

RALF BROOKES, ATTORNEY

Board Certified in City, County and Local Government Law

February 20, 2023

Re: Notice of Appeal of Planning Commission Resolution 23-001

Dear City of Sanibel, Cit Manager

Pursuant to Section 82-98 of the Sanibel Land Development Code (LDC), an appeal of Planning Commission Resolution 23-001 filed with the Clerk on February 6, 2023 is hereby filed on behalf of those listed in Exhibit A.

All appellants reside upon or own property within Sanibel on Heron's Lake, which is owned jointly by the City of Sanibel and nine homeowners living on Osprey Court in Heron's Landing (the "Lake Homeowners").

All appellants participated by written comment or by appearance at the Planning Commission hearing and have legal standing under the LDC to file this appeal¹. Enclosed is the Appeal and Appeal Index. This appeal is timely filed with the City Manager² within 15 days of the date Resolution 23-001 was filed with the clerk on February 6, 2023.

This appeal incorporates by reference the application file and record for Development Permit (Application No. DP-2021-001803) and Minor Subdivision (Application SPLT-2022-000074). Enclosed is a check in the amount of the required filing fee.

We ask that a courtesy, a mutually convenient date, and time, be scheduled for the hearing before City Council.

Sincerely,



Ralf Brookes Attorney
1217 E Cape Coral Parkway #107
Cape Coral, FL 33904
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RalfBrookes@gmail.com

¹ 82-98 (b) Any "person residing upon, or owning property within the city, or owning or operating a business within the city, *who participated by written comment before or at the planning commission hearing or who participated in person or through an authorized agent at the planning commission hearing.*"

² 82-98 (b) "The appeal shall be filed within 15 days after the date that the planning commission decision *was filed.*"

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EXHIBIT A
LIST OF APPELLANT/PETITIONERS

1. Heron's Landing HOA

Box 100

Sanibel FL 33957

Board members Sarah Peck, Menashe Ben-David, and Kooroush Saeian

spoke in their capacity as board members at hearings on 1/9/23 and 1/24/23

2. Sarah C Peck

5391 Shearwater Drive

Sanibel FL 33957

President, Heron's Landing HOA

Spoke at Planning Commission Hearing on 1/24/23

Participated by written comment before or at the planning commission

3. Menashe Ben-David

1983 My Tern Court

Sanibel, FL 33957

Board Member spoke on behalf of the HOA at Planning Commission Hearing on 1/9/23

4. Kooroush Saeian

5422 Shearwater Drive, Unit H

Sanibel, FL 33957

Board Member spoke on behalf of the HOA at Planning Commission Hearing on 1/09/23

5. Howard Simon

5410 Osprey Court

Sanibel, FL 33957

Spoke at Planning Commission Hearing 1/09/23

6. John Connor

5426 Osprey Court

Sanibel, FL 33957

Spoke at Planning Commission Hearing 1/09/23

7. Melisa Laidlaw

1983 My Tern Court

Sanibel FL 33957

Spoke at Planning Commission Hearing on 1/09/23

8. Gayle Dendinger

5406 Osprey Court

Sanibel, FL 33957

Spoke at Planning Commission Hearing on 1/09/23

9. Amb. Peter W Galbraith

5391 Shearwater Drive
Sanibel FL 33957

Participated by written comment before or at the planning commission

10. Doug Stimmel

5418 Osprey Court
Sanibel, FL 33957

Participated by written comment before or at the planning commission, met with the city staff on the HOA's behalf and submitted the HOAs proposed conditions on 8/24/22

11. David Kienzle

5439 Osprey Court
Sanibel, FL 33957

Spoke at Planning Commission Hearing on 1/09/23

12. Almack, Clare

5303 Lady Finger Lake Rd

Participated by written comment before or at the planning commission

13. Almack, Margaret

2090 Wild Lime Dr

Participated by written comment before or at the planning commission

14. Bajek, James

4570 Bowen Bayou Rd

Spoke at Planning Commission Hearing 1/09/23

15. Downing, Molly

1915 Sanibel Bayou Rd

Participated by written comment before or at the planning commission

16. Ginipro, Andrew

1838 Long Point Lane

Spoke at Planning Commission Hearing 1/09/23 and written comments

17. Ridlehoover, Ed

4547 Buck Key Rd

Spoke at Planning Commission Hearing 1/09/23 and written comments

18. Welch, Lyman

2098 Wild Lime Dr

Spoke at Planning Commission Hearing 1/09/23



APPEAL OF PLANNING COMMISSION RESOLUTION 23-001

DEVELOPMENT PERMIT - COASTAL CREEK
(APPLICATION NO. DP-2021-001803)
&
MAJOR SUBDIVISION PLAT - COASTAL CREEK
(APPLICATION SPLT-2022-000074)

This is an appeal on behalf of Petitioners (Ex. A) appealing the decision of the Planning Commission in Resolution 23-001 (Ex. B). The Resolution approved a development permit and subdivision plat for six clustered homes with in-ground pools (“Coastal Creek”) (Ex. C).

The subject land is the site of a decommissioned former private wastewater treatment plant that continues to leach nutrients (i.e., phosphorous and nitrogen) through the groundwater from the subject site into Heron’s Lake, which has been plagued by excess nutrients causing harmful cyanobacteria and algae blooms (“Harmful Algae Blooms” or “HAB”). The Harmful Algae Blooms cause nuisance odors and have real adverse human health impacts.

Heron’s Lake is owned jointly by the City of Sanibel and nine homeowners living on Osprey Court in the Heron’s Landing community (the “Lake Homeowners”). Heron’s Lake is the subject of a “Lake Agreement” to which the City and the Lake Homeowners (including some of the Petitioners) are committed signatories.

The purpose of the Lake Agreement is to achieve on-going nutrient reduction in Heron’s Lake through City aeration and homeowner conditions and restrictions requiring native littoral plantings and prohibitions on fertilizers to improve dissolved oxygen levels in Heron’s Lake.

The State of Florida Department of Environmental Protection (DEP) sent a letter of concern regarding this proposed Coastal Creek development on this site.

DEP recommended additional soil and groundwater sampling because the site may still contain additional, unexcavated sources of nutrient pollution, including soils and waste contaminated with excess nutrients from prior private wastewater operations that can lead to nutrient pollution impacts in Heron’s Lake.

Leaching of nutrients from contaminated soils can be a continuing source of groundwater nutrients leading to nutrient loading in surface waters of the adjacent Heron’s Lake, that in turn can lead to HAB, hazardous human health impacts, and lowered Dissolved Oxygen (D.O.) levels.

The Planning Commission has failed to properly interpret and apply Land Development Code (LDC) Sections and Comprehensive Plan policies as set forth in the Sanibel Plan that prohibit pollution; protect Heron’s Lake and Petitioners from hazardous conditions that are detrimental to the public health, welfare, and safety; and protect the peaceful use and enjoyment of adjoining lands.

Specifically, the Planning Commission has failed to properly interpret and apply the provisions of LDC and Comprehensive Plan that require the following:

Comprehensive Plan

Sanibel Plan, Conservation Goals, Objective 4, the Planning Commission must “*protect and conserve water resources and prevent impairment of the quality and quantity of surface and groundwater resources.*”¹

The Sanibel Plan states that it is “*imperative*” to protect “*lakes and wetlands from any sewage pollution*” and recommends studies and taking “*appropriate remedial action.*”²

The Future Land Use Element requires the City to ensure that all new development will “*promote the protection of natural, [and] environmental resources,*” and “*promote the maintenance of enhancement of water quality.*”³

Policy B2.1 further requires the City to “*protect national resources by application of best management practices.*”

Land Development Code

Land Development Code Section 86-40 requires the Planning Commission to consider how to minimize environmental damage caused by this development. Section 86-40(b) states, “*The design, location and construction and the maintenance of all development shall be in a manner that minimizes environmental damage.*”

Land Development Code Section 14-244 defines land as “*hazardous*” when conditions on the land are “*dangerous to the health, welfare or safety of the public, the occupants of surrounding properties, or the occupants of such land;*” or when “*noxious odors*” or “*harmful particulates*” emanate from the land.

Land Development Code Section 14-247 requires the landowner to assess, remediate the hazardous conditions, and restore the land “*by the means least expensive and least detrimental to the owner's property and to the public environment.*”

Land Development Code Section 78-15 states, “*The provisions of this Land Development Code are deemed to be necessary for the protection of the public health, safety and welfare and for the protection of the peaceful use and enjoyment of any lands by the owners thereof, and any violation of this Land Development Code is hereby declared by the city council to constitute a public nuisance.*”

Statement of Facts & Historical Background

The Applicant proposes to build six homes with pools atop a decommissioned wastewater plant. The City of Sanibel decommissioned the plant in 2008 after sewage leaching from the plant forced the closure of Bowman’s Beach in 2007. *See*, Testimony of Chandler; Staff Report. Four of the

¹ See Section 3.2.2.

² See Sec. 3.2.2., p. 60.

³ See Sec. 3.6.2, Statement B, p. 226.

homes will be built on the former settlement pond. The site is adjacent to Heron's Lake, which is owned jointly by the City and nine homeowners living on Osprey Court in Heron's Landing (the "Lake Homeowners").

The Florida Department of Environmental Protection (DEP) sent a letter of concern regarding the need for extensive soil and groundwater testing at the proposed development site for reasons of public safety. The letter states in relevant part: "... DEP recommends that the developer collect and analyze soil and groundwater screening samples for nitrate, nitrite, and RCRA metals."

DEP recommended this testing because the site may still contain unexcavated sources of pollution, including soils and waste from prior private wastewater operations. These sources almost certainly contain excess nutrients (i.e., phosphorous and nitrogen) that are polluting Heron's Lake.

Sanibel Planning Staff and Petitioners presented evidence that the site is leaching high levels of harmful levels of nutrients into the groundwater that eventually leads to surface water of the adjacent Heron's Lake. *See*, Testimony of Dettmar; SCCF Report; Staff Report. As a result of legacy nutrients from the private wastewater plant and the on-going leaching of nutrients from contaminated soils into the groundwater, Heron's Lake remains one of the most polluted lakes on the island (according to the City's own testing and analysis).

Lake Homeowner Howard Simon testified and introduced evidence from scientific studies that nitrogen and phosphorous are nutrients that can produce harmful cyanobacteria and blue-green algae blooms ("Harmful Algae Blooms"). *See*, Testimony of Simon. These Harmful Algae Blooms release airborne toxins that can cause adverse human health impacts including liver damage, Alzheimer's, and other neurological diseases. Lake Homeowner John Cooper testified the Lake has become so polluted that its stench prevents him from enjoying the use of his deck and exterior space. *See*, Testimony of Cooper.

After 2008, the wastewater plant site was subdivided into two parcels. The City kept the western portion of the parcel. In 2015, the City determined the initial remediation performed when the plant was decommissioned was insufficient. The City therefore completed a \$50,000 restoration effort on only the City-owned western parcel thereby creating the Sanibel Bayous Preserve. The City's restoration activities included exotic plant removal, creation of two seasonal wetland features, and extensive wetland and upland vegetation plantings.

The City returned the eastern parcel (the subject site) to the original developer/owner of the private wastewater plant, who later sold the subject site to the Applicant in March 2021. No soil or groundwater sampling has occurred on the subject site since 2009. However, testing conducted by SCCF on the adjoining City-owned western parcel in 2017 found ***"legacy nutrients from the package plant persist in the soils and groundwater"***, contributing to water quality impairments of the adjacent stormwater [Heron's] lake." *See*, Testimony of Dettmar.

The DEP recommended testing would determine the horizontal and vertical extent of any nutrient contamination remaining on the subject site. Following testing, a remedial action plan should be developed to remove any remaining sources of nutrient contamination prior to development of the site with homes. Remediation must take place prior to construction because once homes and pools

are built, it would be impossible to remove contaminated soils from beneath the houses and developed areas of the site.

It is important to understand how the water quality in Heron's Lake is impacted by nutrients. Algae feeds off the excess nutrients and the algae rapidly multiplies at an unnatural rate. The process causes what is commonly called a Harmful Algae Bloom. These Blooms release gases that cause noticeable lake odors and rapidly use up the dissolved oxygen in the Lake. Aquatic organisms need dissolved oxygen to sustain the Lake's natural ecosystem. Without reducing the level of nutrients entering Heron's Lake, the Lake's ecosystem is unable to "heal" itself. It remains out of balance.

Petitioners/ Lake Homeowners are currently working with the City to remediate and restore the Heron's Lake to abate the Harmful Algae Blooms. In 2021, the City and the Lake Homeowners negotiated the "Lake Agreement" for this purpose. Pursuant to the Agreement, the Lake Homeowners have committed to plant native vegetation in the littoral zones rimming the Lake and to restrict the use of fertilization. If necessary, they have committed to fund further chemical treatment of Heron's Lake. To assist with the low Dissolved Oxygen level caused by Harmful Algae Blooms, the City has agreed and budgeted \$50,000 for an aeration system.

The Lake Agreement requires these minimum mutual efforts to ensure the success of the Heron's Lake Restoration program. Restoring, monitoring, and managing the Lake's ecosystem will lead to enhanced water quality, wildlife habitat and aesthetic benefits. These efforts are also needed to preserve property values so that the homes on Heron's Lake are no longer be impacted by Harmful Algae Blooms.⁴

The success of the Heron's Lake Restoration program also requires the subject site -- the untested eastern parcel of the decommissioned wastewater plant owned by the Applicant -- to stop leaching legacy nutrients into the groundwater and the Lake. Any contamination that may still exist on the site must be excavated and removed prior to development. What happened in the past on the site, and what will happen as it is developed, will directly affect the health of Heron's Lake.

At the January 9 hearing before the Planning Commission, Heron's Landing HOA board members, several Homeowners, and other Heron's Landing residents testified that they were concerned the development will harm Heron's Lake and the health of residents living on or near the Lake. Their concerns well-founded: the DEP letter recommended testing to protect public safety. The City's expert testified the development *will have an adverse impact on water quality*. See, Testimony of Dettmar. As Planning Commissioner DeBruce noted of the situation, "we don't know how dangerous it is."

Notably, the Applicant did not rebut this evidence, but instead testified that he wants to be "part of the solution to a problem he did not create." See, Testimony of Applicant.

⁴ Florida Realtors, "The Impact of Water Quality on Florida's Home Values." <https://www.mysanibel.com/content/download/26111/166405>

**Planning Commission's Decision Failed to Implement
Essential Requirements of Law contained in the Sanibel Plan and LDC**

The Sanibel Plan's Vision Statement inscribed on the very walls of the room where the City Council meets, reminds our civic leaders of their stewardship role and to "resist pressures to accommodate increased development ... that is inconsistent with the Sanibel Plan." The Planning Commission's decision to approve housing on a former wastewater plant that is polluted, and is polluting the groundwater and a nearby lake, is inconsistent with the letter and spirit of the Sanibel Plan and violates the Land Development Code and should be reversed.

First, the Planning Commission failed to apply the sections of the Land Development Code (LDC) that protect the environment, particularly section 86-40, which requires development to be done in a manner that minimizes environmental damage.

Second, the Planning Commission failed to apply the Goals, Objectives and Policies contained in the Sanibel Plan that protect the groundwater and the adjacent Heron's Lake and other surface waters (Conservation Goal, Section 3.2.2.), and that require the City to protect natural resources and maintain the enhancement of water quality through the application of best management practices (Future Land Use Element, Goal Statement B, Section 3.6.2) at the proposed development.

Third, the Planning Commission failed to apply provisions of the LDC and Florida law that protect the health and property rights of the adjoining Heron's Landing homeowners and future Coastal Creek residents, who will also be affected by the future of water quality in Heron's Lake. LDC sections 14-244 and 14-247 require hazardous conditions be abated to prevent further future harm. LDC Section 78-15 protects the right of the adjoining homeowners to peacefully use and enjoy their land. Florida law requires prospective buyers of residential property to be fully informed of material environmental hazards that cannot be seen. *Johnson v. Davis*, 480 So.2d 625 (Fla. 1986).⁵

The well-reasoned opinions of Commissioner Laura DeBruce and then-Planning Commissioner Matt Kirchner, who voted against the application, are worthy of the Council's consideration. Commissioner DeBruce said, "the biggest problem, to use a lay person's term, is that the soil in this area is heavily polluted with nutrients." Commissioner Kirchner (a contractor), concurred, "As much as I like houses being built, I really have a problem making a recommendation to approve this development going forward knowing there is such a concern about the environment to people who may end up buying and moving in. ... We know there's a problem."

Notably, two other Commissioners expressed concern. Commissioner Lyman Welsh, who had not yet been appointed, spoke against the development as a private citizen at the January 9 hearing, and recused himself at the January 24 hearing. Commissioner Ty Symroski, although absent from the January 9 hearing, expressed concern about the pollution at the site at the January 24 hearing and requested an amendment to the draft resolution to reflect those concerns.

⁵ The Florida Supreme Court's held in *Johnson v. Davis*, 480 So.2d 625 (Fla. 1986), that a seller of residential real property has a common law duty to disclose any latent defects if he or she has knowledge of conditions materially affecting the value of the property that are not readily observable or known to the buyer.

None of the Planning Commissioners who voted to approve the development referenced the provisions of the Sanibel Plan and the LDC that protect water, the environment, and public health.

I. Applying LDC Sections That Protect the Environment

a. LDC Section 86-40 requires environmental damage to be minimized

Land Development Code section 86-40 requires the Planning Commission to consider how to minimize environmental damage caused by this development. Section 86-40(b) states:

“The design, location and construction and the maintenance of all development shall be in a manner that minimizes environmental damage.”

The Planning Staff recommended 23 conditions, including a condition requiring 100% native vegetation on both common areas and home sites to minimize environmental damage. SCCF strongly supported this 100% native plant recommendation. However, the Planning Commission reduced this recommendation to 75% native and 25% non-native vegetation on the home sites (Condition 18).

b. The Planning Commission failed to impose adequate conditions

The subject site is not a typical building site on Sanibel. As Commissioner Storejohann quipped, the site contains “a lifetime supply of phosphorus.” The un rebutted evidence shows that the soil, groundwater, and nearby Heron’s Lake are impaired by legacy nutrients. Moreover, Heron’s Lake and other nearby surface waters were severely impacted by the tidal surge caused by Hurricane Ian in September 2022. A recent SFFC blog describing the harmful impact of the storm on Sanibel lakes noted, “Some lakes ... may experience major deterioration due to extreme nutrient-laden inputs.”⁶

The conditions approved by the Planning Commission do not minimize harm to the environment, especially this impaired and stressed environment. To be consistent with LDC section 86-40, the Planning Commissioners should have:

1. Imposed additional conditions to minimize harm to the environment, including:

- Require additional independent testing for contaminated soils and groundwater, including nitrogen and phosphorous, as recommended by the Florida Department of Environmental Protection to determine the levels of nutrients and heavy metals that remain at the site. Even Commissioner Storejohann, who voted to approve the development, said the need for testing was “self-evident.” Yet no testing has been done on the subject site since 2009.
- Require an assessment report detailing the testing results and a plan for any remediation that may be needed to remove any source of continuing nutrient

⁶ <https://www.sccf.org/news/blog/recovery-will-take-time-for-sanibels-freshwater-habitats>

leaching, and to prevent further harm to the groundwater and Heron's Lake. The testing and recommendations for remediation should be performed by an independent body, at the expense of the Applicant.

- Require all soil excavated as part of the construction process to be removed from the island and disposed of properly offsite.
 - Require 100% native vegetation for the entire development, as recommended by the staff and SCCF.
2. Imposed limitations on the scope of the development, such as reducing the number of home sites, prohibiting construction of homes on top of the former settlement pond (at least until all soils contaminated with nutrients can be removed), and prohibiting in-ground pools. As Commissioner DeBruce explained, "the City's 2008 settlement allowed six houses to be built *limited [or subject] to environmental constraints*. The City did not grant the right to the Applicant to build six units."

II. Applying the Sanibel Plan Provisions that Protect Water Resources

a. The Sanibel Plan Requires Protection of the Groundwater and Natural Resources

All development and developments orders issued by the City must be consistent with the duly adopted Comprehensive Plan as required by state law. *Pinecrest Lakes v. Shidel*, 795 So. 2d 191 (Fla. 4th DCA 2001).

Pursuant to Sanibel Plan Conservation Element Goals, Objective 4, development in the City of Sanibel must "*protect and conserve water resources and prevent impairment of the quality and quantity of surface and groundwater resources*." The background of the Goal provides guidance: it is "*imperative*" to protect "*lakes and wetlands from any sewage pollution*." The background recommends studies and taking "appropriate remedial action." See Sec. 3.2.2., p. 60.

