

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

DATE: February 24, 2022

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

RE: PINE LAKES COUNTRY CLUB II MHPD
Hearing Examiner Recommendation

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

PINE LAKES COUNTRY CLUB II MHPD

DCI2021-00004

HEARD: December 1 and 2, 2021

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

cc: Michael Jacob, Esq. / County Attorney's Office
Joseph Adams, Esq. / County Attorney's Office
Anthony Rodriguez / Zoning Section
Dirk Danley, Jr. / Zoning Section
Warren Baucom / Economic Development
Anura J. Karuna-Muni / Natural Resources
Jamie Prancing / Community Development
Applicant(s) & Representative(s)
Other Interested Parties

Summary of Hearing Examiner Recommendation

PINE LAKES COUNTRY CLUB II (AKA FRENCH PROPERTY)

(by Kimley-Horn & Associates on behalf of
Equity Lifestyle Properties, Inc.)

Request: Rezone 83± acres from Agricultural (AG-2) to Mobile Home
Planned Development (MHPD) to allow 400 mobile home units
with accessory uses and amenity areas

Location: 10031 & 10021 French Creek Lane

North Fort Myers Planning Community

(District 4)

Size: 83± acres

Recommendation: Approval

Deviations: 1

Conditions of Note: Vehicular Access to Pine Lakes

Public Concerns: Access to Pine Lakes, Over-burdening amenities

Hearing Examiner Remarks

Applicant seeks to develop 400 mobile home sites on vacant land adjacent to the Pine Lakes community in North Fort Myers. Staff recommended approval.

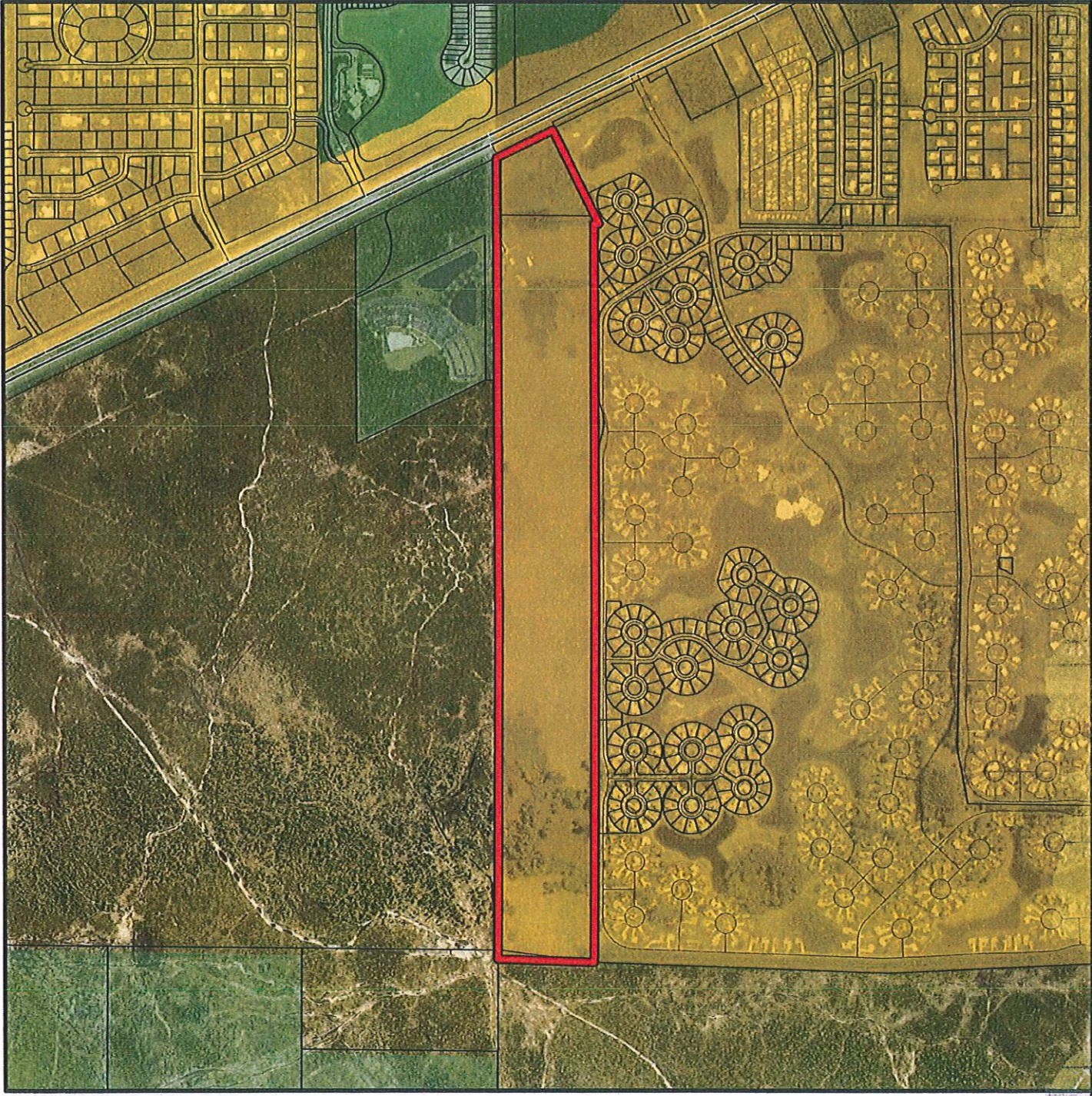
Many Pine Lakes residents oppose the request. The majority of the concerns are outside the scope of zoning review.

Detailed recommendation follows

DCI2021-00004

Future Land Use

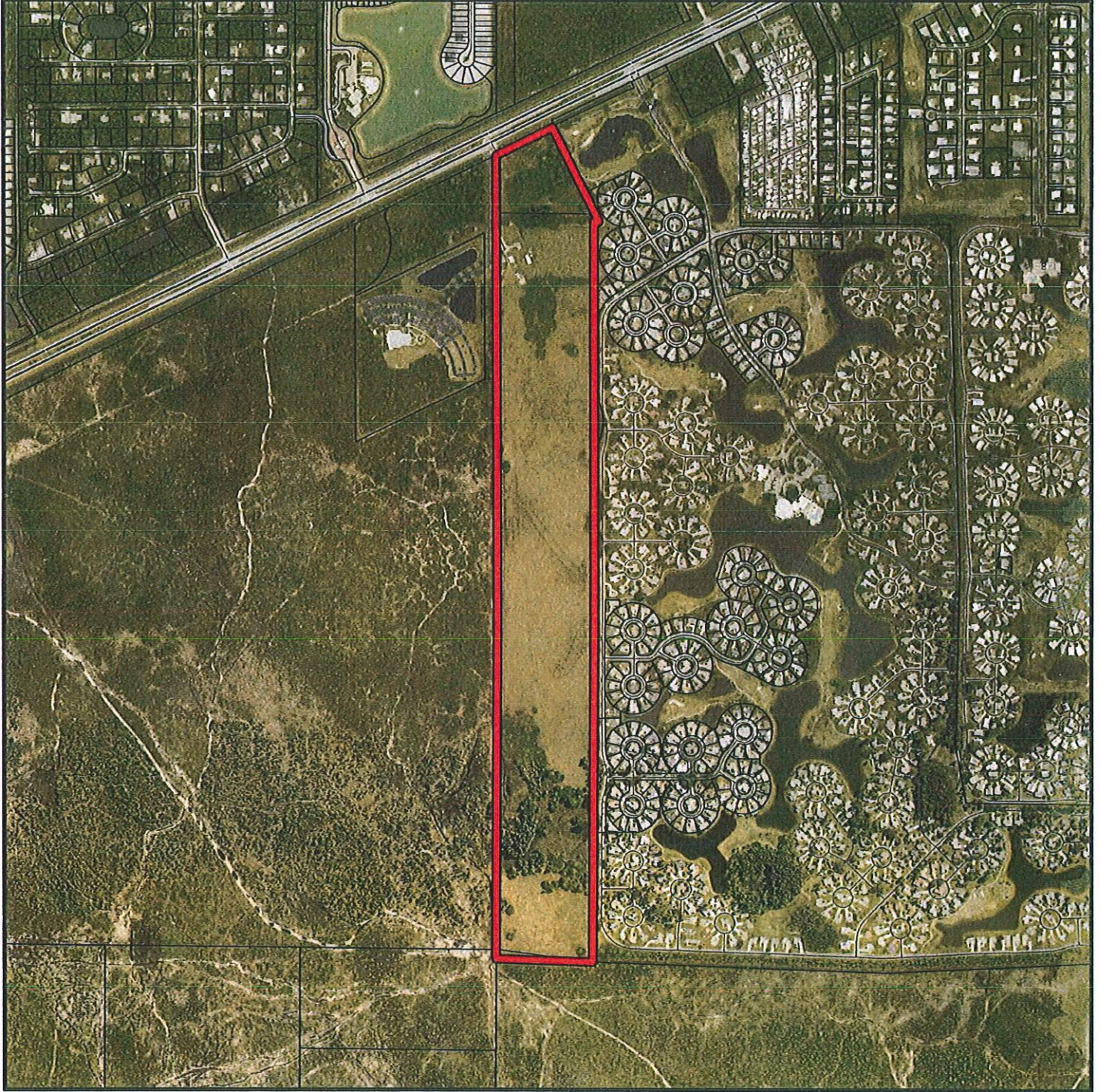
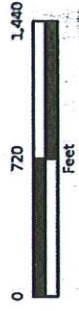
- Subject Property
- Suburban
- Outlying Suburban
- Open Lands
- Wetlands



DCI2021-00004

Aerial

 Subject Property



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2021-00004

Regarding: PINE LAKES COUNTRY CLUB II (AKA FRENCH PROPERTY)

Location: 10031 & 10021 French Creek Lane
North Fort Myers Planning Community
(District 4)

Hearing Dates: December 1 & 2, 2021

Record Closed: December 10, 2021

I. Request

Rezone 83± acres from Agricultural (AG-2) to Mobile Home Planned Development (MHPD) to allow development of 400 mobile home dwelling units with accessory uses and amenity areas.

