼) of said Section 20;
THENCE run N00°31'30"E along the West line of the Southeast Quarter (SE¼) of said Section 17 for 2,644.38 feet to an intersection with the South line of Spring Creek Road as described in Deed Book 305 at Page 276, Lee County Records;
THENCE run S89°58'35"E along said South line for 739.45 feet;
THENCE run N00°07'58"E for 30.00 feet to an intersection with the North line of the Southeast Quarter (SE¼) of said Section 17;
THENCE run S89°58'35"E along the North line of said fraction for 375.91 feet to the Southeast corner of lands described in Official Record Book 1713 at Page 1188 of said Public Records;

THENCE run N00°41'04"W for 668.20 feet to the Northeast corner of said lands;
THENCE run N89°50'32"W along the North line of said lands for 366.38 feet to the Easterly line of said Spring Creek Road (50 feet wide);
THENCE run N00°07'58"E for 2,007.04 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 08;
THENCE continue N00°07'17"E along said East line for 343.54 feet;
THENCE run S89°38'58"E for 10.00 feet;
THENCE run N00°07'17"E along said East line for 849.27 feet to the Southwest corner of lands described in Official Record Book 2039 at Page 3364 said Public Records;
THENCE run S89°21'02"E along the South line of said lands for 189.98 feet;
THENCE run N00°07'17"E along the East line of said lands for 125.01 feet;
THENCE run N89°21'02"W along the North line of said lands for 199.98 feet to an intersection with the Easterly line of said Spring Creek Road;
THENCE run N00°07'17"E along said East line for 1,292.76 feet to an intersection with the South line of Coconut Road (50 feet wide);
THENCE run S89°16'14"E along said South line for 1,802.38 feet to an intersection with the West line of said Section 09;
THENCE run N00°39'58"W along said West line for 25.00 feet to a concrete monument marking the Northwest corner of the Southwest Quarter (SW¼) of said Section;
THENCE continue along said West line N00°39'58"W for 5.00 feet to an intersection with the South line of said Coconut Road as described in Official Record Book 1738 at Page 2538, said Public Records;
THENCE run S89°35'50"E along said South line for 3,164.37 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S00°10'56"W along said West line for 621.81 feet to a Point of Curvature;
THENCE run Southerly and Southeasterly along said West line, along the arc of a curve to the left of radius 5,797.58 feet (chord bearing S04°57'34"E) (chord 1,039.14 feet) (delta 10°17'00") for 1,040.54 feet to a Point of Tangency;
THENCE run S10°06'04"E along said Westerly line for 938.08 feet to an intersection with the North line of the Northeast Quarter (NE¼) of said Section 16;
THENCE run S89°23'00"W along said North line for 708.94 feet to the Northwest corner of said Northeast Quarter (NE¼) of Section 16;
THENCE run S00°02'54"W along said West line of the Northeast Quarter (NE¼) for 2,643.98 feet to the Southwest corner of the Northeast Quarter (NE¼) of said Section;
THENCE run N89°10'38"E along the South line of said fraction for 538.06 feet;
THENCE run S00°06'43"E for 1,085.91 feet;
THENCE run N89°06'43"E for 744.41 feet to an intersection with the West line of said Tamiami Trail;
THENCE run Southerly along said West line, along the arc of a non-tangent curve to the right of radius 5,619.58 feet (chord bearing S00°22'05"E) (chord 50.21 feet) (delta 00°30'42") for 50.21 feet to a Point of Tangency;
THENCE run S00°06'43"E along said West line for 49.81 feet;

THENCE run S89°06'43"W for 300.00 feet;
THENCE run S00°06'43"E for 1,445.82 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 16;
THENCE run S89°16'54"W along said South line of said fraction for 989.41 feet to the Southeast corner of the Southwest Quarter (SW¼) of said Section 16;
THENCE run S88°38'34"W along said South line of said Southwest Quarter (SW¼) for 2,627.98 feet to the POINT OF BEGINNING.

ALSO

PARCEL 2
A tract or parcel of land lying in Sections 07, 08, 17 and 18 which tract or parcel is described as follows:
From a railroad spike marking the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.
From said POINT OF BEGINNING run S89°16'14"E along said South line for 3,253.00 feet to an intersection with the West line of Spring Creek Road;
THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;
THENCE run S00°07'58"W along said West line for 2,646.47 feet;
THENCE run N89°58'35"W along the North line of Coconut Road for 689.04 feet to an intersection with the East line of the Northwest Quarter (NW¼) of said Section 17;
THENCE run N89°59'08"W along said North line for 404.79 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;
THENCE run N01°31'36"E along the East line of said lands for 960.34 feet;
THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE¼) of said Section 18;
THENCE continue N89°59'08"W for 1,840 feet more or less to the waters of Estero Bay;
THENCE run Northerly along the waters of Estero Bay for 8,300 feet more or less to an intersection with the North line of the South Half (S½) of Government Lot 2 of said Section 07;
THENCE run N89°32'15"E along the North line of said Government Lot 2 for 545 feet more or less to the Northwest corner of lands described in Official Record Book 1895 at Page 3817 of said Public Records;
THENCE run S08°50'45"E along the West line of said lands for 199.50 feet;
THENCE run N89°32'15"E along the South line of said lands for 247.50 feet;
THENCE run N89°35'27"E for 666.22 feet;
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;
THENCE run S01°07'45"E along said West line for 488.63 feet;

THENCE run N89°40'05"E along the South line of said Coconut Road for 24.69 feet to the POINT OF BEGINNING.
LESS and EXCEPT lands described in Official Record Book 1677 at Page 3516 of the Public Records of Lee County, Florida.

ALSO

PARCEL 3
A tract or parcel of land lying in Sections 05 and 08, Township 47 South, Range 25 East, Lee County, Florida, consisting of:
Lots 8B, 9B, 10B, I1B, 12B, 21B, 22B, 23B, 24B and 25B of FLORIDA GULF LAND COMPANY SUBDIVISION as recorded in Plat Book 1 at Page 59 of the Public Records of Lee County, also Lot 8, Block 14 of ELDORADO ACRES (an Unrecorded Subdivision), as shown in Deed Book 310 at Page 183 of the Public Records of Lee County, also the East Three-quarters (E-¾) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-⅔) of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Western Half (W½) of the Northwest Quarter (NW¼) of said Section 08; being more particularly described by metes and bounds as follows:
From the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S89°16'14"E along the North line of said Southwest Quarter (SW¼) for 422.61 feet;
THENCE run N01°05'22"W for 40.02 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING continue N01°05'22"W for 2,610.06 feet;
THENCE run N01°22'23"W for 1,304.41 feet;
THENCE run N89°56'22"W for 107.12 feet;
THENCE run N01°22'55"W for 1,303.87 feet;
THENCE run N89°34'15"E for 2,593.81 feet;
THENCE run S00°26'45"E for 2,655.42 feet;
THENCE run N88°48'50"W along the North line of said Section 08 for 322.66 feet;
THENCE run N89°25'01"W for 587.55 feet;
THENCE. run S00°50'16"E for 132.58 feet;
THENCE run N89°11'54"W for 75.00 feet;
THENCE run N00°50'16"W for 132.30 feet;
THENCE run N89°25'01"W for 610.69 feet;
THENCE run S01°00'35"E for 2,612.12 feet to an intersection with the North right-of-way line of Coconut Road;
THENCE run N89°16'14"W along said North right-of-way line for 845.23 feet to the POINT OF BEGINNING.

ALSO

PARCEL 4
All of Government Lot 1, Section 07, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Beginning at a concrete monument marking the Northeast corner of Government Lot 1 of said Section 07, run S01°07'45"E along the East line of said Section 07 for 1,324.52 feet to the Southeast corner of said Government Lot 1;
THENCE run S89°33'42"W along the South line of said Government Lot for 1,747.82 feet to a concrete post at the waters of Estero Bay;
THENCE run Northerly and Westerly along the waters of Estero Bay to an intersection with the North line of said Section 07;
THENCE run N89°48'31"E along said North line for 2,575 feet more or less to the POINT OF BEGINNING.
Containing 2,409 acres, more or less.
Bearings hereinabove mentioned are based on the East boundary line of Pelican's Nest Unit No. 1 as recorded in Plat Book 41 at Pages 58 through 60 of the Public Records of Lee County, Florida.

ALSO

BEACH PARCEL
A tract or parcel of land lying in Government Lot 3, Section 13, and Government Lot 2, Section 24, Township 47 South, Range 24 East, Big Hickory Island, Lee County, Florida, which tract or parcel is described as follows:

From the center of a turnaround on SR 865 (Bonita Beach Road) being S.R.D. Station 19184.75 and N24°28'41"W along the northern prolongation of said centerline of SR 865 for 266.00 feet;
THENCE run S62°26'49"W for 98.40 feet;
THENCE run N27°33'11"W for 1,863.42 feet;
THENCE run N20°00'41"W for 1,403.30 feet;
THENCE run N65°00'00"E for 313.91 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING run N18°55'11"W for 97.51 feet,
N22°26'23"W for 100.53 feet, N23°09'50"W for 100.14 feet,
N14°51'19"W for 73.01 feet, N27°40'10"W for 88.01 feet,
N29°33'57"W for 46.01 feet, N22°14'53"W for 47.27 feet,
N20°39'23"W for 46.98 feet, N11°15'38"W for 29.80 feet,
N26°10'46"W for 46.87 feet, N09°09'45"W for 48.26 feet,
N17°35'56"W for 46.04 feet, N12°49'07"W for 50.04 feet,
N29°20'48"W for 69.12 feet, N20°48'58"W for 63.82 feet;
THENCE run N79°23'51"W for 247 feet more or less to an intersection with the Approximate Mean High Water Line of the Gulf of Mexico;
THENCE run Northerly and Northeasterly along said waters for 1,140 feet more or less to an intersection with the South line of lands described in Official Record Book 198 at Page 188 of the Public Records of Lee County, Florida;
THENCE run along said South line, along the arc of a curve to the right of radius 12,000.00 feet for 783 feet to an intersection with the Waters of New Pass;
THENCE run Southerly, Easterly, Southwesterly and Southerly along said waters for 4,080 feet more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;

THENCE run S65°00'00"W for 181 feet more or less to the POINT OF BEGINNING.

AND

From said POINT OF BEGINNING run S13°03'59"E for 94.16 feet;
THENCE run S19°13'48"E for 50.64 feet;
THENCE run S04°34'15"E for 54.63 feet;
THENCE run S24°53'12"E for 50.09 feet;
THENCE run S27°10'29"E for 50.01 feet;
THENCE run S31°01'44"E for 42.51 feet to an intersection with the South line of lands described in Official Record Book 2246 at Page 4413 of the Lee County Records;
THENCE run N65°00'00"E along said South line for 134 feet, more or less to the waters of Estero Bay;
THENCE Northerly along said waters for 358 feet, more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet, more or less to the POINT OF BEGINNING.
Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

ALSO

Spring Creek West DRI Parcel
All of the Northwest Quarter (NW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida:

ALSO INCLUDED THERETO:

All of the Northeast Quarter (NE¼) lying west of Tamiami Trail (US 41) of Section 21, Township 47 South, Range 25 East, Lee County, Florida;

ALSO INCLUDED THERETO:

All of the East Half (E½) of the Southwest Quarter (SW¼), lying North of Spring Creek LESS the East 600 feet thereof, Section 21, Township 47 South, Range 25 East, Lee County, Florida.

ALSO INCLUDED THERETO:

All of the Southeast Quarter (SE¼) of Section 21, lying West of Tamiami Trail (US 41) and North of Spring Creek, Township 47 South, Range 25 East, Lee County, Florida;
Subject to easements and restrictions of record.
Containing 273.1 acres more or less.

AND

The East 600 feet of the East Half (E½) of the Southwest Quarter (SW¼) of Section 21, Township 47 South, Range 25 East, Lee County, Florida.
Parcel contains 9.7 acres more or less.
TOGETHER WITH the right for ingress and egress over the following described parcel:

A strip of land 60 feet in width lying 30 feet on each side of the East and West Quarter Section line of Section 21, Township 47 South, Range 25 East, extending from the Northwest corner of the East Half (E½) of the Southwest Quarter (SW¼) of said Section to Tamiami Trail (US 41).
Subject to any easements, restrictions, reservations and rights-of-way to record.

C. The subject parcel is currently zoned AG-2, RS-1, RM-6, PUD, RPD, CPD, and RM-2; the property is partially developed.

D. This Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes..

E. The development is not located in an area designated as an Area of Critical State Concern under the provisions of Section 380.05 and 380.06 (14), Florida Statutes.

F. The proposed Development Order Amendment does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development plan applicable to the area. The development is consistent with the State Comprehensive Plan if developed pursuant to the conditions set forth herein.

G. The proposed Development Order Amendment has been reviewed by the Southwest Florida Regional Planning Council (SWFRPC) and is the subject of the report and recommendations adopted by that body ~~on June 20, 1996~~, and subsequently forwarded to Lee County pursuant to the provisions of Section 380.06, Florida Statutes. The development, as proposed in the Application for Development Approval (ADA) and as modified by this Development Order Amendment, is generally consistent with the report and the recommendations of the SWFRPC pursuant to Section 380.06(11).

H. The development is located in the Urban Community, Outlying Suburban and Resource Protection Areas classifications of the Lee Plan with the Privately Funded Infrastructure Overlay and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.

I. The proposed conditions below meet the criteria found in Section 380.06 (15) (d), Florida Statutes.

J. In accordance with the Development Order condition Section III. Condition 16. herein, the lands within the Spring Creek West DRI were incorporated into this Development Order. Those lands described as the Spring Creek West DRI will only be subject to those terms and conditions set forth in ~~Attachment D which is~~ the Eighth Development Order Amendment for the Spring Creek West DRI. They will remain applicable to the property known as the Spring Creek West DRI in the same manner as they are presently applicable, except that one annual monitoring report that includes both Pelican Landing and Spring Creek West DRI's must be submitted. Additionally the Spring Creek West DRI legal description has been included within the Pelican Landing DRI. Since the Spring Creek West land is part of an almost completely developed vested DRI, there is no reason to alter the conditions within the Spring Creek West DRI Development Order. The Spring Creek West property is vested under the terms and conditions of the Spring Creek West DRI Development Order, and this property will not be considered in any cumulative analysis of Pelican Landing in accordance with Section III Condition 16.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, LET IT BE ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that conditions of the Development Order for the Pelican Landing DRI adopted on August 29, 1994, and amended on March 22, 1995, ~~and~~ August 16, 1995 and November 4, 1996, are further amended as follows, with new language underlined and deletions struck through. All other portions of the original Development Order will remain in full force and effect.

For the purposes of this Development Order, the term "developer" or "Applicant" shall include his/her/its successors or assigns, and all references to County Ordinances and codes include future amendments.

A. Historical/Archaeological Sites

1. The Zenith Mound Archaeological Site (State Master File #8LL1436) and the Johnson Cemetery (State Master File #8111440) will be preserved in perpetuity and will be recorded as "preserve" on all appropriate plats, site plans, and the Master Development Plan for Pelican Landing DRI.

2. If any additional archaeological/historical sites are uncovered during development activities, all work in the immediate vicinity of such sites will cease. The developer shall immediately contact the Florida Department of State, Division of Historical Resources, the SWFRPC, and Lee County and advise them of the discovery. The developer will have a State-certified archaeologist determine the significance of the findings and recommend appropriate preservation~~ion~~ and mitigation actions, if necessary.

B. Housing

1. There are no regionally significant housing impacts for the first planning horizon of the DRI DO, which ends on December 31, 1997. Utilizing supply data not adjusted

to account for the fact that housing sells for less than the listed price, Planning Horizon II (January, 1998, through December 2002) would have an unmet need of 99 affordable units for very low income and no unmet need for low income households. Utilizing supply data adjusted to account for the fact that housing sells for less than the listed price, Planning Horizon II would have an unmet need of only 38 affordable housing units for very low income households and still no unmet need for low income households. The aforementioned data is based on the existing studies.

The supply adjustment figures mentioned above are based on actual sales prices relative to listed prices. Affordability thresholds for owner occupied affordable housing are determined using PITI (Principal, Interest, Taxes, and Insurance) calculations methodology as outlined in the DCA 1991 Draft methodology.

2. The Southwest Florida Regional Planning Council, the Florida Department of Community Affairs, and Lee County accept the Developer's contribution of $20,000.00 to assist existing and prospective employees within the Pelican Landing DRI locate affordable housing. The $20,000.00 will be contributed to the Lee County Affordable Housing Trust Fund by January 2, 1997. Lee County may use all, or a portion, of the funds to conduct a needs assessment study, and the County will commit to use SHIP funds to assist a minimum of 8 qualified employees within the Pelican Landing DRI obtain a home. Qualified employees must be first time home buyers, employed by a business located within the Pelican Landing DRI, including employees of WCI. The applicants for funding must meet the program guidelines including, but not limited to, income limitations and repayment obligations. The funds will only be used to provide interest free deferred payment assistance to qualifying home buyers for either closing costs or down payments associated with the purchase loan.

C. Hurricane Preparedness

1. Within six months, after the effective date of this DRI Development Order, the developer shall provide and connect a portable diesel powered generator for the Gateway Elementary School. The generator must be equipped with a fuel tank, capable of generating enough power to handle the demands of ventilation fans, lighting, life safety equipment (alarms and intercom), and refrigeration and cooking equipment. The developer will be responsible for the initial electrical hook-up costs. The selection of the generator will be in coordination with Lee County Emergency Management Staff.

2. The Lee County Emergency Management staff will act as a liaison between the developer and the Lee County School District staff, and will make all of the necessary arrangements for the location of the generator on Lee County School Board property.

3. The provision of the generator serves to mitigate the shelter and evacuation impacts of the project at buildout. Should Lee County ever adopt an impact fee, or other type of levy or assessment to provide funding for shelter space and improvements

thereto, the developer will be entitled to a credit against the fee or levy in the amount of the cost of the generator, if eligible under the terms of that impact fee or levy.

4. The developer must notify all purchasers of real property within the residential portions of development, through the restrictive covenants, of the potential for storm surge flooding in feet above the Base Flood Elevation, according to the National Weather Services' storm surge model "SLOSH", and the National Flood Insurance Program.

5. The developer must prepare, in conjunction with Lee County Emergency Management and Division of Natural Resources staff, a brochure which advises all marina owners of the measures that can be taken to minimize damage in the event of a hurricane. This brochure must address how boat owners can minimize damage to their vessels, the marina site, neighboring properties and the environment. The brochure must be provided to all boat owners and users at the marina.

6. Prior to the issuance of a Certificate of Occupancy for ~~the~~ any Hotel, the developer or the hotel owner/manager must prepare a written hurricane preparation and evacuation/sheltering plan. This plan will be prepared in conjunction with Lee County Emergency Management Staff and must be coordinated with the hurricane evacuation plan for the overall DRI.

7. The Property Owner's Association must host an educational seminar, and will be responsible for obtaining the place for the seminar and for providing the invitations to the homeowners. The time will be coordinated with the Lee County Emergency Management staff, who will provide the education and information at the seminar and will advise the owners of the risks of natural hazards and the action they should take to mitigate the inherent dangers.

8. The developer must develop a hurricane evacuation plan for the DRI. The hurricane evacuation plan shall address and include: a) operational procedures for the warning and notification of all residents and visitors prior to and during a hurricane watch and warning period; b) the educational program set forth in condition 7 above; c) hurricane evacuation; d) the method of advising residents and visitors of hurricane shelter alternatives including hotels and public hurricane shelter locations; e) identification of the person(s) responsible for implementing the plan; and f) how the private security force will be integrated with the local Sheriff's personnel and the Division of Public Safety. The plan shall be developed in coordination with the Lee County Emergency Management officials and must be found sufficient by those officials within six months after the effective date of the DRI DO.