Specific to new development, the Future Land Use Element requires the City to "*promote the protection of natural, [and] environmental resources*," and "*promote the maintenance of enhancement of water quality*." See Sec. 3.6.2, Statement B, p. 226. Policy B2.1 requires the City to "*protect natural resources by application of best management practices*."

The soil, groundwater, and nearby Heron's Lake are impaired by legacy nutrients. In response to a question posed by Commissioner Pfeifer, The City's expert Dana Dettmar testified the development will have an adverse impact on water quality. The Commissioners were also aware of the Best Management Practices applied by the City to protect the natural resources on its own parcel and the BMPs contained in the Lake Agreement with Appellants who are Lake Homeowners to restore Heron's Lake.

b. The Planning Commission Should Have Ordered Testing and Remediation

The Planning Commission's decision to approve the Coastal Creek development without ordering testing and remediation is inconsistent with these provisions of the Sanibel Plan. To be consistent with the Sanibel Plan, as well as the Lake Agreement, the Planning Commission should have included conditions requiring:

1. Pre-development Best Management Practices. These include soil and groundwater testing as recommended by DEP, future surface water quality testing in Heron's Lake, assessment and remediation of any legacy contamination that remains on site, and limiting development until contaminated soils that are removed. As the City's own actions demonstrate, independent testing and remediation are Best Management Practices. To allow this development to proceed without testing and remediation would *impair*, rather than *protect*, the groundwater and Heron's Lake. It would harm City-owned property (Heron's Lake) and undermine the effectiveness of the Lake Agreement, to which the City is a party. Because no testing has been done on the site, no one knows if the site is impairing nearby surface waters, including Buck's Key Lake, the Lee Anne Tauck Tract Lake (future home of Ding Darling's new rookery), and Clam Bayou.
2. Post-development Best Management Practices. These entail, at a minimum, 100% native vegetation for the entire development, as recommended by the staff and SCCF.

III. LDC Sections 14-244, 14-247 Hazardous Conditions, Human Health, Abatement

a. LDC Section 14-244 and 14-247 requires abatement of "hazardous" conditions

Section 14-244 of the Sanibel Land Development Code defines land as "*hazardous*" when conditions on the land are "*dangerous to the health, welfare or safety of the public, the occupants of surrounding properties, or the occupants of such land;*" or when "*noxious odors*" or "*harmful particulates*" emanate from the land. When land is declared hazardous, Section 14-247 requires the landowner to abate and remove the hazardous condition by assessing, remediating and restoring the land "*by the means least expensive and least detrimental to the owner's property and to the public environment.*"

The Commissioners considered un rebutted evidence that this subject site is the primary source of legacy nutrients in Heron's Lake. Lake Homeowner Howard Simon testified these nutrients produce harmful blue-green algae blooms that release airborne toxins that can cause liver damage, Alzheimer's, and other neurological diseases. The harm caused by these Harmful Algae Blooms is well-documented, as acknowledged by Commissioner DeBruce. These conditions endanger the health of the Lake Homeowners and neighbors who live near the Lake, as well as the health of the future residents of Coastal Creek and other Sanibel residents.

Lake Homeowner John Cooper testified how noxious odors emanate from the Lake, which he called the "putrid pond" that can be detected by human sense of smell as airborne toxins released by the Harmful Algae Blooms enter human airways. These harmful and unhealthy conditions are the reason the City entered into the Lake Agreement.

To be consistent with sections 14-244 and -247 of the Land Development Code, the Planning Commission should have imposed a condition requiring the Applicant to conduct additional testing recommended by DEP and to abate any hazardous conditions revealed by the testing. The failure to include such a condition undermines the City's and Lake Homeowner's efforts to remediate the lake, and endangers the health of current and future residents on and adjacent to the site.

b. LDC Section 78-15 requires abatement of public nuisance.

Land Development Code Section 78-15 states "*The provisions of this Land Development Code are deemed to be necessary for the protection of the public health, safety and welfare and for the protection of the peaceful use and enjoyment of any lands by the owners thereof, and any violation of this Land Development Code is hereby declared by the city council to constitute a public nuisance.*"

John Cooper's testimony about how the "putrid" stench emanating from Heron's Lake makes it impossible for his family and neighbors to enjoy their exterior space is the very definition of a public nuisance.⁷ To be consistent with LDC Section 78-15, the Planning Commission should have declared the existence of a public nuisance and ordered testing and abatement to protect the property rights of the Lake Homeowners, and to restore to them the peaceful use and enjoyment of their exterior space, including the otherwise beautiful Heron's Lake.

c. Florida law requires disclosure of material environmental hazards

Applicable Florida law requires the full disclosure of the history and environmental problems of this site, as acknowledged by Commissioner Pfeifer. The Florida Supreme Court's held in Johnson v. Davis, 480 So.2d 625 (Fla. 1986), that a seller of residential real property has a common law duty to disclose any latent defects if he or she has knowledge of conditions materially affecting the value of the property that are not readily observable or known to the buyer. The Planning Commissioners considered un rebutted evidence that at least three Lake Homeowners recently purchased their homes *without adequate disclosure* of the problems of Heron's Lake, or the proximity of a decommissioned wastewater plant. Four of the six proposed homesites are proposed to be located directly on top of the former wastewater pond.

The Applicant's Attorney acknowledged the disclosure requirement. He testified, "there's going to be nothing hidden. ... We will come up with a way that is fair and honest." Yet the method he suggested, "if they are getting financing, they might find it in the title search," is neither timely nor adequate notice of the issues regarding the site. The Planning Commission should have recognized, based on these facts, that adequate disclosure may not be made. Therefore, a condition should be included that requires the Applicants to disclose to prospective purchasers that the site is a decommissioned wastewater plant, test results (or the lack thereof), and actions taken to remediate the site (or the lack thereof).

⁷ Florida common law also recognizes and prohibits the creation of a public nuisance. "Anything which annoys or disturbs one in the free use, possession or enjoyment of his property or which renders its ordinary use or occupation physically uncomfortable may become a nuisance and may be restrained." *Town of Surfside v. Cnty. Line Land Co.*, 340 So. 2d 1287, 1289 (Fla. 3d DCA 1977). Pollution falls within the definition of a public nuisance. *Surfside*, 340 So. 2d at 1289.

Petitioners' Request for Relief: Impose Additional Conditions of Approval

For the reasons set forth above, the Petitioners' respectfully request the City Council to impose the following conditions on the Applicant:

Additional Conditions:

1. Prior to any excavation or improvements on the subject site, the Applicant shall submit to the City Department of Natural Resources:
 - a. A Site Assessment Plan (SAP) to test and assess the extent of potential heavy metal and nutrient contamination in groundwater and soils (above and below the water table) to a depth that is at least 1-2 feet deeper than the former wastewater plant pond to ensure that the vertical and horizontal extent of any remaining contaminants from the wastewater pond have been delineated in three dimensions.
 - b. A Site Assessment Report (SAR) reporting all laboratory results, analysis, and findings of the Site Assessment to the City Department of Natural Resources.
 - c. A Remedial Action Plan (RAP) to prevent contaminants from leaching excess levels of nutrients into groundwater leading to nearby surface waters including Heron's Lake.
 - d. Documentation that the Applicant has excavated all soil contamination that could leach excess nutrients and heavy metals into groundwater and has performed all other remediation identified in the SAR and RAP.
2. Department of Natural Resources must confirm that the site has been fully remediated prior to development of any streets, driveways, utilities, houses, pools, or other improvements on the subject site.
3. All soil excavated as part of the construction process shall be removed from the island and disposed of properly offsite.
4. Only 100% native vegetation shall be required for the entire development, as recommended by the staff and SCCF.
5. The Applicant shall disclose the history of the site and all testing and remediation reports in advance to prospective purchasers in a manner to be approved by the City Council.







FLORIDA DEPARTMENT OF Environmental Protection

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSa
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

January 6, 2023

Holly Milbrandt
Natural Resources Director
City of Sanibel
Email: Holly.Milbrandt@mysanibel.com

Re: Former Sanibel Bayous Wastewater Treatment Plant Site (FLA014576)

Dear Ms. Milbrandt:

Thank you for reaching out to the Department of Environmental Protection (DEP) requesting comments related to decommissioning of the former Sanibel Bayous wastewater treatment plant, and the proposed 6-unit development to be called Coastal Creek on the properties located at STRAP tax parcel no. 13-46-21-T2-00002.2000 and 13-46-21-T2-00002.4000.

A review of DEP records indicates that the City of Sanibel ("City") decommissioned the plant in 2008, removing all structures and filling the two rapid infiltration basins in order to safeguard public health and safety. Such activities are consistent with DEP's expectations for wastewater treatment plant decommissioning. Thank you for the City's efforts to meet DEP's decommissioning expectations.

In situations where land use changes from industrial/commercial to residential, DEP frequently recommends soil and groundwater screening to ensure the safety of future residents. Consistent with that principle, DEP recommends that the developer collect and analyze soil and groundwater screening samples for nitrate, nitrite, and RCRA 8 metals. For soil screening, DEP suggests at least one soil sampling location per proposed residence with discrete vertical sampling intervals at each location of land surface to six inches, six inches to two feet, and two-foot intervals thereafter to the ground water table. For groundwater screening, two sampling locations should suffice. All sampling and analyses should be discrete, not composited.

Please feel free to contact DEP anytime you have questions.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer L. Carpenter".

Jennifer L. Carpenter
Director, South District

Exhibit 1: We presented our proposed conditions on August 24th - As of January 4, majority are not addressed in the proposed permit



HERON'S LANDING DEVELOPMENT

August 24, 2012

Mr. Steve Chandler

Sanibel Planning Commission

RE: Heron's Landing 4530 Bayview East, Sanibel, FL 33958

The City of Sanibel is pleased to present this report to the Sanibel Planning Commission for their review and approval. The report contains the findings of the Sanibel Planning Commission and the City of Sanibel regarding the proposed development. The report also contains the findings of the Sanibel Planning Commission and the City of Sanibel regarding the proposed development.

There are three (3) principal reasons why our RDA request that Coastal Creek be required to do further detailed studies and submit a permit application to the City of Sanibel for the proposed development. The first reason is that the proposed development is located in a sensitive area and the second reason is that the proposed development is located in a sensitive area and the third reason is that the proposed development is located in a sensitive area.

1. Coastal Creek is planned to be constructed over a portion of a former Wastewater Treatment Plant with an existing groundwater contamination. Prospective buyers are entitled to know that their home is built on the site of a former wastewater treatment plant. Our existing communities will be adversely affected if the proposed development is constructed on the site of a former wastewater treatment plant. We want to ensure that the proposed development is constructed on the site of a former wastewater treatment plant.

2. To our knowledge, the Developer and the City of Sanibel have no boring samples specifically located where the proposed development is located. We want to ensure that the proposed development is constructed on the site of a former wastewater treatment plant.

3. The Developer studies do not address groundwater contamination issues. Submitted studies address only Wetlands, Protected Species & Stormwater management plans.

CONCERNS & PROPOSED CONDITIONS

ENVIRONMENTAL CONCERNS Four (4) of the six (6) lots of the proposed development sit directly on top of the former wastewater treatment plant. The proposed development is located in a sensitive area and the second reason is that the proposed development is located in a sensitive area and the third reason is that the proposed development is located in a sensitive area.

PROPOSED CONDITIONS The Developer shall be required to submit a permit application to the City of Sanibel for the proposed development. The Developer shall be required to submit a permit application to the City of Sanibel for the proposed development.

HERON'S LANDING DEVELOPMENT

August 24, 2012

Mr. Steve Chandler

Sanibel Planning Commission

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From Exhibit X in
Planning Commission
Packet

Exhibit 2: Most critical concern is construction on top of former sewage settling ponds



SCCF 2005 Wastewater Treatment Plant Overlay



Attempts to mitigate this former waste treatment plant occurred in 2008. Evidence strongly suggests leaching may still be underway

Exhibit 3: Proposed Community is on top of former sewage settling Ponds



Key Facts taken from SCCF Lake Management Plan for Herons Landing - May 2018

"The Herons Landing stormwater pond just south of the study site has the **highest concentrations of nutrients found in any waterbody on or adjacent Sanibel.**"

"The magnitude of nutrient loading from the perc pond site suggest legacy nutrients from the former percolation ponds are having **major effects on nearby waterbodies through groundwater connections.** The soil currently covering the former perc ponds are primarily sands with low organic content which has little capacity to hold phosphorus and is saturated to the point that it releases P whenever inundated with groundwater or stormwater percolation."

"All results **exceeded state water quality standards** for phosphorus and nitrogen. Phosphorus levels were 2 orders of magnitude greater than state criteria while nitrogen levels were about 7 times greater than criteria. **Phosphorus values in the stormwater lake were similar to groundwater levels from the perc pond site.**"

"**Groundwater flow** towards Herons Landing stormwater pond was greater from the eastern portion of the perc pond area than the western portion where the City has constructed vegetated wildlife ponds."

"The Herons Landing western lake has two known discharge points..... The other discharge location is a heavily vegetated channel at the northwest end of the waterbody and can connect the lake to **Clam Bayou** at extremely high tides or lake levels."

Our Proposed Conditions:

1. Soil and Groundwater must be tested before, during and after construction.
2. Developer/Owners must participate in 5 year Lake Remediation Agreement
10. Developer/RE Agents must disclose former land use.

Exhibit 4: Watershed Concerns



Heron's Landing Watersheds



SCCF Heron's Landing Watersheds 1 in = 250 ft

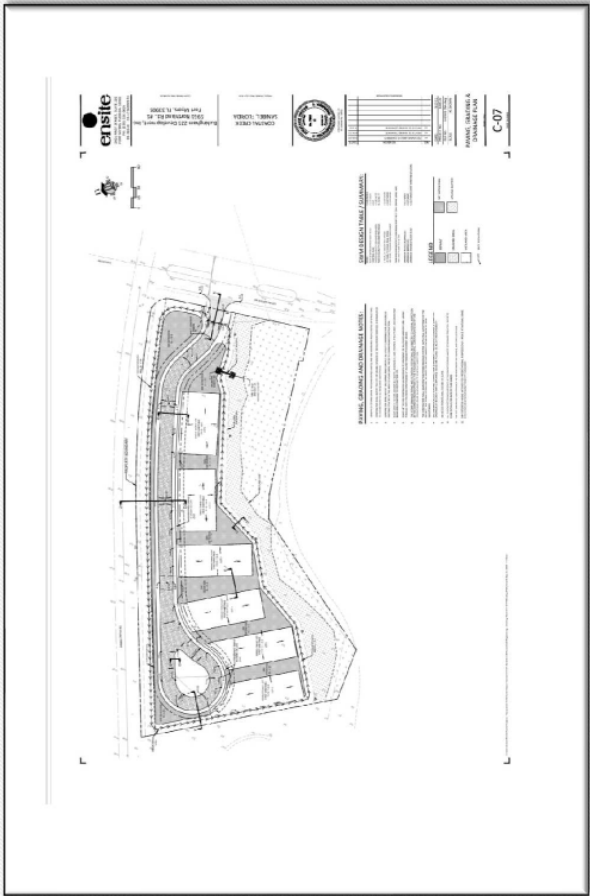
Runoff from Coastal Creek land flows naturally to Heron's Landing Lake to Clam Bayou and out into the Gulf.

Exhibit 5: 62% of this site will be disturbed in construction



Disturbing 62% of this soil will likely lead to additional groundwater contamination

Exhibit 6: Flooding Concerns: The effects of a 5-foot berm



Our Proposed Conditions:

4. A more thorough analysis of the potential flooding impact on Osprey Court must be performed.

Exhibit 7: Traffic / Access



Sanibel Bayous and Heron's Landing both contribute to the maintenance of Sanibel Bayous Road.

Coastal Creek will put additional burden on this private road as well as drive more traffic out to SanCap Road at an already congested intersection.



Our Proposed Condition:

6. The Development must contribute to maintenance of the private road Sanibel Bayous

Exhibit 8: Impact on Rookery



Hérons Landing - West Lake Rookery



Rookery area between Coastal Creek and Herons Landing



Our Proposed Condition:

- 8. Coastal Creek's Conditions/Covenants must include restrictions on motion detector lights/spotlights facing south toward the Rookery for migratory birds.

Exhibit 9: Remainder of our proposed conditions



- 3. The preserve area must be clearly marked as undisturbed (✓)
- 5. All homes must be designed to current Hurricane requirements (metal roofs, impact windows, hardy board, etc.) (✓)
- 7. Construction traffic should use the curb cut on SanCap Road.
- 9. Construction should be limited to the hours of 8 am to 5pm on non holiday weekdays.

✓ Appears to be satisfactorily addressed in current documents



In conclusion: Heron's Landings believes that this Development should NOT be approved until these conditions are appropriately addressed **and** disclosed to potential buyers





Lake Management Plan for Herons Landing

Sanibel, Florida

Prepared by SCCF Marine Lab in Cooperation with

Heron's Landing HOA and The City of Sanibel

May 2018



Introduction

In March 2017, a group of concerned residents of the Herons Landing development met with City of Sanibel Natural Resources Department and Sanibel Captiva Conservation Foundation (SCCF) Marine Lab to discuss the perceived poor water quality within the lake (Heron's Landing western lake) located north of Osprey Court. In that meeting, the residents expressed their concerns regarding a strong hydrogen sulfide odor emanating from the lake, dark coloration of the water and a lack of aquatic life in the lake.

As part of a baseline study of 72 lakes on Sanibel in 2016 (Sanibel Community Lakes Baseline Water Quality Report), the Heron's Landing western lake was ranked poorest in water quality of all lakes surveyed on the island. Its proximity to the former Sanibel Bayous Wastewater Treatment Package Plant percolation ponds was hypothesized as a reason for high nutrient and chlorophyll *a* concentrations found in that study. The Bayous Developments relied upon this wastewater treatment plant until 2007 when all homes in the area were connected to the City's centralized sewer system. In March 2008, the City of Sanibel purchased the former wastewater treatment plant percolation pond site and developed plans to properly decommission the ponds. Following Florida Department of Environmental Protection (FDEP) guidelines, the percolation ponds were pumped, filled with sand, inspected and closed in 2009. In 2015, as part of the site restoration effort, the City excavated two small wildlife habitat ponds in the location of the former percolation ponds and planted aquatic and terrestrial vegetation to aid in the removal of nutrients still present on the site.

After considering the concerns of lakefront property owners in Heron's Landing, the City of Sanibel agreed to further investigate the water quality issues in the lake. At the request of the City, the SCCF Marine Lab conducted a small study, which included additional sampling of the HOA lake and installation and sampling of groundwater monitoring wells on the former percolation pond site (now owned by the City and William Broder). The study also included soil coring into the former percolation pond substrate to analyze the substrate and surrounding groundwater for heavy metals most commonly associated with domestic wastewater. Results of that study were published in a report by the SCCF Marine Lab and distributed to the stakeholders and the City (Appendix 2). That study found the lake to be hypereutrophic (excessively-productive) with high levels of Chlorophyll *a* fueled by extremely high levels of phosphorus (P) and nitrogen (N) in the water column. The dominant planktonic organism in the water column was sulfur-reducing bacteria and the lake itself was hypoxic (very low oxygen conditions). These conditions explain the strong sulfur odors and lack of aquatic life in the lake. The concentration of phosphorus was near the highest value of any ambient surface water samples taken by the SCCF Marine Laboratory on Sanibel.

After evaluating the potential nutrient sources for the HOA lake, stormwater runoff from the low density residential land use around the lake did not appear to lend itself to producing such poor water quality. This suggested another source such as groundwater from the percolation pond site may be driving the elevated nutrient concentrations in the lake. However, certain residential landscape practices (e.g. fertilization, removal of shoreline vegetation) can be a contributing factor to the poor

health of the waterbody and can exacerbate the existing water quality issues.

In 2017, the City of Sanibel contracted the Florida Gulf Coast University (FGCU) Southwest Florida Aquatic Ecological Group to conduct a health assessment of 7 individual lakes on Sanibel as part of the Sanibel Communities for Clean Water Program. The Herons Landing lake was one of the waterbodies assessed during the study. The primary goals of the study were to 1.) Assess the ecological function; and 2.) Characterize the bottom sediments of the lakes (study data available in Appendix 2). Similar to the SCCF findings, the FGCU results confirmed the presence of hypoxic conditions, poor water clarity, likely due to the persistence of sulfur-reducing bacteria in the water column, and exceptionally high concentrations of nitrogen and phosphorus that drive the Trophic State Index (TSI) to a state of hypereutrophy. Additionally, sediment cores were collected to characterize the conditions in the lake bed sediments. Three cores were taken along a transect. Although the muck layer (flocculated material and organic sediment) was not thick compared some waterbodies, the nutrient content was very high especially phosphorus. Furthermore, approximately half of each core was comprised of flocculated material, which is an unconsolidated material that can easily be re-suspended into the water column. This is important to note because if the flocculent material is resuspended, it can increase the amount of nutrients available in the water column for algae growth.