The property's legal description is set forth in Exhibit A.

II. Hearing Examiner Recommendation

Approval, subject to the conditions and deviations set forth in Exhibit B.

III. Discussion

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

In preparing a recommendation to the Board, the Hearing Examiner must consider the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other applicable County regulations to the facts presented in a rezoning request.² Specifically, the Hearing Examiner must find the request compatible with surrounding uses and complies with Lee Plan and LDC requirements relating to such items as transportation facilities, natural resources, and urban services.³ The

¹ LDC 34-145(d)(1)(a) & (2)(a).

² LDC 34-145(d)(3).

³ LDC 34-145(d)(4).

Hearing Examiner may take judicial notice of previous Board decisions.⁴ The Hearing Examiner's recommendation must be based on competent and substantial evidence.⁵

Discussion supporting the recommendation of approval of the proposed MHPD follows below.

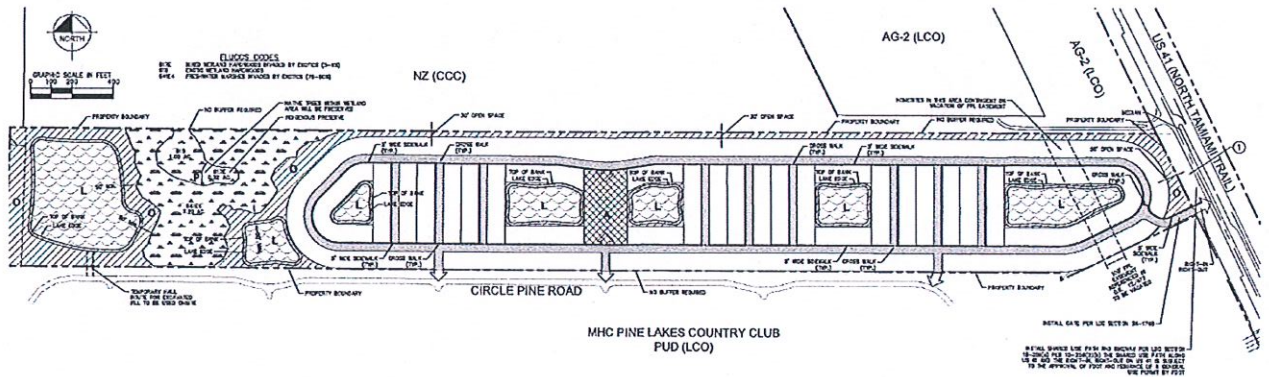
Synopsis of Request

The 83± acre rectangular property is in the North Fort Myers Planning Community, approximately two miles north of the US 41/Del Prado Boulevard intersection. The property adjoins the Pine Lakes community under common ownership.⁶

The property has historically been used for agriculture, primarily cattle grazing.⁷ The site is cleared and vacant except for a single-family dwelling.

Applicant seeks to develop 400 mobile home sites, an amenity tract, preserve areas, and lakes.⁸ The site plan reflects one access on US 41 and three access points on Circle Pine Road to the Pine Lakes community.⁹

Staff recommended approval, finding the proposed MHPD satisfies LDC review criteria.



⁴ Lee Co. Admin. Code 2-6, 2.3.D(4)(b).

⁵ Lee Co. Admin. Code 2-6, 3.3.A(2); LDC 34-83(a)(4)(a)(1)(a).

⁶ The request seeks to rezone land to MHPD. It does not seek to expand the existing PUD as the LDC prohibits rezoning to the PUD district after September 30, 1985. See LDC 34-1031. Pine Lakes hosts mobile homes on leased lots as well as fee simple ownership. See Staff Report (pg. 1).

⁷ See Applicant's Ex. 1 (slide 5).

⁸ See Applicant's Ex. 2: Master Concept Plan.

⁹ Circle Pine Road is an internal roadway to Pine Lakes Country Club. US 41 access points are controlled by the State of Florida. Some opponents question legal access to Circle Pine Road. Testimony of Robert Burandt (Transcript Dec. 1, 2021 pg. 81). Applicant provided testimony and evidence showing it owns the road. Testimony of Jim Murray (Transcript Dec. 2, 2021 pg. 35-37); Testimony of Jason Russo (Transcript Dec. 2, 2021 pg. 37, 39); Testimony of Clancy (Transcript Dec. 2, 2021 pg. 54-55); Testimony of Kelly Klepper (Transcript Dec. 2, 2021 pg. 52-55); Applicant's Ex. 7.

Zoning Review Criteria

Before recommending approval, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations or qualifies for deviations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Will provide access sufficient to support the proposed development intensity;
- E. Addresses impacts on transportation facilities through County regulations or conditions of approval;
- F. Will not adversely affect environmentally critical/sensitive areas or natural resources; and
- G. Will be served by urban services if located in a Future Urban area.¹⁰

When the requested zoning action is a planned development, the Hearing Examiner must also find:

- H. The proposed use/mix of uses is appropriate at the proposed location;
- I. Recommended conditions (1) provide sufficient safeguards to the public interest, and (2) reasonably relate to impacts on the public interest expected from the proposed development; and
- J. Requested deviations (1) enhance achievement of the objectives of the planned development, and (2) promote the LDC's intent to protect public health, safety, and welfare.¹¹

Character of the Area

The property is located east of US 41, south of the Lee/Charlotte County line.¹² Vacant lands within the City of Cape Coral abut to the north and west.¹³ Municipal regulations permit intense mixed use development on these properties.¹⁴

¹⁰ LDC 34-145(d)(4)(a)(1).

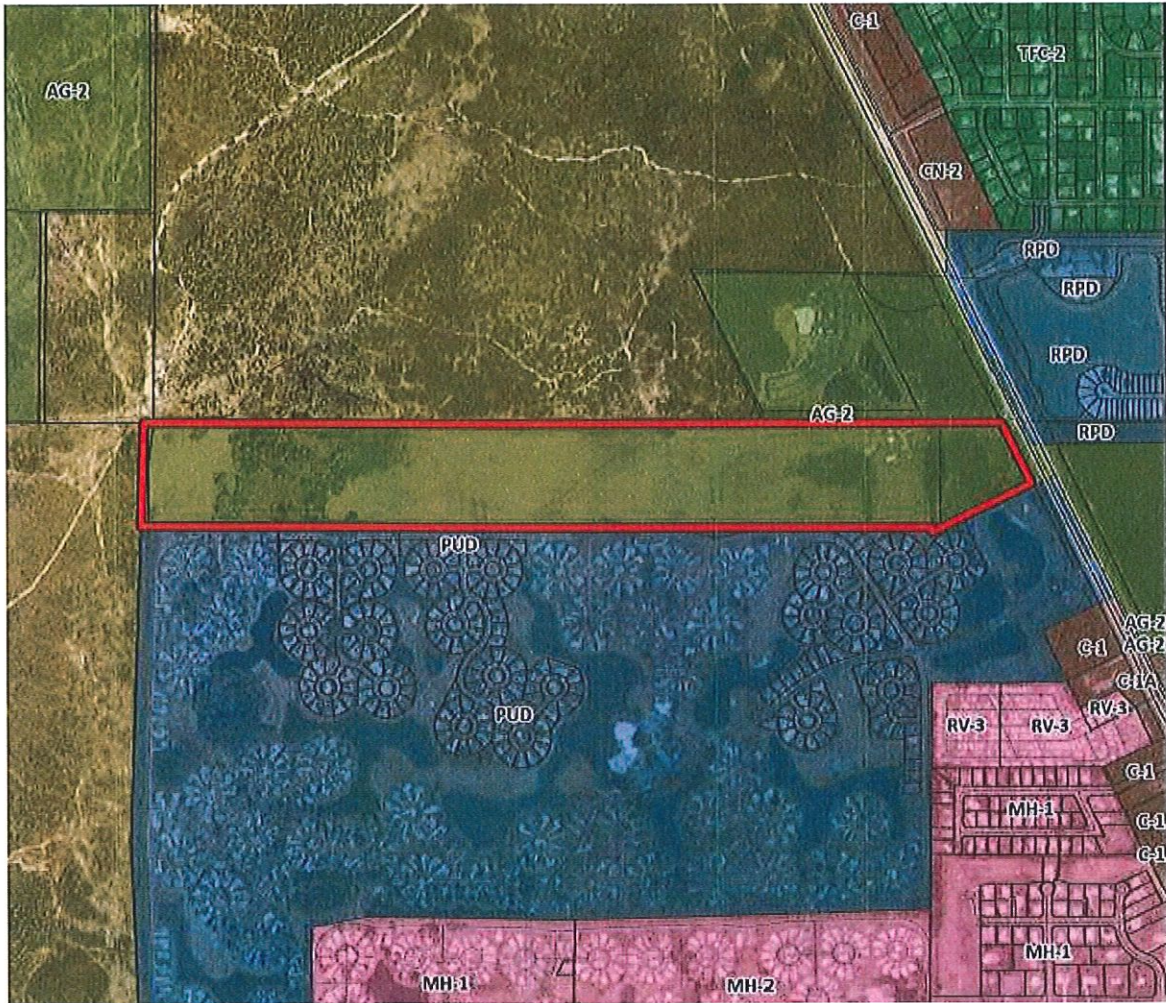
¹¹ LDC 34-145(d)(4)(a)(2).

¹² See Staff Report (Attachment B).

¹³ *Id.*; Applicant's Ex. 1 (slide 9).

¹⁴ See Applicant's Ex. 5.