9. The developer, and any successor landowner, will pay any All Hazards Tax properly levied by Lee County to provide for shelter space, upgrades to shelters, and to address other natural disasters.

10. Conditions C.1. through C.3. address the hurricane mitigation requirements for the initial 4050 units. The developer will mitigate the hurricane shelter impacts for units 4051 through 4400 by paying $18.50 per unit to the Lee County Impact Fee

Coordinator at the time of building permit approval. If the developer constructs an assisted living facility, the developer must comply with all aspects of Section 440.441(1)(b), F.S., as may be amended, including the preparation and submittal of a comprehensive emergency management plan that addresses emergency evacuation transportation and adequate sheltering arrangements for the ALF residents. The developer must update this plan annually. The County must use the funds paid pursuant to this condition to construct or upgrade hurricane shelter space in a location that will benefit the residents of the Pelican Landing Community. The eighteen dollar and fifty cents fee (1996 dollars) will be multiplied by the Dodge Data Service Building Cost Index for U.S. and Canadian cities for June 1 of each year subsequent to 1996, up to the time building permits are issued. This multiplier ensures payment of current dollars at the time the permits are issued. If the Building Cost Index is not available, the Consumer Price Index will be used instead, and applied by the method described above. If Lee County adopts an impact fee for hurricane shelters prior to, or during, the acquisition of building permits 4051 through 4400 then the Developer will pay the duly adopted impact fee, provided that fee is no less per unit than the per unit amount set out above, and this condition will have no further force and effect.

D. Marina Facilities

1. The developer must create a conservation easement precluding the construction of additional docking facilities beyond those specifically authorized in this Development Order. This conservation easement will be in addition to the 4,000 foot conservation easement already required in Spring Creek. The location and extent of the conservation easement will be contingent upon navigability of the waterway, and will be established in association with the Florida Department of Environmental Protection (FDEP) permits.

2. All docking and dry storage facilities must be constructed in accordance with the terms and conditions of any FDEP permit or lease, and in accordance with any Lee County dock permit.

3. The developer has constructed dock and channel markers within Estero Bay. The Lee County Division of Natural Resources Management will be permitted to mount regulatory signs on the docks and channel markers owned by the developer. Lee County will be responsible for insuring that the addition of the regulatory signs does not cause the developer to be in violation of any permit condition or FDEP, Coast Guard, or other agency regulation. The regulatory signs will remain the property and maintenance responsibility of the Lee County Division of Natural Resources Management.

4. The marina operator must dispense manatee awareness brochures to all users of the marina facilities. The brochures must also include information regarding channel locations, proper boating routes, and shallow water habitats to be avoided.

5. The developer and marina operator must insure that the marina lighting is directed away from adjacent mangroves and estuarine systems to reduce any negative impacts to the wildlife using these areas.

6. The marina operator will remove or cause to be removed from the marina any boat operator observed violating the guidelines set forth in the manatee awareness brochures or Lee County regulations regarding the protection of manatees.

7. The developer must designate and reserve one wet slip for the Florida Marine Patrol or the Lee County Sheriff's Special Response Unit, if needed by these agencies.

8. The shuttle boat captain and marina operator must keep a log of all manatee sightings. The log must reflect the locations, time and date of the sighting, the number of manatees, and the nature of their activity if it can be determined. The log should also note the name of the person recording the sighting. This information must be forwarded to Lee County and FDEP on a periodic basis.

9. The developer must construct an educational board on a Kiosk at the Beach Park. The educational board will be created in conjunction with the Lee County Division of Natural Resources Management, Marine Sciences Program and Turtle Time.

10. The developer will comply with all water quality monitoring requirements imposed by the FDEP and the SFWMD.

11. Any boat wash areas must have a closed loop system that captures and recirculates the water through a filtration or other acceptable system. Any boat repair and maintenance facilities must be in an enclosed, roofed, impervious surfaced area to limit the run-off of contaminated water during a storm event.

12. Once a year the marina operator shall host an Educational and Hurricane Preparedness Workshop for all tenants in the wet slip area. The marina operator shall provide the facility for the seminar and must insure that all tenants are invited. The marina operator will establish the date and time for the workshop in conjunction with Lee County Emergency Management and the Lee County Division of Natural Resources Management, Division of Marine Sciences. Lee County will provide a trained representative who will educate the tenants on natural resources awareness, manatees, safe boating practices and on proper procedures, prior to and during a hurricane.

13. The dry storage facilities must be located in a building or structure which is designed and constructed to meet all requirements of the Standard Building Code, as adopted by Lee County.

E. Vegetation and Wildlife/Wetlands

The developer has conducted Protected Species surveys in accordance with the Florida Game and Fresh Water Fish Commission (FGFWFC) guidelines and the Lee County Land Development Code. These surveys identified the presence of the following protected species: bald eagle, wood stork, little blue heron, tricolored heron, reddish egret, snowy egret, white ibis, piping plover, Southeastern snowy plover, least tern, American

oystercatcher, black skimmer, brown pelican, Atlantic loggerhead sea turtle, and gopher tortoise.

1. There were three bald eagle's nests of concern prior to development order adoption. One nest is on the Pelican Landing property. The other nests are within 1500 to 1600 feet of Pelican Landing. The buffers that will affect Pelican Landing property will be established in an on-site eagle habitat management plan addressing the Pelican Landing property only.

Prior to development within 2500 feet of any eagle nest, the Developer shall prepare an on-site eagle management plan addressing the Pelican Landing DRI property only which shall be reviewed by DCA, SWFRPC, FGFWFC Lee County, and USFWS. Said groups shall have a fifteen working day review period and must provide all comments to Lee County and the Developer in writing. The agencies must provide specific written objections or concerns if any, regarding the management plan and indicate how those concerns can be addressed by the developer.

The Developer will revise the management plans to respond to the lawful and timely objections. The agencies will review and respond to the management plan resubmittal, and any successive resubmittals, within fifteen working days of submittal. The agencies will provide a written response to Lee County and the Developer, which reflects that there is no objection to the management plan or which outlines specific objections and concerns. The agency response will indicate how any concerns or objections can be addressed by the developer. Lee County and DCA will have the final approval authority. The management plan will be deemed approved by the County and DCA if the respective agency fails to provide a written response within fifteen working days. The approval of the management plan will not be unreasonably withheld. If a proposed management plan includes development within 750 feet of an eagle's nest, the plan must also be submitted to the Lee County Eagle Technical Advisory Committee (ETAC). ETAC will review the plan and forward recommendations to the FGFWFC and USFWS.

The 2,500 foot limitation is intended to be a temporary restriction to insure the submission and approval for a management plan on a timely basis. The final primary and secondary buffer zones may be less than 2,500 feet. An eagle management plan will be included as part of an upland habitat protection area management plan.

2. A local development order for the Hickory Island Beach Park has been issued which permits construction of beach park infrastructure. This local development order included a protected species survey and phased Preliminary Management Plan (PMP). The PMP incorporated Lee County Division of Natural Resources Management (DNRM) and Florida Game and Fresh Water Fish Commission (FGFWFC) recommendations.

The PMP requires the developer to provide the County with a conservation easement over the entire parcel, except for the active building areas approved through the local development order. The PMP permits a refinement of the conservation easement boundaries after completion of a one year utilization study, the final conservation

easement shall be consistent with the provisions of Section 704.06, Florida Statutes. For the purpose of this DRI D.O., Section 704.06, F.S. will not preclude educational signage, and signage and land management activities required by the management plan, including but not limited to the removal of exotic vegetation.

The objectives of this one year study were: 1) determine shorebird utilization of land under Developer's ownership based on detailed surveys and prepare a shorebird management plan, 2) analyze beach vegetation and prepare a maintenance plan, and 3) monitor beach use by Pelican Landing visitors. Additionally, the PMP requires surveys for identification and protection of sea turtle nests, the construction of three osprey platforms, and a review of the elements of the overall plan to be conditioned on the DRI DO.

The Developer must submit a Final Management Plan to Lee County, FGFWFC, and DCA within 18 months of the effective date of the DRI DO, which was November 14, 1994. Lee County, FGFWFC, and DCA will review the management plan within fifteen working days of submittal. The DCA, and Lee County must provide a written response to the proposed final management plan which reflects that there is no objection or outlines the specific objections and concerns. The agencies response will specify how those concerns or objections can be addressed by the developer. The FGFWFC must provide all lawful objections within the same fifteen working day time frame.

If there are valid legal objections to the management plan, the Developer will revise and resubmit the plan to DCA, FGFWFC, and Lee County. DCA, Lee County, and FGFWFC will review the resubmittal, and any successive resubmittals, within fifteen working days. The agencies will provide a written response which reflects either the approval of the management plan or which outlines the specific objections and concerns. The agencies response will specify how those concerns or objections can be addressed by the developer. DCA and Lee County may not unreasonably withhold approval of the management plan. If the agencies do not provide a written response within the prescribed time frames, the management plan will be deemed approved. The Final Management Plan Approval from Lee County must be obtained prior to the issuance of the Certificate of Compliance for local development order #90-10-003.00D.

3. The projected gopher tortoise burrow count is 439, based on an estimate of FGFWFC habitat guidelines, 75 acres to gopher tortoise habitat must be protected.

The Developer will set aside a 78± acre area of xeric scrub and pine flatwoods to mitigate the impacts to the upland gopher tortoise habitat. This area will be known as the Pelican Landing Eco-Park. The Eco-Park area contains significant portions of the xeric oak habitat existing on the Pelican Landing DRI site.

A Gopher Tortoise Population Study and Management Plan was submitted to the Florida Game and Fresh Water Fish Commission on or about December 22, 1993. The Developer shall submit a copy for the management plan to the DCA, SWFRPC, and Lee County for review prior to the commencement of development in any area containing gopher tortoise habitat, beyond that approved in the Preliminary Development Agreement.

The agencies shall have a fifteen working day review period. The agencies shall provide all lawful objections and concerns regarding the management plan to Lee County and the Developer in writing. The Developer will submit a revised management plan to DCA and Lee County that responds to the lawful objections. DCA and Lee County will review the management plan resubmittal, and any successive resubmittals, within fifteen working days of submittal. The agencies will provide a written response which approves the management plan or which outlines specific objections or concerns. The agencies response will specify how those concerns or objections can be addressed by the developer. DCA and Lee County may not unreasonably withhold the approval of the management plan. Should DCA and Lee County not provide a written response within the prescribed time frames, the management plan will be deemed approved by the agency that failed to provide timely written comments. The Developer has submitted for an Incidental Take Permit for the gopher tortoises located outside of the Eco-Park in the undeveloped portion of Pelican Landing. The Developer shall obtain an Incidental Take Permit prior to proceeding with development within gopher tortoise habitat areas.

The gopher tortoises addressed by the Incidental Take Permit shall be relocated to the Eco-park, or other appropriate open space areas within Pelican landing. The Eco-Park mitigates for regional impacts to the gopher tortoise population and xeric scrub within the Pelican Landing DRI.

4. All areas designated as Preserve on the adopted Map H must remain undeveloped and be owned, maintained, and managed by an Improvement District or a similar legal entity. No lot lines shall be allowed within any preserve areas. The following uses are permitted within Preserves: habitat management activities, hiking and nature study, outdoor education, recreational fishing, gates and fencing, and boardwalks limited to pedestrian use. Trimming of mangroves for residential visual access to Estero Bay or Spring Creek shall be prohibited in wetland areas #14 and #21 (as identified in DRI ADA) and Bay Cedar Phase II (along Spring Creek).

The Developer will grant a conservation easement consistent with Section 704.06., Florida Statutes for the Eco-Park to an entity approved by DCA. The Developer must submit a draft of the proposed conservation easement to DCA for review and comment. DCA must provide comments on the draft easement within 15 days so as not to unduly delay development. Once approved by DCA, the Developer will record the conservation easement in the Lee County Public Records prior to the issuance of a local Development Order or "Early Work" approval for any area containing gopher tortoise habitat other than areas approved in the PDA. The conservation easement may be drafted so as to allow use of the Eco-Park for resource-based recreational activities, enjoyment of nature and education enrichment, including, but not limited to: Picnic areas, trails, benches, boardwalks, biking/jogging trails, vita courses, bird viewing blinds/towers and interpretative facilities, signs, on-going maintenance and removal of exotic vegetation and compliance with the management plan required per the FGFWFC. Educational and directional signage will be permitted within the Eco-Park. For the purposes of this DRI D.O. the prohibition of signage included within Section 704.06, Florida Statutes applies to off-site signs and billboards. The removal of exotics, controlled burns and the maintenance of the vegetation in accordance

with the Eco-Park management plan will be permissible in the conservation easement notwithstanding the provisions of Section 704.06, Florida Statutes which prohibit the destruction of trees.

5. Should any orchids, wild pine air plants, Florida Coonties, Catesby's lilies, leather ferns, royal ferns, or cabbage palms with gold polypody and shoestring ferns be located within development areas, best efforts must be used to relocate these plants to open space and landscaped areas.

6. As part of local development order approval for any phase of the development, an invasive exotic vegetation removal and maintenance plan must be submitted to the Division of Natural Resources Management for approval. At a minimum, this plan must be structured to provide for the phased removal of invasive exotic vegetation and maintenance to control exotic re-invasion within the wetland and upland preserve areas. Removal within preserve areas may be done on a pro rata basis as phased local development orders are obtained.

7. The existing Pelican's Nest golf course includes native vegetation along the rough and between golf holes. The applicant must continue to incorporate the native vegetation into the design of future golf holes, where feasible. Native vegetation has been retained on individual lots and between tracts in the existing developed area of Pelican Landing. Where feasible, the applicant will continue to incorporate native vegetation into the open space and landscaped areas.

8. The applicant must design the golf course and conduct maintenance, which includes fertilization and irrigation, in a manner which is sensitive to the water and nutrient needs of the native xeric vegetation in and around the golf course. However, this condition will not be interpreted in a manner which forces the applicant to jeopardize the health and viability of the golf course.

9. Upon approval of the management plans referenced in the above, the approved management practices shall then be considered a part of this development order for reinforcement purposes, and shall be enforceable in the same manner as a condition of this development order.

10. This project may result in the filling onto more than 8 acres of wetlands. The mitigation for the impact to wetlands will be determined at the time of final permitting, but the mitigation should include the removal of exotic invasives, the restoration of historic hydroperiods, and a total of not more than ten acres of littoral zone plantings.

F. Solid/Hazardous/Medical Waste

1. All storage, siting, and disposal of hazardous wastes and/or hazardous materials must be accomplished in accordance with federal, state, and local regulations. The business owner/operator is responsible for compliance with all permitting, reporting,

emergency notification provisions and other regulations relating to hazardous materials and hazardous wastes.

2. All business owners and operators must insure that regulated substances are loaded, off-loaded and stored in an area that is curbed and provided with an impervious base. The impervious base must be maintained free of cracks and gaps so as to contain any spills or leaks.

3. Outdoor storage of hazardous waste is prohibited.

4. Restaurants must be outfitted with grease traps or approved equivalent systems. The owner/operators of any restaurant must follow all applicable codes and regulations for cleaning and maintaining grease traps.

5. If any hotel pool utilizes gaseous chlorine, the pool must be equipped with chemical sensors, alarm devices, or other comparable equipment. The hotel owner/operator shall be responsible for compliance with this requirement and notice of this responsibility/ obligation must be included on all deed transfers or lease agreements.

6. Any business that generates hazardous waste defined by the Code of Federal Regulations 40 CFR Part 261, shall notify the Division of Natural Resources Management for an assessment as required by Section 403.7225, Florida Statutes. This assessment will address any deficiencies in the management practices of hazardous waste generated at the facility.

7. The developer, or any subsequent owner of the golf course, must insure that the golf course maintenance equipment is handled in accordance with all federal, state and local regulations. Specifically, the developer will insure that all wash down facilities comply with FDEP rules regarding chemical residue, and insure the continued recycling of motor oil from maintenance equipment, and insure recycling of used motor oil, used oil filters, anti-freeze, lead acid batteries, cleaning solvents, shop rags, and aerosol cans.

8. The developer must investigate the feasibility of mulching trees and brush for on-site needs.

9. The developer/property owner of each commercial parcel which will be used to store, manufacture or use hazardous materials, shall contact the Lee County Office of Emergency Management, Hazardous Material Representative, prior to obtaining a development order, to discuss the proposed development in relation to potential type, and storage of hazardous materials which will be located on the premises.

10. If required by federal, state and/or local regulations:

a. The developer/property owner shall prepare or have available material safety data sheets (MSDS) and submit either copies of MSDS or a list of MSDS

chemicals to the appropriate fire department or district and to the Lee County Division of Public Safety.

b. The developer/property owner shall establish an emergency notification system to be used in the event of a hazardous material release.

G. Stormwater Management

1. The surface water management system must be designed, constructed and operated in accordance with the pertinent provisions of Chapters 373 and 403, Florida Statutes; Chapter 40E, Florida Administrative Code; and the South Florida Water Management District "Basis of Review", and any pertinent local regulations regarding the design, construction and maintenance of the surface water management system. This condition applies to anyone obtaining a local Development Order within Pelican Landing. The Bayside Improvement District (a district formed pursuant to Chapter 190, Florida Statutes), must insure that the portion of the system under the ownership and control of the district is operated in accordance with the pertinent portion of the regulatory provisions cited above, and any permit (construction or operation) issued by the SFWMD. Individual lot owners with on-site wetlands or stormwater retention or detention areas under their control must comply with the pertinent portion of the regulatory provisions cited above and any permit issued by the SFWMD.

2. Water Control Structures must be installed as early in the construction process as practicable to prevent over-drainage or flooding of preserved wetland areas. If the SFWMD establishes a construction schedule or scenario that is contrary to this condition, the permit requirement of SFWMD will control.

3. Any shoreline banks created along on-site stormwater wet detention lakes must include littoral zones constructed consistent with SFWMD requirements. The shoreline banks must be planted in native emergent and submergent vegetation. The developer must establish and maintain, by supplemental planting if necessary, 80 percent cover by native aquatic vegetation within the littoral zone for the duration of the project. The littoral zone will include, at a minimum, the area between high water and ordinary low water.

4. The Bayside Improvement District, and/or all property owners, must undertake a regularly scheduled vacuum sweeping of common streets, sidewalks and parking facilities within the development.

5. The developer must implement the best management practices for monitoring and maintenance of the surface water management systems in accordance with Lee County and South Florida Water Management District guidelines.

6. The SFWMD shall establish all internal surface water management and wetland systems. The developer must set aside all internal surface water management and wetland systems as private drainage easements, common areas, or preserves. These areas

must also be identified as specific tracts on the recorded final plat or some other legally binding document acceptable to the County Attorney's office.