Monitoring wells installed at the former percolation pond site showed groundwater from the site flows to the Herons Landing lake. The concentration of phosphorus and nitrogen in the groundwater was generally greater than the concentration found in the lake. This evidence suggests groundwater flowing from the former percolation pond site is a significant source of nutrient input to the study lake. The high nitrogen and phosphorus concentrations in the groundwater are likely the persistence of legacy nutrients (i.e. nutrients that have been accumulating in the soils/sediments) from the former wastewater treatment plant. Treated domestic wastewater once stored in the percolation ponds was likely high in sulfur compounds (a characteristic of domestic wastewater) and the groundwater from that site can contribute additional sulfate to the lake. The sulfate binds with lake sediments releasing phosphorus which is normally held by the sediments. The phosphorus released from the sediments contributes to potential algae blooms.

Hydrogen Sulfide can be detected in the air at concentrations as low as 0.5 ppb. This concentration would generally equate to a Hydrogen Sulfide concentration of at least 0.5 mg/l in the water. Sulfides that exceed 1 mg/l in the water will generate the very noticeable and objectionable rotten egg odor (McVay 2009). Due to the strong rotten egg odor often found at the western lake at Herons Landing, it likely has sulfide concentrations above 1 mg/l.

Over the last decades many community lakes have become eutrophic due to nutrient loads from wastewater, fertilizers, and other residential practices. The relationship between sulfide production and phosphorus release in eutrophic lake sediments is critical due to the significance of phosphorus in stimulating algae growth (Wetzel, 1983; Murray, 1995; NuÈrnberg, 1996; Kleeberg, 1997). The formation and precipitation of insoluble iron sulphide compounds leads to reduced binding of

phosphate to iron oxides (NuÈrnberg, 1996; Kleeberg, 1997) and results in a release of phosphate from the sediments which may increase eutrophication of lakes (Ohle, 1953; Caraco, Cole & Likens, 1993; Smolders & Roelofs, 1993; Søndergaard, Windolf & Jeppesen, 1996). In other words, high sulfate concentrations and lack of oxygen in the groundwater or near the lake sediment-water interface will prevent phosphorus from binding with iron in the sediments which makes the phosphorus available for consumption by phytoplankton or macroalgae leading to greater primary production (algae blooms).

In addition, an accumulation of dissolved sulfides may produce toxicity that inhibits recolonization by organisms that live in the lake sediment. Similarly, the concentration of dissolved sulfide may control recolonization by rooted plants in the littoral zone (Lamers, Tomassen & Roelofs, 1998). These considerations will be important in lake restoration efforts.

Currently, the lake experiences few if any cyanobacteria (blue-green algae) blooms because they are often limited by a lack of iron in the water column; iron is an element that is necessary for the growth and proliferation of cyanobacteria. In an aquatic environment with little to no oxygen, a process referred to as reduction occurs, which transforms sulfate into the compound iron sulfide making iron unavailable to cyanobacteria. In fresh waters the potential for sulfate reduction is limited, but in marine and estuary waters it can be much higher (Boudreau & Westrich, 1984). Therefore, sulfate reduction rates (and associated problems such as odor and higher phosphorus) will be greater in the Herons Landing lake due to the occasional inflow of estuarine waters from Clam Bayou. The lake will have higher soluble P concentrations originating from the sediments due to its higher salinity and sulfate reducing environment. These conditions promote the binding of iron to sulfide which would normally bind the soluble phosphorus (Caraco, Cole & Likens, 1990; Blomqvist, Gunnars & Elmgren, 2004). As stated above, low oxygen or reducing environments will cause iron to preferentially bind to sulfide rather than phosphorus. This increases the concentration of phosphorus in the water column which can provide the fuel necessary to stimulate an algae bloom.

The results of the first SCCF study and the FGCU analyses indicate that the western lake at Herons Landing is eutrophic with mean nitrogen, phosphorus and chlorophyll *a* concentrations exceeding state water quality criteria. The trophic state index is above 100, well over the acceptable value of 60. Even during sun-lit daylight hours, the lake remained anoxic (devoid of oxygen). Normally, photosynthetic organisms (e.g. plants, algae) produce oxygen in the water column, but the lack of aquatic plants and the dominance of sulfur-reducing bacteria limit oxygen production in the lake. Sampling on November 20, 2017 revealed a large abundance of euglenoids (microorganisms) and sulfate reducing bacteria, which produce a strong sulfur odor.

The lake has been added to the Sanibel Communities for Clean Water program (<https://sanibelcleanwater.org/>) and will be sampled each dry and wet season to look for changes and trends in water quality. The May 2018 dry season results of this program show lake water quality improved since the 2017 dry season (Figure 1). Sampling in 2018 showed reduced levels of nitrogen, phosphorus and chlorophyll concentrations and increased oxygen. Although there is not enough time-series data to conclude that these results show true improvement, the information is promising and may

indicate positive effects of remediation efforts by the City of Sanibel at the adjacent former wastewater pond site. Continued monitoring will show if these trends continue and will also document effects of additional management efforts.

The current poor water quality can affect property values and reduce enjoyment of the lake. Low levels of oxygen at the sediment interface must be addressed to prevent binding of iron to sulfide causing the release of phosphorus. In addition, a reduction in the amount of sulfur in the lake or groundwater sources would be beneficial to improving lake water quality. The homeowners association will benefit from a management plan with specific objectives designed to achieve the goal of improved water quality and reduced odors.

Lake Ownership and Watershed Characteristics

According to the Lee County Property Appraiser's website, each individual Herons Landing homeowner with waterfront on the lake owns a section of the lake, approximately parallel to their property's side boundary lines and reaching entirely to the shoreline on the other side of the lake (Figure 2). In other words, each homeowner on the lake owns a piece of the western lake and together the Herons Landing property owners own the entire lake. The properties adjacent to the lake and to the north are owned by the City of Sanibel (western parcel) and by William Broder (eastern parcel) the original developer of Herons Landing (Figure 2). These two parcels comprise the former percolation pond site. The parcel boundaries north of the lake extend only to the lake's shoreline. The City owns a riparian buffer to protect the bird rookery, which extends along the parcel owned by Mr. Broder.

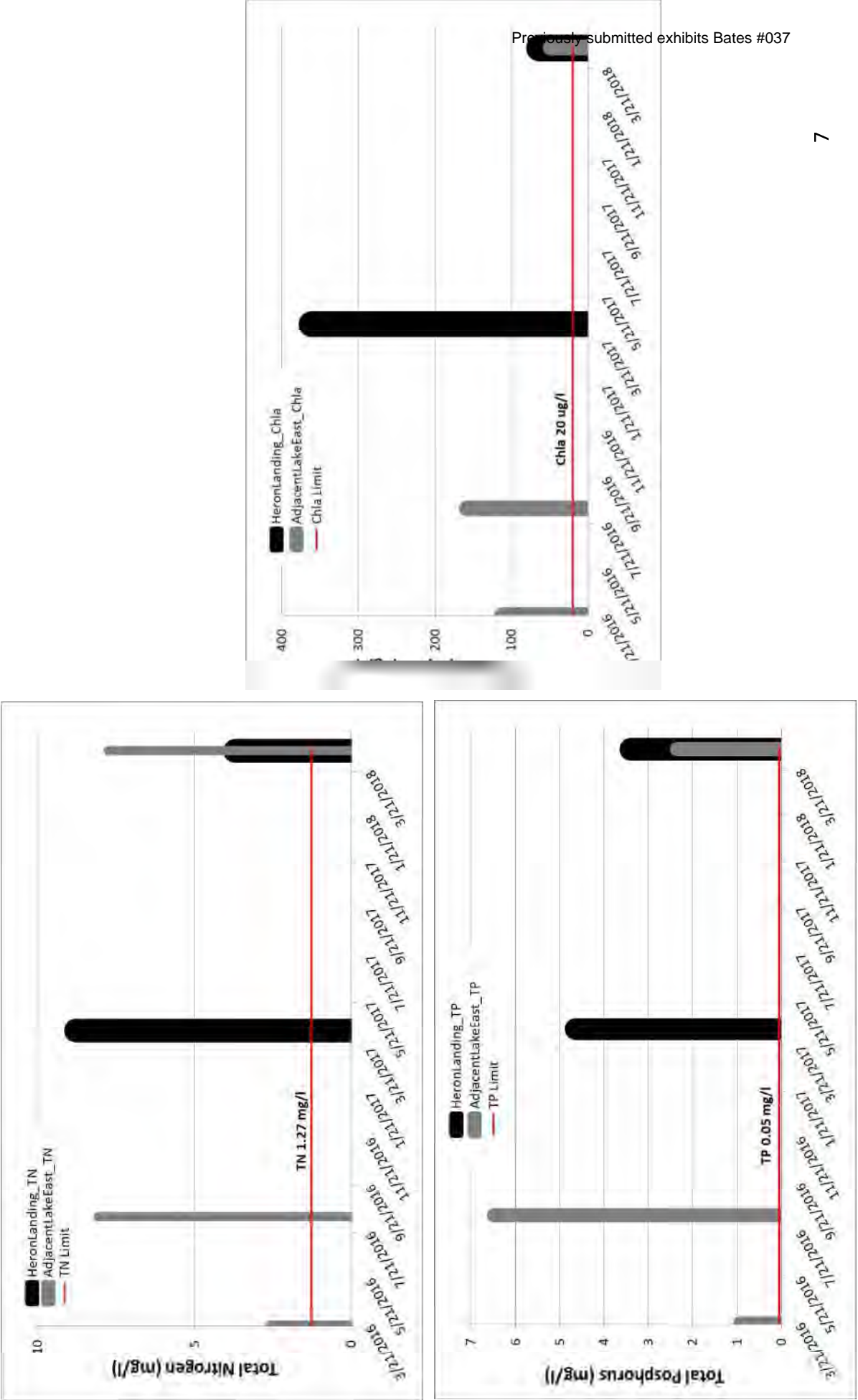
A GIS analysis revealed 9 homes currently exist within the western lake's 573,000 square foot (13.2 acre) watershed with an estimated total impermeable surface area of 20% (Table 1). The existing homes are zoned within the City of Sanibel's mid-island ridge and altered land ecozones. All home sites met the requirements, although two were at maximum allowable impermeable surface. The property located north of the lake is classified primarily as altered land. These classifications permit a developed homesite to contain a maximum of 30 to 35% impermeable surface (depending on mid-ridge or altered land zone).

The lake's watershed consists of properties north of the lake owned by the City of Sanibel and National Development Corporation and the homes on the north side of Osprey Court (Figure 3). Most homesites have a vegetative buffer adjacent to the lake as encouraged by the City of Sanibel, with a notable exception at 5406 Osprey which has sod mowed to the water's edge (Appendix 1). The backyard of 5418 Osprey Ct. has mulch and rip-rap at the water's edge with no vegetative buffer.

Table 1. GIS analysis results for the watershed of the Herons Landing western lake.

Address	Area (Sq. Ft.)						Percent Total Land Area					
	Total Land Area	Drive And Walkways	.% Shell or Paver	House	Sod or Mulch	Canopy or Veg	Drive And Walkways	House	Total Impermeable	Sod or Mulch	Canopy or Veg	Total Permeable
5398 Osprey Ct.	29,976	0	0	0	0	29,976	0	0	0	0	100	100
5402 Osprey Ct.	18,743	2,481	80	5,562	824	9,877	3	30	32	4	53	68
5406 Osprey Ct.	20,312	3,726	80	3,790	3,146	9,651	4	19	22	15	48	78
5410 Osprey Ct.	20,770	2,458	80	4,383	1,317	12,612	2	21	23	6	61	77
5414 Osprey Ct.	15,309	1,812	80	4,271	1,087	8,139	2	28	30	7	53	70
5418 Osprey Ct.	14,249	1,155	0	4,118	1,969	7,006	8	29	37	14	49	63
5422 Osprey Ct.	20,325	1,397	0	3,919	3,336	11,672	7	19	26	16	57	74
5426 Osprey Ct.	16,970	2,295	80	3,447	3,002	8,226	3	20	23	18	48	77
5430 Osprey Ct.	16,743	960	80	3,230	0	12,552	1	19	20	0	75	80
Sanibel Parcel	128,065	0	0	0	0	128,065	0	0	0	0	100	100
Broeder 1	80,663	0	0	0	62,550	18,113	0	0	0	78	22	100
Broeder 2	61,995	0	0	0	16,822	45,173	0	0	0	27	73	100
Parcel Total	444,120	16,284		32,720	94,053	301,062	4	7	11	21	68	89
Lakes,Roads,ROR	129,575	64,575		0	65,000	0	50	0	50	50	0	50
Total Watershed	573,695	80,860		32,720	159,053	301,062	14	6	20	28	52	80

Figure 1. Total nitrogen, total phosphorus and chlorophyll-a concentrations at the Herons Landing western lake and the adjacent lake east. Note the decrease in all eutrophication indicators since the 2017 dry season. Continued monitoring will show if this is a true positive trend. Also note that values are still far above acceptable levels set by Florida DEP.



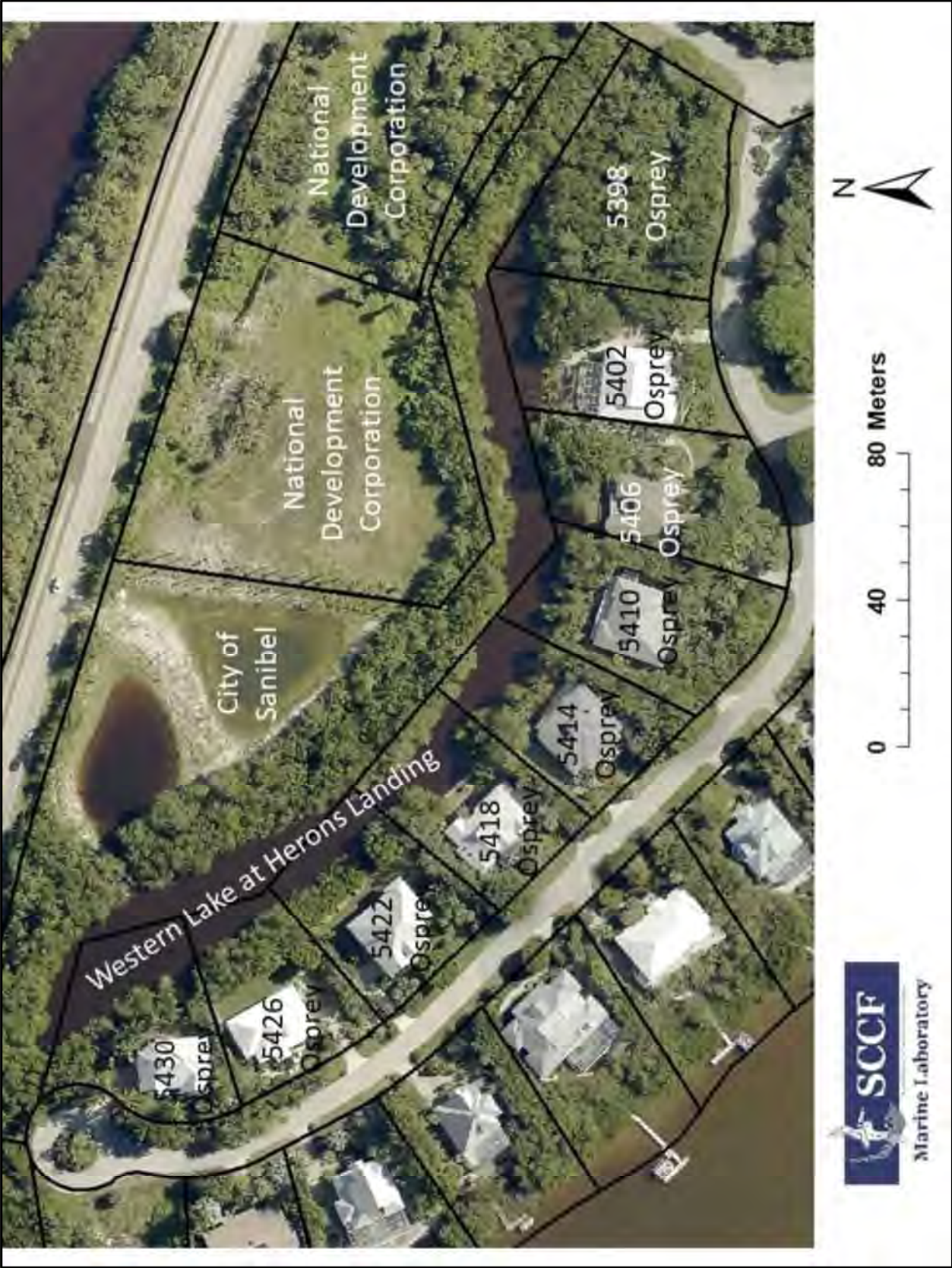


Figure 2. The western lake at Herons Landing showing property boundaries, the City of Sanibel s nutrient removal ponds north of the lake and addresses.



Figure 3. The Herons Landing area watersheds delineated in ArcGis10® using Lee County Lidar elevation data. The drainage basins for this can periodically connect through overflow structures, or during large rain events, or high tides.

Lake Working Group Organization

The involved homeowners will organize a working group that will respond to the needs of the group and develop a vision for the lake. The vision developed will include goals for lake use, including wildlife, plants, water quality, water clarity, color, odor and other issues. Once a vision has been adopted, a list of lake management goals will be established by the working group. Restoration of the Herons Landing lake will require input and effort from the entire community. It is important that everyone in the community understands that it can take many years to achieve water quality improvements and restore natural functions in impaired waterbodies. The Herons Landing lake to the east is periodically connected to the study lake and has similar water quality characteristics. The property owners around that lake may find it beneficial to participate with the lake management working group to expand the focus of the effort to those two lakes, and possibly the entire community. The working group would need to decide how financial needs of lake restoration will be met (i.e. through dues, fees, etc.).

Lake Working Group Goals & Vision for the Future

The Herons Landing western lake is an artificial waterbody created when fill material was removed from the site to elevate the adjacent building sites. The waterbody now acts a stormwater runoff basin for the development. Depending on tides and the lake surface elevation, the lake is periodically connected to Clam Bayou, a brackish waterbody, located to the northwest and to the manmade Herons Landing lake to the southeast (via a water control structure). The original intended uses of the Herons Landing lakes were not as a recreation use or as wildlife habitat. However, the stakeholders hope that the lake can become a positive feature in their neighborhood, improving the aesthetic value of their homes and providing diverse wildlife habitat. The restoration efforts should provide conditions which support a healthy ecological community consisting of phytoplankton, zooplankton, invertebrates and fish.

The primary goals of the lake management plan focus on improving water quality by:
1.) reducing the strong hydrogen sulfide odor that is currently being produced to unnoticeable levels (less than 3-5 ppm per OSHA); 2.) increasing dissolved oxygen above 2 mg/l to address anoxic conditions; and 3.) providing conditions which support a diverse, natural community of flora and fauna in the lake. Significant reduction in the abundance of sulfur-reducing bacteria in the water column will be required to achieve the improved odor objectives. Reduction in overall chlorophyll *a* (phytoplankton) will be addressed by decreasing nutrient concentrations through implementation of best management practices (BMPs). Associated with the reductions in chlorophyll *a*, a reduction in turbidity should be measurable, resulting in improved water clarity. It is understood that the brown, turbid appearance of the lake is partly natural and partly due to a high concentration of microbes. With improved management of pollutant inputs and in-lake restoration activities, obtaining a less turbid appearance should be possible.

This lake management plan will be adaptive in nature and will be updated periodically by the

lake working group based upon findings of new research and monitoring. The lake working group will be responsible for future improvements of their lake and meeting the objectives and goals of this plan.

Specific Objectives to Help Achieve the Lake Management Plan Goals

As stated in the previous section, the overarching goal of the lake management plan is to improve water quality so that the current strong hydrogen sulfide odor is reduced to an unnoticeable level (less than 3-5 ppm per OSHA), dissolved oxygen is increased to relieve anoxia (> 2 mg/l) and a diverse, natural community of flora and fauna develops in the lake. To achieve this goal, the homeowner s association, the City of Sanibel, and the SCCF Marine Laboratory have identified the following management objectives:

- Develop a monitoring plan for surface water and groundwater
- Determine sulfate levels in water column, groundwater, and water-sediment interface
- Determine pre-mitigation hydrogen sulfide levels in the air over the lake
- Eliminate or drastically decrease the abundance of sulfate-reducing bacteria in the lake system
- Increase oxygen concentration in the water column
- Increase oxygen concentration at the sediment-water interface
- Establish aquatic vegetation and a healthy vegetated littoral zone
- Reduce possible sulfur inputs via groundwater from former percolation pond site
- Significantly reduce nitrogen and phosphorus concentrations in water column
 - Reduce inputs from groundwater
 - Reduce inputs from sediments oxygenate
 - Reduce inputs from stormwater runoff
- Significantly reduce chlorophyll *a* concentrations
- Increase abundance and diversity of beneficial zooplankton and phytoplankton
- Provide habitat for native fish
- Reduce sediment sulfur content and increase iron concentrations
- Reduce lake salinity to slow sulfate reduction rate, iron sulphide and internal P loads.