St. Therese Catholic Church sits immediately north. Commercial parcels are concentrated along the US 41 corridor. Mobile home residential uses dominate the area.¹⁵



Lee Plan Consistency and Compatibility

All planned developments must be consistent with the Lee Plan.¹⁶ Requests for rezoning must be compatible with existing/planned uses in the surrounding area.¹⁷ Planned developments must be located to minimize negative effects of proposed uses on neighboring properties.¹⁸

¹⁵ See Applicant's Ex. 1 (slide 10-11); Staff Report (pg. 1-2); Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021, pg. 18-20).

¹⁶ LDC 34-411(a).

¹⁷ LDC 34-145(d)(4)(a).

¹⁸ LDC 34-411(c) and (i).

The Lee Plan Future Land Use Map classifies the site as Suburban.¹⁹ Suburban areas are predominantly residential, providing housing near more urban areas.²⁰ The standard density range is one to six units per acre.²¹ Applicant proposes a residential use below maximum permitted density.²² The request is consistent with the Suburban category.

The site lies within the North Fort Myers Planning Community.²³ The proposal to diversify residential use types complies with planning community directives and continues established development patterns.²⁴

Applicant provided sufficient evidence to demonstrate the request is consistent with the Lee Plan.

To secure zoning approval, Applicant must also establish the request is compatible with existing/planned uses in the surrounding area.²⁵ The request places mobile home sites next to an existing mobile home community. The requested use is inherently compatible. Opponents concede the use is compatible, but argue the proposed intensity is incompatible with Pine Lakes.²⁶

Applicant demonstrated the proposed development is sufficiently buffered from Pine Lakes residences.²⁷ The site plan clusters and centralizes development.²⁸

Compatibility does not demand the request be identical to adjoining developments. Rather, compatibility requires the requested use/zoning exhibit a positive or neutral relationship on surrounding properties.²⁹ Applicant provided competent substantial

¹⁹ See Lee Plan Map 1-A, Policy 1.1.5, 1.5.1; Staff Report (Attachment B).

²⁰ Lee Plan Policy 1.1.5.

²¹ *Id.*

²² Applicant proposes a density of 4.82 units per acre. Testimony of Kelley Klepper (Transcript pg. 42); Applicant's Ex. 1 (Slide 25). Opponents argue the site is inappropriate for this density because of its location on the "urban fringe." Testimony of Mr. Forgey (Transcript Dec. 1, 2021 pg. 122-124). Mr. Danley clarified this terminology reflects merely the site's proximity to county boundaries rather than actual area development patterns. Testimony of Dirk Danley Jr. (Transcript Dec. 1, 2021 pg. 73-75). Applicant submitted evidence demonstrating adjoining municipal lands are programmed for high intensity mixed uses as well as its placement along a heavily developed corridor. See Applicant's Ex. 6.

²³ Lee Plan Map 1-B and 2-A; Lee Plan Goal 30; LDC 33-1531 *et. seq.*

²⁴ Lee Plan Goal 30, Objectives 2.1, 2.2, 30.1, 135.1, Policies 2.2.1, 2.2.2, 30.1.3, 30.1.4, 135.1.9, 158.1.9; Applicant's Ex. 1 (slide 28); Staff Ex. 1 (slide 16); Testimony of Dirk Danley, Jr. (Transcript Dec. 1, 2021 pg. 65). Mr. Danley noted the request addresses a county-wide need for attainable housing given rising market costs for single family homes.

²⁵ LDC 34-145(d)(4)a.1(c).

²⁶ Testimony of Mr. Forgey (Transcript Dec. 1, 2021 pg. 131).

²⁷ Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021 pg. 25-26). Mr. VanBuskirk recounted the existing Pine Lakes community has 40 feet of open space along its northern boundary, in addition to the Circle Pine Road right-of-way. Combined this yields 60 feet of separation from existing residences and proposed mobile home lots.

²⁸ Lee Plan Objective 2.1, 2.2, Policies 2.1.1, 2.2.2; Applicant's Ex. 1 (slide 26).

²⁹ LDC 34-2. Opponents proffer a different definition and legal standard to determine compatibility. Testimony of Max Forgey (Transcript Dec. 1, 2021 pg. 134-135). The Hearing Examiner does not have

evidence demonstrating compatibility.³⁰ The project is adjacent to an established residential neighborhood. Proposed dwellings are similar in character and compatible with proximate mobile home communities.

The request is compatible with neighboring uses and consistent with the Lee Plan.³¹

Transportation/Traffic

Planned developments must have access to roads with sufficient capacity to support proposed intensity.³² Existing regulations or conditions of approval must address expected impacts on transportation facilities.³³

Access

The proposed project will access US 41 and Circle Pine Road. US 41 is an arterial road maintained by the State of Florida.³⁴ Circle Pine Road is a privately maintained road internal to the Pine Lakes community.³⁵

The LDC requires more than one access for residential projects greater than five acres.³⁶ Applicant asserts primary access will be on US 41.³⁷

To satisfy the additional access requirement, Applicant proposes interconnection to Pine Lakes via Circle Pine Road.³⁸ Residents dispute that Applicant has legal right to this roadway.

liberty to adopt alternative definitions, and must apply the plain language of the LDC in evaluating compatibility. *See Id.*; LDC 34-145(d).

³⁰ *See* comprehensive testimony of Kelley Klepper; Applicant's Ex. 1, 5.

³¹ *See* Staff Report; Testimony of Dirk Danley, Jr. (Transcript Dec. 1, 2021 pg. 65); Staff Ex. 1 (slides 11-18).

³² LDC 34-145(d)(4)(a)(1)(d); 34-411(d)(1).

³³ LDC 34-145(d)(4)(a)(1)(e); 34-411(d)(2).

³⁴ *See* Staff Report (Attachment J); Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021 pg. 23). Applicant had preliminary conversations with FDOT staff. That access point is not guaranteed. Staff testified they anticipated FDOT would likely grant some form of access to US 41. Testimony of Dirk Danley, Jr. (Transcript Dec. 1, 2021 pg. 55-58).

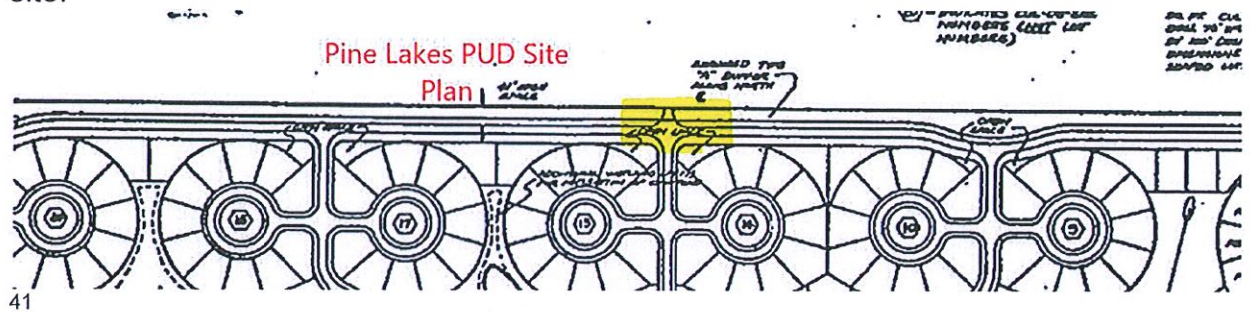
³⁵ Many residents and their counsel questioned ownership. Applicant provided testimony and evidence supporting ownership. Testimony of Jim Murray (Transcript Dec. 2, 2021 pg. 329-331); Testimony of Jason Russo (Transcript Dec. 2, 2021 pg. 331, 333); Testimony of Mallory Clancy (Transcript Dec. 2, 2021 pg. 348-349); Testimony of Kelly Klepper (Transcript Dec. 2, 2021 pg. 346-349); Applicant's Ex. 8.

³⁶ *See* LDC 10-291(3). If Applicant cannot provide a second access, a deviation/variance must be obtained through the public hearing process, and notice must be recorded articulating an emergency access plan. *Id.*

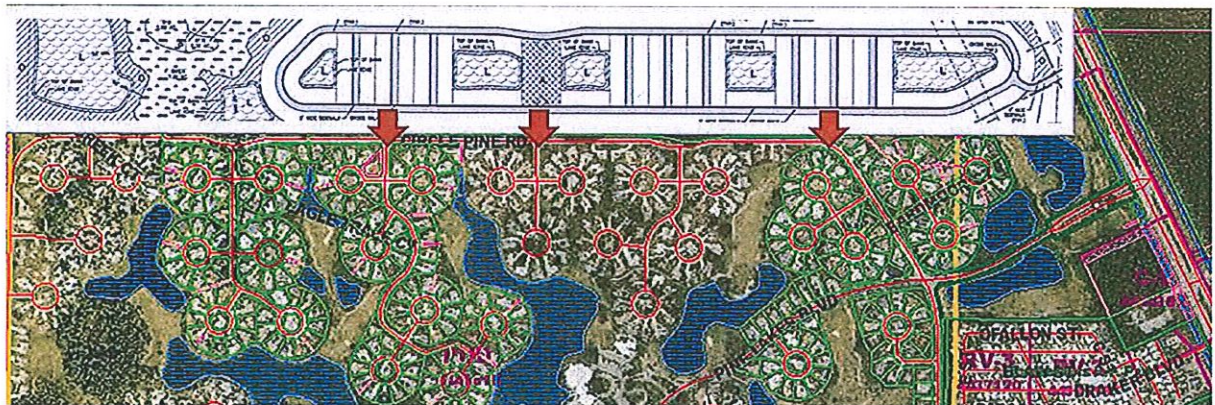
³⁷ Testimony of Addie Clark (Transcript Dec. 2, 2021 pg. 319). FDOT controls US 41 and has not yet approved this connection. Testimony of Peter Van Buskirk (Transcript Dec. 1, 2021 pg. 27); Testimony of Dirk Danley (Transcript Dec. 1, 2021 pg. 55-58). The parties indicated approval is likely though not guaranteed. If US 41 access is not granted, then access to Circle Pine Road becomes imperative.