H. Transportation

1. Significant Impact

a. The traffic impact assessment for this project assumes the development parameters and land uses shown in Attachment B, "Pelican Landing DRI Development Parameters". The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at the end of Planning Horizon I (1997) and buildout (2002). Each annual monitoring report, described in Paragraph 4, must reflect whether the roadways and intersections described below are significantly impacted or are projected to be significantly impacted by this project in the following year.

b. The Pelican Landing DRI is projected to significantly and adversely impact (as defined by Lee County Administrative Code AC-13-16, dated August 8, 1991, see Attachment C) the following roadways and intersections:

Planning Horizon I (1997)		Needed Improvement
US 41/Corkscrew Road	-	Signal retiming
US 41/Williams Road	-	Signalization, if warranted
US 41/Coconut Road	-	Signalization, if warranted
US 41/Pelican Commercial Entrance	-	Northbound left turn lane
	-	Southbound right turn lane
	-	Eastbound right turn lane
US 41/North Pelican Entrance	-	Northbound left turn lane
	-	Southbound right turn lane
	-	Eastbound left and right turn lanes
	-	Signalization, if warranted
US 41/Pelican Landing Parkway/Old 41	-	Southbound dual left turns
	-	Signal retiming
US 41/Pelican's Nest Drive	-	Northbound left and right turn lanes
	-	Southbound left and right turn lanes
	-	Eastbound left and thru/right lanes
	-	Westbound left and thru/right lanes
	-	Signalization, if warranted
US 41/Terry Street	-	Signal retiming
US 41/Bonita Beach Road	-	Signal retiming
Coconut Road/Spring Creek Road	-	Separate NB left & right turn lanes
	-	Separate EB thru and right turn lanes
	-	Separate WB thru and left turn lanes

Buildout (2002)

Corkscrew Road		
- Three Oaks Parkway to 1-75	-	Widen to 4 lanes
Old 41		
- Bonita Beach Road to Terry St.	-	Constrained (no widening possible; maximum v/c ratio of 1.85 per 1993 Lee Plan Policy 22.1.9)
US 41		
- Immokalee Road to Old 41 (Collier County)	-	Widen to 6 lanes
- Bonita Beach Road to West Terry Street	-	Widen to 6 lanes
- West Terry Street to Pelican's Nest Drive	-	Widen to 6 lanes
- Coconut Road to Williams Rd.	-	Widen to 6 lanes
- Constitution Boulevard to Alico Road	-	Widen to 6 lanes
US 41/Corkscrew Road	-	Separate EB left and thru/right lanes
	-	Westbound dual left turn lanes
	-	Signal retiming
US 41/Williams Road	-	Signalization, if warranted.
US 41/Coconut Road	-	Separate EB left and right turn lanes
	-	Signalization, if warranted
US 41/Pelican Commercial Entrance	-	Northbound left turn lanes
	-	Southbound right turn lane
	-	Eastbound right turn lane
US 41/North Pelican Entrance	-	Northbound left turn lane
	-	Southbound right turn lane
	-	Eastbound left and right turn lanes
	-	Signalization, if warranted
US 41/Pelican Landing Parkway/Old 41	-	Southbound dual left turn lanes
	-	Northbound dual left turn lanes
	-	Eastbound thru/right turn lane
	-	Westbound two thru lanes
	-	Signal retiming
US 41/Pelican's Nest Drive	-	Northbound left and right turn lanes
	-	Southbound left and right turn lanes
	-	Eastbound left and thru/right lanes
	-	Westbound left and thru/right lanes
	-	Signalization, if warranted
US 41/Terry Street	-	Northbound dual left turn lanes
	-	Separate WB thru and right turn lanes
	-	Signal retiming

US 41/Bonita Beach Road	-	Signal retiming
Coconut Road/Spring Creek Road	-	Separate NB left and right turn lanes
	-	Separate EB thru and right turn lanes
	-	Separate WB thru and left turn lanes

2. Mitigation

a. The developer will pay impact fees as defined in the Lee County Land Development Code to mitigate Pelican Landing's transportation impacts on the non-site related roads and intersections set forth in Section ~~H.1.b.~~ H.1.b. above. Road Impact Fees are estimated to be ~~$8,783,000~~ $8,900,000 for the land uses identified in Attachment B. Road Impact Fee payments represent the DRI's proportionate share payment for all road and intersection improvements identified in Condition H.1.b. as significantly impacted by this project and operating below the adopted level of service standard by 2002. Estimated Road Impact Fees from this project exceed the community's estimated proportionate share dollar amount of all significantly impacted roadway improvements.

If the Land Development Code Chapter governing Impact Fees is repealed, reduced, or made unenforceable by court petition, the Pelican Landing DRI will continue to pay, per individual permit, an amount equivalent to Road Impact Fees prior to such repeal, reduction or court petition. If payment is not made consistent with that schedule, then a substantial deviation will be deemed to occur, and the traffic impacts of Pelican Landing DRI must be reanalyzed to determine appropriate alternative mitigation prior to the issuance of further building permits for the Pelican Landing DRI.

All road impact fee monies paid by the Pelican Landing DRI after adoption of this DRI Development Order will be applied by Lee County toward the non-site related improvements included in Transportation Condition ~~H.1.b.~~ H.1.b., provided those improvements are deemed necessary to maintain the adopted level of service standards and are included in the County's Capital Improvement Program. Should the identified improvements be funded through other sources, in whole or in part, or deemed unnecessary to maintain the adopted level of service standards, Lee County may apply any Pelican Landing impact fees not required for those specific improvements to other improvements consistent with the requirements of the Lee County Land Development Code.

b. If through the local development approval process, the developer constructs, with the approval of the Lee County DOT, an intersection or roadway improvement identified in Paragraph ~~H.1.b~~ H.1.b., those improvements may be eligible for Road Impact Fee credits. The determination of whether such credits will be granted will be made consistent with the procedures outlined in the Land Development Code.

c. The developer must dedicate 60 feet of right-of-way for Burnt Pine Drive North, from Pelican Landing Parkway to Coconut Road, a distance of 6,926 feet; and for Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive, a distance of 2,326 feet. The developer must construct, as a two-lane access road, Burnt Pine Drive

North from Pelican Landing Parkway to Coconut Road, and Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive. Credits, if any, for the right-of-way dedication and construction identified above will be issued consistent with the procedures outlined in the Land Development Code. Dedication of the roadway right-of-way and construction of Burnt Pine Drive will occur as follows:

1) Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive: coincident with the Certificate of Compliance for the commercial parcel located in the northeast quadrant of the intersection of Burnt Pine Drive South and Pelican's Nest Drive.

2) Burnt Pine Drive North from Pelican Landing Parkway to Pelican Landing North Entrance: under construction no later than December 31, 1998.

3) Burnt Pine Drive North from Pelican Landing North Entrance to Coconut Road: should be under construction no later than December 31, 1999.

d. The developer agrees to reserve 25 feet of additional right-of-way along the south side of Coconut Road from US 41 west to Spring Creek Road to ensure that improvements to Coconut Road are not precluded. Such right-of-way will be dedicated to Lee County if and when requested. Credits, if any, for the right-of-way dedication will be granted at the time of dedication, and must be consistent with the Land Development Code in effect at that time.

e. As a mitigation option, the developer may, with the concurrence of Lee County, make an advance payment of a portion of Pelican Landing's total Impact Fees up to 2 million dollars. Lee County would then utilize the advance payment to accelerate the Project Design & Environmental (PD&E) Study for US 41 from the Collier County line to San Carlos Boulevard. The PD&E Study is currently scheduled in FDOT's Tentative Five Year Work Program for fiscal year 1998/99 (WPI #1114700).

3. Access and Site-Related Improvements

a. The developer will be fully responsible for site-related roadway and intersection improvements required within the Pelican Landing DRI. The developer must pay the full cost for any site-related intersection improvements (including but not limited to signalization, turn lanes and additional driveway through lanes) found necessary by Lee County or the Florida Department of Transportation (FDOT) permitting requirements for the Community's access intersections on US 41, Coconut Road and Spring Creek Road.

b. The Pelican Landing DRI site access points will be located and developed consistent with the Florida DOT's access management classification for US 41, unless otherwise approved by the Florida DOT. Improvements to those access points will be consistent with the Department's permitting requirements.

c. Site-related improvements will be as defined in the Land Development Code.

d. Except for Spring Creek Road and Coconut Road, all roads located within Pelican Landing will be maintained by the Bayside Improvement District (BID), unless subsequently dedicated to and accepted by Lee County.

4. Annual Monitoring Report

a. The developer will submit an annual traffic monitoring report to the following entities for review and approval: Lee County, the Florida Department of Transportation (FDOT), the Florida Department of Community Affairs (FDCA), and the Southwest Florida Regional Planning Council (SWFRPC).

The first monitoring report will be submitted one year after the date of the issuance of this DRI Development Order. Reports must be submitted annually thereafter until buildout of the project.

b. The monitoring report will be designed in cooperation with the Lee County Department of Transportation, FDOT, the SWFRPC and the FDCA prior to the submittal of the first report. The methodology of the annual traffic monitoring report may be revised if agreed upon by all parties.

c. The annual traffic monitoring report must contain the following information:

(1) P.M. peak hour existing volumes and tuning movement counts at all site access onto US 41 and Coconut Road, and a comparison to the project trip generation assumed in the DRI analysis.

(2) For existing conditions and a one-year projection, P.M. peak hour peak season tuning movement counts, Pelican Landing's estimated share of traffic, and an estimated level of service for the intersections identified in Paragraph H.1.b. as impacted by this project.

(3) For existing conditions and a one-year projection, P.M. peak hour peak season traffic counts, Pelican Landing's estimated share of traffic, and an estimated level of service for the roadway links identified in Paragraph H.1.b. as impacted by this project through buildout.

(4) An estimate of when the monitored roadways and intersections will exceed adopted levels of service.

(5) A summary of the status of road improvements assumed to be committed in the ADA, including the following:

Roadway	Segment	Improvement	Schedule
Pelican's Nest Dr.	Pelican's Nest to US 41	0 to 2	Planning Horizon I (1997/98)
Corkscrew Road	1-75 to Treeline Ave.	2 to 4	Planning Horizon I (1997/98)
US 41	Alico Rd. to Island Park Rd.	4 to 6	Planning Horizon I (1997/98)
US 41	Island Park Rd. to south of Daniels Parkway	4 to 6	Planning Horizon I (1997/98)
Bonita Beach Road	Hickory Blvd. to Vanderbilt	2 to 4	Planning Horizon I (1997/98)

(6) A summary of the roadway and intersection improvements listed in Paragraph H.1.b. that have been constructed, and the program status of the remainder.

d. If the annual monitoring report confirms that the peak season P.M. peak hour traffic on the significantly impacted roadways exceeds the level of service standards adopted by Lee County, or is projected to exceed the adopted level of service standards adopted by Lee County within the forthcoming 12 months, and if the project is utilizing more than 5% of LOS "D" service volume during peak hour peak season traffic conditions, then further local development orders, building permits and certificates of occupancy may not be granted until the standards of the County's concurrency management system have been met. This means that adequate district-wide level of service capacity must be available through 1999. After 1999, significantly impacted individual links must be operating at the adopted level of service, or an improvement to achieve the adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program.

e. If the annual traffic monitoring report confirms that the peak season P.M. peak hour traffic on the segment of US 41 in Collier County from Immokalee Road to Old US 41 exceeds the level of service standard adopted by Collier County and if the project is utilizing more than 5% of level of service D service volume during peak hour, peak season traffic conditions, then further building permits may not be granted until the subject roadway segment is committed for construction by the Florida Department of Transportation and/or Collier County.

f. In the event the developer confirms that no additional development occurred on any portion of the site for the year, even after the approval of a local

development order, they may submit a Letter of "No Further Transportation Impact" in lieu of fulfilling the transportation monitoring portion of the Annual Monitoring Report.

I. Wastewater Management/Water Supply

1. The developer or the Bayside Improvement District must obtain a South Florida Water Management District Water Use Permit, or a Modification to an existing Consumptive Use Permit for any water withdrawals, and for dewatering activities proposed in connection with on-site construction that does not qualify for a No Notice General Permit, under Rule 40E-20.302(4), F.A.C.

2. Builders within Pelican Landing must utilize ultralow volume plumbing fixtures, self-closing or metered water faucets, and other water conserving devices/methods consistent with the criteria outlined in the water conservation element of the Bonita Springs Utilities, Incorporated, SFWMD Water Use Permit or the water conservation element of any other approved utility provider utilized by the Development.

3. Developers must utilize xeriscape principles in the landscape design of the project to further the conservation of nonpotable water.

4. If reclaimed water is available for use within the project to address a portion of the project's irrigation demands, the developer or Bayside Improvement District, as appropriate, must ensure that on-site lakes, wetlands, and the surface water management system are protected in accordance with the requirements of the SFWMD and FDEP.

5. The developer must provide written assurance that any hazardous commercial effluent, generated by the project, will be treated separately from domestic wastewater, and handled in accordance with FDEP regulations.

6. Except for temporary septic tanks for construction trailers or for sales offices/models, septic tanks are prohibited.

7. All potable water facilities, including any on-site potable water treatment system, must be properly sized to supply average and peak day domestic demand, as well as fire flow demand. The facilities shall be constructed and sized in accordance with all pertinent regulations of the FDEP, Lee County, and any Fire Control District with jurisdiction.

8. All irrigation systems constructed for the golf course, landscaped areas and commercial/office portions of the project must designed to accommodate effluent for irrigation use. Reclaimed water, to the extent it is available, must be used to address irrigation needs. The remaining demand will be satisfied through approved groundwater or surface water withdrawals. Reclaimed water must be used in accordance with all applicable regulations.

J. Police and Fire Protection

1. Construction must comply with the fire protection requirements of all building, development, and life safety codes adopted by Lee County.

2. Facilities qualifying under the Superfund Amendments Reauthorization Act (SARA) Title III and the Florida Hazardous Materials Emergency Response and Community Right to Know Act of 1988, must file hazardous materials reporting applications in accordance with Sections 302 and 312. Each reporting facility must update these applications annually.

3. The developer must provide for the emergency medical service impacts and fire protection impacts generated by the proposed development as defined by Lee County regulations.

4. If access to development is through a security gate or similar device that is not manned 24 hours per day, the developer must install an override switch in a glass-covered box for use by emergency vehicles, or a comparable system that permits emergency vehicles to access the project.

5. The project's impact on fire protection and rescue service delivery will be met by the ad valorem taxes, EMS impact fees and fire impact fees.

K. Interface Zone

1. The Developer will design, develop, and maintain any golf course constructed adjacent to the mangrove fringe area of Estero Bay in accordance with condition 14 a. through i. of Resolution Number Z-94-014. Adjacent to the mangrove fringe means any golf course constructed within 500 feet of the mangrove fringe.

2. The Developer will employ management strategies to address the potential for pesticide/chemical pollution of groundwater and surface water receiving areas, including but not limited to, Estero Bay, the mangrove fringe and any transition zone wetlands of Estero Bay which may result from the development of a golf course and water management areas within five hundred feet of the mangrove fringe of Estero Bay.

3. The management practices which the Developer will follow are as follows:

a. The use of slow release fertilizers and/or carefully managed fertilizer applications which are timed to ensure maximum root uptake and minimal surface water runoff or leaching to the groundwater.

b. The practice of integrated pest management (IPM) when seeking to control various pests, such as weeds, insects, and nematodes. The application of pesticides will involve only the purposeful and minimal application of pesticides, aimed only

at identified targeted species. The regular widespread application of broad spectrum pesticides is not acceptable. The IPM program will minimize, to the extent possible, the use of pesticides, and will include the use of the USDA-SCS Soil Pesticide Interaction Guide to select pesticides for uses that have a minimum potential for leaching or loss due to runoff depending on the site specific soil conditions. Application of pesticides within 100 feet of the jurisdictional mangrove system is prohibited.

c. The coordination of the application of pesticides with the irrigation practices (the timing and application rates of irrigation water) to reduce runoff and the leaching of any applied pesticides and nutrients.

d. The utilization of a golf course manager licensed by the state to use restricted pesticides and experienced in the principles of IPM. The golf course manager will be responsible for ensuring that the golf course fertilizers are selected and applied to minimize fertilizer runoff into the surface water and the leaching of those same fertilizers into the groundwater.

e. The storage, mixing, and loading of fertilizer and pesticides will be designed to prevent/minimize the pollution of the natural environment.

4. The Developer will prepare a management plan for the application of herbicides, pesticides, and fertilizers on the proposed golf course adjacent to the mangrove fringe of Estero Bay. The plan will be prepared prior to the application of any herbicides, pesticides and fertilizers to the proposed golf course. The management plan will include a groundwater and surface water monitoring plan. The plan will provide for testing to assess whether there are any herbicide, pesticide, or fertilizer pollution of the water within the area of the golf course located within 500 feet of the mangrove fringe. The plan will identify the locations for the groundwater monitoring and testing on a map(s). The plan will set forth the testing and reporting requirements. The developer will submit the test reports with the annual monitoring report. The monitoring program will be established and operated at the expense of the Developer, the Bayside Improvement District, or other comparable legal entity charged with the legal responsibility of managing the golf course. This plan will be evaluated in accordance with the directives of Chapter 17-302, F.A.C., Water Quality Standards.

5. The Developer will submit a written surface and groundwater quality management plan to Lee County and DCA. The plan must be approved by DCA prior to the application of chemicals to the proposed golf course. The DCA will have 30 working days to review the management plan and approve or object to the plan in writing. The objections must be based on valid rules and regulations, and must identify how the concerns or issues can be addressed by the developer. The Developer must resubmit a revised water quality management plan to address the valid objections. DCA will have 30 days in which to review any revised management plan and must provide written comments or approval in the same manner as for the original management plan. Should DCA fail to provide a written response within the prescribed time frames, the plan will be deemed approved.

6. If groundwater or surface water pollution occurs, as that term is defined by the rules or regulations in effect at the time, and should the pollution be caused by the application of fertilizers, herbicides or pesticides to the golf course adjacent to the mangrove wetlands, the application of the pollutant must cease until there is a revised management plan for the application of the pollutant. A determination that the application of fertilizers, herbicides or pesticides to the golf course are the cause and source of the pollution must be based on competent and substantial evidence. If mitigation is necessary to address the pollution, a mitigation plan approved by DCA will be implemented by the developer. The mitigation plan will be based on rules and regulations in effect at the time the plan is reviewed and approved. The approved mitigation plan will be enforceable as a condition of the Development Order.

7. The mangrove wetland jurisdiction line of Estero Bay will be buffered from the proposed golf course by a 100' undisturbed naturally vegetated corridor, except for water management facilities permitted by the South Florida Water Management District and except for the removal of exotic plants as required by Lee County. The 100' buffer area will run along the portion of the golf course that abuts the mangrove wetlands of Estero Bay.

8. All of the Interface Zone conditions will be interpreted and applied with the understanding that water quality is regulated by the DEP and the SFWMD. None of the Interface Zone conditions will be interpreted in a manner which is contrary to Section 403.021, ~~F.S.~~ Florida Statutes, the Florida Air and Water Pollution Control Act, and the rules adopted thereunder.

9. The Interface Zone conditions will not be interpreted in a manner contrary to public policy directives to utilize domestic reclaimed water. Pelican Landing will not be responsible for any harmful pollutants applied to the golf course via the reclaimed water, unless Pelican Landing has actual knowledge that the reclaimed water provided by the utility contains harmful pollutants.

10. The conditions set forth in this DRI DO do not preempt the authority of the South Florida Water Management District and the Department of Environmental Protection. Section 373.016, ~~F.S.~~ Florida Statutes provides that the legislature has vested the authority in the DEP/SFWMD to accomplish the conservation, protection, management, and control of the waters of the state. To the extent that any requirements of DCA, SWFRPC, or Lee County pursuant to this DRI DO are contrary to those of the SFWMD/DEP, in areas where the SFWMD and DEP have been given preemptive authority, the requirements of the SFWMD and the DEP will control.

III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

1. This amended Development Order constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the application filed by WCI Communities, L.P. to amend the Pelican Landing Development of Regional Impact Development Order.