Each of these objectives will require activities and action plans to make them possible, but there are existing technologies and methods for addressing each objective.

Potential Best Management Practices

To achieve the objectives listed in the previous section, specific best management practices (BMPs) will be required. In this section we describe some potential BMPs and the positive impact they would have on lake water quality. There are a wide variety of BMPs available and their cost/unit

P or N removed can vary greatly. Particular BMPs will address different objectives identified in this study to meet the goal of improving water and air quality. Some potential BMPs are presented in Table 1, with the water quality objective identified and a rough cost estimate provided if available.

One of the main objectives of BMPs will be to create an aquatic environment that is not conducive to sulfate-reducing bacteria, thereby reducing hydrogen sulfide odors. Increasing the oxygen content within the water column and at the sediment-water interface, reducing sulfur inputs from groundwater and eliminating existing bacteria within the waterbody are actions which can work together to achieve this goal. Aeration or water circulation systems will be essential to fight anoxic conditions that currently exist in the waterbody. A well-oxygenated water column will reduce the production of hydrogen sulfide gas and allow phosphorus to bind to iron, which then settles into the sediments making the phosphorus unavailable to algae. There are a wide variety of available systems which can provide aeration and circulation. Whole lake mixing will provide re-oxygenated water to the lower (hypolimnion) and upper (epilimnion) portions of the lake and is an appropriate choice for the conditions in the study lake. Circulation of the water will help control cyanobacteria blooms which may become more likely due to aeration of the sediments (iron is released). A number of system configurations are available including pump/venturi and air-lift circulation. A system which pumps bottom water through a venturi and homogeneously discharges throughout the lake system may be a good choice as it moves larger volumes of water and provides better aeration.

Studies have shown that hydrogen peroxide treatment of the lake can reduce or eliminate sulfate reducing bacteria in the water column. A number of lake management companies offer this service. It is important that hydrogen peroxide is added at sufficient amounts to adequately kill existing bacteria populations. This (one time) service should be performed just **after** installation and startup of an aeration/circulation system. The objective is to kill off the sulfate bacteria and then minimize their chance of re-establishing by providing an aerated water column with the circulation system.

Another potential BMP is the addition of ferrous sulfate for hydrogen sulfide control. The PRI-SC® process is a patented technology that combines the use of iron salts (either FeCl_2 , FeCl_3 or FeSO_4) and hydrogen peroxide or other oxidant in a unique fashion, whereby an iron salt is added as the primary sulfide control agent in the upper reaches of the lake system (or groundwater discharge system), and hydrogen peroxide is added at specific points downstream to regenerate the spent iron (FeS). The regeneration step effectively oxidizes the sulfide to elemental sulfur and in the process frees up the iron for subsequent sulfide and phosphorus control further downstream. In the case of the Herons Landing lake, ferrous sulfate would be added to the lake to bind up the hydrogen sulfide, and after effective odor control, hydrogen peroxide would be added to regenerate the spent iron sulfide (to further control odors) and mineralize the sulfur.

Media-filled phosphorus filters are under investigation as potential BMPs in many locations. One possible filter would consist of iron slag media placed in a simple flow-through tank which pumps from the lake and discharges back into the lake. The iron slag will bind dissolved P and

reduce the P concentrations to lower levels. The slag would periodically be removed or regenerated. This system could be used in series with a pumped venturi circulation system with the same pumps used to supply the treatment filter.

The best cost/benefit ratios for reducing N and P in a stormwater pond are usually found in vegetative plantings such as increasing buffer zones, adding tree canopy to the landscape, and adding littoral plantings. However, the situation at the Herons Landing western lake is unusual with large nutrient inputs from groundwater flow originating from the former wastewater percolation ponds and lake-wide anoxic conditions. Before vegetation can be successfully planted within the lake, the low oxygen levels should be addressed.

Many of the most effective BMPs aid in the improvement of water quality with little to no cost and only require behavioral changes of the communities that live adjacent to waterbodies. These BMPs include:

Adhere to the Fertilizer Ordinance Sanibel has a strict fertilizer ordinance that prohibits the application of fertilizer within 25 feet of any waterbody or stormwater conveyance system. This prevents the likelihood of granular fertilizer being washed into waterbodies in stormwater or irrigation runoff.

Florida-Friendly Plants Homeowners should choose plants that are low maintenance, disease resistant, and/or Florida-friendly. Native plants are highly recommended because they are adapted to Sanibel's environment and require little to no maintenance (i.e. fertilizer and irrigation).

Proper Irrigation Excess water from irrigation running off into the waterbodies may contain nutrients or materials that could cause water to appear murky. To prevent runoff, application rates should not exceed the soil's ability to absorb and retain water or exceed available moisture storage in the root zone. Knowledge of your plants is imperative. Plants require more water during seed, flower, and fruit production, but require less water when dormant. During colder months or those with shorter day periods most plants are not actively growing, therefore irrigation, if any, should be reduced. Additionally, homeowners, especially those that irrigate with re-use water, should ensure that their sprinklers are not spraying directly into the water.

Pet Waste Disposal Decaying pet waste that enters a waterbody will release nutrients that promote symptoms of eutrophication such as algae blooms. The decaying pet waste, which is being metabolized by bacteria, will consume and reduce the amount oxygen in the water column.

Runoff Control Controlling nutrients at the source is often the most inexpensive method for protecting water quality. Homeowners can implement features that have the ability to deflect or slow roof and pavement runoff. Downspouts should be positioned in such a way as to aim roof runoff at a porous surface (e.g. low lying shell, gravel pit, or vegetative buffer). Roof runoff can also be collected in a rain garden or a rain barrel.

Eliminate or Minimize Turf Grass - Property owners should consider replacing turf grass with native groundcovers. Planted and mulched areas require significantly less water than turf grass, native groundcovers require less fertilizer, and can be easily fertilized with natural materials like compost. If homeowners do choose to install turf grass, understanding the type of turf grass on your property can greatly reduce impacts to water quality. When selecting turf grass, homeowners should take into account such things as salt, drought, and shade tolerance of each species. Choosing an unsuitable species of turf grass for the property can result in the need for excess fertilizer and irrigation to revive ill-adapted species.

Proper Mowing Techniques Mowing turf grass at the correct height increases turf density and root health while also increasing weed suppression. When grass is mulched, rather than collected in a bag, the clippings contain nutrients that act as fertilizer. Grass that is mowed too short will result in a reduction of root depth making it harder for the turf to access water in the soil. Moreover, short turf blades and roots have less carbohydrate storage, which makes it harder to recover from environmental stresses to the lawn. Mowing high results in deeper roots, which encourages the development of drought tolerant turf thus reducing irrigation needs. Contrary to popular belief, watering turf infrequently can be beneficial to a lawn. This practice will also train turf roots to grow deeper, and allow the lawn to better withstand drought. Always make sure the mower blade is sharp because turf cut with a dull blade will require more irrigation to recover. Mowing height for shaded turf should be raised by 30% since it has less access to light. Therefore, the turf needs more surface area to perform photosynthesis or else it will start to thin.

Proper pruning of mangroves and other trees along the shoreline Proper pruning will ensure that trees along the shoreline are maintained in a healthy state. Mature trees can help take up nutrients in the water through their roots and stabilize the shoreline. Permits are required by the City of Sanibel when trimming mangroves.

These low cost BMPs should always be incorporated into any management plan and implemented wherever possible. Other potential BMPs which may address the conditions found in Herons Landing western lake are listed in the following table but represent only a subset of possibilities. Others may be found to be more cost effective at addressing the objectives of this plan. This plan is meant to be adaptive and incorporate new ideas based upon new research and information. The plan will be constantly improving and updated.

Table 2. Potential BMPs to achieve objectives of the Herons Landing Lake Management Plan.

BMP ID	Description	Objectives Addressed	Cost \$	P Removal	N Removal	Sulfur Removal
Bubble aeration	Bubble type	Increase O2	\$12,000 -30,000	yes		yes
Water circulation	Pump or air compressor	Circulate water to increase O2	\$10,000 45,000	yes		yes
Lake H2O2 treatment	Hydrogen Peroxide Treatment of Lake (ex: Green Clean)	Kill sulphate reducing bacteria-add	\$5,000			yes
Media packed filter for P	Use steel slag, Bold & Gold for P removal	Reduces P concentrations	?	yes		
Iron salt treatment	Add iron salt to lake to remove H2S	Remove H2S and P	?	yes		yes
Alum treatment	Add alum to lake	Binds with P	?	P	possible	no
Irrigation with lake water	Use lake water for lawn irrigation	Oxygenates lake, reduces N and P	?	yes	yes	yes
Phoslock, Struvite, or lime addition	Add these to lake P binding	P reduction	\$-\$\$\$	yes	no	?
Vegetative buffers	Some lawns can increase buffer quality	Stormwater runoff quantity and	\$387 /acre	Yes 5%	Yes - 4%	no
Expand treatment ponds	Increase depth/area of vegetated ponds Bayous WWTP site	Remove N and P, decrease nutrient load to		yes	yes	yes
Floating island	Vegetated islands west lake	Increases lake N and P removal	\$8 -120 /sq.ft.	yes	yes	no
Floating island	Vegetated islands bayous ponds	Increases N and P removal	\$8 -120 /sq.ft.	yes	yes	no
H2O2 treatment of groundwater	Inject H2O2 in to groundwater	Convert H2S to elemental	?	possible	no	yes
Groundwater treatment - filters	Pump GW through media filters	Remove H2S and P	?	yes	possible	yes
Littoral shelf	Plant aquatic vegetation	Remove N and P	\$1/sq.ft.	yes 8%	yes 5%	no
Mechanical algae removal	Use manual techniques to remove any blooms	Remove N and P	?	yes	yes	no
Lake dredging	Removal of sediment from lake	Remove N and P	\$\$\$	yes	yes	yes
Reduce lake salinity	Increase elevation of lake inflow channel	Prevent H2S and P release from	\$?	yes	yes

Performance Measures for Evaluating Best Management Practices

Activities intended to help achieve the goal of reduced odor and improved water quality must be evaluated based upon their ability to demonstrate improvement at an acceptable cost (cost/benefit). Performance measures must be used to determine if actions taken produce measurable progress toward goals and objectives.

Based upon the goals and objectives of the plan, performance measures which can be used to monitor change include:

Hydrogen Sulfide (H₂S) in lake water Hach kit - \$50.00. USEPA recommends a surface water concentration less than 0.002 mg/L. **Monthly or quarterly (3 sample locations)**. Downward trend in lake water H₂S is an objective.

H₂S odor (air) as measured by H₂S monitor (\$150.00) **monthly measurement (3 sample locations)**. Objective is downward trend.

Oxygen concentration in lake water column, using calibrated sonde. Possibly **continuous deployment or monthly 24-hour deployment**. Objective is increasing trend. Monitor for 1st year (\$1,500)

Bi-annual lake water column nutrient (N and P) monitoring (1-3 samples). Objective is downward trend (\$2,200/yr.).

Sulfate reducing bacteria concentration (quarterly - 3 sample locations) (H₂S bacteria test kit (\$150) Bart from Hach, Aquagenix CBT kits or microscope). Objective is decreasing trend.

Chlorophyll *a* (\$1,740/yr. nutrient monitoring) concentration in water column. **Quarterly (3 sample locations)**. Objective is downward trend.

Sediment redox state (bi-annual, 3 sample locations (\$400/yr.)). Increasing redox value over time at surface of sediment.

Sediment sulphate concentration (bi-annual 3 locations).

Sediment iron concentration The Fe:P ratio should exceed 10 if it is to regulate phosphorus release and should exceed 15 to prevent phosphorus release from oxidized sediments (**bi annual 3 locations \$1,200/yr.**) (Sondergaard et al. 2003).

Sediment depth and % organics of sediment cores (bi-annual, 3 locations, \$1,200/yr.).

Discharges to and from lake (annual flow through overflow channels/structures).

Plankton abundance and species richness (quarterly, \$1,200/yr.). An increasing trend in abundance and richness will be objective.

These performance measures can be analyzed using repeated measures statistical evaluation in addition to trend analyses. **Typically, trend analyses will require several years of data before significant or reliable trends may be detected.** Repeated measure analyses require significant monitoring of the performance measure before an action is implemented and then similar monitoring effort after the action is implemented.

Water Quality Monitoring

Regular water testing will provide the management group the ability to analyze water quality trends. It is normal for water quality to change from season to season because of factors such as precipitation, water depth, temperature, etc. A record of monthly water quality measurements will help identify seasonal and long-term changes in the lake and will help track progress toward objectives. Test kits can be purchased online that test the pH, dissolved oxygen, turbidity, iron, hydrogen sulfide, nitrogen and phosphorus such as those from LaMotte or Hach.

Fish & Wildlife

Urban lakes provide much-needed habitat for Florida's wildlife. After water quality improves, stocking the Herons Landing lake with native fish will be an important consideration. Most waterbodies on Sanibel are now dominated by non-native cichlid fish. These fish can out-compete native fish and cause water quality deterioration due to their feeding strategies. It is better to establish a strong population of native bass and sunfish before cichlids find their way in to the lake. Large bass and sunfish are capable of eating small cichlids which will inevitably find their way into the lake.

With the development of proper habitat, the lake watershed can also be managed for other desirable wildlife such as wading birds. Visit the Florida Fish and Wildlife Conservation Commission website for more information.

Drainage Structures Flow Measurement

To better evaluate the factors affecting water quality, estimates of any surface water discharges into or from the lake should be made so that salinity changes, dilution effects, etc. can be considered in controlling nutrients. The Herons Landing western lake has two known discharge points. One is a control structure at the southeast end of the lake which separates this lake from an adjoining lake to the east in Herons Landing. The other discharge location is a heavily vegetated channel at the northwest end of the waterbody and can connect the lake to Clam Bayou at extremely high tides or lake levels. The Lake Working Group will need to coordinate with the City on how to best monitor discharges at these two locations. This section of the management plan will be updated once a plan is agreed upon.

Inflow of estuarine water to the lake can have a negative effect on water quality by producing conditions that promote the release of phosphorus and hydrogen sulphide from the sediment into the water column. Adjacent hydraulic connections can also allow the discharge of very poor-quality water to other waterbodies. Moreover, inflow of estuarine water can produce unstable conditions in the waterbody making it difficult to re-establish vegetative buffers and littoral zones necessary for improving water quality and habitat. Flow measurement is important to the overall management of this lake.

Lake Working Group Meetings and Work Days

Regular meetings of the Working Group will facilitate progress towards improving the lake s water quality. When activities are decided upon, actual hands-on working days may also be required. These meetings and work days should be discussed and a schedule derived as work progresses. It has taken years for this lake to degrade to its current state; it will also take years to recover. In the meantime, plan some workdays and have some fun! For an example the Adopt-A- Pond Workday Report shown below.

Date: _____ Workday Report Pond Group #: _____ Pond Name/Location: _____ Purpose and

Summary: _____

APPENDIX 1

Photos of land use adjacent to the western lake of Herons Landing.



Figure 4. Backyard of 5402 Osprey Court on 11-20-2017.



Figure 5 Backyard of 5406 Osprey Court on 11-20-2017.



Figure Backyard of 5410 Osprey Court on 11-20-2017.



Figure 7. Backyard of 5414 Osprey Court on 11-20-2017.



Figure 8 Backyard of 5418 Osprey Court on 11-20-2017.



Figure 9 Backyard of 5422 Osprey Court on 11-22-2017.

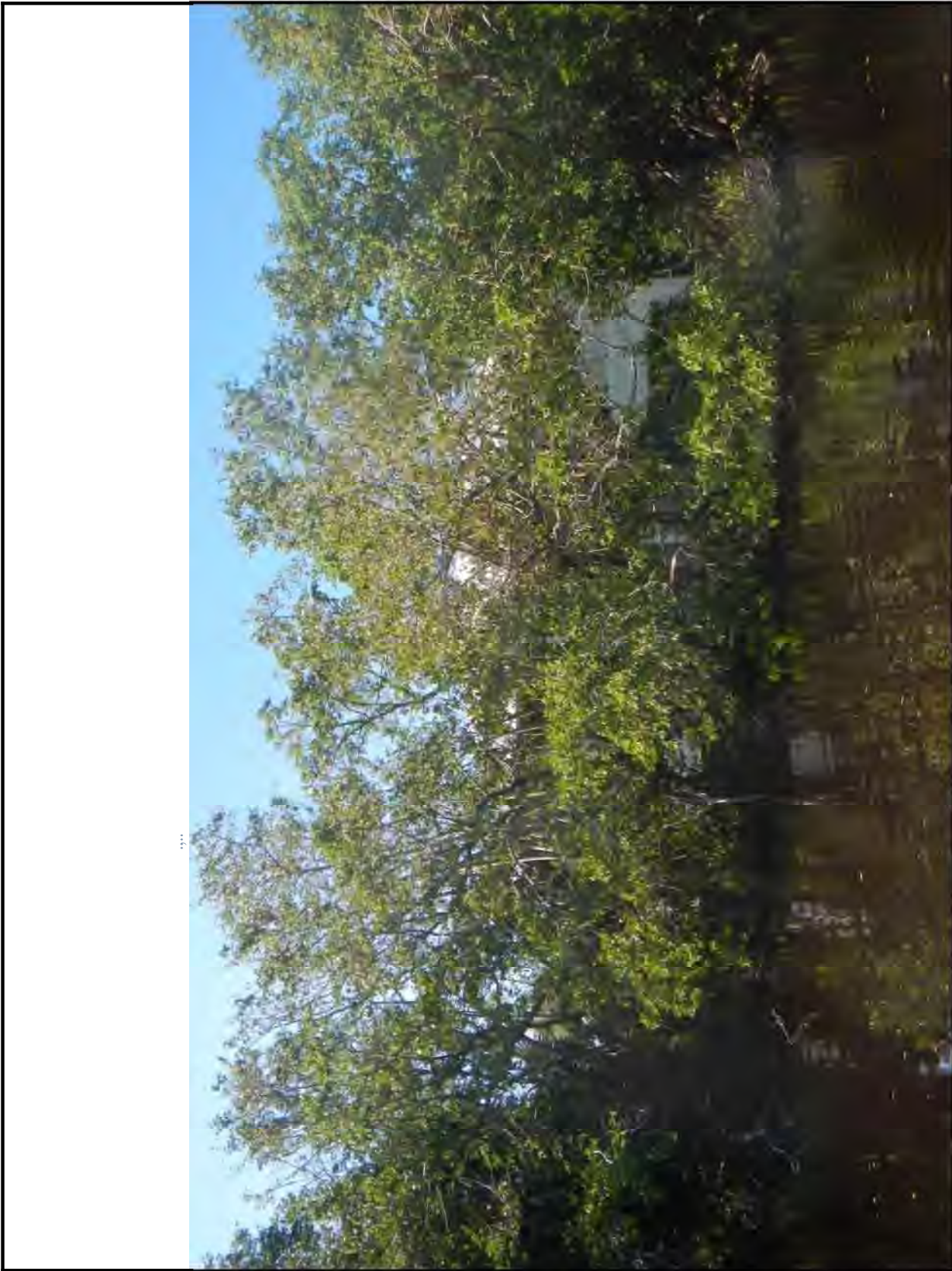


Figure 10. Backyard of 5426 Osprey Court on 11-20-



Figure 11. Backyard of 5430 Osprey Court on 11-20-2017.

APPENDIX 2

Herons Landing Community Lake Eutrophication Evaluation

Summary of Findings

Hérons Landing Community Lake Eutrophication Evaluation

Summary of Findings

SCCF Marine Laboratory for the City of Sanibel

July 3, 2017

Mark Thompson



Stormwater Pond Eutrophication Study

The results summarized here represent findings from a short term (current conditions) evaluation of eutrophication indicators for a lake in Herons Landing, Sanibel located just north of Osprey Court, Bayous Development, Sanibel Florida (Figure 1). The study was requested and funded by the City of Sanibel Natural Resources Department in response to citizen concerns about the condition of their stormwater pond and reviewing results from the Sanibel Community Lakes Baseline Water Quality Study. Located adjacent and just north of the pond is the site of a former package wastewater treatment plant (WWTP) and percolation (perc) ponds originally installed by developers of the Heron s Landing Subdivision, but since decommissioned by the City of Sanibel. The perc ponds were filled in 2009 and closed per Florida DEP standards. The property is now divided into two parcels. The City owns the western-most parcel and has dug two ponds which have been planted with native vegetation in an effort to remove nutrients through vegetation Best Management Practices (BMPs). The eastern parcel is owned by National Development LLC of Miami and is currently zoned as utilities according to the Lee County Tax Appraiser s Office (<http://www.leepa.org/Display/DisplayParcel.aspx?folioid=10005748> accessed May 8, 2017).