³⁸ Residents urged the project should use an easement that runs along the property's northern boundary. Applicant recounted attempts to utilize an easement, but has not yet secured access rights. Testimony of

Record evidence indicates the property has access to Circle Pine Road.³⁹ The Pine Lakes PUD site plan shows an interconnection from Circle Pine Road to the site.⁴⁰



Applicant is pursuing an amendment to the Pine Lakes PUD to authorize two additional interconnections.⁴² This illustration shows the MCP overlaid on an aerial with all proposed connections:⁴³



Peter Van Buskirk (Transcript Dec. 1, 2021 pg. 49-50); Testimony of Kelley Klepper (Transcript Dec. 2, 2021 pg. 55-57); Applicant's Ex. 9.

³⁹ See Applicant's Ex. 3; Staff's Ex. 1 (slide 5-6, 8-10). Applicant's Ex. 1 (slide 13-14); Pine Lakes PUD Site Plan. Applicant's attorney stated the Pine Lakes PUD required the interconnection to the north on recommendation by the county engineer during the 1984 approval. Neale Montgomery (Transcript Dec. 1, 2021 pg. 48); Applicant's Ex. 4; Zoning Resolution ZAB-84-269, ZAB-85-097; Testimony of Dirk Danley, Jr. (Transcript Dec. 1, 2021 pg. 53-54); Staff Ex. 1 (slides 5-6, 8-9).

⁴⁰ *Id.*

⁴¹ See Staff Ex. 2 (slide 7 highlight and label added).

⁴² Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021 pg. 23-25); Testimony of Dirk Danley, Jr. (Transcript Dec. 1, 2021 pg. 58-60). See Staff Report (pg. 3, referencing ADD2021-00147). The PUD amendment is subject to review under LDC 34-1037. At time of hearing, staff required an additional public information meeting before finding the application sufficient. See Staff Ex. 1 (slide 10). Residents advocate that application should have been considered through the public hearing process. The Hearing Examiner does not have authority to make that determination in this request. LDC 34-145(d). The LDC sets forth separate review criteria for jurisdictional items before the Hearing Examiner. The Hearing Examiner cannot unilaterally seize jurisdiction of a pending administrative appeal. Further, standing for appellate actions before the Hearing Examiner is limited to the applicant. LDC 34-145(a)(3).

⁴³ Staff Ex. 1 (slide 9).

The parties agreed to a condition of approval ensuring compliance with the approved single access to Circle Pine Road and any additional access granted by the pending administrative amendment.⁴⁴

Project Impact

The Traffic Impact Statement concludes affected roadways will operate at acceptable levels of service after project buildout.⁴⁵ Intersection improvements, if needed, will be addressed during development order review.⁴⁶

Applicant demonstrated the request provides sufficient access to support proposed development.⁴⁷ The county will evaluate site related impacts and bicycle/pedestrian facilities during development order review.⁴⁸

Environmental and Natural Resources

Planned development design should reflect creative use of open space.⁴⁹ Developers must make an effort to protect and preserve natural site features.⁵⁰ New development must not degrade surface water quality.⁵¹

The site is mostly improved pasture for cattle grazing.⁵² The MCP denotes enhanced preserve areas on the western portion of the site.⁵³

The proposed development meets LDC open space requirements.⁵⁴ The MCP also reflects adequate buffers to minimize off-site impacts.⁵⁵ Notably, there is a buffer along the northern boundary although none is required.⁵⁶

⁴⁴ Providing access to US 41 and Pine Circle Road achieves LDC directives. See LDC 10-291; Condition 5; Post-Hearing Written Submission Dated Dec. 10, 2021 from Dirk Danley, Jr. Granting additional accesses satisfies public safety objectives by: (1) expanding emergency access; (2) improving traffic circulation; and (3) avoiding a single chokepoint. See LDC 10-291.

⁴⁵ See Staff Report (Attachment I).

⁴⁶ See Staff Report (pg. 5, Attachment J).

⁴⁷ LDC 34-145(d)(4)(a)(1)(d); Applicant's Ex. 1 (slides 18-19); Staff Report (pg. 6, Attachment I, J).

⁴⁸ Site related improvements include capital improvements and right-of-way dedications for "direct access" improvements. Direct access improvements include improvements whose primary purpose at the time of construction is to provide access to the development. Lee Plan Glossary and LDC 2-264; Lee Plan Objective 39.1, Policy 39.1.1; Lee Co. Admin. Code 13-17; LDC 2-66 *et. seq.* See also Staff Report (pg. 6), frontage along US 41 is designated for bicycle and pedestrian facilities. Lee Plan Map 3D.

⁴⁹ LDC 34-411(h).

⁵⁰ LDC 34-411(g).

⁵¹ Lee Plan Policy 125.1.2.

⁵² Testimony of Mallory Clancy (Transcript Dec. 1, 2021 pg. 33-34); Applicant's Ex. 1 (slide 21).

⁵³ See Applicant's Ex. 2: MCP; Applicant's Ex. 1 (slides 21); Lee Plan Objective 124.1. Applicant located wetlands through permitting review and addressed them consistent with Lee Plan Goal 124. Testimony of Dirk Danley, Jr. (Transcript Dec. 1, 2021 pg. 61-62).

⁵⁴ Lee Plan Goal 77, Objective 77.2; See Applicant's Ex. 2: MCP; Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021, pg. 21).

⁵⁵ See Applicant's Ex. 2: MCP; Staff Report (Attachment E).

⁵⁶ Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021 pg 22-23); Applicant's Ex. 2: MCP.

Some speakers expressed concern over bird and tree habitats. Applicant's environmental engineer testified County and South Florida Water Management District regulations address protective measures for identified habitats.⁵⁷

The proposed stormwater design maintains predevelopment conditions and enhances water quality.⁵⁸ Currently, surface waters flow from the north into Pine Lakes.⁵⁹ Applicant proposes a stormwater management plan that provides detention and treatment prior to discharge into Pine Lakes.⁶⁰

Urban Services

Urban services are the facilities, capital improvements, and infrastructure necessary to support development.⁶¹ The Lee Plan requires an evaluation of available urban services during the rezoning process.⁶²

A host of urban services and infrastructure serve the property including roads, potable water, sanitary sewer, police, fire, and emergency medical services.⁶³

Deviations

"Deviations" are departures from LDC regulations.⁶⁴ Applicant seeks one deviation for driveway separation requirements along US 41.⁶⁵ Staff supports the requested deviation.⁶⁶

The Hearing Examiner's standard of review requires a finding that the deviation:

1. Enhances achievement of objectives of the planned development; and

⁵⁷ Testimony of Mallory Clancy (Transcript Dec. 2, 2021 pg. 326-27).

⁵⁸ Testimony of Mallory Clancy (Transcript Dec. 1, 2021 pg. 34, 37-38); Applicant's Ex. 1 (slide 22-23), Lee Plan Policy 125.1.2.

⁵⁹ *Id.* Two drainage structures on Circle Pine Road accept the untreated/uncontrolled runoff.

⁶⁰ *Id.* at 35, slide 23.

⁶¹ Lee Plan Glossary. Urban services include public water and sewer, paved streets and roads, public transit, parks and recreation facilities, urban levels of police, fire and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries, and community centers.

⁶² Lee Plan Policy 2.2.1.

⁶³ Applicant's Ex. 1 (slide 15-16, 27); Staff Report (pg. 6); Lee Plan Standards 4.1.1, 4.1.2, Policy 2.2.1.

⁶⁴ LDC 34-2.

⁶⁵ Testimony of Peter VanBuskirk (Transcript Dec. 1, 2021 pg. 24).

⁶⁶ See Staff Report (pg. 6, Attachment C); Testimony of Dirk Danley, Jr. (Transcript pg. 67-68). The deviation request was originally limited to separation from the northern access to the church. However, a deviation is also necessary from the south. Staff supported the deviation with relief granted for separation from both access points. *Id.*

2. Preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.⁶⁷

Applying LDC deviation standards of review to testimony and evidence in the record, the Hearing Examiner concludes the requested deviation meets approval criteria.⁶⁸

Conditions

The county must administer the zoning process so proposed land uses acceptably minimize adverse impacts to adjacent property. Conditions must plausibly relate to anticipated impacts from the proposed development and must be pertinent to mitigation of those impacts on the public health, safety, and welfare.⁶⁹

The MHPD will be subject to several conditions of approval. The conditions relate to impacts anticipated from the project.⁷⁰ The Hearing Examiner recommends:

1. Revisions to conditions to improve clarity; and
2. Deletion of conditions that restate LDC standards and criteria applicable to the project pursuant to Condition 1.

Public

The LDC requires zoning applicants hold an informational meeting in the North Fort Myers Planning Community.⁷¹ Applicant held two meetings.⁷²

Many members of the public attended the hearing.⁷³ Some residents generally supported rezoning to permit mobile homes, but objected to the site design and access to Circle Pine Road.⁷⁴

Residents testified on matters relating to overburdening amenities, prospectus disclosure requirements, mobile home park expansion concerns, homeowner consent, and lot rent assessments.⁷⁵ These concerns are outside the scope of

⁶⁷ LDC 34-145(d)(4).

⁶⁸ LDC 34-377(a)(4).

⁶⁹ LDC 34-932(b).

⁷⁰ LDC 34-83(b)(4)a.3.

⁷¹ LDC 33-1532. The meeting must be held before county staff can deem the application sufficient.

⁷² The first meeting was held on June 22, 2021, with a subsequent meeting on November 3, 2021. See Staff Report Attachment L; Applicant's Ex. 1 (slide 6); Testimony of Kelley Klepper (Trans. Dec. 1, 2021 pg. 14-15). In addition, Applicant conducted additional community outreach. *Id.*

⁷³ Staff entered voluminous e-mails from residents as well, over Applicant's objection. See Staff Ex. 2.