2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are incorporated by reference into this Development Order. These documents include, but are not limited to the following:

(a) Pelican Landing Application for Development Approval, stamped Received October 26, 1992;

(b) Pelican Landing DRI sufficiency response, stamped Received February 5, 1993;

(c) Pelican Landing DRI sufficiency response, stamped Received July 6, 1993;

(d) Pelican Landing DRI sufficiency response, dated September 16, 1993; and

(e) Pelican Landing DRI sufficiency response, stamped Received November 22, 1993.

3. Map H, last revised ~~April 2, 1996~~ May 27, 1997 and stamped received ~~April 15, 1996~~ June 13, 1997, is attached hereto as Attachment A and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and location of internal roadways may be modified to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. This provision may not be used to reduce the acreage of the Eco-Park or other open space or preserve acreages. It is understood that the precise wetland boundaries are determined by the U.S. Army Corps of Engineers, SFWMD, FDEP and Lee County.

4. The Development Order is binding upon the developer(s) and its assignees or successors in interest. Where the Development Order refers to the Bayside Improvement District, lot owners, business owners, or other specific reference, those provisions are binding on the entities or individuals referenced. Those portions of this Development Order which clearly apply only to the project developer are binding upon any builder/developer who acquires any tract of land within Pelican Landing DRI.

5. The terms and conditions set out in this document constitute a basis upon which the developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.

6. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party by action at law or equity. All costs of such proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

7. Any reference to a governmental agency will be construed to mean any future instrumentality which may be created and designated as successors in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

8. If any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision will in no manner affect the remaining portions or sections of the Development Order which will remain in full force and effect.

9. This Development Order grants limited approval and does not negate the developer's responsibility to comply with all applicable federal, state, regional and local regulations.

10. Subsequent requests for local development permits will not require further review pursuant to Section 380.06, Florida Statutes, unless the Board of County Commissioners, after due notice and hearing, finds that one or more of the following is present:

(a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans which create a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or

(b) An expiration of the period of effectiveness of this Development Order.

Upon a finding that any of the above is present, the Board must order a termination of all development activity in the development affected by a substantial deviation or expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

11. The project has a buildout date of 2002, and a termination date of 2005. This term is based on a ten year buildout and the recognition that a local Development Order, which is valid for three years, may be obtained in the tenth year.

12. The developer and the Bayside Improvement District may not exercise any rights of condemnation to acquire land within the development commonly known as Spring Creek Village, El Dorado Acres, Estero Bay Shores, Mound Key Estates and Spring Creek Estates.

13. The Administrative Director of the Lee County Department of Community Development, or his/her designee, will be the local official responsible for assuring compliance with this Development Order.

14. The project will not be subject to down-zoning, unit density reduction, intensity reduction or prohibition of development until 2005 as long as the Lee Plan amendment proposed in association with this DRI to upwardly adjust the 2010 Overlay allocations for Subdistricts 801 and 806 is adopted and effective. If the County clearly demonstrates that substantial changes have occurred in the conditions underlying the approval of the Development Order through public hearings on an amendment to the zoning and/or this DRI Development Order then a down-zoning, unit density reduction, or prohibition of development may occur. These changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

If the companion plan amendment is adopted, Lee County will reserve to this DRI, the appropriate uses from the allocations established for subdistricts (subdistricts 806/801) of the Lee Plan 2010 Overlay until 2005. This reservation has the effect of reserving all of the acreage transferred from Gateway to Pelican Landing for the duration of the Development Order.

15. The developer, or its successor(s) in title to the undeveloped portion of the subject property, will submit a report annually to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes. The developer must inform successors in title to the undeveloped portion of the real property covered by this Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

16. The Developer applied for an amendment to the DRI DO within six months of the effective date of this Development Order. The amendment to this Development Order incorporated the portion of the Spring Creek DRI located west of US Highway 41 into the Pelican Landing DRI. The amendment contained a description of that portion of the Spring Creek DRI (and the conditions of the Spring Creek Development Order which are applicable to the Spring Creek West property). The impacts of the Spring Creek development will not be considered separately or cumulatively in any future change to the Pelican Landing Development Order. A change in the development plan for the Spring Creek property could be a substantial deviation which would require further analysis of Spring Creek West. The amendment was adopted solely for the purpose of consolidating Spring Creek West and

~~Third~~ Fourth Development Order

Pelican Landing under the same Development Order and none of Spring Creek West's vested rights will be lost because of the amendment.

17. The County will forward certified copies of this Development Order to the SWFRPC, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Amendment was offered by Commissioner Judah and seconded by Commissioner Manning and upon poll of the members present, the vote was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 17th day of November, 1997 .

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: John E. Albion
Vice (Chairman)

ATTEST:

CHARLIE GREEN, Clerk

By: Lisa L. Purce
Deputy Clerk

APPROVED AS TO FORM

By: Dawn E. Lehman
County Attorney's Office

FILED

NOV 21 1997

CLERK CIRCUIT COURT
BY Lisa L. Purce D.C.

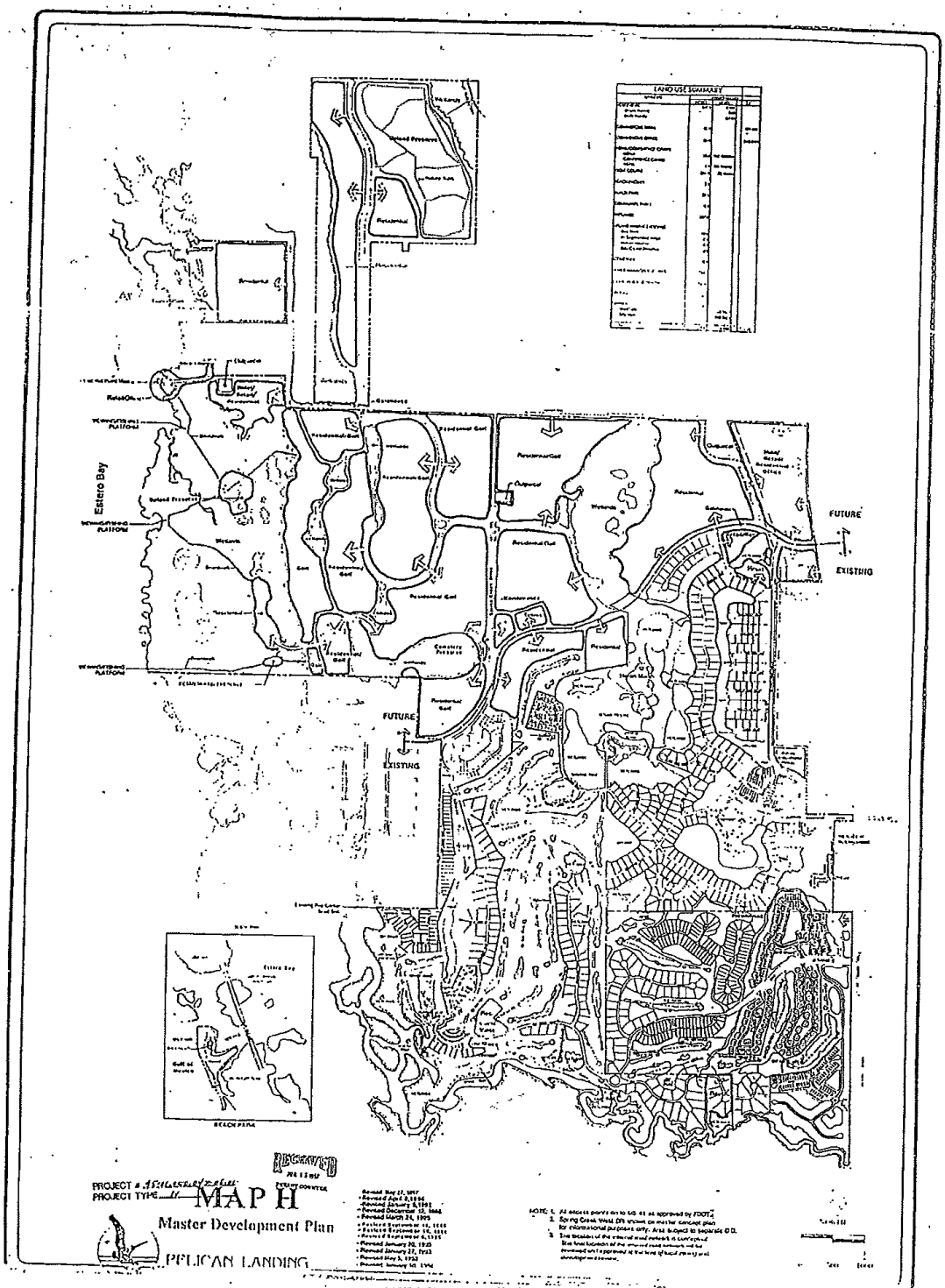
State of Florida
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 24th day of November, A.D. 1997

CHARLIE GREEN, CLERK
By Lisa L. Purce
Deputy Clerk

11/17/97



ATTACHMENT "A"

ATTACHMENT "B"
~~THIRD~~ FOURTH AMENDMENT
PELICAN LANDING DRI
DEVELOPMENT PARAMETERS

Land Use	Units[1]	Existing (1992)	Planning Horizon I (1997)	Buildout Total (2002)
Residential	DU	969	2,433	4,400
Single Family	DU	373	625	665
Multi Family	DU	596	1,808	3,735
Retail[2]	GFA	11,000	291,000	461,050 ~~540,000~~
Office[3]	GFA	40,000	150,000	245,000
Hotel/Motel	Rooms	0	750 ~~450~~	750 ~~450~~
Recreation Uses				
Pelican Nest Golf Course/Clubhouse/ Practice Range	Holes	29	38	38
Range Club Golf Course	Holes	0	9	9
Tennis Center	Courts	0	6	12
Coconut Marina	Boat Slips Wet	24	48	48
	Dry	0	150	150
Redfish Point	GFA	5,000	5,000	5,000
	Boat Slips Wet	15	15	15
Other[4]	Boat Slips Wet	2	2	2

Footnotes:

1 Units
DU - Dwelling Units
GFA - Square Feet of Gross Floor Area
2 Includes conference center, community center and clubhouse/marina
3 Includes "Foundations"
4 Ancillary Use

Attachment I

DEVELOPMENT ORDER

FOR

PELICAN LANDING

A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #1-9293-121

LET IT BE KNOWN, THAT PURSUANT TO SECTION 380.06 OF THE FLORIDA STATUTES, THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, HAS HEARD AT A PUBLIC HEARING CONVENED ON THE 29th DAY OF AUGUST, 1994, THE APPLICATION FOR DEVELOPMENT APPROVAL FOR PELICAN LANDING DRI, A RESIDENTIAL, COMMERCIAL AND MARINA DEVELOPMENT IN LEE COUNTY WHICH INCLUDES APPROXIMATELY 2,100 ACRES TO BE DEVELOPED IN ACCORDANCE WITH THE APPLICATION SUBMITTED TO LEE COUNTY ON OCTOBER 26, 1992, BY THE OWNER/APPLICANT, PELICAN LANDING COMMUNITIES, INC., FORMERLY KNOWN AS WESTINGHOUSE BAYSIDE COMMUNITIES, INC.

WHEREAS, the Board of County Commissioners of Lee County, Florida, has considered the report and recommendations of the Southwest Florida Regional Planning Council, the Lee County Staff, the Lee County Hearing Examiner, the documents and comments upon the record made before the Board in public hearing, and, after full consideration of those reports, recommendations, comments, and documents, the Board of County Commissioners of Lee County, Florida, finds and determines that:

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. The "Pelican Landing DRI" is a partially built master planned community on 2,100± acres located approximately three miles north of the Lee/Collier County line. The property is bounded on the west by Estero Bay, on the east by US 41, and on the south by Spring Creek. Coconut Road provides the general northern boundary of Pelican Landing; however, a part of the project is located north of Coconut Road.

The proposal is to construct 4,050 residential units, of which 665 are single-family and 3,385 multi-family, 600,000 square feet of gross floor area of retail commercial, and 210,000 square feet of gross floor area of office commercial. The retail uses will provide up to 2,400 parking spaces and the office uses will provide up to 700 parking spaces. The project will also include 450 hotel rooms, 50,000 square foot conference center, 65 wet boat slips and 150 dry boat slips, various recreational amenities including, but not limited to: golf, tennis, canoe parks, and a beach park for the benefit of the owners in Pelican Landing. There are 87 acres of

upland habitat preserve, 507 acres of salt and freshwater wetlands, 208 acres of water management lakes, 140 acres of public and private rights-of-way, 6 acres of utilities and a .11 acre cemetery site.

Water supply and wastewater treatment, and reclaimed water, when available, will be provided by Bonita Springs Utilities, Inc. The project buildout is the year 2002.

B. LEGAL DESCRIPTION: In Sections 05, 07, 08, 09, 16, 17, 18, 20, and 21, Township 47 South, Range 25 East, and Sections 13 and 24, Township 47 South, Range 24 East, Lee County, Florida:

PARCEL 1

A tract or parcel of land lying in Sections 08, 09, 16, 17, 20 and 21, Township 47 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

BEGINNING at a concrete monument marking the Northeast corner of said Section 20 run S00°35'25"E along the East line of said section for 2,659.47 feet to the Southeast corner of the Northeast Quarter (NE¼) of said section;
THENCE run N88°52'49"E along the North line of the Southwest Quarter (SW¼) of said Section 21 for 2,040.41 feet;
THENCE run S00°51'35"E for 801.04 feet to the waters of Spring Creek;
THENCE run along Spring Creek for 3,630 feet, more or less to an intersection of the East line of said Section 20 and the approximate centerline of Spring Creek;
THENCE run along said centerline the following courses:
S78°50'00"W for 181.31 feet,
N34°24'12"W for 230.22 feet,
N30°59'12"W for 174.93 feet,
N24°25'16"E for 120.83 feet,
S65°47'43"E for 219.32 feet,
N18°24'43"E for 158.11 feet,
N75°11'47"W for 351.71 feet,
N65°09'33"W for 451.88 feet,
N84°18'44"W for 351.75 feet,
N66°54'31"W for 445.79 feet,
S63°24'43"W for 134.16 feet,
S03°23'22"E for 170.29 feet,
S50°30'17"W for 220.23 feet,
N84°49'43"W for 331.36 feet,
S62°13'07"W for 214.71 feet,
S22°08'36"W for 291.55 feet,
S72°15'11"W for 131.22 feet to an intersection with the East line of the Southwest Quarter (SW¼) of said Section 20;
THENCE run N00°50'19"W along said East line for 520.00 feet to the Northeast corner of said fraction;

continued...

THENCE run S89°58'37"W along the North line of said fraction for 290.00 feet to an intersection with the approximate centerline of the most Easterly branch of said Spring Creek;
THENCE run along said centerline the following courses:
N09°13'28"W for 137.34 feet,
N29°08'22"W for 590.59 feet,
N38°31'58"W for 278.03 feet,
N65°16'43"W for 254.95 feet,
N37°18'28"W for 286.01 feet,
N32°51'05"E for 252.39 feet,
N20°11'00"E for 236.69 feet,
N27°23'47"W for 369.25 feet,
N89°15'43"E for 50 feet, more or less to the Easterly shore of said Spring Creek;
THENCE run along said Easterly shore for 1,220 feet, more or less to an intersection with the North line of said Section 20;
THENCE run N89°15'13"E along said North line of said Section for 970 feet, more or less to a concrete monument marking the Northwest corner of the Northeast Quarter (NE¼) of said Section 20;
THENCE run N00°31'30"E along the West line of the Southeast Quarter (SE¼) of said Section 17 for 2,644.38 feet to an intersection with the South line of Spring Creek Road as described in Deed Book 305 at Page 276, Lee County Records;
THENCE run S89°58'35"E along said South line for 739.45 feet;
THENCE run N00°07'58"E for 30.00 feet to an intersection with the North line of the Southeast Quarter (SE¼) of said Section 17;
THENCE run S89°58'35"E along the North line of said fraction for 375.91 feet to the Southeast corner of lands described in Official Record Book 1713 at Page 1188 of said Public Records;
THENCE run N00°41'04"W for 668.20 feet to the Northeast corner of said lands;
THENCE run N89°50'32"W along the North line of said lands for 366.38 feet to the Easterly line of said Spring Creek Road (50 feet wide);
THENCE run N00°07'58"E for 2,007.04 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 08;
THENCE continue N00°07'17"E along said East line for 343.54 feet;
THENCE run S89°38'58"E for 10.00 feet;
THENCE run N00°07'17"E along said East line for 849.27 feet to the Southwest corner of lands described in Official Record Book 2039 at Page 3364 said Public Records;
THENCE run S89°21'02"E along the South line of said lands for 189.98 feet;
THENCE run N00°07'17"E along the East line of said lands for 125.01 feet;

continued...

THENCE run N89°21'02"W along the North line of said lands for 199.98 feet to an intersection with the Easterly line of said Spring Creek Road;
THENCE run N00°07'17"E along said East line for 1,292.76 feet to an intersection with the South line of Coconut Road (50 feet wide);
THENCE run S89°16'14"E along said South line for 1,802.38 feet to an intersection with the West line of said Section 09;
THENCE run N00°39'58"W along said West line for 25.00 feet to a concrete monument marking the Northwest corner of the Southwest Quarter (SW¼) of said Section;
THENCE continue along said West line N00°39'58"W for 5.00 feet to an intersection with the South line of said Coconut Road as described in Official Record Book 1738 at Page 2538, said Public Records;
THENCE run S89°35'50"E along said South line for 3,164.37 feet to an intersection with the West line of Tamiami Trail (SR 45);
THENCE run S00°10'56"W along said West line for 621.81 feet to a POINT OF CURVATURE;
THENCE run Southerly and Southeasterly along said West line, along the arc of a curve to the left of radius 5,797.58 feet (chord bearing S04°57'34"E) (chord 1,039.14 feet) (delta 10°17'00") for 1,040.54 feet to a POINT OF TANGENCY;
THENCE run S10°06'04"E along said Westerly line for 938.08 feet to an intersection with the North line of the Northeast Quarter (NE¼) of said Section 16;
THENCE run S89°23'00"W along said North line for 708.94 feet to the Northwest corner of said Northeast Quarter (NE¼) of Section 16;
THENCE run S00°02'54"W along said West line of the Northeast Quarter (NE¼) for 2,643.98 feet to the Southwest corner of the Northeast Quarter (NE¼) of said Section;
THENCE run N89°10'38"E along the South line of said fraction for 538.06 feet;
THENCE run S00°06'43"E for 1,085.91 feet;
THENCE run N89°06'43"E for 744.41 feet to an intersection with the West line of said Tamiami Trail;
THENCE run Southerly along said West line, along the arc of a non-tangent curve to the right of radius 5,619.58 feet (chord bearing S00°22'05"E) (chord 50.21 feet) (delta 00°30'42") for 50.21 feet to a POINT OF TANGENCY;
THENCE run S00°06'43"E along said West line for 49.81 feet;
THENCE run S89°06'43"W for 300.00 feet;
THENCE run S00°06'43"E for 1,445.82 feet to an intersection with the South line of the Southeast Quarter (SE¼) of said Section 16;
THENCE run S89°16'54"W along said South line of said fraction for 989.41 feet to the Southeast corner of the Southwest Quarter (SW¼) of said Section 16;
THENCE run S88°38'34"W along said South line of said Southwest Quarter (SW¼) for 2,627.98 feet to the POINT OF BEGINNING.

continued...