The SCCF Marine Laboratory developed a sampling protocol which included discrete surface water sampling at three sites on April 13, 2017, groundwater sampling and flow monitoring at the former wastewater perc ponds, and three composite soil samples taken April 20th 2017 (Figure 1). Surface water samples were analyzed in the field for dissolved oxygen, pH, temperature, CDOM, turbidity and salinity. These samples were also evaluated by a NELAC certified laboratory for nitrogen (N) and phosphorus (P) constituents and for chlorophyll *a*.

Four temporary groundwater monitoring wells were installed April 13, 2017 at the former perc pond site. The monitoring design allows for flow estimates between two wells one upstream and one downstream. One well set was installed to estimate groundwater flow from the eastern parcel of the former perc ponds and one set estimated groundwater flow from the western parcel (Figure 1). Due to land surface elevations, and the proximity of the stormwater pond, groundwater flow was hypothesized to be primarily toward the stormwater pond from the former perc pond area. Continuously recording level loggers were installed in each well and groundwater flow was estimated from the difference in head between wells along with soil properties and distance between wells. Groundwater samples were taken by using a Masterflex pump to flush wells and pump samples up to containers. Samples were collected on April 20th, one week after initial well installation. Groundwater samples were analyzed for the same constituents as the surface water samples.

To estimate the capacity of soil on the perc pond site to hold phosphorus, a soil phosphorus storage capacity (SPSC) test was performed on samples collected April 20th. Three composite soil samples were collected from the former perc pond site. One composite sample was collected from 10 random subsamples within the eastern parcel. Sample 2 was collected by

taking 10 random subsamples from the western parcel (City-owned) within the footprint of the vegetated ponds constructed by the City. The ponds were nearly dry during the sampling period, allowing us to sample what is periodically inundated by water. A third sample consisted of 10 random subsamples taken from the upland area in between the ponds of sample 2. The sampling locations were established from a GIS generated map with random points generated within a boundary for each area sampled for soil characteristics. Samples were shipped to University of Florida Soils Testing Laboratory in Gainesville, to be extracted using the Mehlich 3 procedure and analyzed for phosphorus, iron and aluminum, which are needed for SPSC evaluation. The evaluation will determine the capacity of the soils to hold (or release) phosphorus during rainfall events).

Analyses results are included in Table 1. Surface water samples were very consistent between the three stations sampled. All results exceeded state water quality standards for phosphorus and nitrogen. Phosphorus levels were 2 orders of magnitude greater than state criteria while nitrogen levels were about 7 times greater than criteria. Phosphorus values in the stormwater lake were similar to groundwater levels from the perc pond site. Nitrogen levels were greater in the groundwater than in the stormwater pond.

Chlorophyll *a* levels in the stormwater lake were very high exceeding 300 ug/l for all 3 samples. The trophic state index (TSI) is a measure of overall waterbody eutrophication. It is an index which combines the indicators of eutrophication together (nitrogen, phosphorus and chlorophyll *a*) in a single score, which can be compared to other lakes and evaluation criteria. A lake with a TSI value over 60 is considered to be of poor water quality. **The TSI score for the Herons Landing lake was 118**, making this waterbody **the most eutrophic waterbody** (by score) so far evaluated on Sanibel. This is consistent with a previous evaluation of the lake located just downstream of the subject lake, which ranked as the poorest water quality of lakes surveyed to that time on Sanibel (Thompson and Milbrandt 2016).

Groundwater concentrations of phosphorus recorded during this evaluation exceeded all groundwater sample concentrations taken from monitoring wells at 50 sites on Sanibel during a study in 2015-2016 (Thompson and Milbrandt 2016). Nitrogen concentrations were as high as the greatest values found during that study (which occurred at Golf Course sites).

Groundwater flow rates were evaluated from April 20th through May 5th, 2017 during an extended dry period but which also included three significant rain events (Figures 2 and 3). The 14 day flow evaluation period is insufficient to get a true annual estimate of groundwater flow; however the estimates are valid for this period of time. Well water levels and estimated flowrates are shown in figures 2 and 3, along with the response of water level to rain events. Data indicated that groundwater flowed from the perc pond sites towards the stormwater lake during this period, as predicted. Soil characteristics were similar at both monitoring well measurement sites (Well 1-2, Well 3-4). Groundwater flow estimates are shown in Table 2.

Groundwater flow towards Herons Landing stormwater pond was greater from the eastern portion of the perc pond area than the western portion where the City has constructed vegetated wildlife ponds. We speculate that evapotranspiration from the ponds on this portion of the surveyed area decrease groundwater flowrate towards the Herons Landing waterbody. Localized groundwater flow gradients towards connected lakes are a widely published and observed phenomenon. Groundwater in the eastern portion of the studied area is responding to a larger elevation gradient towards flowing towards the Herons Landing lake without as much diversion toward other sinks such as the lakes found on the western portion.

Estimates of groundwater nutrient loads transported from the perc pond site to the Herons Landing waterbody are shown in Table 2. Though estimating loads from only two weeks worth of flow data is not recommended, an estimate was made for the dry season. By extrapolating values obtained during the study period estimates show **groundwater phosphorus and nitrogen loads into the studied lake are extremely great.** The loading rates are driven by the extremely high nutrient concentrations in the groundwater coupled with hydraulically conductive soil. During the wet season, the flow gradient may vary greatly from the results of our two week study due to changing groundwater elevations relative to pond elevations and evapotranspiration rates. Estimates of wet season flows and loads were not made for this study.

Based on dry season sampling, nutrient loading rates from the eastern portion of the former perc pond were much greater (88 % of N load and 75% of P load) than the western (Table 2). This is driven primarily by the greater flow rates from that area as explained above.

Soil analyses showed all three sets of samples were similar and contained low levels of aluminum and iron which bind phosphorus, yet had a high pH which can help soil bind phosphorus (Table 3). The phosphorus saturation ratio (PSR) values of all three samples (Table 3) were greater than the threshold capacity of the soil to hold phosphorus. The ability of soil to hold phosphorus (soil phosphorus storage capacity - SPSC) is estimated from PSR. SPSC values are shown in Table 3. Positive SPSC values indicate the soil has the capacity to absorb that amount of P. Negative values indicate the soil will release P whenever there is water saturating the soil. The SPSC values for the three samples taken were negative, suggesting soils on the former perc pond site will release P to the groundwater during a rain event. Sandy soils typically have lower P holding capacity but are not usually saturated with P.

Groundwater concentrations of nutrients on the former perc pond site were the highest measured at any sampled location on Sanibel. Soil on the site is saturated with phosphorus and does not have the capacity to hold any additional P, but instead leaches P whenever the soils are saturated with rain or water table inundation. The Herons Landing stormwater pond just south of the study site has the highest concentrations of nutrients found in any waterbody on or adjacent Sanibel. The waterbody is anaerobic, producing hydrogen sulfide gases. Ammonia concentrations in the waterbody are high enough to be toxic to most fish. Chlorophyll *a* values above 300 ug/l suggest the water column is filled with phytoplankton probably with few

grazers due to the lake's poor water quality. Aquatic plant life may be absent due to anaerobic conditions.

Sampling suggests the main source of nutrients in the subject stormwater pond is groundwater from the former perc pond site. Groundwater flowrates and concentrations are relatively high, producing at a minimum, large seasonal nutrient loads. The groundwater flow from the western portion of the perc site owned by the City of Sanibel is significantly less than the western portion of the site. This may be due to the installation of vegetated ponds on that portion of the site which produce additional evapotranspiration and pull groundwater toward them, diverting flow that would otherwise enter the Herons Landing stormwater pond. Addition of vegetated ponds on the eastern portion of the site may help divert loads from the impacted stormwater pond, and periodic harvesting of plant material will help remove nutrient loads.

The magnitude of nutrient loading from the perc pond site suggest legacy nutrients from the former percolation ponds are having major effects on nearby waterbodies through groundwater connections. The soil currently covering the former perc ponds are primarily sands with low organic content which has little capacity to hold phosphorus and is saturated to the point that it releases P whenever inundated with groundwater or stormwater percolation.

The estimated surface area of the former perc pond is 61,200 square feet (1.4 acres). With an estimated maximum depth of 10 feet, the volume of waste held was 612,000 cubic feet (4.6 million gallons). Typical WWTPs do a poor job removing nitrogen and phosphorus. Effluent from the City of Sanibel Donax wastewater treatment plant contains phosphorus concentrations of around 1-3 mg/l and nitrogen of 3-5 mg/l. The groundwater concentrations found on the perc pond site are higher than these values, but the former Bayous WWTP was probably not as efficient as the Donax plant. Typical WWTPs produce effluent with nitrogen values around 15 mg/l and phosphorus 3 mg/l. If typical wastewater effluent values are used as an estimate for nutrients in wastewater from the former Bayous plant, we can estimate the mass of N and P contained within the former perc ponds to be about 265 kg N and 55 kg P. These values may be used as targets for the amount of N and P which need to be removed from the perc pond site through BMPs.

Residents living on the study lake have complained of intense odors of hydrogen sulfide. A grab sample in early April revealed the lake had a bloom of some type of sulfur-producing bacteria (Rick Bartleson personal communication). The salinity of the pond is about half the strength of seawater, which along with low oxygen levels is optimal for many sulfur producing bacteria.

Based on the existing conditions of the Herons Landing pond studied, including very low dissolved oxygen, high chlorophyll *a*, hydrogen sulfide off-gassing, absence of fish, and high ammonia concentrations the following best management practices would be recommended:

1. Aeration to resolve the low dissolved oxygen problem, convert ammonium into safer nitrogen forms that are less toxic to fish and other aquatic life, allows plants, fish and zooplankton to survive, increases the rate of organic decomposition rate and decreases sulfur odors.
2. Littoral zone aquatic vegetation planting plants use nutrients and remove them from the water column. If harvested, nutrients will be removed from system.
3. Floating treatment wetlands floating mats with vegetation which removes nutrients from water column, and promote denitrification (removal of N from system).
4. Fish and zooplankton stocking after establishment of aeration.
5. Possible introduction of native mussels to filter chlorophyll *a* from water column.
6. Adherence to the fertilizer ordinance s 25ft no-fertilizer buffer zone near waterbodies.
7. Lake-friendly landscaping choose native plants that are low maintenance and require little to no additional fertilizer.
8. Dredging of organic sediments from the bottom of the stormwater lake. This would be a more costly and last resort alternative. Removal of nutrient enriched sediment from the bottom would reduce internal loading of nutrients within the system.

Additional potentially useful BMPs will become apparent once aeration has been implemented and aquatic vegetation can be established.

Testing for Metals at Former Wastewater Percolation Pond Site.

To address concerns expressed by Herons Landing residents, soil and groundwater at the former perc pond site adjacent to the Herons Landing stormwater pond was tested for 5 metals (lead-Pb, copper-Cu, cadmium-Cd, mercury-Hg and arsenic-As) potentially present in domestic wastewater.

Samples were collected using a hand auger to bore through the sediment beneath the western pond now in place at the former perc-pond site. On the May 25th, 2017 sampling date, the pond was dry, providing access for hand auger operation. A composite soil sample was obtained from a layer of high organic content material encountered at an elevation of -0.53 meters below mean sea level (MSL) (approximately 4 feet below the sediment surface). This layer was sampled as it would represent the bottom (sediment layer) of the percolation pond previously existing at the site. In addition, a well casing was installed in the augered hole by pounding a 3 inch PVC pipe to an elevation of -3.35 meters below MSL (approximately 13.5 feet below the existing sediment surface). A groundwater sample was collected from the well using a Masterflex tubing pump from an elevation of about -3 meters. Before sampling, the well was pumped for 1 hour at a rate of 150 ml/minute (9 liters purged). Samples were put on ice and delivered to Benchmark Laboratories for metals analyses per EPA methods.

Results show metals levels in the sediment sample were well below probable effects level concentrations (Table 4) as defined by Macdonald (1998). Sediment sample results were also

below mean background soil concentrations for arsenic and mercury, while above background concentrations for lead, cadmium and copper. Since this site was a former wastewater perc pond site, metals levels would be expected to be above natural background levels. Lead was highest relative to mean probable effect level at 1/5th the effect level.

Results of groundwater analyses show cadmium, lead and arsenic below class 3 marine surface water criteria, while only cadmium exceeded the drinking water standard (Table 4).

Figure 1. Location of Herons Landing stormwater pond, Former WWTP perc ponds, sampling sites, and wells.



Figure 2. Groundwater level and estimated flow at the western well sites evaluated in this study. Graphs show well water level and flow in response to rain events which occurred during the period.

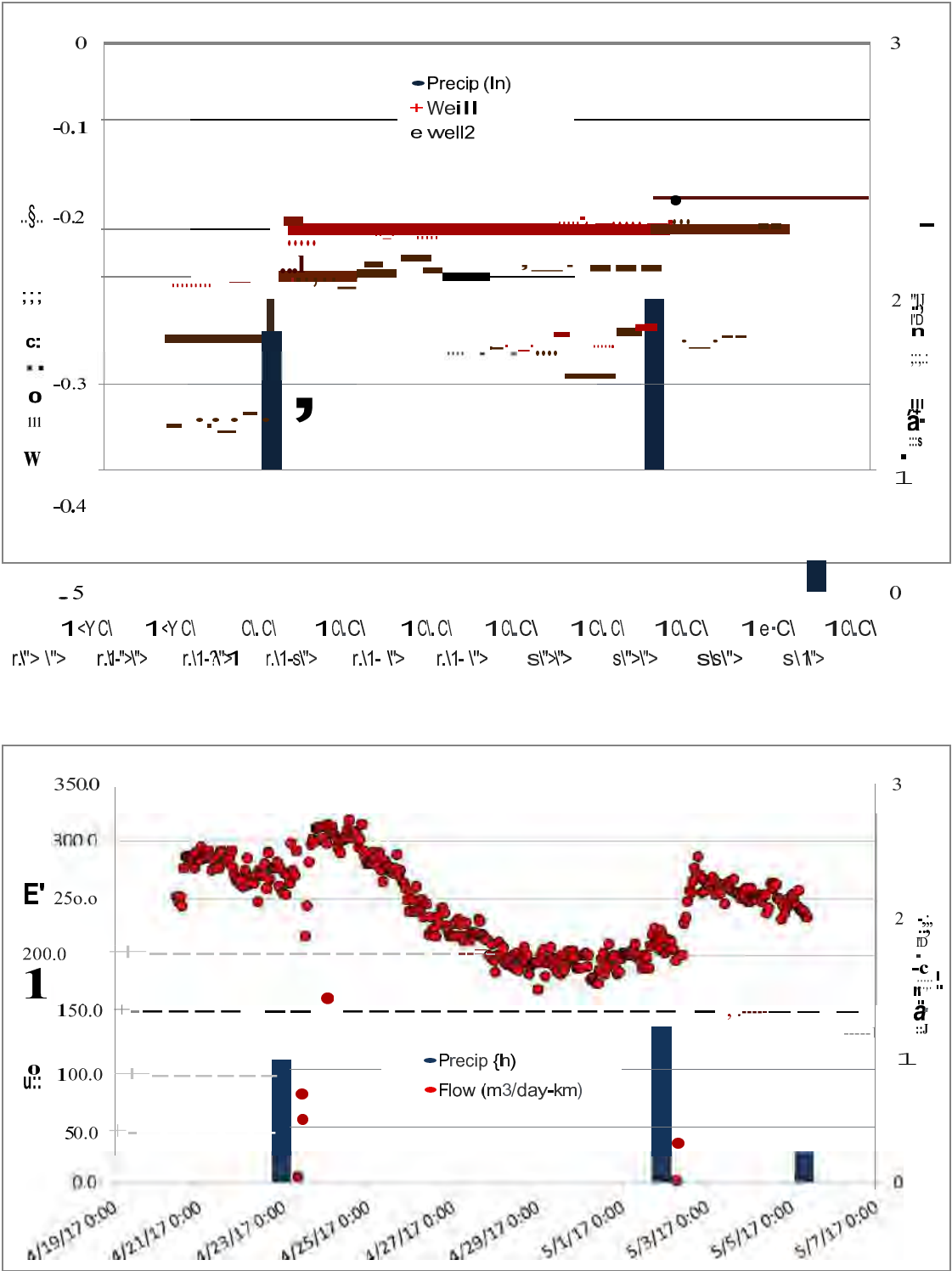


Figure 3. Groundwater level and estimated flow at the eastern well sites evaluated in this study. Graphs show well water level and flow in response to rain events which occurred during the period.

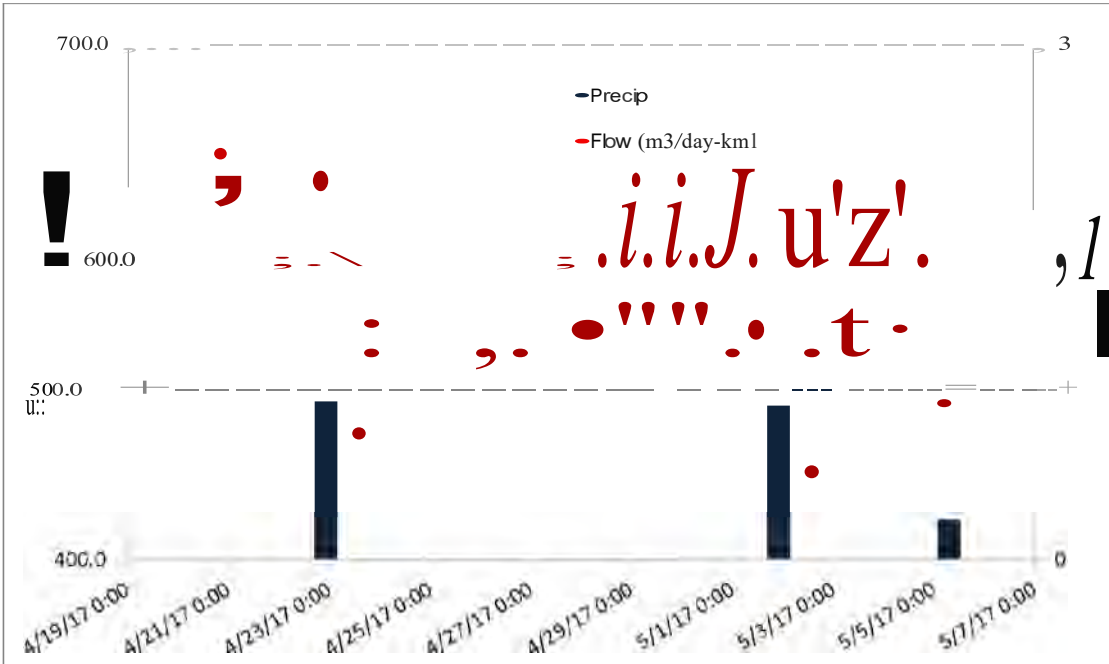
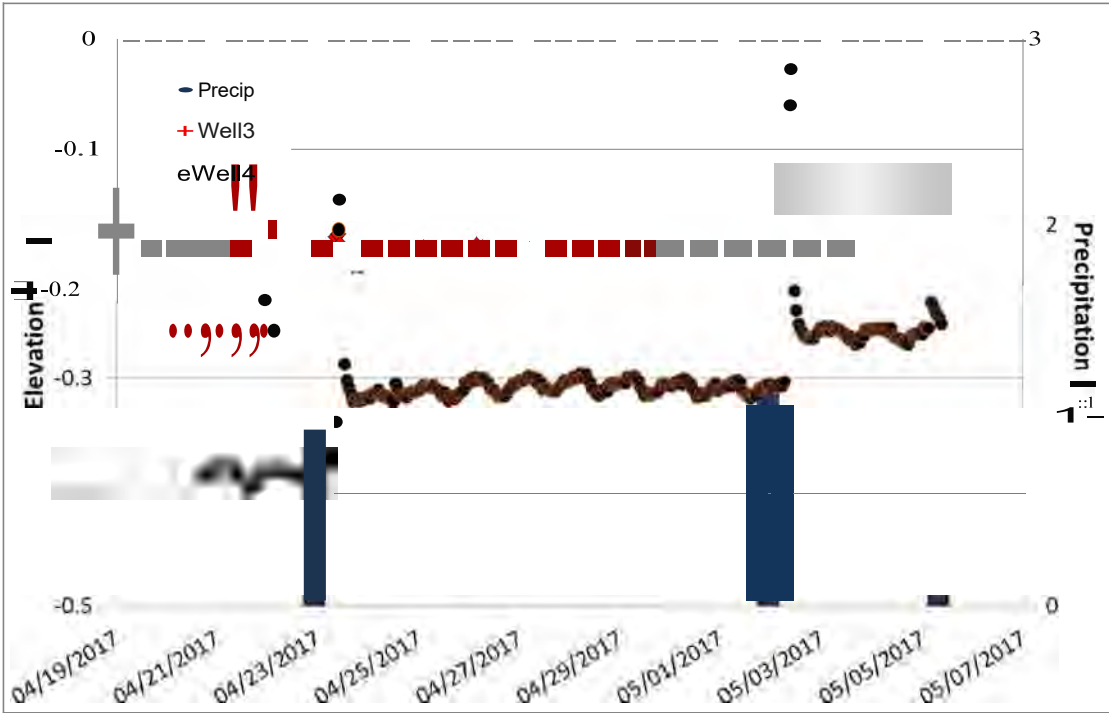


Figure 4. Imagery from 2005 showing the former percolation ponds and the adjacent Herons Landing stormwater pond. Perc pond surface area was approximately 61,200 square feet.