⁷⁴ Testimony of Mr. Konetzny (Transcript Dec. 1, 2021 pg. 139). Mr. Konetzny stated Pine Lakes residents do not oppose the rezoning from agricultural to permit mobile homes. *Id.*

⁷⁵ Testimony of the public (Transcript Dec. 1, 2021 pg. 77-292, Transcript Dec. 2, 2021 pg. 300-10).

LDC review guidelines.⁷⁶ Further, these matters are statutorily preempted by state law.⁷⁷

Florida statutes preempt local governments from the mobile home landlord-tenant relationship.⁷⁸ Accordingly, resident complaints against landlords are not properly before the Hearing Examiner for review.⁷⁹

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation the requested rezoning to MHPD meets LDC approval criteria.

IV. Findings and Conclusions

The Hearing Examiner makes the following findings and conclusions based on the testimony and evidence in the record:

A. *As conditioned herein*, the proposed rezoning to MHPD:

1. Complies with the Lee Plan. See, Lee Plan Goals 2, 4, 5, 30, 39, 77, 124, 125, Objectives 2.1, 2.2, 5.1, 30.1, 135.1, and Policies 1.1.5, 2.1.1, 2.1.2, 2.2.1, 5.1.2, 5.1.5, 30.1.3, 30.1.4, 125.1.2, 135.1.9, 135.9.7; Lee Plan Maps 1A-B, 2A.
2. Complies with the LDC and other County regulations. See, LDC Chapters 10 and 34; 33-1531 *et. seq.*
3. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.1.5, 2.1.1, 2.1.2, 2.2.1, 5.1.5, 135.1.9, 135.9.5; LDC 34-411(c), (i), and (j).
4. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goals 77, Objectives 4.1, 77.1, Policy 5.1.2, Standard 4.1.4, LDC 34-411(h).
5. Will be served by urban services. See, Lee Plan Glossary, Map 4A-B, Goal 2; Objectives 2.1, 2.2, 4.1, 53.1, 56.1; Policies 2.2.1, 135.9.7 and Standards 4.1.1 and 4.1.2; LDC 34-411(d).

⁷⁶ The Hearing Examiner's authority in zoning cases is set forth in LDC 34-145(d).

⁷⁷ F.S. ch. 723, §723.004 (2021); Testimony of Dirk Danley Jr. (Transcript Dec. 1, 2021 pg. 71-72); Staff Ex. 4.

⁷⁸ F.S. §723.004 (2021). The Hearing Examiner's authority is afforded under the LDC. Some speakers urged extending protections afforded under Lee Plan Policy 5.1.5 to include Pine Lakes' internal operations. The Hearing Examiner finds this would be an over-reaching of county zoning authority.

⁷⁹ Statutes delegate these matters to other state agencies for residents' recourse.

- B. The Master Concept Plan reflects sufficient access to support the intensity of development. In addition, County regulations and conditions of approval will address expected impacts to transportation facilities. See, Lee Plan Goal 39, Objective 39.1; LDC 34-411(d).
- C. The proposed mix of uses is appropriate at the proposed location. See, Lee Plan Policies 1.1.5, 2.1.1, 5.1.5, and 135.1.9.
- D. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See, Lee Plan Policies 5.1.5, 135.9.6; See *also*, LDC Chapters 10, 33, and 34.
- E. As conditioned herein, the deviations:
 - 1. Enhance the objectives of the planned development; and
 - 2. Promote the intent of the LDC to protect the public health, safety, and welfare. See, 34-377(b)(4).

Date of Recommendation: February 24, 2022.



Amanda L. Rivera
Deputy Hearing Examiner

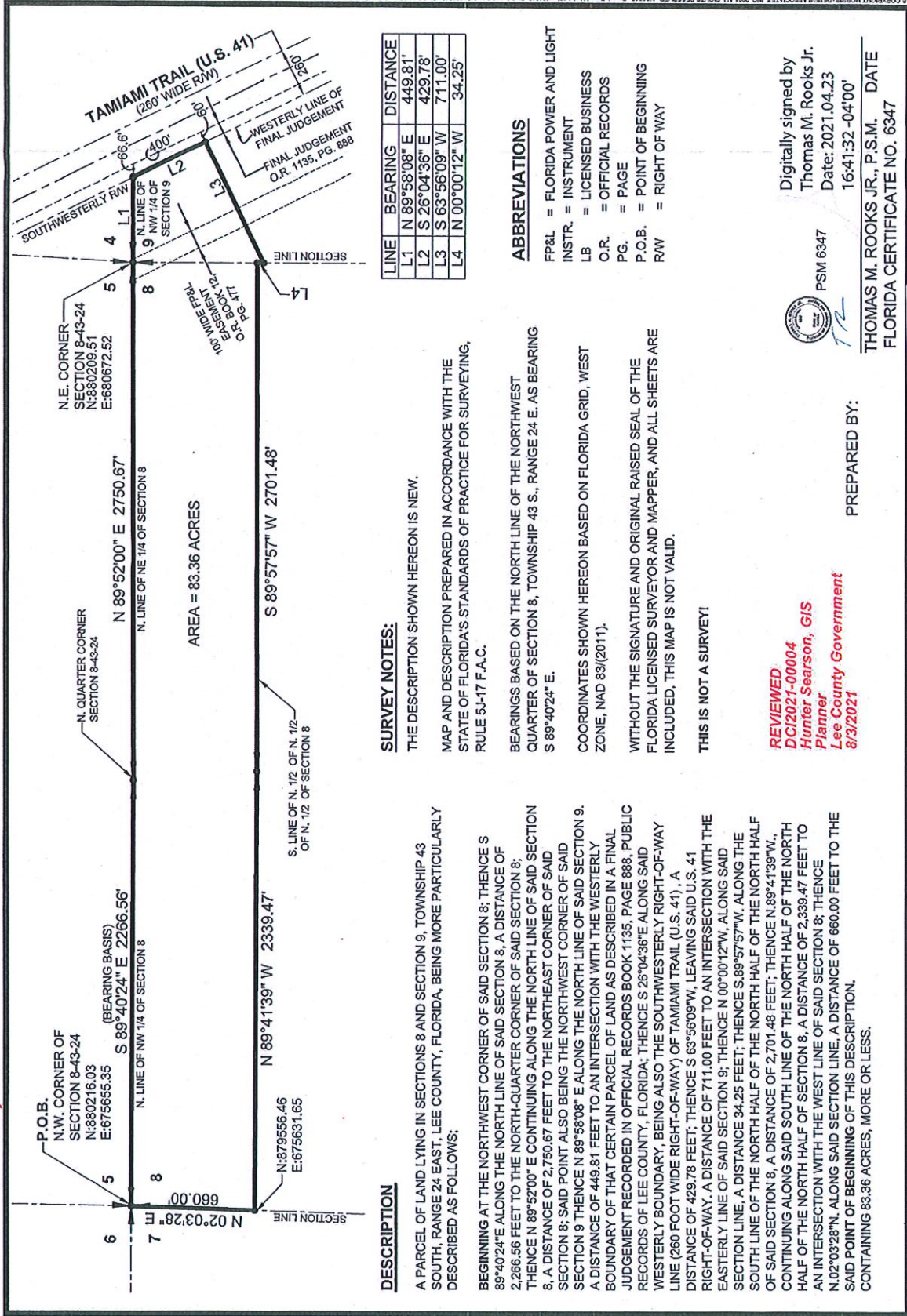
Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

- Exhibit A Legal Description and Vicinity Map
- Exhibit B Recommended Conditions and Deviations
- Exhibit C Exhibits Presented at Hearing
- Exhibit D Hearing Participants
- Exhibit E Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP



PROJECT:
LOUIS FRENCH PARCEL

LOCATION:
A PARCEL OF LAND LYING IN SECTIONS 8 & 9, T. 43 S., R. 24 E., LEE COUNTY, FLORIDA

CLIENT:
EQUITY LIFESTYLE PROPERTIES, INC
TWO NORTH RIVERSIDE PLAZA, SUITE 800, CHICAGO, ILLINOIS 60606

CONSULTANT:
MORRIS DEPEW ENGINEERS & ARCHITECTS LANDSCAPE ARCHITECTS
1000 N. UNIVERSITY AVENUE, SUITE 1000, CHICAGO, ILLINOIS 60607
TEL: 312.329.2000 FAX: 312.329.2001
WWW.MORRISDEPEW.COM

REVISIONS	DATE
PROJECT MANAGER:	TMR
DRAWING BY:	TAB
JURISDICTION:	LEE COUNTY
DATE:	04-22-2021
DESCRIPTION DRAWING	
SHEET NUMBER:	1 OF 1
JOBFILE NUMBER:	21040

LINE	BEARING	DISTANCE
L1	N 89°58'08\" E	449.81'
L2	S 26°04'36\" E	429.78'
L3	S 63°56'09\" W	711.00'
L4	N 00°00'12\" W	34.25'

ABBREVIATIONS

FP&L = FLORIDA POWER AND LIGHT
 INSTR. = INSTRUMENT
 LB = LICENSED BUSINESS
 O.R. = OFFICIAL RECORDS
 PG. = PAGE
 P.O.B. = POINT OF BEGINNING
 RW = RIGHT OF WAY

SURVEY NOTES:
 THE DESCRIPTION SHOWN HEREON IS NEW.
 MAP AND DESCRIPTION PREPARED IN ACCORDANCE WITH THE STATE OF FLORIDA'S STANDARDS OF PRACTICE FOR SURVEYING, RULE 5J-17 F.A.C.

BEARINGS BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 43 S., RANGE 24 E., AS BEARING S 89°40'24\" E.
 COORDINATES SHOWN HEREON BASED ON FLORIDA GRID, WEST ZONE, NAD 83(2011).
 WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER, AND ALL SHEETS ARE INCLUDED, THIS MAP IS NOT VALID.