ALSO

PARCEL 2

A tract or parcel of land lying in Sections 07, 08, 17 and 18 which tract or parcel is described as follows:

From a railroad spike marking the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S00°23'24"E along the West line of said fraction for 25.00 feet to an intersection with the South line of Coconut Road (50 feet wide) and the POINT OF BEGINNING.
From said POINT OF BEGINNING run S89°16'14"E along said South line for 3,253.00 feet to an intersection with the West line of Spring Creek Road;
THENCE run S00°07'17"W along said West line for 2,610.71 feet to an intersection with the South line of said Section 08;
THENCE run S00°07'58"W along said West line for 2,646.47 feet;
THENCE run N89°58'35"W along the North line of Coconut Road for 689.04 feet to an intersection with the East line of the Northwest Quarter (NW¼) of said Section 17;
THENCE run N89°59'08"W along said North line for 404.79 feet to the Southeast corner of lands described in Official Record Book 411 at Page 759 of said Public Records;
THENCE run N01°31'36"E along the East line of said lands for 960.34 feet;
THENCE run N89°59'08"W along the North line of said lands for 2,200.77 feet to an intersection with the East line of the Northeast Quarter (NE¼) of said Section 18;
THENCE continue N89°59'08"W for 1,840 feet more or less to the waters of Estero Bay;
THENCE run Northerly along the waters of Estero Bay for 8,300 feet more or less to an intersection with the North line of the South Half (S½) of Government Lot 2 of said Section 07;
THENCE run N89°32'15"E along the North line of said Government Lot 2 for 545 feet more or less to the Northwest corner of lands described in Official Record Book 1895 at Page 3817 of said Public Records;
THENCE run S08°50'45"E along the West line of said lands for 199.50 feet;
THENCE run N89°32'15"E along the South line of said lands for 247.50 feet;
THENCE run N89°35'27"E for 666.22 feet;
THENCE run N89°32'15"E for 239.00 feet to an intersection with the West line of Coconut Road;
THENCE run S01°07'45"E along said West line for 488.63 feet;
THENCE run N89°40'05"E along the South line of said Coconut Road for 24.69 feet to the POINT OF BEGINNING.
LESS and EXCEPT lands described in Official Record Book 1677 at Page 3516 of the Public Records of Lee County, Florida.

ALSO

continued...

PARCEL 3

A tract or parcel of land lying in Sections 05 and 08, Township 47 South, Range 25 East, Lee County, Florida, consisting of Lots 8B, 9B, 10B, 11B, 12B, 21B, 22B, 23B, 24B and 25B of FLORIDA GULF LANDCOMPANY SUBDIVISION as recorded in Plat Book 1 at Page 59 of the Public Records of Lee County, also Lot 8, Block 14 of ELDORADO ACRES (an Unrecorded Subdivision), as shown in Deed Book 310 at Page 183 of the Public Records of Lee County, also the East Three-quarters (E-3/4) of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of said Section 05, also the East Two-thirds (E-2/3) of the Western Half (W½) of the Northwest Quarter (NW¼) of said Section 08; being more particularly described by metes and bounds as follows:
From the Northwest corner of the Southwest Quarter (SW¼) of said Section 08 run S89°16'14"E along the North line of said Southwest Quarter (SW¼) for 422.61 feet;
THENCE run N01°05'22"W for 40.02 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING continue N01°05'22"W for 2,610.06 feet;
THENCE run N01°22'23"W for 1,304.41 feet;
THENCE run N89°56'22"W for 107.12 feet;
THENCE run N01°22'55"W for 1,303.87 feet;
THENCE run N89°34'15"E for 2,593.81 feet;
THENCE run S00°26'45"E for 2,655.42 feet;
THENCE run N88°48'50"W along the North line of said Section 08 for 322.66 feet;
THENCE run N89°25'01"W for 587.55 feet;
THENCE run S00°50'16"E for 132.58 feet;
THENCE run N89°11'54"W for 75.00 feet;
THENCE run N00°50'16"W for 132.30 feet;
THENCE run N89°25'01"W for 610.69 feet;
THENCE run S01°00'35"E for 2,612.12 feet to an intersection with the North right-of-way line of Coconut Road;
THENCE run N89°16'14"W along said North right-of-way line for 845.23 feet to the POINT OF BEGINNING.

ALSO

PARCEL 4

All of Government Lot 1, Section 07, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

BEGINNING at a concrete monument marking the Northeast corner of Government Lot 1 of said Section 07, run S01°07'45"E along the East line of said Section 07 for 1,324.52 feet to the

continued...

Southeast corner of said Government Lot 1;
THENCE run S89°33'42"W along the South line of said Government Lot for 1,747.82 feet to a concrete post at the waters of Estero Bay;

THENCE run Northerly and Westerly along the waters of Estero Bay to an intersection with the North line of said Section 07;
THENCE run N89°48'31"E along said North line for 2,575 feet more or less to the POINT OF BEGINNING.

CONTAINING 2,409 acres, more or less.

Bearings hereinabove mentioned are based on the East boundary line of Pelican's Nest Unit No. 1 as recorded in Plat Book 41 at Pages 58 through 60 of the Public Records of Lee County, Florida.

AND

BEACH PARCEL

A tract or parcel of land lying in Government Lot 3, Section 13, and Government Lot 2, Section 24, Township 47 South, Range 24 East, Big Hickory Island, Lee County, Florida, which tract or parcel is described as follows:
From the center of a turnaround on SR 865 (Bonita Beach Road) being S.R.D. Station 19184.75 and N24°28'41"W along the northern prolongation of said centerline of SR 865 for 266.00 feet;
THENCE run S62°26'49"W for 98.40 feet;
THENCE run N27°33'11"W for 1,863.42 feet;
THENCE run N20°00'41"W for 1,403.30 feet;
THENCE run N65°00'00"E for 313.91 feet to the POINT OF BEGINNING.
From said POINT OF BEGINNING run N18°55'11"W for 97.51 feet, N22°26'23"W for 100.53 feet, N23°09'50"W for 100.14 feet, N14°51'19"W for 73.01 feet, N27°40'10"W for 88.01 feet, N29°33'57"W for 46.01 feet, N22°14'53"W for 47.27 feet, N20°39'23"W for 46.98 feet, N11°15'38"W for 29.80 feet, N26°10'46"W for 46.87 feet, N09°09'45"W for 48.26 feet, N17°35'56"W for 46.04 feet, N12°49'07"W for 50.04 feet, N29°20'48"W for 69.12 feet, N20°48'58"W for 63.82 feet;
THENCE run N79°23'51"W for 247 feet more or less to an intersection with the Approximate Mean High Water Line of the Gulf of Mexico;
THENCE run Northerly and Northeasterly along said waters for 1,140 feet more or less to an intersection with the South line of lands described in Official Record Book 198 at Page 188 of the Public Records of Lee County, Florida;
THENCE run along said South line, along the arc of a curve to the right of radius 12,000.00 feet for 783 feet to an intersection with the Waters of New Pass;

continued...

THENCE run Southerly, Easterly, Southwesterly and Southerly along said waters for 4,080 feet more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet more or less to the POINT OF BEGINNING.

AND

From said POINT OF BEGINNING run S13°03'59"E for 94.16 feet;
THENCE run S19°13'48"E for 50.64 feet;
THENCE run S04°34'15"E for 54.63 feet;
THENCE run S24°53'12"E for 50.09 feet;
THENCE run S27°10'29"E for 50.01 feet;
THENCE run S31°01'44"E for 42.51 feet to an intersection with the South line of lands described in Official Record Book 2246 at Page 4413 of the Lee County Records;
THENCE run N65°00'00"E along said South line for 134 feet, more or less to the waters of Estero Bay;
THENCE Northerly along said waters for 358 feet, more or less to an intersection with a line bearing N65°00'00"E and passing through the POINT OF BEGINNING;
THENCE run S65°00'00"W for 181 feet, more or less to the POINT OF BEGINNING.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone.

C. The subject parcel is currently zoned AG-2, RS-1, TFC-2, PUD, RPD, CPD, and IM; the property is partially developed.

D. This Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes.

E. The development is not located in an area designated as an Area of Critical State Concern under the provisions of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development plan applicable to the area. The development is consistent with the State Comprehensive Plan if developed with the conditions set forth herein.

G. The development has been reviewed by the Southwest Florida Regional Planning Council (SWFRPC) and is the subject of the report and recommendations adopted by that body on January 20, 1994, and subsequently forwarded to Lee County pursuant to the provisions of Section 380.06, Florida Statutes; the development, as proposed in the Application for Development Approval (ADA) and modified by this Development Order, is generally consistent with the report and the recommendations of the SWFRPC pursuant to Section 380.06(11).

H. The development is located in the Urban Community, Outlying Suburban and Resource Protection Areas classifications of the Lee Plan with the Privately Funded Infrastructure Overlay and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.

I. The proposed conditions below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting which was duly advertised, constituted and assembled the 29th day of August, 1994, that the Development of Regional Impact Application for Development Approval submitted by Westinghouse Bayside Communities, Inc., now known as Pelican Landing Communities, Inc., hereinafter referred to as "Developer" or "Applicant", is hereby ordered Approved subject to the conditions, restrictions, and limitations which follow. For the purposes of this Development Order, the term "developer" shall include his/her successors or assigns, and all references to County Ordinances and codes include future amendments.

A. Historical/Archaeological Sites

1. The Zenith Mound Archaeological Site (State Master File #8LL1436) and the Johnson Cemetery (State Master File #8111440) will be preserved in perpetuity and will be recorded as "preserve" on all appropriate plats, site plans, and the Master Development Plan for the Pelican Landing DRI.

2. If any additional archaeological/historical sites are uncovered during development activities, all work in the immediate vicinity of such sites will cease. The developer shall immediately contact the Florida Department of State, Division of Historical Resources, the SWFRPC, and Lee County and advise them of the discovery. The developer will have a State-certified archaeologist determine the significance of the findings and recommend appropriate preservation and mitigation actions, if necessary.

B. Housing

1. No mitigation for affordable housing is required as a result of this development. Based on available supply, there is no unmet affordable housing need for either very low or low income households resulting from this development in Planning Horizon I (through December 1997). Utilizing supply data not adjusted to account for the fact that housing sells for less than the listed price, Planning Horizon II (January 1998 through December 2002) would have an unmet need of 99 affordable units for very low income and no unmet need for low income households. Utilizing supply data

adjusted to account for the fact that housing sells for less than the listed price, Planning Horizon II would have an unmet need of only 38 affordable housing units for very low income households and still no unmet need for low income households. This number of needed units for Planning Horizon II, using either the unadjusted or adjusted housing supply data, is below the level of regionally significant impact as determined by DCA and SWFRPC.

These findings are in accordance with applicable DCA and SWFRPC policy. The basis of analysis for determining unmet need is the 1991 DCA agreed upon draft methodology for determining affordable housing demand study, and need. The level of regionally significant impact is SWFRPC policy, based upon DCA rules and guidelines. The supply adjustment figures mentioned above are based on actual sales prices relative to listed prices. Affordability thresholds for owner occupied affordable housing are determined using PITI (Principal, Interest, Taxes, and Insurance) calculations methodology as outlined in the DCA 1991 Draft methodology.

C. Hurricane Preparedness

1. Within six months, after the effective date of this DRI Development Order, the developer shall provide and connect a portable diesel powered generator for the Gateway Elementary School. The generator must be equipped with a fuel tank, capable of generating enough power to handle the demands of ventilation fans, lighting, life safety equipment (alarms and intercom), and refrigeration and cooking equipment. The developer will be responsible for the initial electrical hook-up costs. The selection of the generator will be in coordination with Lee County Emergency Management Staff.

2. The Lee County Emergency Management staff will act as a liaison between the developer and the Lee County School District staff, and will make all of the necessary arrangements for the location of the generator on Lee County School Board property.

3. The provision of the generator serves to mitigate the shelter and evacuation impacts of the project at buildout. Should Lee County ever adopt an impact fee, or other type of levy or assessment to provide funding for shelter space and improvements thereto, the developer will be entitled to a credit against the fee or levy in the amount of the cost of the generator, if eligible under the terms of that impact fee or levy.

4. The developer must notify all purchasers of real property within the residential portions of development, through the restrictive covenants, of the potential for storm surge flooding in feet above the Base Flood Elevation, according to the National Weather Services' storm surge model "SLOSH", and the National Flood Insurance Program.

5. The developer must prepare, in conjunction with Lee County Emergency Management and Division of Natural Resources staff, a brochure which advises all marina owners of the measures that can be taken to minimize damage in the event of a hurricane. This brochure must address how boat owners can minimize damage to their vessels, the marina site, neighboring properties and the environment. The brochure must be provided to all boat owners and users at the marina.

6. Prior to the issuance of a Certificate of Occupancy for the Hotel, the developer or the hotel owner/manager must prepare a written hurricane preparation and evacuation/sheltering plan. This plan will be prepared in conjunction with Lee County Emergency Management Staff and must be coordinated with the hurricane evacuation plan for the overall DRI.

7. The Property Owner's Association must host an educational seminar, and will be responsible for obtaining the place for the seminar and for providing the invitations to the homeowners. The time will be coordinated with the Lee County Emergency Services staff, who will provide the education and information at the seminar and will advise the owners of the risks of natural hazards and the action they should take to mitigate the inherent dangers.

8. The developer must develop a hurricane evacuation plan for the DRI. The hurricane evacuation plan shall address and include: a) operational procedures for the warning and notification of all residents and visitors prior to and during a hurricane watch and warning period; b) the educational program set forth in condition 7 above; c) hurricane evacuation; d) the method of advising residents and visitors of hurricane shelter alternatives including hotels and public hurricane shelter locations; e) identification of the person(s) responsible for implementing the plan; and f) how the private security force will be integrated with the local Sheriff's personnel and the Division of Public Safety. The plan shall be developed in coordination with the Lee County Emergency Management officials and must be found sufficient by those officials within six months after the effective date of the DRI DO.

9. The developer, and any successor landowner, will pay any All Hazards Tax properly levied by Lee County to provide for shelter space, upgrades to shelters, and to address other natural disasters.

D. Marina Facilities

1. The developer must create a conservation easement precluding the construction of additional docking facilities beyond those specifically authorized in this Development Order. This conservation easement will be in addition to the 4,000 foot conservation easement already required in Spring Creek. The location and

extent of the conservation easement will be contingent upon navigability of the waterway, and will be established in association with the Florida Department of Environmental Protection (FDEP) permits.

2. All docking and dry storage facilities must be constructed in accordance with the terms and conditions of any FDEP permit or lease, and in accordance with any Lee County dock permit.

3. The developer has constructed dock and channel markers within Estero Bay. The Lee County Division of Natural Resources Management will be permitted to mount regulatory signs on the docks and channel markers owned by the developer. Lee County will be responsible for insuring that the addition of the regulatory signs does not cause the developer to be in violation of any permit condition or FDEP, Coast Guard, or other agency regulation. The regulatory signs will remain the property and maintenance responsibility of the Lee County Division of Natural Resources Management.

4. The marina operator must dispense manatee awareness brochures to all users of the marina facilities. The brochures must also include information regarding channel locations, proper boating routes, and shallow water habitats to be avoided.

5. The developer and marina operator must insure that the marina lighting is directed away from adjacent mangroves and estuarine systems to reduce any negative impacts to the wildlife using these areas.

6. The marina operator will remove or cause to be removed from the marina any boat operator observed violating the guidelines set forth in the manatee awareness brochures or Lee County regulations regarding the protection of manatees.

7. The developer must designate and reserve one wet slip for the Florida Marine Patrol or the Lee County Sheriff's Special Response Unit, if needed by these agencies.

8. The shuttle boat captain and marina operator must keep a log of all manatee sightings. The log must reflect the locations, time and date of the sighting, the number of manatees, and the nature of their activity if it can be determined. The log should also note the name of the person recording the sighting. This information must be forwarded to Lee County and FDEP on a periodic basis.

9. The developer must construct an educational board on a Kiosk at the Beach Park. The educational board will be created in conjunction with the Lee County Division of Natural Resources Management, Marine Sciences Program and Turtle Time.

10. The developer will comply with all water quality monitoring requirements imposed by the FDEP and the SFWMD.

11. Any boat wash areas must have a closed loop system that captures and recirculates the water through a filtration or other acceptable system. Any boat repair and maintenance facilities must be in an enclosed, roofed, impervious surfaced area to limit the run-off of contaminated water during a storm event.

12. Once a year the marina operator shall host an Educational and Hurricane Preparedness Workshop for all tenants in the wet slip area. The marina operator shall provide the facility for the seminar and must insure that all tenants are invited. The marina operator will establish the date and time for the workshop in conjunction with Lee County Emergency Management and the Lee County Division of Natural Resources Management, Division of Marine Sciences. Lee County will provide a trained representative who will educate the tenants on natural resources awareness, manatees, safe boating practices, and on proper procedures, prior to and during a hurricane.

13. The dry storage facilities must be located in a building or structure which is designed and constructed to meet all requirements of the Standard Building Code, as adopted by Lee County.

E. Vegetation and Wildlife/Wetlands

The developer has conducted Protected Species surveys in accordance with the Florida Game and Fresh Water Fish Commission (FGFWFC) guidelines and the Lee County Land Development Code. These surveys identified the presence of the following protected species: bald eagle, wood stork, little blue heron, tricolored heron, reddish egret, snowy egret, white ibis, piping plover, Southeastern snowy plover, least tern, American oystercatcher, black skimmer, brown pelican, Atlantic loggerhead sea turtle, and gopher tortoise.

1. There were three bald eagles' nests of concern prior to development order adoption. One nest is on the Pelican Landing property. The other nests are within 1,500 to 1,600 feet of Pelican Landing. The buffers that will affect Pelican Landing property will be established in an eagle habitat management plan.

Prior to development within 2,500 feet of any eagle nest, the Developer shall prepare an eagle management plan which shall be reviewed by DCA, SWFRPC, FGFWFC, Lee County, and USFWS. Said groups shall have a thirty day review period and shall provide all comments to Lee County in writing, which shall have the final approval authority. If a proposed management plan includes development within 750 feet of an eagle's nest, the plan must also be submitted to the Lee County Eagle Technical Advisory Committee (ETAC). ETAC will review the plan and forward recommendations to the FGFWFC and USFWS.

The 2,500 foot limitation is intended to be a temporary restriction to insure the submission and approval of a management plan on a timely basis. The final primary and secondary buffer

zones may be less than 2,500 feet. An eagle management plan will be included as part of an upland habitat protection area management plan.

2. A local development order for the Hickory Island beach park has been issued that permits construction of beach park infrastructure. This development order included a protected species survey and phased Preliminary Management Plan (PMP). The PMP incorporated Lee County Division of Natural Resources Management (DNRM) and Florida Game and Fresh Water Fish Commission (FGFWFC) recommendations.

The PMP requires the developer to provide the county with a conservation easement over the entire parcel, except for the active building areas approved through the local development order. The PMP permits a refinement of the conservation easement boundaries after completion of a one year utilization study, the final conservation easement shall be consistent with the provisions of Section 704.06, Florida Statutes.

The objectives of this one year study were: 1) determine shorebird utilization based on detailed surveys and prepare a shorebird management plan, 2) analyze beach vegetation and prepare a maintenance plan, and 3) monitor beach use by Pelican Landing visitors. Additionally, the PMP requires surveys for identification and protection of sea turtle nests, the construction of three osprey platforms, and a review of the elements of the overall plan to be conditioned on the DRI DO.

As a condition of DRI approval the County and FGFWFC shall review and approve the results of all studies and surveys required for implementation of a Final Management Plan required by the PMP approved as part of local development order 90-10-003.00D. These approvals shall be obtained prior to Certificate of Compliance for local development order #90-10-003.00D, or new/amended local development orders on the beach park. The developer shall utilize best efforts to obtain the approval of the final management plan within 18 months of the effective date of this Development Order.