Table 1. Water quality results for surface water samples and groundwater samples collected during this evaluation. Bold values indicate a result is greater than Florida state water quality

Station Identification	HL01	HL02	HL03	State Criteria	SBW01	SBW02	SBW04
Sample Type	Lake	Lake	Lake	Lake	Groundwater	Groundwater	Groundwater
Total Phosphorus (mg/l)	4.37	4.43	4.64	0.05	2.96	4.88	4.74
Total Nitrogen (mg/l)	8.78	8.14	8.06	1.27	49.36	9.56	22.741
Inorganic Phosphorus (mg/l)	3.5	4.01	3.74	0.04 - 90th%	2.5	4.56	4.07
Inorganic Nitrogen (mg/l)	3.467	3.401	3.249	0.139 - 90th%	20.66	1.121	5.081
Ammonia (mg/l)	3.46	3.39	3.24	0.2	20.6	1.11	5.04
Chlorophyll a (ug/l)	332	361	346	20	-	-	-
Salinity (PSU)	18.1	18.1	18.1	-	8.9	12.4	9
Dissolved Oxygen %	4	7	13	38	0	0	0
pH	8	7.9	8	-	7	7.1	7.2
Temperature C	22.64	22.7	22.6	-	26.1	24.4	23.7
Turbidity NTU	73	103.1	107		7.5	11	9.4
CDOM QSE	321	319	321	-	-	-	-

criteria.

Table 2. Results of estimated groundwater flow and nutrient loads from the two sets of wells installed for this study. Estimates were interpolated from two weeks worth of data for the dry season (October-May) only.

Location	Flowrate (m3/day)	TN Loading (kg/day)	IN Loading (kg/day)	TP Loading (kg/day)	OP Loading (kg/day)	.% TN Load	.% TP Load
Eastern Parcel	79.4	1.81	0.40	0.38	0.32	0.88	0.75
Western Parcel (City of Sanibel)	25.5	0.24	0.03	0.12	0.12	0.12	0.25
Total Daily	104.9	2.05	0.43	0.50	0.44	1	1
Dry Season Estimate	20,770	406	86	99	87		

Table 3. Results of soil phosphorus index testing at former percolation pond site. Negative soil phosphorus storage capacity values indicate soils release P when inundated rain or groundwater.

Location	Phosphorus (mg/kg)	Iron (mg/kg)	Aluminum (mg/kg)	pH	Magnesium (mg/kg)	Calcium (mg/kg)	Phosphorus Saturation Ratio	SPSC (mg/kg)	Does Soil Hold or Release P?
Eastern Parcel	6.0	25.0	0.0	8.1	68.0	302.0	0.45	-6.30	release
Western Parcel Pond Sediments	9.0	7.5	0.0	8.0	90.0	324.0	2.03	-34.70	release
Western Parcel Upland Soils	7.0	9.5	0.0	8.8	52.0	337.0	1.33	-8.4	release

Table 4. Results from sampling groundwater and sediment for metals at former Bayous wastewater treatment plant percolation ponds.

	Sediment Sample Concentration (Mg/Kg)	Sediment Probable Effects Level Concentration (Mg/KG)	Southern Florida Soil Background Concentration (Mg/Kg)	Groundwater Sample Conc. (ug/l)	Drinking Water Standard (ug/l)	Class III Marine Waters (ug/l)
Lead (Pb)	15.3	60	1.95	1.94	15	8.5
Copper (Cu)	3.22	75	1.4	NT	1.3	3.7
Arsenic (As)	0.192	16	0.48	1.59	10	50
Cadmium (Cd)	0.38	2.5	0.04	7.3	5	8.8
Mercury (Hg)	0.031	0.5	0.162	NT	2	0.025

APPENDIX 2

**Excerpts from:
Limnological health assessment of Seven Sanibel Island ponds**

A study by the Southwest Florida Aquatic Ecology Group

FGCU

Serge Thomas Ph.D.

November 2017

Hérons Land West Lake Findings

v. Heron landing pond

When visited, Heron Landing pond surface water was -0.17m NAVD'88. The volume of the pond was then 8,595m³ for a planar surface area of 4,774m² and a mean depth of 1.9m.

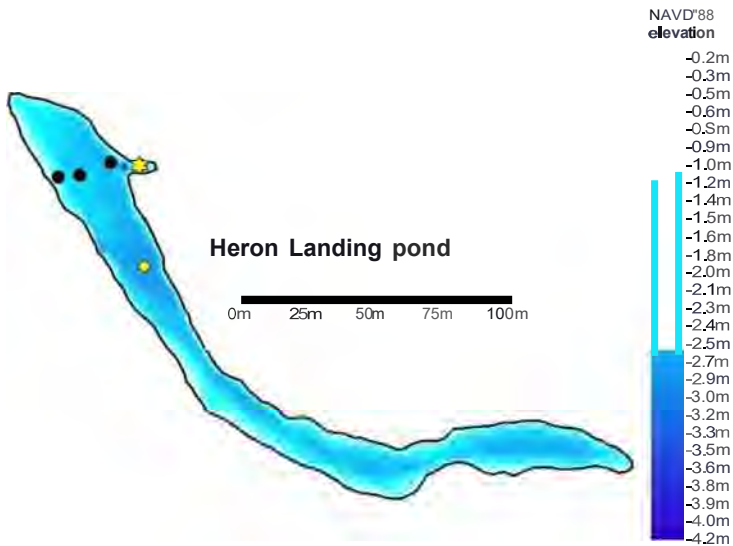


Figure 12. Bathymetry of Heron Landing pond

The average bottom hardness of Heron Landing pond was 0.44 as calculated with surfer and its bottom was hard... than its shelf. SAV cover was found Intermittently on the shelf but not in the deepest portions of the pond.

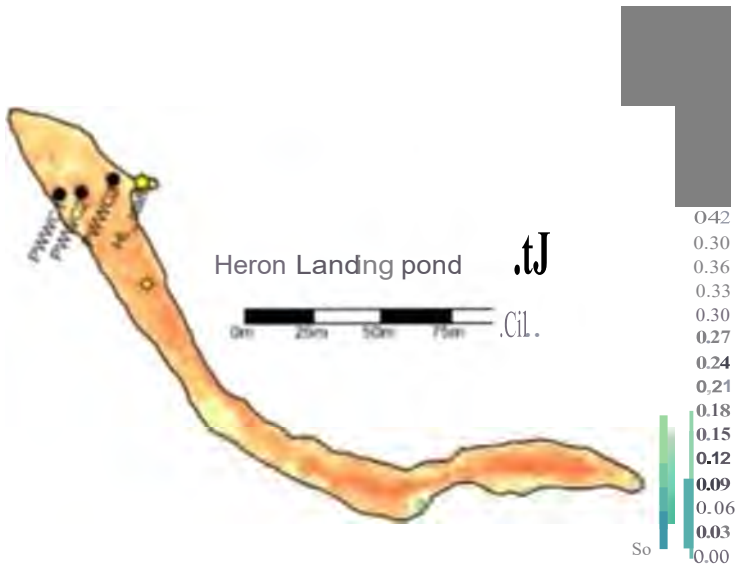


Figure 13. Bottom hardness of Heron Landing pond

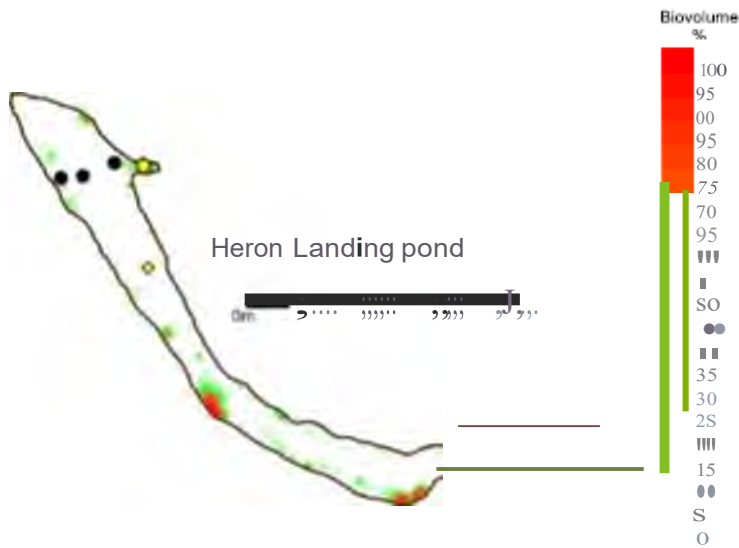


Figure 14. SAV cover in Heron Landing pond

Ponds	Elevation (NAVD83 m)	Volume m ³	Planar Area m ²	Mean Depth m	Bottom Hardness m	CAV %
Beach Villa	0.247	414	523	0.8	>0.3	spotty on shelf, sparse in deep portion
Bike/Bath Trail	-0.5	27,035	15,007	1.8	0.39	spotty to sparse on shelf
Elliott's Sun Mtn	0.27	3,781	8,218	1.2	0.37	spotty on shelf, sparse to deep portion
Golf Course	0.247	27,679	8,218	1.8	0.47	light cover on shelf
Heron Landing	0.17	8895	4,778	1.9	0.44	spotty to sparse on shelf
Sanctuary	0.15	5,057	4,540	1.1	0.45	light cover on shelf
The Dunes	0.208	250,700	81,300	1.6	0.41	very sparse on shelf and deeper portion

Table 1. Summary of ponding characteristics

v. Heron landing pond

The water column is being destratified in Heron Landing pond since the temperature curve represents mixing occurring between the epi and hypolimnion. DO are alarming low and typical of anoxia, pH is typical of brackish and saline water which agrees with the specific conductance. Specific conductance is also lower on the surface than in deeper water and shows a weak halo/pycnocline which is being destroyed. ORP is very negative showing a very reducing environment in par with the anoxia observed. Water clarity is very poor as PAR profiles prove very challenging as light would attenuate too quickly. Particulates other than phytoplankton and likely heterotrophic bacteria and other particulates attenuate light in the water column.

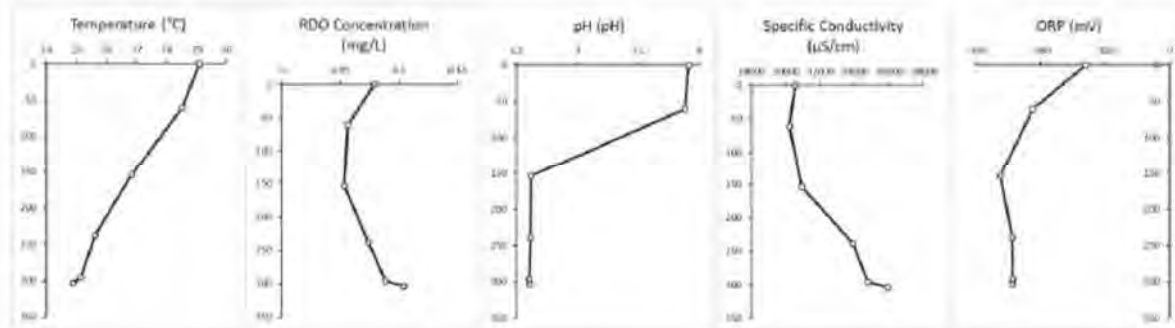


Figure 23. From left to right, water column profiles of temperature, DO, pH, specific conductance and ORP in Heron Landing pond

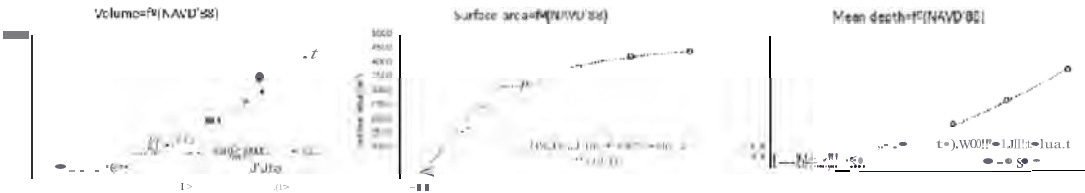
	Total	Chlo	NOx	NH4	TN	SRP	TP	TN/TP	Umitation	TSI(SO)	TSI(Chlo)	TSI(TP)	TSI(TN)	TSI(Combo)
Ponds	mg/l	µg/l	mg/l	mg/l	mg/l	mg/l	mg/l	no units	P,N, both	a.u.	a.u.	a.u.	a.u.	a.u.
Beach Villa	129.5	6.0	0.024	0.033	0.799	0.01	0.027	29.6	both	54.3	42.7	43.3	54.8	48.7
Bike Path Trail	194.0	36.9	0.046	0.061	2.571	0.071	0.021	125.4	P	84.0	68.8	38.2	79.9	63.6
Chateau sur Mer	297.0	22.3	0.039	0.041	1.574	0.037	0.078	20.3	both	68.6	61.5	62.9	69.4	65.4
Golf Course	192.0	31.	0.016	0.062	2.423	0.048	0.117	20.7	both	64.2	66.5	70.6	78.6	68.4
Heron landing	507.0	63.2	0.079	0.533	3.030	0.120	3.821	0.8	N	91.5	76.5	135.4	83.4	84.0
Sanctuary	269.0	49.6	0.025	0.049	1.963	0.284	0.650	3.0	N	54.3	73.0	102.5	74.1	63.6
The Dunes	258.0	66.1	0.026	1.578	4.16	0.132	0.171	24.3	both	84.6	77.2	77.6	90.3	81.9

Table 3. Summary table of the water chemistry and overall water quality assessment via the TSI.

v. Heron landing pond

Heron Landing has high total alkalinity showing an eventual good connection between the pond water and the surrounding lime rich environment. Such alkalinity could limit algal and SAV growth as carbonates dominate. Cyanobacteria however can thrive in such environments and it seems to be the case as chlorophyll concentration is quite high but not enough to compensate the high biological oxygen demand of the water and likely of the sediment. Nitrogen, but especially, phosphorus (a fortiori as labile phosphorus) levels are especially high in this pond and drive the TSI to hypereutrophy+. The pond is limited in nitrogen which can select nitrogen fixing cyanobacteria but with such high levels of nutrients, it is doubtful that any limitation exists. Ammonia levels are high linked especially to the reducing properties of the water (i.e. low ORP).

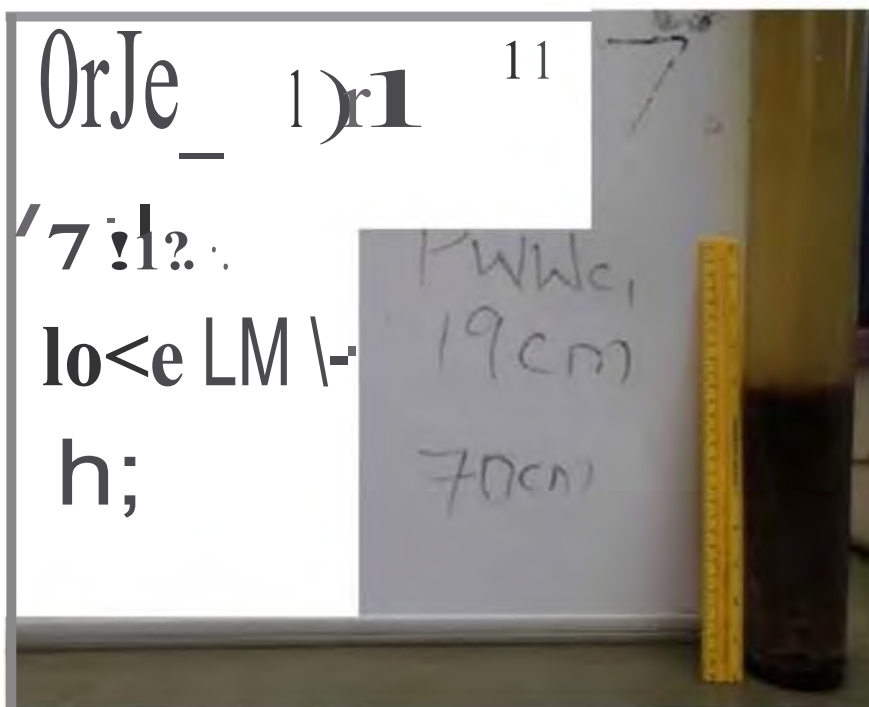
S. Heron landing pond (1/7/17)



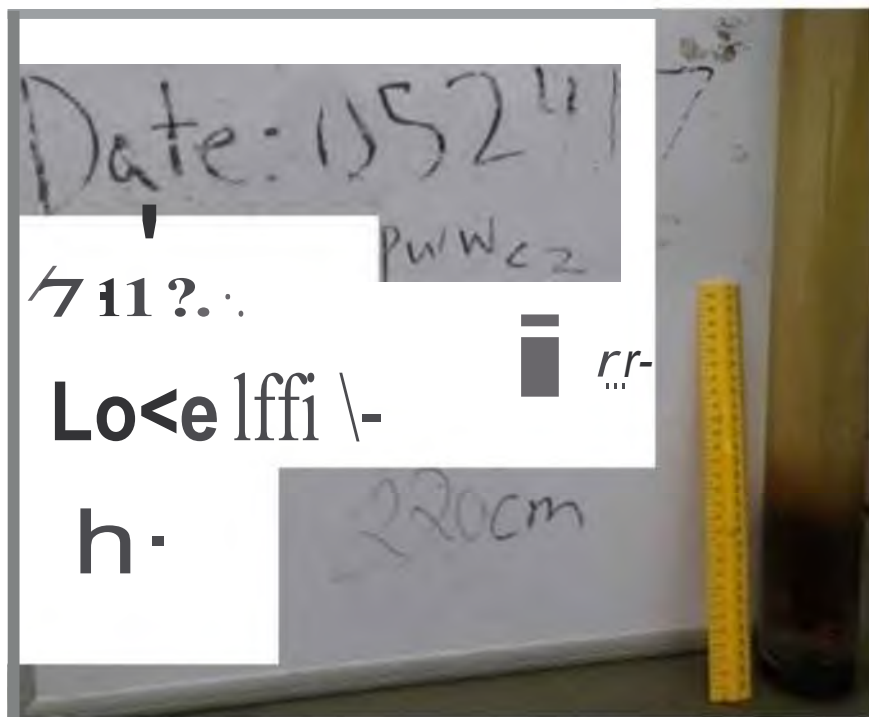
Appendix 1. Morphometric relations for Heron Landing pond

Water level: -0.76m, top of post 0.234m

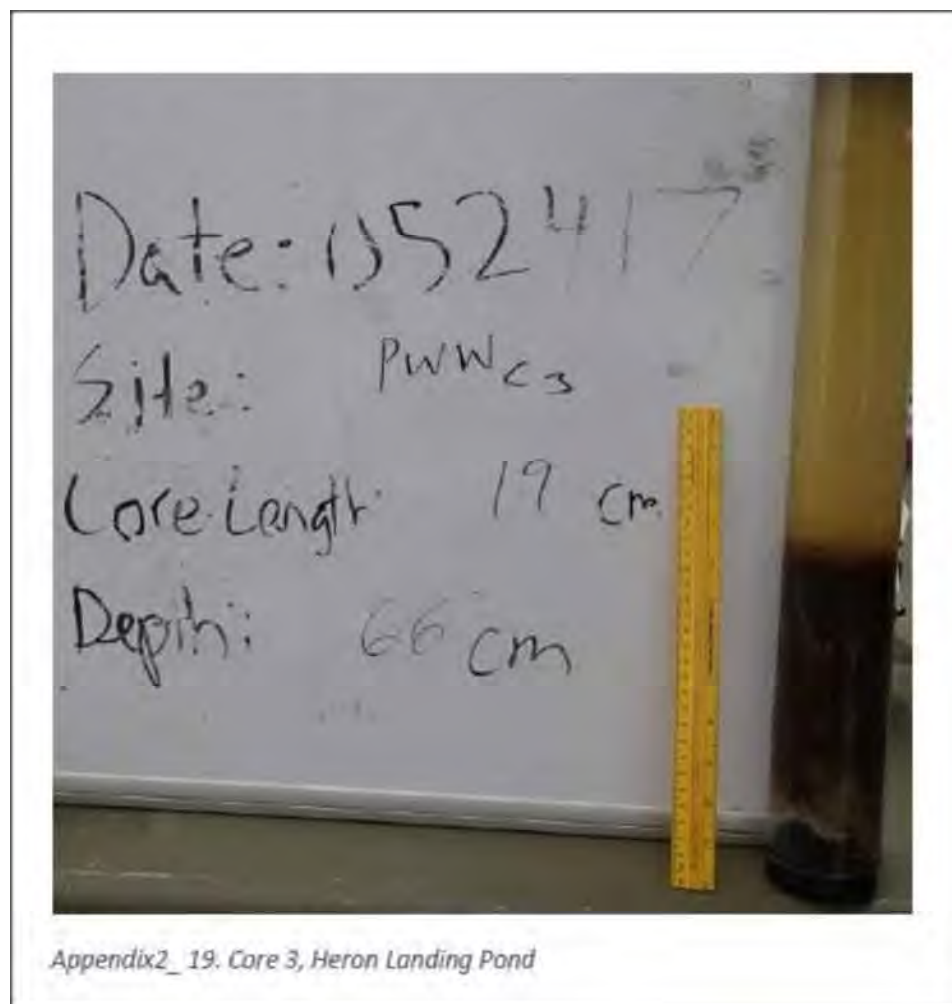
5. Heron landing pond (3/22/17)



Append1K2_I7.Corel, Heron Loding Pond



Appendtx2_I8.CQre 2, Heron Loding Pond





Heron's Landing Homeowners Association

February 14, 2023

Mr. Craig Chandler
Sanibel Planning Department

RE: Heron's Landing HOA Revised Conditions #4 for Coastal Creek Development

Heron's Landing HOA request revisions to the previously submitted conditions for the Coastal Creek development in order to mitigate adverse impacts on our communities. Please use this document as a revised and updated list of our proposed conditions.