THIS IS NOT A SURVEY!

REVIEWED
 DCI2021-00004
 Hunter Searson, GIS Planner
 Lee County Government
 8/3/2021



Digitally signed by
 Thomas M. Rooks Jr.
 Date: 2021.04.23
 16:41:32 -04'00'

PREPARED BY:
 THOMAS M. ROOKS JR., P.S.M.
 FLORIDA CERTIFICATE NO. 6347

DESCRIPTION
 A PARCEL OF LAND LYING IN SECTIONS 8 AND SECTION 9, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 8; THENCE S 89°40'24\" E ALONG THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 2,266.56 FEET TO THE NORTH-QUARTER CORNER OF SAID SECTION 8; THENCE N 89°52'00\" E CONTINUING ALONG THE NORTH LINE OF SAID SECTION 8, A DISTANCE OF 2,750.67 FEET TO THE NORTHEAST CORNER OF SAID SECTION 8; SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID SECTION 9 THENCE N 89°58'08\" E ALONG THE NORTH LINE OF SAID SECTION 9, A DISTANCE OF 449.81 FEET TO AN INTERSECTION WITH THE WESTERLY BOUNDARY OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN A FINAL JUDGEMENT RECORDED IN OFFICIAL RECORDS BOOK 1135, PAGE 888, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S 26°04'36\" E ALONG SAID WESTERLY BOUNDARY, BEING ALSO THE SOUTHWESTERLY RIGHT-OF-WAY LINE (260 FOOT WIDE RIGHT-OF-WAY) OF TAMiami TRAIL (U.S. 41), A DISTANCE OF 429.78 FEET; THENCE S 63°56'09\" W, LEAVING SAID U.S. 41 RIGHT-OF-WAY, A DISTANCE OF 711.00 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF SAID SECTION 9; THENCE N 00°00'12\" W, ALONG SAID SECTION LINE, A DISTANCE 34.25 FEET; THENCE S 89°57'57\" W, ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTH HALF OF THE NORTH HALF OF SAID SECTION 8, A DISTANCE OF 2,701.48 FEET; THENCE N 89°41'39\" W, CONTINUING ALONG SAID SOUTH LINE OF THE NORTH HALF OF THE NORTH HALF OF THE NORTH HALF OF SECTION 8, A DISTANCE OF 2,359.47 FEET TO AN INTERSECTION WITH THE WEST LINE OF SAID SECTION 8; THENCE N 02°03'28\" N, ALONG SAID SECTION LINE, A DISTANCE OF 660.00 FEET TO THE SAID POINT OF BEGINNING OF THIS DESCRIPTION.
 CONTAINING 83.36 ACRES, MORE OR LESS.

DCI2021-00004

Zoning

 Subject Property

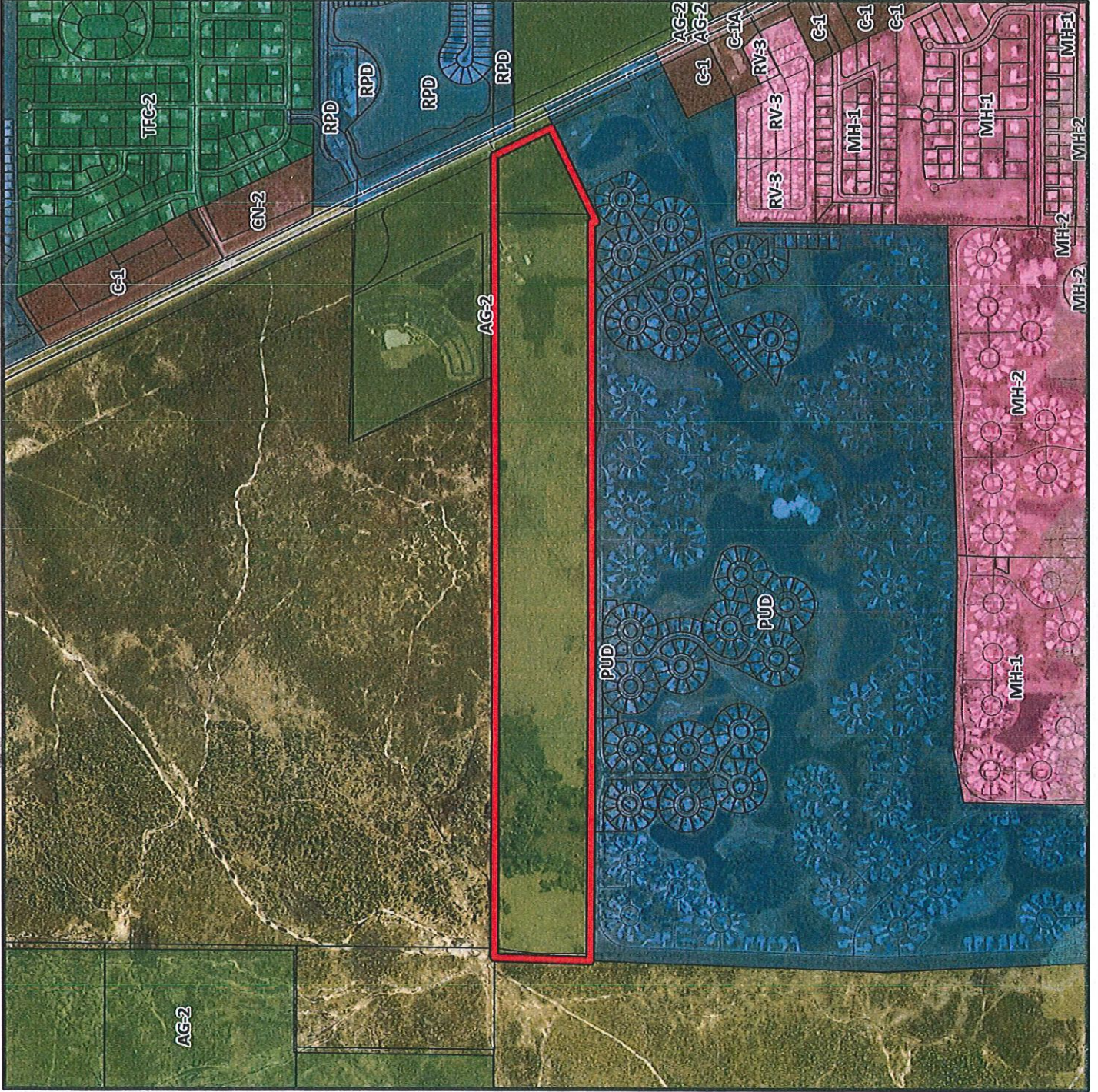


Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

CONDITIONS

1. Master Concept Plan (MCP)/Development Parameters
 - a) MCP: Development must be substantially consistent with the one-page MCP entitled "Pine Lakes Country Club II, Master Concept Plan," prepared by Kimley Horn and Associates, date stamped July 16, 2021 (Exhibit B1), except where modified by the conditions below.
 - b) Land Development Code (LDC) and Lee Plan: Development must comply with the LDC and Lee Plan at the time of local development order approval, except where deviations are approved herein. Subsequent amendments to the MCP, conditions, or deviations may require further development approvals.
 - c) Development Parameters: This MHPD is limited to a maximum of 400 mobile home dwelling units and accessory uses.
2. Uses and Site Development Regulations
 - a) Schedule of Uses
 - Accessory Uses and Structures
 - Administrative Office
 - Agricultural Uses (See Condition 3)
 - Caretaker's Residence
 - Clubs, Private, Country
 - Dwelling Unit, Mobile Home
 - Entrance Gates and Gatehouses
 - Essential Services
 - Essential Services Facilities, Group I
 - Excavation - Water Retention
 - Fences and Walls
 - Home Occupation
 - Models: Model Unit, Model Home (LDC 34-1954) (Condition 4)
 - Parks, Group I
 - Parking Lot, Accessory
 - Real Estate Sales Office (See Condition 4)
 - Recreation Facilities, Private, On-Site, Personal
 - Rental or Leasing Establishment, Groups I and II (LDC 34-937)

Residential Accessory Uses
Signs
Storage, Indoor
Temporary uses

b) Site Development Regulations

Residential Development
Lot Size

Minimum Lot Area: 4,250 square feet
Minimum Lot Depth: 85 feet
Minimum Lot Width: 50 feet

Setbacks

Development Perimeter 5 feet
Street (public) 25 feet
Street (private) 15 feet
Side 5 feet
Rear 5 feet
Waterbody 5 feet

Accessory uses and setbacks must comply with LDC 34-1174 *et seq.* and LDC 34-2194.

Maximum Lot Coverage 60%

Maximum Height 35 feet

Nonresidential Uses

Lot Size

Minimum Lot Area: 10,000 square feet
Minimum Lot Depth: 100 feet
Minimum Lot Width: 100 feet

Setbacks

Development Perimeter 15 feet
Street (public) 25 feet
Street (private) 20 feet
Side 15 feet
Rear 20 feet
Water body 20 feet

Minimum building separation: 20 feet or one-half the building height for structures greater than 40 feet

<u>Maximum Lot Coverage</u>	45%
<u>Maximum Height</u>	35 feet

3. Agricultural Uses

Existing bona fide agricultural uses in the form of cattle pasture may continue on the property subject to the following:

- a) Termination of Agricultural Use. Agricultural uses must terminate on project areas receiving development order approval for vertical development and prior to county issuance of a vegetation removal permit. Development order approvals for plats, infrastructure improvements, landscaping, surface water management, or other non-vertical development do not trigger termination.
- b) Additional Clearing Prohibited. Clearing 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 may not be cleared or expanded. This prohibition does not preclude County approved requests for removal of invasive exotic vegetation.
- c) Proof of Termination. Upon approval of a local development order for vertical development and prior to issuance of a vegetation removal permit, the property owner must provide written proof of the following, subject to approval by the County Attorney's Office:
 - 1) Affidavit. Sworn affidavit from the property owner confirming:
 - a. Date agricultural uses ceased;
 - b. Legal description of the property subject to the development order approved for vertical development;
 - c. An affirmative statement acknowledging and agreeing agricultural uses are illegal and prohibited on the property, and that the owner covenants with the County they will not allow agricultural uses to resume until the property is rezoned to permit agriculture; and
 - d. The affidavit constitutes a covenant between the property owner and the County binding on the owner and its successors. The covenant must be properly recorded in the public records of the County at the owner's expense.