3. The projected gopher tortoise burrow count is 439, based on an estimate of FGFWFC habitat coverages. Using this figure and the FGFWFC habitat protection guidelines, 75 acres of gopher tortoise habitat must be protected.

The developer will set aside a 78± acre area of xeric scrub and pine flatwoods to mitigate the impacts to the upland gopher tortoise habitat. This area will be known as the Pelican Landing Eco-Park. The Eco-Park area contains significant portions of the xeric oak habitat existing on the Pelican Landing DRI site.

A Gopher Tortoise Population Study and Management Plan was submitted to the Florida Game and Fresh Water Fish

Commission on or about December 22, 1993. The Developer shall submit a copy of the management plan to the DCA, SWFRPC, and Lee County for review. The agencies shall have a thirty day review period. The agencies shall provide all comments regarding the management plan to Lee County in writing which shall have the final approval authority. The Developer has submitted for an Incidental Take Permit for the gopher tortoises located outside of the Eco-Park in the undeveloped portion of Pelican Landing. The Developer shall obtain an Incidental Take Permit prior to proceeding with development within gopher tortoise habitat areas.

The gopher tortoises addressed by the Incidental Take Permit shall be relocated to the Eco-Park, or other appropriate open space areas within Pelican Landing. The Eco-Park mitigates for regional impacts to the gopher tortoise population and xeric scrub within the Pelican Landing DRI.

4. All areas designated as Preserve on the adopted Map H must remain undeveloped and be owned, maintained, and managed by an Improvement District or a similar legal entity. No lot lines shall be allowed within any Preserve area. The following uses are permitted within Preserves: habitat management activities, hiking and nature study, outdoor education, recreational fishing, gates and fencing, and boardwalks limited to pedestrian use. Trimming of mangroves for residential visual access to Estero Bay or Spring Creek shall be prohibited in wetland areas #14 and #21 (as identified in DRI ADA) and Bay Cedar Phase II (along Spring Creek).

5. Should any orchids, wild pine air plants, Florida Coonties, Catesby's lilies, leather ferns, royal ferns, or cabbage palms with golden polypody and shoestring ferns be located within development areas, best efforts must be used to relocate these plants to open space and landscaped areas.

6. As part of local development order approval for any phase of the development, an invasive exotic vegetation removal and maintenance plan must be submitted to the Division of Natural Resources Management for approval. At a minimum, this plan must be structured to provide for the phased removal of invasive exotic vegetation and maintenance to control exotic re-invasion within the wetland and upland preserve areas. Removal within preserve areas may be done on a pro rata basis as phased local development orders are obtained.

7. The existing Pelican's Nest golf course includes native vegetation along the rough and between golf holes. The applicant must continue to incorporate the native vegetation into the design of future golf holes, where feasible. Native vegetation has been retained on individual lots and between tracts in the existing developed area of Pelican Landing. Where feasible, the applicant will continue to incorporate native vegetation into the open space and landscaped areas.

8. The applicant must design the golf course and conduct maintenance, which includes fertilization and irrigation, in a manner which is sensitive to the water and nutrient needs of the native xeric vegetation in and around the golf course. However, this condition will not be interpreted in a manner which forces the applicant to jeopardize the health and viability of the golf course.

9. Upon approval of the management plans referenced in the above, the approved management practices shall then be considered a part of this development order for enforcement purposes, and shall be enforceable in the same manner as a condition of this development order.

10. This project may result in the filling of not more than 8 acres of wetlands. The mitigation for the impact to wetlands will be determined at the time of final permitting, but the mitigation should include the removal of exotic invasives, the restoration of historic hydroperiods, and a total of not more than ten acres of littoral zone plantings.

F. Solid/Hazardous/Medical Waste

1. All storage, siting, and disposal of hazardous wastes and/or hazardous materials must be accomplished in accordance with federal, state, and local regulations. The business owner/operator is responsible for compliance with all permitting, reporting, emergency notification provisions and other regulations relating to hazardous materials and hazardous wastes.

2. All business owners and operators must insure that regulated substances are loaded, off-loaded and stored in an area that is curbed and provided with an impervious base. The impervious base must be maintained free of cracks and gaps so as to contain any spills or leaks.

3. Outdoor storage of hazardous waste is prohibited.

4. Restaurants must be outfitted with grease traps or approved equivalent systems. The owner/operators of any restaurant must follow all applicable codes and regulations for cleaning and maintaining grease traps.

5. If any hotel pool utilizes gaseous chlorine, the pool must be equipped with chemical sensors, alarm devices, or other comparable equipment. The hotel owner/operator shall be responsible for compliance with this requirement and notice of this responsibility/obligation must be included on all deed transfers or lease agreements.

6. Any business that generates hazardous waste defined by the Code of Federal Regulations 40 CFR Part 261, shall notify the

Division of Natural Resources Management for an assessment as required by Section 403.7225, Florida Statutes. This assessment will address any deficiencies in the management practices of hazardous waste generated at the facility.

7. The developer, or any subsequent owner of the golf course, must insure that the golf course maintenance equipment is handled in accordance with all federal, state and local regulations. Specifically, the developer will insure that all wash down facilities comply with FDEP rules regarding chemical residue, and insure the continued recycling of motor oil from maintenance equipment, and insure recycling of used motor oil, used oil filters, anti-freeze, lead acid batteries, cleaning solvents, shop rags, and aerosol cans.

8. The developer must investigate the feasibility of mulching trees and brush for on-site needs.

9. The developer/property owner of each commercial parcel which will be used to store, manufacture or use hazardous materials, shall contact the Lee County Office of Emergency Management, Hazardous Material Representative, prior to obtaining a development order, to discuss the proposed development in relation to potential type, use, and storage of hazardous materials which will be located on the premises.

10. If required by federal, state and/or local regulations:

a. The developer/property owner shall prepare or have available material safety data sheets (MSDS) and submit either copies of MSDS or a list of MSDS chemicals to the appropriate fire department or district and to the Lee County Division of Public Safety.

b. The developer/property owner shall establish an emergency notification system to be used in the event of a hazardous material release.

G. Stormwater Management

1. The surface water management system must be designed, constructed and operated in accordance with the pertinent provisions of Chapters 373 and 403, Florida Statutes; Chapter 40E, Florida Administrative Code; and the South Florida Water Management District "Basis of Review", and any pertinent local regulations regarding the design, construction and maintenance of the surface water management system. This condition applies to anyone obtaining a local Development Order within Pelican Landing. The Bayside Improvement District (a district formed pursuant to Chapter 190, Florida Statutes), must insure that the portion of the system under the ownership and control of the district is operated in accordance with the pertinent portion of the regulatory provisions cited above, and any permit

(construction or operation) issued by the SFWMD. Individual lot owners with on-site wetlands or stormwater retention or detention areas under their control must comply with the pertinent portion of the regulatory provisions cited above and any permit issued by the SFWMD.

2. Water Control Structures must be installed as early in the construction process as practicable to prevent over-drainage or flooding of preserved wetland areas. If the SFWMD establishes a construction schedule or scenario that is contrary to this condition, the permit requirement of SFWMD will control.

3. Any shoreline banks created along on-site stormwater wet detention lakes must include littoral zones constructed consistent with SFWMD requirements. The shoreline banks must be planted in native emergent and submergent vegetation. The developer must establish and maintain, by supplemental planting if necessary, 80 percent cover by native aquatic vegetation within the littoral zone for the duration of the project. The littoral zone will include, at a minimum, the area between high water and ordinary low water.

4. The Bayside Improvement District, and/or all property owners, must undertake a regularly scheduled vacuum sweeping of common streets, sidewalks and parking facilities within the development.

5. The developer must implement the best management practices for monitoring and maintenance of the surface water management systems in accordance with Lee County and South Florida Water Management District guidelines.

6. The SFWMD shall establish all internal surface water management and wetland systems. The developer must set aside all internal surface water management and wetland systems as private drainage easements, common areas, or preserves. These areas must also be identified as specific tracts on the recorded final plat or some other legally binding document acceptable to the County Attorney's office.

H. Transportation

1. Significant Impact

a. The traffic impact assessment for this project assumes the development parameters and land uses shown in Attachment B, "Pelican Landing DRI Development Parameters". The assessment indicates that the significantly impacted roadways and intersections described below will be operating below acceptable levels of service at the end of Planning Horizon I (1997) and buildout (2002). Each annual monitoring report, described in Paragraph H.4, must reflect whether the roadways and intersections described below are significantly impacted or are projected to be significantly impacted by this project in the following year.

b. The Pelican Landing DRI is projected to significantly and adversely impact (as defined by Lee County Administrative Code AC-13-16, dated August 8, 1991, see Attachment C) the following roadways and intersections:

Planning Horizon I (1997)	Needed Improvement
US 41/Corkscrew Road	- Signal retiming
US 41/Williams Road	- Signalization, if warranted
US 41/Coconut Road	- Signalization, if warranted
US 41/Pelican Commercial Entrance	- Northbound left turn lane - Southbound right turn lane - Eastbound right turn lane
US 41/North Pelican Entrance	- Northbound left turn lane - Southbound right turn lane - Eastbound left and right turn lanes - Signalization, if warranted
US 41/Pelican Landing Parkway/ Old 41	- Southbound dual left turns - Signal retiming
US 41/Pelican's Nest Drive	- Northbound left and right turn lanes - Southbound left and right turn lanes - Eastbound left and thru/right lanes - Westbound left and thru/right lanes - Signalization, if warranted
US 41/Terry Street	- Signal retiming
US 41/Bonita Beach Road	- Signal retiming
Coconut Road/Spring Creek Road	- Separate NB left & right turn lanes - Separate EB thru and right turn lanes - Separate WB thru and left turn lanes

Buildout (2002)	
Corkscrew Road - Three Oaks Parkway to I-75	- Widen to 4 lanes
Old 41 - Bonita Beach Road to Terry St.	- Constrained (no widening possible; maximum v/c ratio of 1.85 per 1993 Lee Plan Policy 22.1.9)
US 41 - Immokalee Road to Old 41 (Collier County)	- Widen to 6 lanes

- Bonita Beach Road to West Terry Street	- Widen to 6 lanes
- West Terry Street to Pelican's Nest Drive	- Widen to 6 lanes
- Coconut Road to Williams Rd.	- Widen to 6 lanes
- Constitution Boulevard to Alico Road	- Widen to 6 lanes
US 41/Corkscrew Road	- Separate EB left and thru/right lanes - Westbound dual left turn lanes - Signal retiming
US 41/Williams Road	- Signalization, if warranted
US 41/Coconut Road	- Separate EB left and right turn lanes - Signalization, if warranted
US 41/Pelican Commercial Entrance	- Northbound left turn lanes - Southbound right turn lane - Eastbound right turn lane
US 41/North Pelican Entrance	- Northbound left turn lane - Southbound right turn lane - Eastbound left and right turn lanes - Signalization, if warranted
US 41/Pelican Landing Parkway/ Old 41	- Southbound dual left turn lanes - Northbound dual left turn lanes - Eastbound thru/right turn lane - Westbound two thru lanes - Signal retiming
US 41/Pelican's Nest Drive	- Northbound left and right turn lanes - Southbound left and right turn lanes - Eastbound left and thru/right lanes - Westbound left and thru/right lanes - Signalization, if warranted
US 41/Terry Street	- Northbound dual left turn lanes - Separate WB thru and right turn lanes - Signal retiming
US 41/Bonita Beach Road	- Signal retiming
Coconut Road/Spring Creek Road	- Separate NB left and right turn lanes - Separate EB thru and right turn lanes - Separate WB thru and left turn lanes

2. Mitigation

a. The developer will pay impact fees as defined in the Lee County Land Development Code to mitigate Pelican Landing's transportation impacts on the non-site related roads and intersections set forth in Section H.1.b. above. Road Impact Fees are estimated to be $8,783,000 for the land uses identified in Attachment B. Road Impact Fee payments represent the DRI's proportionate share payment for all road and intersection improvements identified in Condition H.1.b as significantly impacted by this project and operating below the adopted level of service standard by 2002. Estimated Road Impact Fees from this project exceed the community's estimated proportionate share dollar amount of all significantly impacted roadway improvements.

If the Land Development Code Chapter governing Impact Fees is repealed, reduced, or made unenforceable by court petition, the Pelican Landing DRI will continue to pay, per individual permit, an amount equivalent to Road Impact Fees prior to such repeal, reduction or court petition. If payment is not made consistent with that schedule, then a substantial deviation will be deemed to occur, and the traffic impacts of Pelican Landing DRI must be reanalyzed to determine appropriate alternative mitigation prior to the issuance of further building permits for the Pelican Landing DRI.

All road impact fee monies paid by the Pelican Landing DRI after adoption of this DRI Development Order will be applied by Lee County toward the non-site related improvements included in Transportation Condition H.1.b., provided those improvements are deemed necessary to maintain the adopted level of service standards and are included in the County's Capital Improvement Program. Should the identified improvements be funded through other sources, in whole or in part, or deemed unnecessary to maintain the adopted level of service standards, Lee County may apply any Pelican Landing impact fees not required for those specific improvements to other improvements consistent with the requirements of the Lee County Land Development Code.

b. If through the local development approval process, the developer constructs, with the approval of the Lee County DOT, an intersection or roadway improvement identified in Paragraph H.1.b, those improvements may be eligible for Road Impact Fee credits. The determination of whether such credits will be granted will be made consistent with the procedures outlined in the Land Development Code.

c. The developer must dedicate 60 feet of right-of-way for Burnt Pine Drive North, from Pelican Landing Parkway to Coconut Road, a distance of 6,926 feet; and for Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive, a distance of 2,326 feet. The developer must construct, as a two-lane

access road, Burnt Pine Drive North from Pelican Landing Parkway to Coconut Road, and Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive. Credits, if any, for the right-of-way dedication and construction identified above will be issued consistent with the procedures outlined in the Land Development Code. Dedication of the roadway right-of-way and construction of Burnt Pine Drive will occur as follows:

1) Burnt Pine Drive South from Pelican Landing Parkway to Pelican's Nest Drive: coincident with the Certificate of Compliance for the commercial parcel located in the northeast quadrant of the intersection of Burnt Pine Drive South and Pelican's Nest Drive.

2) Burnt Pine Drive North from Pelican Landing Parkway to Pelican Landing North Entrance: under construction no later than December 31, 1998.

3) Burnt Pine Drive North from Pelican Landing North Entrance to Coconut Road: should be under construction no later than December 31, 1999.

d. The developer agrees to reserve 25 feet of additional right-of-way along the south side of Coconut Road from US 41 west to Spring Creek Road to ensure that improvements to Coconut Road are not precluded. Such right-of-way will be dedicated to Lee County if and when requested. Credits, if any, for the right-of-way dedication will be granted at the time of dedication, and must be consistent with the Land Development Code in effect at that time.

e. As a mitigation option, the developer may, with the concurrence of Lee County, make an advance payment of a portion of Pelican Landing's total Impact Fees up to 2 million dollars. Lee County would then utilize the advance payment to accelerate the Project Design & Environmental (PD&E) Study for US 41 from the Collier County line to San Carlos Boulevard. The PD&E Study is currently scheduled in FDOT's Tentative Five Year Work Program for fiscal year 1998/99 (WPI #1114700).

3. Access and Site-Related Improvements

a. The developer will be fully responsible for site-related roadway and intersection improvements required within the Pelican Landing DRI. The developer must pay the full cost for any site-related intersection improvements (including but not limited to signalization, turn lanes and additional driveway through lanes) found necessary by Lee County or the Florida Department of Transportation (FDOT) permitting requirements for the Community's access intersections on US 41, Coconut Road and Spring Creek Road.

b. The Pelican Landing DRI site access points will be located and developed consistent with the Florida DOT's access management classification for US 41, unless otherwise approved by

the Florida DOT. Improvements to those access points will be consistent with the Department's permitting requirements.

c. Site-related improvements will be as defined in the Land Development Code.

d. Except for Spring Creek Road and Coconut Road, all roads located within Pelican Landing will be maintained by the Bayside Improvement District (BID), unless subsequently dedicated to and accepted by Lee County.

4. Annual Monitoring Report

a. The developer will submit an annual traffic monitoring report to the following entities for review and approval: Lee County, the Florida Department of Transportation (FDOT), the Florida Department of Community Affairs (FDCA), and the Southwest Florida Regional Planning Council (SWFRPC).

The first monitoring report will be submitted one year after the date of the issuance of this DRI Development Order. Reports must be submitted annually thereafter until buildout of the project.

b. The monitoring report will be designed in cooperation with the Lee County Department of Transportation, FDOT, the SWFRPC and the FDCA prior to the submittal of the first report. The methodology of the annual traffic monitoring report may be revised if agreed upon by all parties.

c. The annual traffic monitoring report must contain the following information:

(1) P.M. peak hour existing volumes and turning movement counts at all site access onto US 41 and Coconut Road, and a comparison to the project trip generation assumed in the DRI analysis.

(2) For existing conditions and a one-year projection, P.M. peak hour peak season turning movement counts, Pelican Landing's estimated share of traffic, and an estimated level of service for the intersections identified in Paragraph H.1.b as impacted by this project.

(3) For existing conditions and a one-year projection, P.M. peak hour peak season traffic counts, Pelican Landing's estimated share of traffic, and an estimated level of service for the roadway links identified in Paragraph H.1.b as impacted by this project through buildout.

(4) An estimate of when the monitored roadways and intersections will exceed adopted levels of service.

(5) A summary of the status of road improvements assumed to be committed in the ADA, including the following:

Roadway	Segment	Improvement	Schedule
Pelican's Nest Dr.	Pelican's Nest to US 41	0 to 2	Planning Horizon I (1997/98)
Corkscrew Road	I-75 to Treeline Ave.	2 to 4	Planning Horizon I (1997/98)
US 41	Alico Rd. to Island Park Rd.	4 to 6	Planning Horizon I (1997/98)
US 41	Island Park Rd. to south of Daniels Parkway	4 to 6	Planning Horizon I (1997/98)
Bonita Beach Road	Hickory Blvd. to Vanderbilt	2 to 4	Planning Horizon I (1997/98)

(6) A summary of the roadway and intersection improvements listed in Paragraph H.1.b that have been constructed, and the program status of the remainder.

d. If the annual monitoring report confirms that the peak season P.M. peak hour traffic on the significantly impacted roadways exceeds the level of service standards adopted by Lee County, or is projected to exceed the adopted level of service standards adopted by Lee County within the forthcoming 12 months, and if the project is utilizing more than 5% of LOS "D" service volume during peak hour peak season traffic conditions, then further local development orders, building permits and certificates of occupancy may not be granted until the standards of the County's concurrency management system have been met. This means that adequate district-wide level of service capacity must be available through 1999. After 1999, significantly impacted individual links must be operating at the adopted level of service, or an improvement to achieve the adopted level of service is scheduled for construction in the first three years of an adopted local government capital improvement program or state work program.

e. If the annual traffic monitoring report confirms that the peak season P.M. peak hour traffic on the segment of US 41 in Collier County from Immokalee Road to Old US 41 exceeds the level of service standard adopted by Collier County and if the project is utilizing more than 5% of level of service D service volume during peak hour, peak season traffic conditions, then further building permits may not be granted until the subject roadway segment is committed for construction by the Florida Department of Transportation and/or Collier County.

f. In the event the developer confirms that no additional development occurred on any portion of the site for the

year, even after the approval of a local development order, they may submit a Letter of "No Further Transportation Impact" in lieu of fulfilling the transportation monitoring portion of the Annual Monitoring Report.