To be clear, we do not oppose this development. The land in question -- adjacent to the busy San-Cap Road and constructed over the former wastewater treatment plant--- is not pristine and adds nothing to the natural qualities that make our communities special. However, we want to ensure that the development does not harm future homeowners or the residents of the surrounding communities.

There are three (3) principal reasons why our HOA request that Coastal Creek be required to do further detailed studies before Planning Commission & City Council consider approval:

1. Coastal Creek is planned to be constructed over a portion of a former Wastewater Treatment Plant with documented groundwater contamination. Prospective buyers are entitled to know that their home is built on the site of a former wastewater treatment plant. Our existing communities will be adversely affected if the Coastal Creek development is unable to sell all its homes or if there is litigation because buyers did not know they were buying homes built on land polluted by a wastewater treatment plant.
2. To our knowledge, The Developer and the City of Sanibel have no boring samples specifically located where lots and homes are proposed.
3. The Developer studies do not address ground water contamination issues. Submitted studies address only Wetlands, Protected Species & Stormwater management plans.

Four (4) of the six (6) lots of the proposed development sit directly on top of the former Wastewater Treatment Plant, decommissioned by the City in 2008 (see 2005 Wastewater Plant Overlay attached). All groundwater contamination discharges into Heron's Landing Western Lake (See the May 2018 Lake Management Plan for Heron's Landing Lake, prepared by SCCF). We are concerned about disturbing the contaminated soils of this tract and the impact on Heron's Landing Western Lake. The City and residents have entered into an Agreement to expend funds for cleanup and aeration of this Lake. No part of the Developer's "Environmental Assessment & Protected Species Survey Report" provides treatment for the soils outlined in the 2018 SCCF report.

PROPOSED CONDITION 1: The developer shall be required to test the soil and groundwater on the site of the former wastewater treatment plant, with construction permitted to proceed only if tests show the soil and groundwater not to contain levels of toxins harmful to human health as defined by applicable law and regulations, and that the soil and groundwater do not contain toxins that could increase levels in adjacent bodies of water (e.g., Clam Bayou, Heron's Landing West Lake, and the adjacent lake in Sanibel Bayou).

PROPOSED CONDITION 2: The developer shall be required to share proportionate costs with Heron's Landing 9 owners as outlined in the Feb 1, 2022 Agreement between the City & Heron's Landing 9 owners.

Specific language incorporating this requirement should be incorporated into the 5-year plan between the City and the 9 Heron's landing residents.

PROPOSED CONDITION 3: All areas labeled as "Wetland Preserve & Upland Buffer" (between the proposed 6 lots and Heron's Landing) shall be clearly labeled as undisturbed buffers and all vegetation and existing trees in these areas shall remain.

The developer proposes a min. 5' berm to the south of the 6 proposed lots to control stormwater. Heron's Landing and Sanibel Bayous have significant concerns about flooding created by "berming off" & creating a moat around Coastal Creek, further restricting the flood zone area in heavy storm events, pushing potential flood waters into Heron's Landing, specifically Osprey Ct.

PROPOSED CONDITION 4: City engineers and the developer shall be required to document whether the "berming off" may exacerbate potential flooding toward Osprey Ct.

The Coastal Creek Development shall adhere to the following requirements:

PROPOSED CONDITION 5: (a) All homes shall be elevated one level, and have the option for 1 or 2 stories above (in compliance with Sanibel height restrictions) with ground floor parking below. All roofs shall be metal roofs, Hardy Plank Siding, aluminum handrails and what is referred to as "Old Florida Style;" (b) All homes shall be a minimum of 2,500 s.f. (Information volunteered by the developer)

The location of the proposed entrance from Sanibel Bayou Road is approximately 100' from San-Cap Road. This is a dangerous access point, set very close to a major collector road. The existing Curb cut on Sanibel Captiva Road should be explored as the entrance to this development.

PROPOSED CONDITION 6: The Developer shall be required to contribute proportionately to expenses associated with the maintenance of Sanibel Bayous Road, e.g., landscaping, guardhouse, and other related costs currently shared by Heron's Landing & Sanibel Bayou HOAs.

PROPOSED CONDITION 7: The Developer shall restrict all construction traffic through a temporary access located at the existing curb cut off Sanibel Captiva Rd.

PROPOSED CONDITION 8: Ongoing construction activity and its impact on the vibrant Rookery is a major concern. Light and noise pollution could significantly disrupt the migratory birds to the south side of the construction zone. All homes and pools shall not be allowed to have motion detector lights/spotlights facing south toward the Rookery for migratory birds.

PROPOSED CONDITION 9: Construction shall not begin before 8 am, cease no later than 5 pm, and prohibited on weekends and holidays. The Developer shall provide adequate sanitation facilities for all workers. Workers shall not use facilities at the HL1 pool House.

PROPOSED CONDITION 10: The Developer shall disclose to real estate agents and potential buyers that the development will be built on the site of a former wastewater treatment plant

We look forward to further discussion prior to submission to the Planning Commission.

The Homeowners association have designated Doug Stimmel as our representative with regard to the Coastal Creek development. Please direct any response and comments to him (dwstimme@gmail.com) including the proposed Planning Commission date for this matter.



**AGREEMENT BETWEEN THE CITY OF SANIBEL AND
CERTAIN PROPERTY OWNERS WITHIN HERON'S LANDING**

THIS AGREEMENT is made and entered into this 6 day of APRIL, 2022, by and between the City of Sanibel, a municipal corporation, ("City") and the following property Owners within Heron's Landing: Douglas W. Stimmel Revocable Trust; John F. & Susan Connor; Andrew Ky Haynes & Sarah Hughes Haynes; Richard E. Eitland; Osprey Property LLC; Nickolas B & Maryann Savage; Howard L. Simon & Elizabeth J. Wilson; Kay R. Trainor; and Brenda E. William Jr. and Assunta E. Breda, as Trustees of William E. Breda, Jr. Declaration of Trust dated September 11, 1998 and Assunta E. Breda and William E. Breda, Jr., as Trustees of Assunta E. Breda Declaration Trust dated September 11, 1998 (collectively "Owners").

WHEREAS, the City has made great efforts to improve water quality in and around the City;

WHEREAS, the Owners are owners of properties adjacent to or including portions of the Western Lake at Heron's Landing (the "Lake"), as depicted in Figure 1 of the Lake Management Plan for Heron's Landing (May 2018), attached hereto as Attachment A (the "Lake Management Plan");

WHEREAS, the City purchased the failing neighborhood wastewater treatment facility in 2008, and the property acquired included land and shoreline on the north side of the Lake along with the northern portion of the Lake itself;

WHEREAS, the City decommissioned the wastewater treatment plant in 2008 and completed restoration of the site to conservation land in 2015;

WHEREAS, a 2016 study found the Lake had the poorest water quality of all 72 lakes on Sanibel; and

WHEREAS, the City and the Owners desire to partner in the improvement of the water quality in the Lake in accordance with the Lake Management Plan.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the Owners hereby agree to the following:

1. RECITALS

The above recitals are acknowledged as correct and incorporated herein.

2. CITY'S OBLIGATIONS

The City agrees to coordinate a multi-year program under the direction of the City's Department of Natural Resources to improve water quality in the Lake. Specifically, for a period of five (5) years the City assumes financial and operational responsibility for, at a minimum, the installation, operation, and maintenance of an adequate aeration system, including any electrical

needs to provide power as determined by the City. The City has budgeted \$50,000.00 to complete the installation of the aeration system at the City's expense.

As part of the City's Sanibel Communities for Clean Water Program, the City agrees to, at a minimum, biennially test the water quality by taking samples of surface water in the Lake and share the results thereof with the Owners, beginning in 2022 and every two years thereafter during the pendency of this Agreement, subject to City funds being appropriated. The City further agrees to complete ground water testing in 2025, subject to City funds being appropriated.

Provision of electrical needs for the aeration system by the City is conditioned upon suitable connection to power exclusively on City property or property of the Owners and the provision by the Owners of any necessary easement(s) through their properties. The City will identify an individual from the City's Department of Natural Resources Department to serve as the City's project coordinator (hereinafter "City Coordinator"), who shall have authority to identify tasks to be completed pursuant to this Agreement, to notify the Owners of services to be completed, transmit instructions, and receive information related to the work to be performed hereunder.

3. OWNERS' OBLIGATIONS

The Owners shall designate in writing an individual to act as the Owners' coordinator (hereinafter "Owners' Coordinator"), and such person shall be the person authorized and responsible to act on behalf of the Owners with respect to the work to be performed hereunder. The Owners hereby agree to assume joint and several liability with one another for the financial responsibility for the periodic application of nutrient balancing chemical ingredients to the Lake. The timetable for such treatments shall be in collaboration with the City and based on best management practices identified in the Lake Management Plan. The owners agree to notify the City prior to the application of any chemical treatment referenced in Table 2, page 15 of the Lake Management Plan. Additionally, the Owners hereby agree to assume joint and several liability with one another for the financial responsibility for the purchase and application of chemical treatments or other mitigative measures to reduce the smell and/or increase the clarity of Lake water as deemed desirable by the Owners; however, the Owners' Coordinator shall obtain written approval from the City before taking any mitigative measures and/or applying any chemical treatment product not referenced in Table 2, page 15 of the Lake Management Plan. The unapproved application of any chemical treatment product or mitigative action deemed by the City to be contrary to the goals of the Lake Management Plan shall be a material breach of this Agreement and good cause for termination by the City without further obligation hereunder.

For any authorized mitigative measure or chemical treatment as referenced above, the Owners' Coordinator shall notify the City of the dates of the application(s) of any mitigative measure or chemical treatment on the Lake and provide a monitoring plan to be carried out by an independent licensed contractor with appropriate water quality sampling experience and expertise, who is approved by the City. The Owners shall be joint and severally liable with one another for the financial responsibility for water quality monitoring prior to and following each chemical treatment or mitigative measure that is authorized.

Within one year of the installation of the aeration system by the City at the City's expense, the Owners also agree to work (through the Owners' Coordinator) with the City to develop and install a vegetation planting plan. Such plan shall include, at the Owner's option, plantings in the littoral zone of the Lake adjacent to the Owners' properties or equivalent plantings on floating mats on the Lake or a combination thereof, with such planting plan to be implemented when monitoring tests have indicated oxygen levels have increased to a suitable level as determined by the City. The Owners hereby assume joint and several liability with one another for the financial responsibility for purchase, installation, and maintenance of any plantings during the duration of this Agreement. If the elected planting plan consists solely of floating mats, the City requirement would require a minimum of 1,650 square feet of floating mats to be purchased, installed, and maintained during the term of this Agreement, for a cost not to exceed \$35,000.00.

The Owners shall follow Best Management Practices described on pages 13 – 14 of the Lake Management Plan for the following items:

1. Adhere to Fertilizer Ordinance (as more fully described below)
2. Florida-Friendly Plants
3. Proper Irrigation
4. Pet Waste Disposal
5. Runoff Control
6. Eliminate or Minimize Turf Grass
7. Proper Mowing Techniques

Further, the Owners shall implement the following additional best management practices within one year after the adoption of this Agreement:

- a. Establish, at a minimum, a 10-foot wide native plant buffer along the shoreline of each private property for water quality enhancement. Although compliance can be met in a variety of ways, to the extent a property is not already in compliance, it will be sufficient if the minimum 10-foot buffer is fully vegetated exclusively with native plantings of any height or size, whether groundcover, shrubs or trees, or some combination thereof.
- b. Adhere to the City's fertilizer ordinance, Sec. 30-144, Sanibel Code, including, but without limitation, the buffer zones detailed in Sec. 30-144(e), on the entirety of the Owners' properties. A copy of the fertilizer ordinance is attached hereto as Exhibit B for ease of reference.
- c. In accordance with the Sanibel Land Development Code, stormwater runoff must be gradual and dispersed and approximate natural rates. Any and all features (i.e., pipes, outfalls, impervious surfaces, etc.) that cause direct or point discharge of stormwater from an Owner's property into the Lake must be removed or appropriately redirected. To the extent a property is not already in compliance, it will, at a minimum, be necessary to remove any and all currently-existing features

that are within 10 feet of the shoreline such that any remaining stormwater runoff filters through the minimum 10-foot wide native plant buffer.

- d. Cease disposal of any grass clippings, leaves, or any other vegetative debris into the Lake to reduce nutrient loading to the Lake.

4. ACCESS

Only small vessels may be launched by hand at a site to be determined by the City for Lake access. Care should be taken by private contractors to minimize plant damage when accessing the Lake. Excessive impacts to native vegetation may be assessed for mitigation and the Owners will be responsible for associated costs. The City reserves the right to terminate access from the City-owned land at any time. Lake access from Sanibel Bayous Road is not permitted due to the presence of sensitive bird rookery habitat. If access for a larger vessel is required, permission may be granted by one of the Owners to access the Lake from private property.

5. REPORTING AND COMMUNICATION

The Owners shall provide the City with a yearly report that includes a summary of all actions taken by the Owners to improve water quality in the Lake. At least once annually, an in-person meeting between the City Coordinator and the Owners' Coordinator shall occur to review the collective actions taken by the Owners and the City since the last in-person meeting and to reevaluate, as necessary, any planned actions moving forward.

6. TERM

This Agreement shall terminate five (5) years following the initiation of the operation of the aeration system detailed in section 2, City's Obligations, above; however, in the event the City or Owners are not satisfied with the results of the efforts of this Agreement at the end of the initial term, the parties shall engage in good faith negotiations for the renewal and potential amendment of the Agreement, upon mutual agreement, in writing signed by both parties. During the five-year term of the Agreement, the Owners' obligations herein shall run with the Owners' respective properties as identified by property addresses in the signature blocks below, it being the mutual agreement of the City and the Owners that, for the five-year term of this Agreement, such properties and any owner of such properties be bound hereby to the same degree as the current Owners.

7. EVALUATION

The effectiveness of the joint efforts of the City and the Owners to improve water quality in the Lake shall be assessed biennially, as detailed in section 2, City's Obligations, above, and such assessment shall be detailed in a written report prepared by the City and shared with the Owners.

8. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, and there are no warranties, representations, or other agreements among the parties in connection with the subject matter

hereof, except as specifically set forth herein and therein. Any amendment or modification to this agreement shall require a formal amendment in writing, signed by both parties.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first above written.

ATTEST: 
BY: Scotty Lynn Kelly
Scotty Lynn Kelly, City Clerk
APPROVED FINANCIAL SUFFICIENCY
Steven C. Chaipel
Steven C. Chaipel, Finance Director

CITY OF SANIBEL
BY: Paul Hays
City Manager

APPROVED AS TO FORM:
[Signature]
CITY ATTORNEY

OWNERS

Nickolas B. Savage
Maryann Savage
Property Address: 5402 Osprey Court
Sanibel, FL 33957

Nickolas B. Savage

Maryann Savage

Date: _____

Kay R. Trainor
Property Address: 5414 Osprey Court
Sanibel, FL 33957

Kay R. Trainor

Date: _____

Howard L. Simon
Elizabeth J. Wilson
Property Address: 5410 Osprey Court
Sanibel, FL 33957

Howard L. Simon

Elizabeth J. Wilson

Date: _____

Douglas W. Stimmel Revocable Trust
Property Address: 5418 Osprey Court
Sanibel, FL 33957

Douglas W. Stimmel, Trustee

Stacy Stimmel, Trustee

Date: _____

Andrew Ky Haynes
Sarah Hughes Haynes
Property Address: 5430 Osprey Court
Sanibel, FL 33957

Andrew Ky Haynes

Sarah Hughes Haynes

Date: _____

John F. Connor
Susan Connor
Property Address: 5426 Osprey Court
Sanibel, FL 33957

John F. Connor

Susan Connor

Date: _____

**William E. Breda, Jr. Declaration
of Trust dated September 11, 1998
and Assunta E. Breda Declaration
of Trust dated September 11, 1998**
Property Address: 5422 Osprey Court
Sanibel, FL 33957

William E. Breda, Jr., Trustee

Assunta E. Breda, Trustee

Date: _____

Richard E. Eitland
Property Address: 5398 Osprey Court
Sanibel, FL 33957

Richard E. Eitland

Date: _____

Osprey Property, LLC
Gayle and Karen Dendinger
Bob and Joyce Lynn

By: _____

Printed Name: _____

Title: _____

Date: _____

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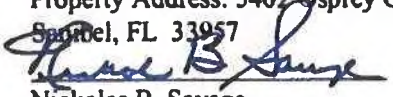
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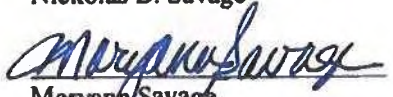
CITY OF SANIBEL

BY: _____
Scotty Lynn Kelly, City Clerk

BY: _____
City Manager

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Nickolas B. Savage


Maryann Savage
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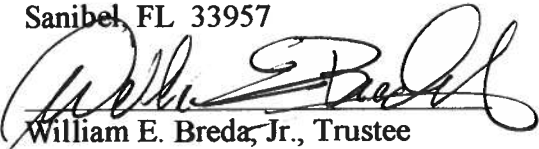
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Assunta E. Breda, Trustee

Date: 3/7/22

Osprey Property, LLC
Gayle and Karen Dendinger
Bob and Joyce Lynn

By: 
Printed Name: GAYLEA DENDINGER
Title: Member

Date: 3/09/2022

Richard E. Eitland
Property Address: 5398 Osprey Court
Sanibel, FL 33957

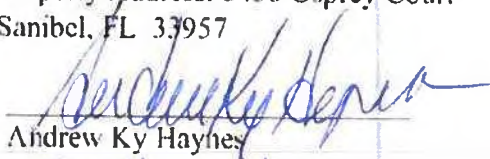
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Property Address: 5430 Osprey Court
Sanibel, FL 33957



Andrew Ky Haynes



Sarah Hughes Haynes

Date: 3-14-22

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BY: _____
City Manager

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Property Address: 5414 Osprey Court
Sanibel, FL 33957



Kay R. Trainor

Date: 3-11-22

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Date: _____

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IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first above written.