- 2) Termination of Tax Exemption. Termination of the agricultural tax exemption for portions of the property subject to development order for vertical development. Proof of termination must include a copy of the request to terminate the tax exemption submitted to the Lee County Property Appraiser.

4. Model Units/Real Estate Sales
Real Estate Sales are limited to clubhouses and model units. Daily hours of operation are 8 a.m. to 8 p.m.

5. Vehicular Ingress and Egress
Ingress/egress points from the MHPD to the existing Pine Lakes Community must be consistent with either: (a) Resolution ZAB-85-097, allowing one access point; or (b) ADD2021-00147, if approved, allowing up to three access points. Modification of the access points depicted on the MCP must be approved in accordance with the LDC.

6. Consistency with State Statute
Approval of this MHPD does not contravene Florida Statutes Chapter 723. Development must remain consistent with applicable state laws.

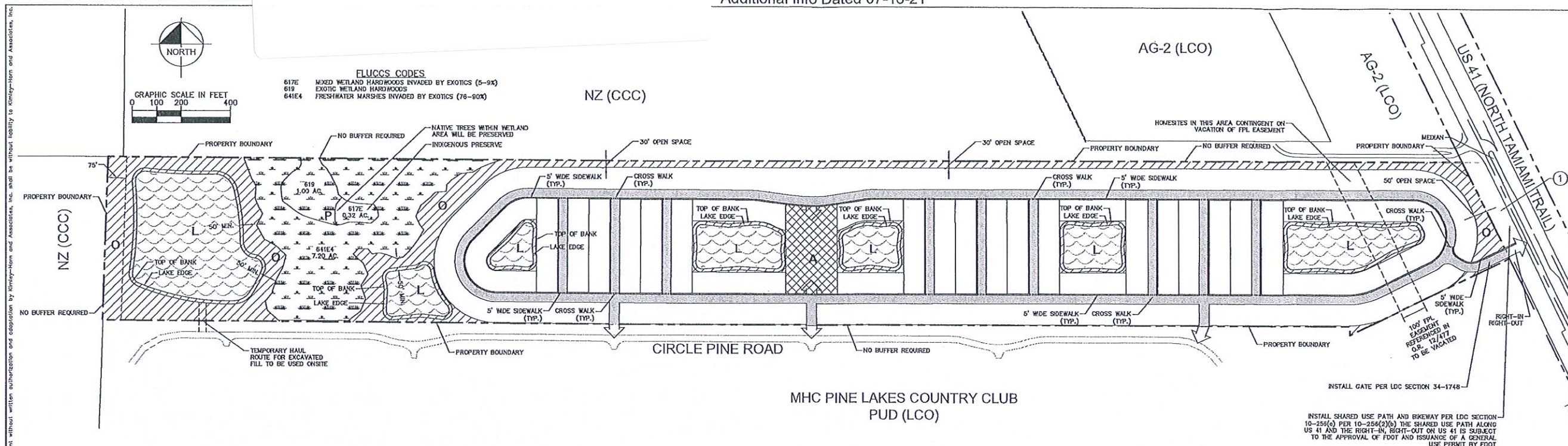
DEVIATIONS

1. Connection Separation. Deviation (1) seeks relief from LDC 10-285 Table 1, Connection Separation, which requires a minimum separation of 660 feet for Principal Arterial roadways in Future Suburban Areas, to allow a minimum separation of 400 feet.

HEX Recommendation: Approval, *subject to* the following condition:

The proposed access point deviation on North Tamiami Trail/US 41 is subject to approval by Florida Department of Transportation.

Exhibits to Conditions:
B1 Master Concept Plan

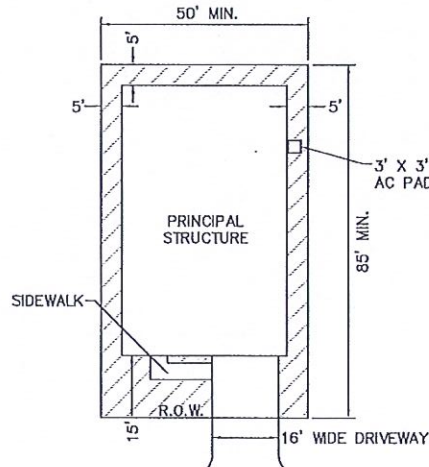


Plotted By: Anderson, Perdue, Sheet: 048231100 - ELS French Parcel\CA048231100 - 07-16 MCD\CDP.dwg
 This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Release of and improper reliance on this document without written authorization and approval by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

LEGEND

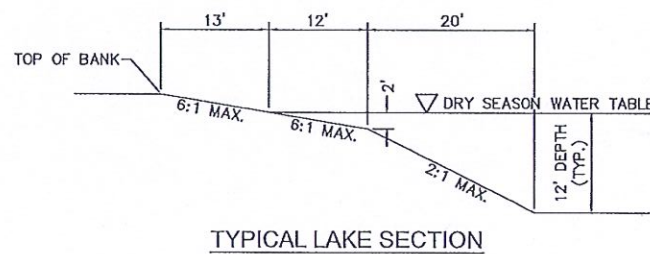
- 40' WIDE PRIVATE ROAD EASEMENT WITH CLOSED DRAINAGE
- PRESERVED WETLANDS
- COMMON OPEN SPACE
- AMENITY AREA
NOTE: AMENITY AREA FACILITIES MUST COMPLY WITH THE PARKING REGULATIONS SET FORTH IN LDC SECTIONS 10-260(a) AND 34-2001 THRU 34-2053 OR THE THEN CURRENT LDC PARKING REGULATION AT TIME OF DEVELOPMENT
- LAKES
- FPL EASEMENT
- DEVIATION REQUEST

PRIVATE OPEN SPACE DIAGRAM (N.T.S.)



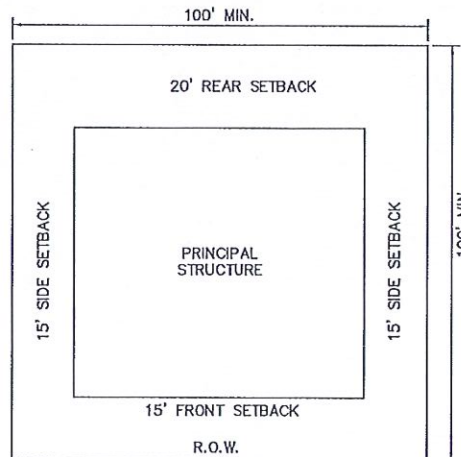
MIN. LOT AREA = 4,250 SF
 MAX. BUILDING AREA = 2,600 SF
 DRIVEWAY AREA = 240 SF
 SIDEWALK AREA = 70 SF
 AC PAD AREA = 9 SF
 AREA AVAILABLE FOR PRIVATE OPEN SPACE = 1,331 SF
 MIN. 10% ONSITE OPEN SPACE = 425 SF

PRIVATE OPEN SPACE (TYP.)



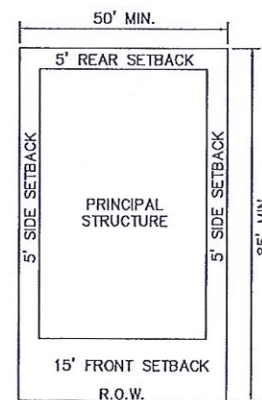
TYPICAL NON-RESIDENTIAL SITE INFORMATION (N.T.S.)

NOTE: 25' SETBACK FOR OFFSITE STREETS



TYPICAL RESIDENTIAL SITE INFORMATION (N.T.S.)

NOTE: 25' SETBACK FOR OFFSITE STREETS



LAND USE SUMMARY

USE	AREA (AC)
PRESERVE	2.52
ROADWAY	11.33
LAKES	11.09
RESIDENTIAL SITES	37.95
AMENITY AREA	1.70
COMMON OPEN SPACE	32.79
TOTAL	89.36

OPEN SPACE SUMMARY	
REQUIRED	
OPEN SPACE REQUIREMENTS, 30% OF PROJECT AREA AS COMMON OPEN SPACE WITH 10% ADDITIONAL OPEN SPACE TO BE DISTRIBUTED AS PRIVATE OPEN SPACE WITH INDIVIDUAL RESIDENTIAL SITES.	
OPEN SPACE REQUIRED	83.36 AC X 0.40 = 33.34 AC
INDIGENOUS PRESERVE REQUIRED	33.34 AC X 0.50 = 16.67 AC
INDIGENOUS LAND USE AREA AVAILABLE	0.32 AC
PROVIDED	
LAKES*	8.33 AC
INDIGENOUS PRESERVE	0.32 AC
OTHER PRESERVE	8.20 AC
COMMON OPEN SPACE	12.70 AC
PRIVATE OPEN SPACE	3.79 AC
TOTAL OPEN SPACE PROVIDED	33.34 AC

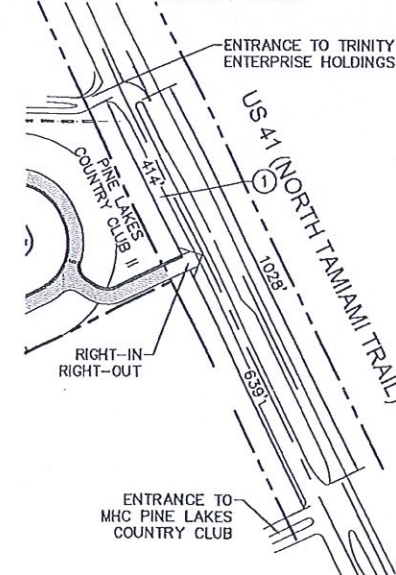
* LAKES CAN PROVIDE UP TO 25% OF REQUIRED OPEN SPACE. THEREFORE OF THE 11.09 AC OF LAKES ONLY 8.33 AC IS USED TO PROVIDE OPEN SPACE.