I. Wastewater Management/Water Supply

1. The developer or the Bayside Improvement District must obtain a South Florida Water Management District Water Use Permit, or a Modification to an existing Consumptive Use Permit for any water withdrawals, and for dewatering activities proposed in connection with on-site construction that does not qualify for a No Notice General Permit, under Rule 40E-20.302(4), F.A.C.

2. Builders within Pelican Landing must utilize ultra-low volume plumbing fixtures, self-closing or metered water faucets, and other water conserving devices/methods consistent with the criteria outlined in the water conservation element of the Bonita Springs Utilities, Incorporated, SFWMD Water Use Permit or the water conservation element of any other approved utility provider utilized by the Development.

3. Developers must utilize xeriscape principles in the landscape design of the project to further the conservation of non-potable water.

4. If reclaimed water is available for use within the project to address a portion of the project's irrigation demands, the developer or Bayside Improvement District, as appropriate, must ensure that on-site lakes, wetlands, and the surface water management system are protected in accordance with the requirements of the SFWMD and FDEP.

5. The developer must provide written assurance that any hazardous commercial effluent, generated by the project, will be treated separately from domestic wastewater, and handled in accordance with FDEP regulations.

6. Except for temporary septic tanks for construction trailers or for sales offices/models, septic tanks are prohibited.

7. All potable water facilities, including any on-site potable water treatment system, must be properly sized to supply average and peak day domestic demand, as well as fire flow demand. The facilities shall be constructed and sized in accordance with all pertinent regulations of the FDEP, Lee County, and any Fire Control District with jurisdiction.

8. All irrigation systems constructed for the golf course, landscaped areas and commercial/office portions of the project must designed to accommodate effluent for irrigation use. Reclaimed water, to the extent it is available, must be used to address irrigation needs. The remaining demand will be satisfied

through approved groundwater or surface water withdrawals. Reclaimed water must be used in accordance with all applicable regulations.

J. Police and Fire Protection

1. Construction must comply with the fire protection requirements of all building, development, and life safety codes adopted by Lee County.

2. Facilities qualifying under the Superfund Amendments Reauthorization Act (SARA) Title III and the Florida Hazardous Materials Emergency Response and Community Right to Know Act of 1988, must file hazardous materials reporting applications in accordance with Sections 302 and 312. Each reporting facility must update these applications annually.

3. The developer must provide for the emergency medical service impacts and fire protection impacts generated by the proposed development as defined by Lee County regulations.

4. If access to development is through a security gate or similar device that is not manned 24 hours per day, the developer must install an override switch in a glass-covered box for use by emergency vehicles, or a comparable system that permits emergency vehicles to access the project.

5. The project's impact on fire protection and rescue service delivery will be met by the ad valorem taxes, EMS impact fees and fire impact fees.

III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

1. This Development Order constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Pelican Landing DRI.

2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are incorporated by reference into this Development Order. These documents include, but are not limited to the following:

(a) Pelican Landing Application for Development Approval, stamped Received October 26, 1992;

(b) Pelican Landing DRI sufficiency response, stamped Received February 5, 1993;

(c) Pelican Landing DRI sufficiency response, stamped Received July 6, 1993;

(d) Pelican Landing DRI sufficiency response, dated September 16, 1993; and

(e) Pelican Landing DRI sufficiency response, stamped Received November 22, 1993.

3. Map H, stamped received September 19, 1994, is attached hereto as Attachment A and is incorporated by reference. It is understood that because it is a concept plan it is very general. The boundaries of development areas and location of internal roadways may be modified to accommodate topography, vegetation, market conditions, traffic circulation or other site related conditions as long as they meet local development regulations. This provision may not be used to reduce the acreage of the Eco-Park or other open space or preserve acreages. It is understood that the precise wetland boundaries are determined by the U.S. Army Corps of Engineers, SFWMD, FDEP and Lee County.

4. The Development Order is binding upon the developer(s) and its assignees or successors in interest. Where the Development Order refers to the Bayside Improvement District, lot owners, business owners, or other specific reference, those provisions are binding on the entities or individuals referenced. Those portions of this Development Order which clearly apply only to the project developer are binding upon any builder/developer who acquires any tract of land within Pelican Landing DRI.

5. The terms and conditions set out in this document constitute a basis upon which the developer and the County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.

6. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party by action at law or equity. All costs of such proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

7. Any reference to a governmental agency will be construed to mean any future instrumentality which may be created and designated as successors in interest to, or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

8. If any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision will in no manner

affect the remaining portions or sections of the Development Order which will remain in full force and effect.

9. This Development Order grants limited approval and does not negate the developer's responsibility to comply with all applicable federal, state, regional and local regulations.

10. Subsequent requests for local development permits will not require further review pursuant to Section 380.06, Florida Statutes, unless the Board of County Commissioners, after due notice and hearing, finds that one or more of the following is present:

(a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans which create a reasonable likelihood of adverse regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or

(b) An expiration of the period of effectiveness of this Development Order.

Upon a finding that any of the above is present, the Board must order a termination of all development activity in the development affected by a substantial deviation or expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

11. The project has a buildout date of 2002, and a termination date of 2005. This term is based on a ten year buildout and the recognition that a local Development Order, which is valid for three years, may be obtained in the tenth year.

12. The developer and the Bayside Improvement District may not exercise any rights of condemnation to acquire land within the development commonly known as Spring Creek Village, El Dorado Acres, Estero Bay Shores, Mound Key Estates and Spring Creek Estates.

13. The Administrative Director of the Lee County Department of Community Development, or his/her designee, will be the local official responsible for assuring compliance with this Development Order.

14. The project will not be subject to down-zoning, unit density reduction, intensity reduction or prohibition of development until 2005 as long as the Lee Plan amendment proposed in association with this DRI to upwardly adjust the 2010 Overlay allocations for Subdistricts 801 and 806 is adopted and effective.

If the County clearly demonstrates that substantial changes have occurred in the conditions underlying the approval of the Development Order through public hearings on an amendment to the zoning and/or this DRI Development Order then a down-zoning, unit density reduction, or prohibition of development may occur. These changes would include, but would not be limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

If the companion plan amendment is adopted, Lee County will reserve to this DRI, the appropriate uses from the allocations established for subdistricts (subdistricts 806/801) of the Lee Plan 2010 Overlay until 2005. This reservation has the effect of reserving all of the acreage transferred from Gateway to Pelican Landing for the duration of the Development Order.

15. The developer, or its successor(s) in title to the undeveloped portion of the subject property, will submit a report annually to Lee County, SWFRPC, FDCA and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission. In addition, the report must be consistent with the rules of the FDCA. The first monitoring report must be submitted to the Administrative Director of the DCA not later than one year after the effective date of this Development Order. Further reporting must be submitted not later than one year of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes. The developer must inform successors in title to the undeveloped portion of the real property covered by this Development Order of this reporting requirement. This requirement may not be construed to require reporting from tenants or owners of individual lots or units.

16. Within six months of the effective date of this Development Order, the Developer will apply for an amendment to this Development Order which incorporates the portion of the Spring Creek DRI located west of US Highway 41 into the Pelican Landing DRI. The amendment will contain a description of that portion of the Spring Creek DRI and the conditions of the Spring Creek Development Order which are applicable to the Spring Creek West property. The amendment will not be deemed a substantial deviation under Chapter 380, Florida Statutes. The impacts of the Spring Creek development will not be considered separately or cumulatively in any future change to the Pelican Landing Development Order. A change in the development plan for the Spring Creek property could be a substantial deviation which would require further analysis of Spring Creek West. This amendment is to be adopted solely for the purpose of consolidating Spring Creek West and Pelican Landing under the same Development Order Development Order and none of Spring Creek West's vested rights will be lost because of this amendment.

17. The County will forward certified copies of this Development Order to the SWFRPC, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, the developer must record notice of its adoption in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Resolution approving and adopting this Development Order was offered by Commissioner John Manning, and seconded by Commissioner Douglas St. Cerny and upon poll of the members present, the vote was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Nay
Franklin B. Mann	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 29th day of August, 1994.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: Ray Judah
(Chairman)

ATTEST:
Charlie Green, Ex - Officio Clerk
Board of County Commissioners
_____, Clerk

By: Ruth Trymian
Deputy Clerk

APPROVED AS TO FORM

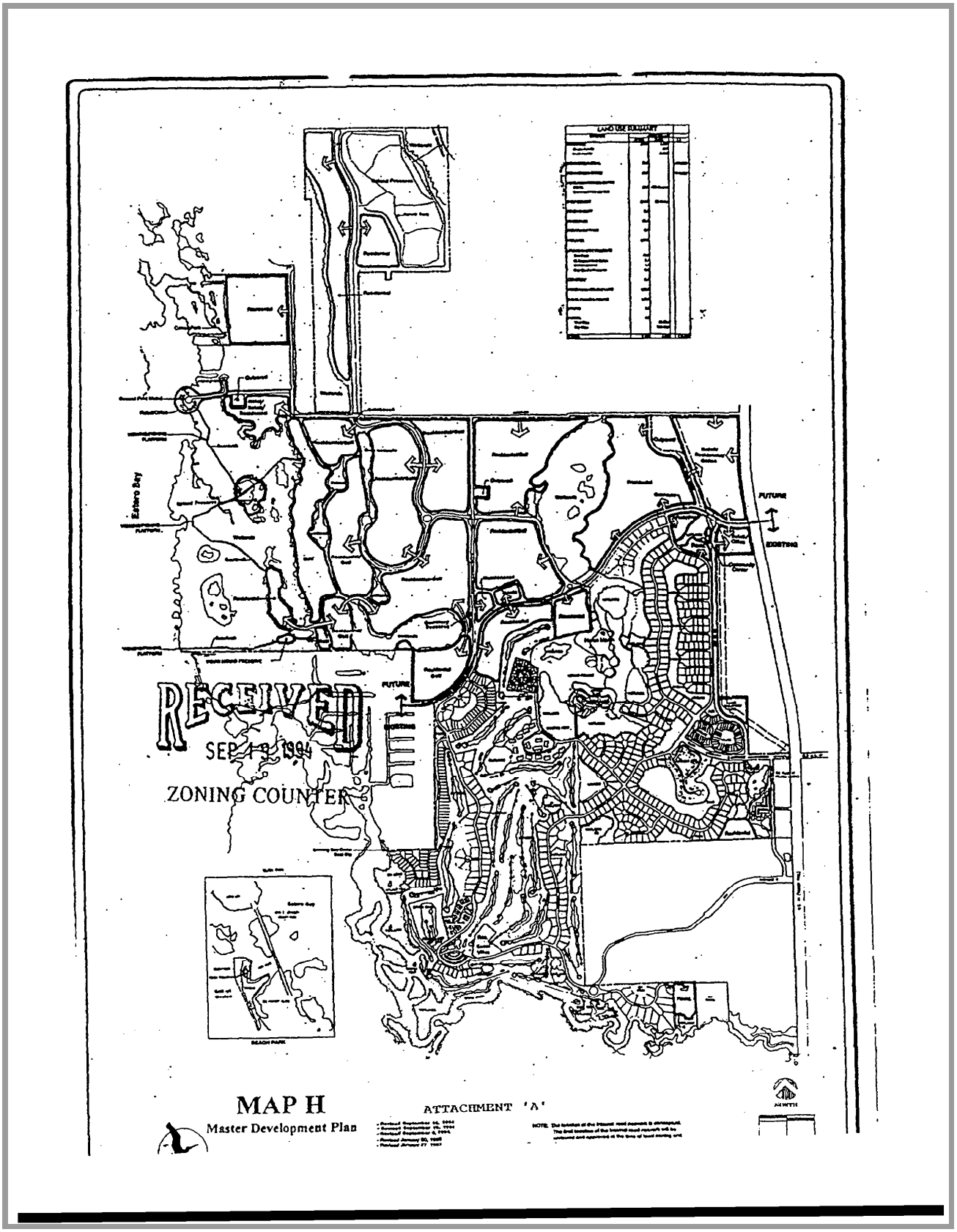
By: Donna Marie Collins
County Attorney's Office

FILED

SEP 26 1994

CLERK CIRCUIT COURT
BY Ruth Trymian D.C.

ZON4796/20-Sep-1994


LAND USE SUMMARY
Estero Bay
FUTURE
EXISTING
RECEIVED
SEP 19 1994
ZONING COUNTER
MAP H
Master Development Plan
ATTACHMENT 'A'

ATTACHMENT "B"

PELICAN LANDING DRI
DEVELOPMENT PARAMETERS

Land Use	Units[1]	Existing (1992	Planning Horizon I (1997)	Buildout Total (2002)
Residential	DU	969	2,433	4,050
Single Family	DU	373	625	665
Multi Family	DU	596	1,808	3,385
Retail[2]	GFA	11,000	291,000	600,000
Office[3]	GFA	40,000	150,000	210,000
Hotel	Rooms	0	450	450
Recreation Uses				
Pelican Nest Golf Course/Clubhouse/ Practice Range	Holes	29	38	38
Range Club Golf Course	Holes	0	9	9
Tennis Center	Courts	0	6	12
Coconut Marina	Boat Slips			
	Wet	24	48	48
	Dry	0	150	150
Redfish Point	GFA	5,000	5,000	5,000
	Boat Slips			
	Wet	15	15	15
Other[4]	Boat Slips			
	Wet	2	2	2

Footnotes:

1 Units
DU - Dwelling Units
GFA - Square Feet of Gross Floor Area
2 Includes conference center, community center and clubhouse/marina
3 Includes "Foundations"
4 Ancillary Use

ZON4796/20-Sep-1994

ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY:	CODE NUMBER:
DEVELOPMENT/PLANNING/ZONING	AC-13-16
TITLE:	ADOPTED:
PROPORTIONATE SHARE CALCULATIONS FOR TRANSPORTATION FACILITY NEEDS RESULTING FROM NEW DEVELOPMENT	AUGUST 21,1991
	ORIGINATOR:
	BILL SPIKOWSKI DEPT. OF GROWTH MANAGEMENT
COUNTY ADMIN:	BOARD CHAIRPERSON:
ROBERT GRAY, ACTING COUNTY ADMINISTRATOR	DOUGLAS ST. CERNY

I. PURPOSE:

This document describes procedures to calculate proportionate share costs for proposed developments. All new development is required to pay road impact fees under the terms of Lee County's Roads Impact Fee Ordinance (No. 85-23, as amended). Some developers/applicants may be required to pay a proportionate share of roadway improvement costs under certain conditions as outlined below. These conditions result from the larger size, use, character, or location of the proposed development. Mitigation of impacts on the county's road system is mandated by the Lee County Comprehensive Plan.

II. SCOPE:

The policies and procedures contained in this code have been prepared to aid the development community and Lee County Commissioners and staff in assessing the impacts of larger new developments on the surrounding road network. This code is supplemental in nature:

A. As to Developments of Regional Impact (DRIs), this code supplements the provisions of Chapter 380, Florida Statutes, and Rule 9J-2.0255, Florida Administrative Code.

B. As to Development Agreements, this code supplements Ordinance No. 90-29.

Traffic analysis methodologies deviating from these procedures must be approved by the Lee County Department of Transportation & Engineering.

III. POLICY/PROCEDURE:

A. Pre-application Meeting
A pre-application meeting between the county and the applicant is encouraged. The purpose of this meeting is to review the methodology and procedures and to determine the study period. This will usually be a PM peak hour analysis; however, other time periods may require analysis. This discussion can be held at the same time as the pre-application meeting for the project's Traffic Impact Statement.

B. Projecting Future Year Total and Development Trips
Two separate methodologies are outlined under this section. The first methodology applies to large projects or developments with build-out periods of longer than five years. For purposes of this analysis, projects generating more than 750 peak hour external trip ends and having build-out periods of 5 years or more are generally considered large, all others are small. This first methodology requires use of the latest Lee County FSUTMS computer model for projecting total and development trips. The second methodology applies to smaller projects and projects with build-out periods of five years or less. For these smaller short-range developments, manual traffic analysis methods should be used in place of the FSUTMS computer model.

ATTACHMENT C

AC-13-16 (Continued)

1. Larger or Long-Term Developments

   a. The FSUTMS computer model should be used to develop traffic volumes for build-out and interim phase years.

      (1) The latest zonal data should be gathered from the Lee County Department of Transportation & Engineering.

      (2) The model's base and future year zonal data can be used for data interpolation of extrapolation to the appropriate project years (in the absence of existing zonal data).

   b. Future year traffic assignments should be developed for development trips and total trips using the FSUTMS model. The following methods are the recommended DRI traffic impact analysis methodologies as listed in Florida Department of Transportation FSUTMS training course materials:

      (1) Development trips can be determined by using a two-purpose trip table with the second purpose representing all trips with at least one end in the development zone or zones.

      (2) Development trips can also be isolated with the selected links analysis method.

   c. The "net impact methodology" is an unacceptable method for determining development trips. Under this method, volumes from a traffic assignment with the development land use in place are subtracted from assignment volumes with zero land use assumed on the development site. The net impact methodology significantly underestimates development trips on each link. On links further from the site, this methodology often results in an illogical negative number of development trips; thus the methodology is not appropriate as the basis for proportionate share calculations.

2. Smaller or Short-Term Developments

   a. For these developments, it is acceptable to use historic growth rates for traffic projection and manual distribution techniques to determine project trip loadings.

      (1) Appropriate traffic growth rates should be determined based on an examination of historical counts available for the impact area.

      (2) Current traffic counts must be collected for all arterial segments in the impact area.

      (3) Current traffic volumes should be projected to the build-out year and the end of each development phase.

   b. Trip generation for the project under study should be estimated using the latest edition of the ITE Trip Generation manual or other figures acceptable to the Department of Transportation & Engineering. It may be appropriate to apply internal capture assumptions for mixed-use developments and pass-by capture factors for commercial uses on arterial roadways. These factors may be based on the ITE Trip Generation manual or other sources acceptable to the Department of Transportation and Engineering.

   c. Development trips should be assigned to surrounding roadways based on the relative trip activity and location of surrounding land uses.

      (1) The potential origins and destinations for development trips and turning patterns at key intersections should form the basis for these manual distributions.

      (2) Trip attenuation along assigned roadways can be accomplished through an analysis of average trip length and consideration of intervening opportunities for "intercepting" trips along designated paths.

      (3) Thorough documentation of distribution procedures and justifications of all assumptions must be presented.

   d. The total traffic projection on each roadway segment in the study area is calculated generally by adding the assigned development traffic to the projected future year volume.

Mitigation Due to "Significance" and "Adversity"

1. If a roadway link is projected to carry a significant number of development trips and total traffic adversely affects the roadway by exceeding the service volume (capacity), a proportionate share of the improvement cost for that link shall be calculated.

2. For roadway links in the impact area, service volumes must be determined.

   a. Each roadway has a specific service volume based on its unique characteristics.

   b. These service volumes must be determined using procedures based on 1985 Highway Capacity Manual.

   c. The FDOT statewide Generalized Level of Service Tables are applicable only to the broadest planning applications; a more detailed LOS analysis must be used for mitigation purposes. Generalized service volumes have been developed for Lee County, and may be used. They are contained in Chapter IX of the 1990 Amendments to the Lee Plan (see Volume 1 of the supporting documentation).

   d. The ARTPLAN program developed by FDOT is another acceptable method of replicating the 1985 HCM arterial analysis.

3. Each roadway link must be analyzed to determine if development traffic has a significant impact on the roadway.

   a. A significant impact is said to occur when development traffic exceeds 5% of the LOS D service volume for that link.

   b. This significance analysis will determine which roadways fall within the impact area and must then be tested for adversity.

4. A roadway link is determined to be adversely affected if total traffic exceeds the LOS D service volume for that link.

D. Roadway Improvement Costs

1. A proportionate share shall be calculated for design, right-of-way, and construction costs for all links where traffic levels are both significant and adverse.

   a. Roadway improvement cost calculations should be based on cost figures developed specifically for the roadway being analyzed. These cost figures are often available for roadway projects under design by state or local agencies.

   b. If specific costs are unavailable, average cost per mile figures for the required type of roadway improvement should be used. Statewide average cost per mile values have been developed by FDOT for each type of roadway improvement; often local average cost per mile figures are also available.

E. Proportionate Share Calculations for DRIs

1. Proportionate shares shall be calculated using the formula developed by the Southwest Florida Regional Planning Council. This formula is similar to the DRI proportionate share formula adopted by the Department of Community Affairs as contained in Rule 9J-2.0255, F.A.C. The formula is as follows:

$$\text{Proportionate Share Percentage} = \frac{\text{(Development Trips - Reserve Capacity on Link)}}{\text{Added Capacity with Improvement}}$$

   a. "Reserve Capacity" is determined by subtracting future year non-development traffic from the road's service volume. A reserve capacity of zero is used if this calculation results in a negative number.

AC-13-16 (Continued)

b. "Added Capacity With Improvement" is the difference between the service volume after the improvement and the service volume before the improvement.

2. The proportionate share percentage is multiplied by the total cost of the roadway improvement for each road link to determine the developer's proportionate share of that improvement.

3. This proportionate share formula is applied to each link on which the development traffic is significant and levels of service are adverse. The sum of these computations is the development's "proportionate share." If this sum is less than the development would pay in road impact fees, it shall not form the basis for an assessment against the development in the DRI or DCI process. If the sum is greater than the development would pay in road impact fees, it will be used in a DRI development order as the figure required to mitigate the development's long-run impact on transportation facilities.

F. Voluntary Proportionate Share Payments in Development Agreements

1. In order to induce Lee County into entering a Development Agreement pursuant to Ordinance No. 90-29, a prospective developer should use this section as the basis for his/her offer to voluntarily construct road improvements or to pay the cost of such improvements.

2. Sections B, C, and D above shall be used to project future travel patterns, to determine "significance" and "adversity," and to estimate roadway improvement costs.

3. Proportionate share payments in Development Agreements shall be calculated by summing the costs of improving each road segment that meets the previously stated tests for "significance" and "adversity," up to a cap of double the road impact fees at current rates for the entire development. The Development Agreement shall be based on the greater of the total costs of needed improvements (as just described) up to the cap of double impact fees, or the proportionate share as calculated under Section E above, whichever is greater.

State of Florida
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify that the foregoing is a true copy of the Minutes of the Board of County Commissioners

Given under my hand and seal this 26th day of September, 1997.

CHARLIE GREEN, CLERK

By Ruth Ingraham
Deputy Clerk

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ATTACHMENT C

EXHIBIT "D"

MINUTES OF MARCH 20, 2018 PLANNING AND ZONING BOARD
FOR FINAL PLAN APPROVAL CASE NUMBER ADD2017-E012

This Final Action Agenda/Minutes is supplemented by electronic recordings of the meeting, which may be reviewed upon request to the Village Clerk. Village Design Review Board meetings from June 30, 2016 forward can be viewed online at http://estero-fl.gov/council/watch-meetings-online/. Staff reports, resolutions, ordinances, and other documents related to this meeting are available at https://estero-fl.gov/agendas/ at the corresponding agenda date.

APPROVED BY THE BOARD
APRIL 17, 2018

FINAL ACTION AGENDA/MINUTES

Planning and Zoning Board Meeting

Village of Estero
9401 Corkscrew Palms Circle
Estero, FL 33928
March 20, 2018 5:30 p.m.

1. **CALL TO ORDER:** 5:30 p.m.

2. **PLEDGE OF ALLEGIANCE:** Led by Chairman Wood.

3. **ROLL CALL:**
Chairman Scotty Wood and Board Members William Campos, Anthony Gargano, Robert King, Marlene Naratil, James Tatooles, and John Yarborough.

Also present: Land Use Counsel Nancy Stroud, Community Development Director Mary Gibbs, Principal Planner Matthew Noble, and Recording Secretary Michelle Radcliffe.

4. **APPROVAL OF AGENDA:**

A motion to approve the agenda was made and duly passed.

5. **BUSINESS:**

(a) Consent Agenda

(1) Approval of the February 20, 2018 minutes.

A motion to approve the Consent Agenda was made and duly passed.

(b) Public Hearings:

Chairman Wood provided information regarding Board business and quasi-judicial hearings. All audience members and staff providing testimony for all hearings were sworn in by Land Use Counsel Stroud. No ex parte communications or conflicts of interest were noted.

(1) Comterra Development, LLC/Coconut Square Lot 5 Hotel Final Plan Approval (ADD2017-E012) (District 1). *Continued from February 20th meeting.* 2340 Walden Center Drive, west of US 41 and south of Coconut Road and approximately 250 feet west of the intersection of Coconut Road and US 41. Applicant is proposing a 128-room hotel in the northwest area of the Pelican Landing DRI. The Pelican Landing zoning resolution requires a Final Plan Approval to verify conformance with the resolution. Public Information Meeting was held January 16, 2018.

Community Development Director Gibbs explained that this item was continued from last month because a question arose on whether the Planning and Zoning Board could provide a decision on this item. She stated that after consultation with Land Use Counsel Stroud, it was determined that the Planning and Zoning Board will provide a recommendation for the Village Council. Ms. Gibbs then provided a brief introduction.

Presentation/Information by: John T. Wojdak, P.E., DeLisi Fitzgerald, Inc., and Neale Montgomery, Esq., Pavese Law Firm.

Mr. Wojdak presented an overview of the project, its current entitlements, and described the deviations requested on the project.

Board Questions or Comments: Questions were asked and comments were given regarding parking; ingress/egress of the property to and from US 41; overbuild of hotels in the Village; and stormwater management.

Public Comment:

Bob Palma and Veglia Palma, Meadowbrook, both expressed concerns on the proposed hotel and spoke against the project.

Vicki Olsen, 23710 Merono Ct, #201, as resident of Estero and a representative of the Coconut Road West Coalition, Estero, expressed concern regarding traffic on Coconut Road and urged the Board to look at the traffic implications at the intersection of Coconut Road and US 41 prior to approving this project.

Neale Montgomery responded to concerns expressed during Public Comment and explained the project approval process with both Lee County and the Village of Estero.

Board Member Naratil noted that if the name of the hotel was divulged, the fears of the residents could be alleviated.

Motion: Move to recommend that Council approve with conditions outlined in the draft resolution: 1) the terms and conditions of Zoning Resolutions Z-94-014 and Z-97-073 remain in full force, except as modified; 2) the development of the hotel and amenities must be in substantial compliance with the 1-page Master Concept Plan, by DeLisi Fitzgerald, Inc., stamped received on January 26, 2018; 3) the deviation from Section 10-261 of the Land Development Code for a 288 square foot trash enclosure is approved; and 4) if it is determined that inaccurate or misleading information was provided to staff or the Planning and Zoning Board or if this decision does not comply with the LDC when rendered, then at any time the Planning and Zoning Board may issue a modified decision that complies with the Code or revoke the decision. If the approval is revoked, the applicant may seek the necessary approvals by filing an application for public hearing in accordance with Chapter 34.

Motion by: Board Member Campos
Seconded by: Board Member Gargano

Action: Recommended that Council approve with conditions outlined in the draft resolution: 1) the terms and conditions of Zoning Resolutions Z-94-014 and Z-97-073 remain in full force, except as modified; 2) the development of the hotel and amenities must be in substantial compliance with the 1-page Master Concept Plan, by DeLisi Fitzgerald, Inc., stamped received on January 26, 2018; 3) the deviation from Section 10-261 of the Land Development Code for a 288 square foot trash enclosure is approved; and 4) if it is determined that inaccurate or misleading information was provided to staff or the Planning and Zoning Board or if this decision does not comply with the LDC when rendered, then at any time the Planning and Zoning Board may issue a modified decision that complies with the Code or revoke the decision. If the approval is revoked, the applicant may seek the necessary approvals by filing an application for public hearing in accordance with Chapter 34.

Vote:
Aye: Unanimous
Nay:
Abstentions:

(2) Arcos Executive Center (DCI2017-E005) (District 4). 10170 and 10150 Arcos Avenue, Plaza Del Sol Commercial Planned Development Parcels B and C, Northeast corner of Corkscrew Road and Three Oaks Parkway. Amendments to the Commercial Planned Development. Deviations from the required building setback and height of architectural features are also requested. Public Information Meeting held June 1, 2017.

Ms. Gibbs reported that Design Review Board Member Bill Prysi sent an e-mail to Board Member Tatooles. There were no other ex parte communications or conflicts of interest noted. Principal Planner Matt Noble provided a brief introduction.

Presentation/Information by: Kristina Johnson, PE, and Richard S. Losee, PE, LAI Design Associates, LLC; Scott Windham, RLA, Windham Studio, Inc.; and James M. Banks, PE, JMB Transportation Engineering, Inc.

Ms. Johnson stated that the applicant is proposing to build a three-story 66,000 square foot executive center containing office and retail and is requesting two deviations: 1) increase the building height from three-stories at 45 feet to three-stories at 52.7 feet and allow a maximum height of 59.93 feet for the architectural features; and 2) increase the maximum building setback from 25-feet for buildings on corner lots to a maximum building setback of 120-feet for the preservation of heritage trees located on the site.

Mr. Windham provided an overview of site features including the pedestrian boardwalk proposed to be built in the shade of the heritage trees. He stated this would be open space used for both the tenants of the building and the public.

Ms. Johnson provided responses to questions from the Public Information meeting held on June 1, 2017 and noted that 27 of the approved uses were removed from the application.

Mr. Banks presented an overview of the applicant's traffic analysis on the proposed project site. Ms. Johnson noted that the applicant will provide its proportionate fair share of the cost to install a traffic signal at the Lowe's intersection.

Board Questions or Comments: Questions were asked and comments were made regarding increased traffic in the area, office building occupancy timeframe, proposed business hours, parking spaces, the building setback, and heritage trees located onsite. Concerns were expressed on the amount of landscaping used to shade the parking lot and the Board suggested that the applicant provide more plants to its landscaping plan when presenting the Pattern Book to the Design Review Board.

Public Comment: None.

Motion: Move to recommend that Council approve with the following conditions: 1) the development of the 66,000 square foot building on Parcels B and C must be substantially consistent with the Master Concept Plan entitled Arcos Executive Center date stamped received March 6, 2018; 2) the previous approval (contained in Resolution Number Z-09-037) including conditions and deviations remain in effect except as modified by the conditions and deviations contained in this approval; 3) Transportation – Puente Lane Signal: Pursuant to a signalization agreement as a part of development order number DOS2002-00172, Plaza Del Sol is responsible for a proportionate share of the cost of the signalization of the intersection of Puente Lane and Corkscrew Road at such time as the required warrants for signalization are met. A signalization agreement, if required by Lee County, may be required prior to a CC (certificate of compliance) being issued for the development order; 5) Maximum Building Height: Maximum Building Height Parcel B and C only: 53 feet or 3 stories (See Deviation 13 for architectural feature height); 6) Pattern Book: The project design must be consistent with the Pattern Book, titled "Arcos Executive Center, Revised March 2018"; 7) Corkscrew Road Buffer: The existing heritage oak trees must be preserved. The landscaping along Corkscrew Road will be done in a manner to highlight the heritage trees; 8) 8. Base Flood Elevation: The finished first floor of the building must meet base flood elevation (AE – EL 16 NAVD) at a minimum plus one foot of free board; 9) Three Oaks Sidewalk Connection: The applicant must provide a

sidewalk connection to the sidewalk on Three Oaks Parkway once the lift station has been relocated and the final grade is determined. Per the agreement between the applicant and Lee County Utilities, the sidewalk connection to the Arcos Executive Center on-site sidewalk system, will be connected to the sidewalk on Three Oaks Parkway by Lee County Utilities as part of their corner restoration after the lift station has been removed; 10) Three Oaks Buffer & Landscaping: Palm trees must be less than 50% of the proposed trees within the right-of-way buffer. All required trees must be a minimum 45-gallon container, 12-foot to 14-foot planted height.

Motion by: Board Member Naratil
Seconded by: Board Member Yarbrough

Action: Recommended that Council approve with the following conditions: 1) The development of the 66,000 square foot building on Parcels B and C must be substantially consistent with the Master Concept Plan entitled Arcos Executive Center date stamped received March 6, 2018; 2) The previous approval (contained in Resolution Number Z-09-037) including conditions and deviations remain in effect except as modified by the conditions and deviations contained in this approval; 3) Transportation – Puente Lane Signal: Pursuant to a signalization agreement as a part of development order number DOS2002-00172, Plaza Del Sol is responsible for a proportionate share of the cost of the signalization of the intersection of Puente Lane and Corkscrew Road at such time as the required warrants for signalization are met. A signalization agreement, if required by Lee County, may be required prior to a CC (certificate of compliance) being issued for the development order; 5) Maximum Building Height: Maximum Building Height Parcel B and C only: 53 feet or 3 stories (See Deviation 13 for architectural feature height); 6) Pattern Book: The project design must be consistent with the Pattern Book, titled "Arcos Executive Center, Revised March 2018"; 7) Corkscrew Road Buffer: The existing heritage oak trees must be preserved. The landscaping along Corkscrew Road will be done in a manner to highlight the heritage trees; 8) 8. Base Flood Elevation: The finished first floor of the building must meet base flood elevation (AE – EL 16 NAVD) at a minimum plus one foot of free board; 9) Three Oaks Sidewalk Connection: The applicant must provide a sidewalk connection to the sidewalk on Three Oaks Parkway once the lift station has been relocated and the final grade is determined. Per the agreement between the applicant and Lee County Utilities, the sidewalk connection to the Arcos Executive Center on-site sidewalk system, will be connected to the sidewalk on Three Oaks Parkway by Lee County Utilities as part of their corner restoration after the lift station has been removed; 10) Three Oaks Buffer & Landscaping: Palm trees must be less than 50% of the proposed trees within the right-of-way buffer. All required trees must be a minimum 45-gallon container, 12-foot to 14-foot planted height.

Vote:
Aye: Board Members Campos, King, Naratil, Tatooles, Wood, and Yarbrough
Nay: Board Member Gargano
Abstentions:

(3) Coconut Point DRI/MPD Tract 1D-3 Hotel (DCI2017-E003) (District 6). 2.16-acre parcel in the Coconut Point Mixed Planned Development at the southwest corner of the intersection of Via Villagio and Sweetwater Ranch Boulevard adjacent to the Estero Fire Station. Amendment to the Coconut Point MPD zoning to add a hotel use to Tract 1D-3 and to increase the maximum height to 55 feet, with deviations. Public Information Meeting held August 15, 2017.

No ex parte communications or conflicts of interest were noted. Ms. Gibbs stated that there was a letter received from the Rapallo Homeowners Association.

Principal Planner Matt Noble provided a brief introduction and stated that staff recommends a continuance on this item due to additional discussions needing to be held on the proposed landscape buffer along the roadway to take into account the views from the Rapallo community as well as concerns raised by the neighbors regarding drainage to the Rapallo lake system.

Presentation/Information by: Ned Dewhirst, PE, Oakbrook Properties; Mike Concilla, Equity, Inc.

Mr. Dewhirst provided background information on the proposed project, introduced the project team, and presented an overview of the planned development area.

Mr. Concilla provided an overview of the proposed site plan.

Mr. Dewhirst presented an overview of requested deviations which included: 1) maximum height to 55-feet; 2) maximum height for limitation on architectural elements for an additional 22-feet (77 feet total); and 3) LDC Section 33-351 landscaping buffers requires 20-foot Type D landscape buffer between commercial and right of way uses, to allow a 15-foot Type D landscape buffer, of which 10-feet will include a maintenance easement. He then explained stormwater drainage on the proposed site and noted that they have been in contact with residents at the Rapallo community and that the developer is taking a proactive stance on drainage concerns.

Board Questions or Comments: None.

Public Comment:

Marcia Green, Rapallo
Anthony Rossi, Rapallo
David Yellen, Rapallo
Joseph Herceg, Rapallo
Frank Moser, Rapallo
Bill Bitonti, Rapallo

Summary of Public Comment: Requested that the Board wait to make a decision until the independent drainage tests are completed and results can be analyzed.

Ms. Gibbs requested that a copy of the study be provided to the Village and reiterated that staff recommends continuance of the request to resolve some outstanding issues including stormwater, Pattern Book, and deviation items. She explained that staff will need to draft conditions for the Board to review prior to approval.

Mr. Dewhirst responded to comments regarding roadway flooding and stated that roads in Southwest Florida are designed to flood.

Motion: Move to continue this item until the April 17, 2018 meeting.

Motion by: Board Member Tatooles
Seconded by: Board Member King

Action: Continued this item to the April 17, 2018 meeting.
Vote:
Aye: Unanimous
Nay:
Abstentions:

6. PUBLIC INPUT: None.

7. BOARD COMMUNICATIONS:

(a) Next Board Meeting April 17, 2018

A motion to adjourn was made and duly passed.

8. ADJOURNMENT: 8:32 p.m.

Michelle Radcliffe, CMC
Recording Secretary

EXHIBIT "E"

RESOLUTION Z-97-037 TOWN CENTER TC LIST
OF PROPERTY DEVELOPMENT REGULATIONS

c. **TOWN CENTER "TC":**

MINIMUM LOT DIMENSIONS

Town Center	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial:			
Office	7,500	100	75
Retail	7,500	100	75
Hotel	22,500	150	150
Community Use	7,500	100	75
Multi-Family, Low-rise	6,500	80	80
ALF	22,500	150	150

MINIMUM SETBACKS

Town Center	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	5	10	0
Pool Deck	5	5	10	5	10	5
Commercial:						
Office	15	20	20	0	10	20
Retail	15	20	20	0	10	20
Hotel	15	20	20	0	15	25
Community Use	15	20	20	0	10	20
Multi-Family Low-rise	10	10	20	20	10	10
ALF	15	20	20	0	15	25

Town Center	Maximum Height (ft.)	Number of Habitable Floors	Minimum Building Separation (ft.)	Maximum Lot Coverage (%)
Clubhouse Area	45	3	15	N/A
Accessory Structures	45	N/A	10	N/A
Pool Deck	N/A	N/A	N/A	N/A
Commercial Office Retail Hotel Community Use	 65 45 65 65	 5 3 5 5	 15 15 20 15	 45 45 45 45
Multi-Family, Low-rise	50	4	20	55
ALF	65	5	20	55

d. **RECREATION, OPEN SPACE, GOLF COURSE, BUFFERS & LAKES -"RO":**

MINIMUM LOT DIMENSIONS

Recreation, Open Space, Golf Course, Buffers & Lakes	Area (sq.ft.)	Depth (ft.)	Width (ft.)
Clubhouse Area	N/A	N/A	N/A
Accessory Structures	N/A	N/A	N/A
Pool Deck	N/A	N/A	N/A
Commercial/Office (per Schedule of Uses)	7,500	100	75

MINIMUM SETBACKS

Recreation, open space, golf course, buffers & lakes	Side (ft.)	Rear (ft.)	Front/ Road (ft.)	Waterbody (ft.)	Preserve (includes upland buffer)	Golf Course (ft.)
Clubhouse area	15	20	20	0	10	0
Accessory structures	5	5	10	0	10	5
Pool Deck	5	5	10	5	10	5
Commercial/Office (per schedule of uses)	15	20	20	0	10	0