SETBACK TABLE	
TYPICAL NON-RESIDENTIAL SITE	
FRONT SETBACK	15'
REAR SETBACK	20'
SIDE SETBACK	15'
TYPICAL RESIDENTIAL SITE	
FRONT SETBACK	15'
REAR SETBACK	5'
SIDE SETBACK	5'
EXCAVATION SETBACKS	
LOCAL STREET EASEMENT	25'
ARTERIAL OR COLLECTOR STREET	50'

NOTE: ALL EXCAVATION SETBACKS ARE MEASURED FROM THE MEAN HIGH WATER

ADJACENT ACCESS POINT DETAIL

SCALE: 1" = 200'



No.	REVISIONS	DATE	BY

Kimley-Horn
 © 2021 KIMLEY-HORN AND ASSOCIATES, INC.
 1412 JACKSON STREET, SUITE 2, FORT MYERS, FL 33901
 PHONE: 239-271-2650 FAX: 941-379-4352
 WWW.KIMLEY-HORN.COM REGISTRY No. 656

KHA PROJECT: 048231100
 DATE: JULY 2021
 SCALE: AS SHOWN
 DESIGNED BY: [Blank]
 DRAWN BY: [Blank]
 CHECKED BY: [Blank]

MASTER CONCEPT PLAN

PINE LAKES COUNTRY CLUB II
 PREPARED FOR EQUITY LIFESTYLE PROPERTIES, INC.
 LEE COUNTY FLORIDA
 SHEET NUMBER 1 OF 1

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

- a. *DCD Staff Report with attachments for DCI:* Prepared by Dirk Danley, Jr., Senior Planner, dated November 16, 2021 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
1. *PowerPoint Presentation:* Prepared by DCD Staff, for Pine Lakes Country Club II MHPD, DCI2021-00015, Planned Development Rezoning Request (multiple pages – 8.5"x11")[color]
2. *Emails:* From Residents (multiple pages – 8.5"x11")[color]
3. *Notebook:* (multiple pages – 8.5"x11" and thumb drive)[color]
4. *Email:* From Joseph Adams, to Dirk Danley, Jr., dated Tuesday, November 23, 2021 10:59 AM (5 pages – 8.5"x11")
5. *Written Submissions:* Email from Dirk Danley, Jr., to Maria Perez, with copies to Jamie Pringing, & Neale Montgomery, Esq., dated Friday, December 10, 2021 4:11 PM (2 pages – 8.5"x11"){post hearing submittal}

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Mallory Clancy, with Kimley-Horn, to Maria Perez & Dirk Danley, Jr., with copies to Kelly Klepper, Neale Montgomery, Esq., Jim Murray, Leslie Register, Addie Clark, & Peter Vanbuskirk, dated Monday, November 29, 2021 9:04 AM (multiple pages – 8.5"x11")
- b. *Revised 48-Hour Notice:* Email from Mallory Clancy, with Kimley-Horn, to Maria Perez & Dirk Danley, Jr., with copies to Kelly Klepper, Neale Montgomery, Esq., Jim Murray, Leslie Register, Addie Clark, & Peter Vanbuskirk, dated Monday, November 29, 2021 12:43 PM (multiple pages – 8.5"x11")
- c. *Second 48-Hour Notice:* Email from Mallory Clancy, with Kimley-Horn, to Maria Perez & Dirk Danley, Jr., with copies to Kelly Klepper, Neale Montgomery, Esq., Jim Murray, Leslie Register, Addie Clark, & Peter Vanbuskirk, dated Monday, November 30, 2021 4:05 PM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Kimley-Horn & Associates, for Pine Lakes Country Club II (aka Louise French Trust Property0, DCI2021-00004 (multiple pages – 8.5"x11")[color]

2. *Master Concept Plan*: Prepared by Kimley Horn, for Pine Lakes Country Club II (1 page – 11"x17")
3. *Planned Unit Development Site Plan*: Prepared by Johnson Engineering, Inc., dated DEC.1985 (1 page – 11"x17")
4. *Staff Report*: Case number 84-5-4 (DCI), Pine Lakes Country Club, report dated November 21, 1984 (multiple pages – 8.5"x11")
5. *Florida Statute*: The 2021 Chapter 163 (multiple double-sided pages – 8.5"x11")
- 6(a). *Future Land Use Element*: (multiple double-sided pages – 8.5"x11")
- 6(b). *Lee Plan*: Section 4.1.2, Establishing of zoning districts (2 pages – 8.5"x11")
- 6(c). *Lee Plan*: Section 4.1.3, Zoning district development dimensional standards (multiple pages – 8.5"x11")
- 6(d). *Use Table*: (multiple pages – 8.5"x11")
- 6(e). *Future Land Use 2040*: City of Cape Coral Future Land Use (1 page – 11"x17") [color]
7. *Lee Plan As amended through November 2021*: (multiple pages – 8.5"x11")
8. *Lee County Property Data*: For MHC Pine Lakes Country Club, c/o Duff & Phelps A Kroll, Business, property address 10200 Pine Lakes Blvd, North Fort Myers, Florida 33903, Strap number 08-43-24-04-0000A.0000 (multiple pages – 8.5"x11")
9. *Cross Easement Agreement*: Prepared by Denis H. Noah, Esq., with Henderson, Franklin, Starnes & Holt, P.A., dated February 2, 2005 (multiple pages – 8.5"x11")
- 10(a). *Letter*: From B. Kelley Klepper, with Kimberley/Horn, to Anthony Rodriguez, with Lee County Community Development, dated February 5, 2021, regarding Application for Planned Development Public Hearing, Pine Lakes Country Club II, Project Number 048231100 (multiple pages – 8.5"x11")
- 10(b). *Application for Planned Development Public Hearing Unincorporated Areas Only*: Project Name Pine Lakes Country Club II (aka French Property), to rezone from AG-2 to MHPD (multiple pages – 8.5"x11")
- 10(c). *Application for Planned Development Public Hearing Unincorporated Areas Only*: Project Name Pine Lakes Country Club II (aka French Property), to rezone from AG-2 to MHPD (multiple pages – 8.5"x11")

- 10(d). *Conceptual Sketch Plan & Documents*: Preliminary drawing for French Property (multiple pages – 8.5"x11")
- 10(e). *Ron Thoreson's Ask a Question*: (6 Pages – 8.5"x11")
11. *Letter*: To Pine Lakes Country Club residents, from Leslie Register, with Pine Lakes Country Club

OTHER EXHIBITS

Ralph Brooks, Esq.

1. *Documents*: (multiple pagers - 8.5"x11" & 11"x17")
2. *Letter & Documents*: Fromm Ralph Brooks, Esq., to Donna Marie Collins, Chief Hearing Examiner & Michael Jacob, Esq., with the County Attorney's Office, with copies to Robert Burandt, Dirk Danley, Jr., & Max Forgey, dated November 29, 2021 (multiple pages – 8.5"x11")

Max Forgey

1. *Documents*: Expert Planners' Report, The Caser for Denial of Lakes Country Club II, in Unincorporated Lee County, DCI2021-00004, FP Case 2021-06-03, dated November 30, 2021; Attachment A, Lee Plan 2021, Table 1(b) Year 2045 Allocations, 2 pgs.; and Attachment B, Résumé of Daryl Max Forgey, AICP, 6 pgs (multiple pages – 8.5"x11")

Robert Konetzny

1. *Presentation for HEX Hearing Meeting*: (multiple pages – 8.5"x11")

Charles Orvik

1. *Document*: Questions of Neighborhood Issuers of Concern to Lee County & Equity Lifestyles Properties (ELS); and Mr. Orvik's presentation (1 page – 8.5"x11")

Frank Tivnan

1. *Presentation*: (1 page – 8.5"x11")

Betty White

1. *Presentation & Photographs*: (4 pages – 8.5"x11" – 3 pages – 4"x6")[color]

Ron Thoreson

1. *PowerPoint Presentation*: (multiple pages – 8.5"x11")[color]

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Dirk Danley, Jr.

Applicant Representatives:

1. Mallory Clancy
2. Addie Clark
3. Kelly Klepper
4. Neale Montgomery, Esq.
5. Jim Murray
6. Jason Russo
7. Peter Van Buskirk

Public Participants:

1. Jackie Bartilucci
2. Ralph Brooks, Esq.
3. Wayne Brown
4. Robert Burandt
5. Tonie Calvin
6. Tom Clark
7. Patricia Dieringer
8. Ray Dunlap
9. Max Forgey

10. Rebecca Gloss
11. Michael Gloss
12. Michael Hayes
13. Matt Heier
14. Jan Hippler
15. Pamela Johnson
16. Pam Krohn
17. Robert Konetzny
18. Marlo J. Magnette
19. John McDonald
20. Kristin Mellott
21. Thomas Minahan
22. Gary Nicolini
23. Charles Orvik
24. Charles Rimlinger
25. Richard Saniti
26. Johnnie Stanley
27. Ron Thoreson
28. Frank Tivnan
29. Mary Tivnan
30. Charles Wakefield
31. Pamela Wagner

32. Betty White
33. Bruce Wrede
34. Bonnie Wright
35. Jacquelyn Yablonsky

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

- A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.
- B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.

COPIES OF TESTIMONY AND TRANSCRIPTS

- A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.