ATTEST:

CITY OF SANIBEL

BY: _____
Scotty Lynn Kelly, City Clerk

BY: _____
City Manager

OWNERS

Nickolas B. Savage
Maryann Savage
Property Address: 5402 Osprey Court
Sanibel, FL 33957

Nickolas B. Savage

Maryann Savage

Date: _____

Howard L. Simon
Elizabeth J. Wilson
Property Address: 5410 Osprey Court
Sanibel, FL 33957

Howard L. Simon

Elizabeth J. Wilson


Date: _____

Kay R. Trainor
Property Address: 5414 Osprey Court
Sanibel, FL 33957

Kay R. Trainor

Date: _____

Douglas W. Stimmel Revocable Trust
Property Address: 5418 Osprey Court
Sanibel, FL 33957



Douglas W. Stimmel, Trustee

~~Stacy Stimmel, Trustee~~ 

Date: 3/7/2022


Andrew Ky Haynes
Sarah Hughes Haynes
Property Address: 5430 Osprey Court
Sanibel, FL 33957

Andrew Ky Haynes

Sarah Hughes Haynes

Date: _____

John F. Connor
Susan Connor
Property Address: 5426 Osprey Court
Sanibel, FL 33957



John F. Connor



Susan Connor

Date: MARCH 7, 2022

**William E. Breda, Jr. Declaration
of Trust dated September 11, 1998
and Assunta E. Breda Declaration
of Trust dated September 11, 1998**
Property Address: 5422 Osprey Court
Sanibel, FL 33957

William E. Breda, Jr., Trustee

Assunta E. Breda, Trustee

Date: _____

Richard E. Eitland
Property Address: 5398 Osprey Court
Sanibel, FL 33957

Richard E. Eitland

Date: _____

Osprey Property, LLC
Gayle and Karen Dendinger
Bob and Joyce Lynn

By: _____
Printed Name: _____
Title: _____
Date: _____

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Sanibel, FL 33957


Howard L. Simon


Elizabeth J. Wilson

Date: 3-9-2022

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Sanibel, FL 33957

Kay R. Trainor

Date: _____

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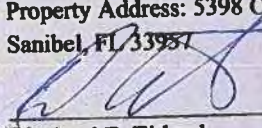
By: _____

Printed Name: _____

Title: _____

Date: _____

Richard E. Eitland
Property Address: 5398 Osprey Court
Sanibel, FL 33957



Richard E. Eitland

Date: 3/7/2022





MEMORANDUM

Public Works Department

Planning Commission Meeting Date: September 28, 2022

To: Craig Chandler, Planning Supervisor
From: Oisin Dolley PE, Assistant City Engineer
Date: September 20, 2022

SUBJECT: Major Subdivision Plat & Development Permit, SPLT-2022-000074 & DP-2021-001803; Coastal Creek, 5301 Sanibel Captiva Road

BACKGROUND:

Public Works completed their review of the Stormwater, Engineering and Wastewater related components of the proposed development of the property at 5301 Sanibel Captiva Road. Based on meetings with the applicant and adjacent property owners, the following areas of concern were noted: Stormwater Management, Site access location and potential soil excavation. The following paragraphs address each concern.

Public Works has reviewed the Stormwater Management plan and site layout for the Coastal Creek subdivision and has no issues or additional required conditions. The stormwater management plan as permitted by SFWMD exceeds the required stormwater requirements of the Sanibel Land Development Code. As part of the Sanibel Bayous subdivision plan, the property would not have been required to have on-site retention. The proposed development has been designed with this included. The plan includes on-site retention for 25 year, 3 day storm event with a rainfall total of 11 inches without reaching a discharge level. This exceeds the Sanibel requirements for both the 5 year, 1 hour storm (2.8 inches) for typical lots and the 25 year, 24 hour storm (9.05 inches) used for designing subdivision outfall structures. In addition when necessary, the outfall structure does not drain directly to the adjacent pond, it drains into the conservation area which allows for additional ground absorption and water quality treatment before dispersed drainage flow into the pond. Based on this, the stormwater management plan has been designed in the best way to reduce water quality impacts.

Public Works reviewed the site layout including location of the proposed access drive on Sanibel Bayous Road. Public Works review found that the proposed driveway corresponds to an existing driveway location on Sanibel Bayous Road. There is also an existing sewer connection at this location. There is an existing driveway access on Sanibel-Captiva Road. Public Works staff supports the decision to use the Sanibel Bayous Road access point as it is a local road and has less traffic and safety concerns compared to Sanibel-Captiva Road which is an arterial road. The impacts during construction related to this development will be similar

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to the other construction developments that have been carried out in the Sanibel Bayous and Heron's Landing subdivisions previously.

Concerns were shared regarding possible soil contaminants on site and how they would be affected by the site development. Public Works reviewed the site plan and City records of past restoration activities to evaluate these concerns. Excavation will be limited with the proposed development. Drainage areas are shown at grade or filled in some areas. One exception that has been pointed out is the installation of future pools may require excavation. During pool excavation, all excavated soil will be removed from the site so possible contaminate soil should not be an issue. As always proper erosion control and dewatering measures should be followed to ensure any possible soil erosion is contained on-site. In July of 2008, the City of Sanibel took the wastewater treatment plant offline and redirected the flows into the Sanibel Sewer System. After this, the City completed abandonment and restoration plan at the site. Abandonment of the plant was done in accordance with FDEP regulations. Part of this process was removing layers of soil from the prior sewer site and replacing with clean fill from a recent City dredging project. This process involved removing around 2000 Cubic Yards (CY) from the ponds on site and replacing with clean fill. The removed soils were transported to a landfill in Hendry County, FL for appropriate disposal. In addition to the 2000 CY of soil replacement, there was 6000 CY of clean fill brought in to fill the ponds and regrade the site. This initial scope of work was completed within 90 days of the plant being taken offline. In addition to this work, Public Works completed additional restoration work in 2009 which involved placing 15,000 CY of additional fill onto the site to further restore the site. These were the main two restoration projects by Public Works after the plant was taken off-line. Additional restoration projects have taken place on-site since then including a \$50,000 project in 2015 to create the Sanibel Bayous Preserve. Based on our review of the completed restoration activities, Public Works does not see any concerns related to potential soil contamination remaining at the site.

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City of Sanibel Natural Resources Department

Memorandum

To: Craig Chandler, Planning Supervisor

From: Dana Dettmar, Environmental Biologist

Subject: Major Subdivision Plat & Development Permit, SPLT-2022-000074 & DP-2021-001803; Coastal Creek, 5301 Sanibel Captiva Road

Date: December 2, 2022

Vegetation Assessment

Pre-Hurricane Ian: On August 8, 2022, the Natural Resources Department performed a site inspection to evaluate the natural resource-related impacts of a development permit application to install infrastructure (roadway, stormwater, etc.) associated with the platting of a new 6-unit single-family residence major subdivision. At the time of inspection, the location of the proposed roadway was not staked as required by Sec. 122-144 of the Land Development Code (LDC). Natural Resources informed the applicant of this requirement and was later notified that the property staking would be completed and ready for inspection on August 22, 2022. On August 24, 2022, Natural Resources performed a second inspection and determined that the list of impacted vegetation did not accurately reflect the site conditions within the staked area. Natural Resources reviewed the vegetation plan submitted by EnSite, Inc. and provided the following revisions/corrections to the applicant the same day:

1. The native plant inventory is not accurate. The inventory does not accurately reflect the quantities of each native species to be impacted, and there are several native species located within the footprint that are not included on the impact list (e.g., wax myrtle, paurotis palm, mastic, cats claw, silver saw palmetto). The applicant must submit a revised vegetation inventory.
2. The vegetation plan notes several native plants outside of the development footprint that are proposed to be impacted. The applicant must provide an explanation, consistent with the LDC, for why these plants must be impacted. Natural Resources assumes the impacts were identified due to the location of the stormwater berm.
3. There are minor revisions noted on the vegetation plan relating to the master plant schedule for the front buffer (i.e., some plants are categorized incorrectly).

Natural Resources met on-site with Vegetation Contractors Ted and Chris Browning (Browning's Nursery & Landscaping) on 9/16/2022 to discuss the vegetation impact list and vegetation plan deficiencies. During this meeting, the Brownings provided plans dated 9/9/21 that more accurately documented the vegetation on-site, but for some reason was not reflected on the EnSite vegetation plan that was provided by the applicant for staff review. The Brownings also indicated that they would primarily use the front buffer area as the receptor site for transplanted native vegetation, which will have an impact on the master

plant schedule for the front buffer (i.e. the applicant will likely need less new plantings than what is currently being proposed). Furthermore, the Brownings noted the stormwater berm will not impact vegetation, and that they plan to meander the berm around existing vegetation. So while minor changes to the vegetation plan are outstanding, the changes required are straightforward and can be easily addressed by the applicant.

Post-Hurricane Ian: On December 2, 2022, Natural Resources visited the property to inspect the site conditions post-Hurricane. There has been some storm-related damage to vegetation in both the area to be impacted by the site development activities and the front vegetation buffer. It is likely there will be less impacts to native vegetation than previously documented within the area of development and that more vegetation will need to be installed within the front buffer to achieve compliance. The applicant will need to update the plant inventories and impact list on the vegetation plan. **Natural Resources recommends the Planning Commission require the applicant to obtain a vegetation permit as a means to approve the vegetation plan once revised plans have been received.**

Other Governmental Permits

As part of the plat/development of this property, the applicant was required to perform an environmental assessment to identify the potential for Florida Department of Environmental Protection (FDEP) and/or South Florida Water Management District (SFWMD) jurisdictional wetlands as well as to determine the potential presence of listed species inhabiting the site as regulated by the U.S. Fish & Wildlife Service (FWS) and the Florida Fish & Wildlife Conservation Commission (FWC), which was conducted by Bearpaws Environmental Consulting.

Wetlands Assessment: Natural Resources was present for the wetland delineation meeting on June 18, 2021 between the applicant, FDEP, and SFWMD in which ± 0.54 acres of mangrove swamp wetland was verified (Formal Wetland Determination Application No. 210614-6488). As proposed, the development of the subdivision will not result in any impacts to the on-site wetlands. The applicant is proposing a ± 0.86 acre preserve area consisting of ± 0.35 acres of tropical hardwood forest and the ± 0.54 acres of mangrove swamp wetland that will be placed under a conservation easement and maintained as such in perpetuity, by the owner of their successor. The preserve will be located along the southern portion of the property between the proposed development and the City-owned mangrove fringe (i.e. bird rookery). The tropical hardwood hammock portion of the preserve will serve as a buffer between the subdivision development and mangrove swamp wetland and rookery. As required by the SFWMD, Bearpaws Environmental Consulting, on behalf of the applicant, has submitted a preserve management plan with the goal of improving the condition of the preserve as wildlife habitat over a 5-year reporting period. Enhancements will include the annual removal of exotic vegetation and native vegetation planting if areas do not naturally recruit vegetation at the end of two years. The plan also indicates its purpose and intent "is to ensure that wetland preserves, conservation areas, open space areas, or undeveloped areas are maintained free of exotic plants [as defined by FLEPPC] in perpetuity." The maintenance and long-term management portion of the plan indicates that inspections of the preserve area will be conducted annually and maintenance (i.e., exotic plant removal) will be conducted in perpetuity. The applicant is required to submit annual monitoring reports to the SFWMD. **Natural Resources recommends that the applicant also be required to provide a copy of each annual report to the City.**

Wildlife Assessment: Bearpaws Environmental Consulting noted in the environmental assessment that no protected species or signs thereof were observed on-site during the protected species survey. Prior to Hurricane Ian, Natural Resources has also inspected the lot for protected species and was in agreement with the environmental assessment. Natural Resources has visited the property post-Hurricane Ian to determine if any displaced wildlife are now utilizing the site; however, the results were negative.

Additional Background and Natural Resources Recommendations for Water Quality Protection

The subject parcel was part of a larger area (comprised of 5301, 5325, and 5491 Sanibel-Captiva Road) that was once the site of the former Sanibel Bayous/Heron's Landing wastewater package plant. Under a FDEP permit, the privately owned and operated plant discharged minimally treated effluent into on-site unlined holding ponds. In 2007, routine water quality testing by the Florida Department of Health resulted in repeated beach closures at Bowman's Beach park. Further water quality testing, in the form of nutrient source tracking, identified the package plant as a significant source of sewage pollution (e.g., bacteria, nutrients) to the surrounding coastal waters through the interaction of the effluent from the plant (minimally treated and stored in unlined ponds) and groundwater. In 2008, the City purchased the package plant in an effort to protect water quality and local beach conditions. Existing users were connected to City's central sewer system (2008), and the plant was decommissioned by the City in accordance with FDEP requirements, including the removal of all structures and excavation and capping of the discharge lagoons. The package plant site was subdivided into smaller parcels with the City maintaining the western portion of the parcel and the entire mangrove fringe along the southern property boundary to protect a highly productive bird rookery. Although no further action was required by FDEP, the City completed a \$50,000 restoration effort on the City-owned parcel in 2015, creating the Sanibel Bayous Preserve. Restoration activities included exotic plant removal, creation of two seasonal wetland features, and extensive wetland and upland vegetation plantings. Restoration was funded through a \$25,000 grant from the FWS Partners for Wildlife Program with matching funds from the City. Despite this effort on the City-owned parcel, legacy nutrients from the package plant persist in the soils and groundwater, contributing to water quality impairments of the adjacent stormwater lake.

Through the Sanibel Communities for Clean Water Program, biennial water sampling is performed on 84 waterbodies throughout the island. Each sampling year, the waterbodies are ranked from the most impaired (1) to the least impaired (84). The waterbodies in the vicinity of the former package consistently rank as some of the most impaired lakes on Sanibel (refer to table below) and are hyper-eutrophic (excessively nutrient-rich).

Sampling Site	2022	2020	2018	2016
Heron's Landing	5	4	18	1*
Sanibel Bayous	3	2	3	1*
Restoration Lake East	12	10	13	NR
Restoration Lake West	13	12	5	7

* Heron's Landing and Sanibel Bayous stormwater lakes were initially sampled as one waterbody. From 2018 on, the waterbodies have been sampled separately.

The City has completed a number of studies in the area of the former package plant site including surface water sampling, bathymetric mapping, sediment coring, groundwater sampling and movement, and heavy metals (all sampled metals were below probable effect levels) to better understand the dynamics of this system. All results point towards the existence of package plant legacy nutrients in the soils and groundwater as the primary nutrient source for the area. The City assisted Heron's Landing in the development of a lake management plan and has also entered into an agreement with nine lakefront property owners to install an aeration system to help address on-going nutrient-related water quality issues.

Development of the subdivision will result in a loss of vegetative cover and an increase in impervious surface. This change will increase the amount of stormwater runoff generated by the property and result in less vegetation to remove nutrients from the soils, both of which have the potential to negatively impact

water quality. **Natural Resources recommends that the Planning Commission consider the following nutrient reduction strategies to be required as part of the subdivision development:**

1. **Landscaping on single-family lots shall be 100% native.**
2. **The use of fertilizers containing nitrogen and phosphorus is prohibited.** The installation of a stormwater berm around the entire subdivision, in effect, makes the area within (the single-family lots, common area, etc.) a stormwater retention area. Sec. 30-144(e) *buffer zones*, prohibits the application of fertilizer in or within 25ft of retention areas.
3. **Within the common area (lands excluding the six (6) single-family lots), the use of sod shall be prohibited and the area shall be planted consistent with Sec. 118-286.** Article IV. – Standards for Stormwater Control, Sec. 118-286 – Planting, states “Such surface water retention areas shall be planted with types of native vegetation species that can survive in wet/dry conditions of those areas.”

The site plans propose to remove an existing fence on the Coastal Creek parcel, which runs along the western property boundary. The fence currently provides separation between the subject parcel and City-owned conservation land. **To keep the Sanibel Bayous Preserve protected from potential encroachment from the proposed subdivision, Natural Resources also recommends that the applicant be encouraged to install a native plant buffer along the western property line.** This area could serve as a receptor site for some of the transplanted native vegetation.

The southern property boundary of the parcel is adjacent to a City-owned mangrove fringe, which was acquired in order to preserve an active bird rookery during the decommissioning of the package plant. **The City will not authorize any mangrove trimming for views of the stormwater lake to protect the rookery habitat and water quality.**

Pursuant to Sec. 122-169(3) and Sec. 122-191, all City-listed and Florida Invasive Species Council (formerly FLEPPC) listed shall be removed from the site and maintained free in perpetuity.



Sanibel part1

Tue, Jan 17, 2023 3:25PM • 3:31:01

SUMMARY KEYWORDS

site, sanibel, development, applicant, nutrients, lake, city, conditions, plant, question, staff, area, plan, groundwater, landing, concern, property, road, subdivision, land

SPEAKERS

John D. Agnew, Melissa Laidlaw, Andrew Ginipro, Eric Pfeifer, Karen Storjohann, Laura DeBruce, John Connor, Menashe Ben-David, Dana Dittmar, Kelly Scotty, Sawyer C. Smith, Dan Daughdrill, Mayor Holly Smith, Holly Milbrandt, Craig Chandler, Robin Cook, Roger Grogman, Brian Smith, Howard Simon, Gayle Dendinger, David Kienzle, Matt Kirchner, Jim Bajek, Kooroush Saeian, Ed Rydell Hoover, Matt DePaolis, Jonathan Wallace, Paul Nichols, Paula McMichael

Roger Grogman 00:07

Very quickly, before we do the roll, I want I have a couple of announcements I'd like to make. The first is that we do have a hard stop on the meeting today at four o'clock. Many of you probably anticipated only going to noon. But we've been there done that. So four o'clock is our hard stop on the meeting today. And of course, we're taking the public hearing, which represents much of your interest today, all the public hearings represent your interest, but that'll be the first item on the agenda. I'd also like to remind everyone that in the public comment section for items not on the agenda, we have a three minute limitation on that, and we have a 20 minute total limitation on that. We don't have a total limitation on the comments related to the hearings. So just for your information on that as well. Think that is Oh, Robert's rule of order, you know, prevails here we try and be orderly, you know, so everyone will be called on to speak, and they will be acknowledged by myself and then we will proceed on the basis of their information and questions from that. So with that said, I would ask our city clerk Kelly, if you would, please call the roll.

Kelly Scotty 01:36

Chair grobman. Here, Vice Chair Pfeiffer here, Commissioner DeBRUCE. Here, Commissioner Nichols. Commissioner Kirschner, here, Commissioner Nori, ham. Sorry, Commissioner murasky. Thank you.

Roger Grogman 01:51

Could I have a motion to Excuse Excuse Commissioner smartscape motion? So

Karen Storjohann 01:56

moved.

Roger Grogman 01:59

Bucha. Could I have all those in favor? Aye. Any opposition? There being none. Tie ties Mirsky is excused. I'll then turn to the public comments I referred to before now these are items that are not appearing on the agenda. This is something you would like to articulate in this public forum and provide that information to us. But it can't be part of what we have as our hearings today. So this, this would be a public comment on an item not on today's agenda, reflective of the public hearings. So to my left, any any desire for public comments, to the senator public comments, to the right public comments. Okay, there being no public comments, I'll move to this city liaison report, which will update us on State of our city, Mayor Smith.

Mayor Holly Smith 02:59

Good morning, everyone, for the record, Mayor Holly Smith. And I just hope that you all had a nice time with your family and your friends over their holiday as we roll out, thankfully from 2022. And we roll into our next chapter of 2023. And I will tell you, for 2023. And beyond this will be quite a chapter for the history of our city of Sanibel. And you the Planning Commission are going to be playing a vital role and what happens as we move forward in the rebuilding of our island. I just want to take a quick moment to again, thank Commissioner Kirschner. As we know this is his last meeting as the seating suited planning commissioner, I want to thank you for your friendship, your commitment to this island and all that you have done as a planning commissioner for the city of Sanibel. I will tell you, thank you, you have with your expertise in building it is a vital part of an understanding of the planning commission, because you do know the code so well. So thank you for that. I hope you're not going anywhere too soon. Okay. And I would just like to update you wish you know there is there will be at our January 17 meeting, we will be putting some planning commissioners in place. There are three vacancies, there were two that have requested to remain. And there are current there were 14 Total applicants that apply. So we need to know that that's a really good thing. Those are people that want to be invested in our island, understand our island and I can tell you their plethora of very qualified applicants. And that's what we hope that will always continue because it's so important in these volunteer positions that we have people fill those positions that can do the good work that you all are doing so just wanted to update on you with you on that. As you can see on Our agenda, several items have been postponed. The chair, chair grobman, and I were in the pre agenda item meeting. And we really discussed the need to make sure that when the packages come to you, they come in a timely manner, they are complete, there are not changes that are coming through as, as we saw during the last meeting, which it was very difficult for work to be done when changes are made. And you all do not have the opportunity to fully vet that the information coming forward. So several of those items were postponed and may come back in a future. In a future meeting, we also need to make sure that we're considering policy changes that we do that very carefully. We need to do it right. As I stated in the last meeting, we don't need to do it fast, because these are going to impact our citizenry and our island for potentially decades to come. When I look at these items, and I know you look at these items, there are things that I look at first, during this time, is it more restrictive? Or is it less restrictive? And why is this the appropriate time to consider this item? What will the impact be to our community to those that are seeking variances or building permits or development where development is no longer there? Should we educate versus regulate? I think education is always a great step. Certainly I understand. And we all understand that there might be need for certain things to come forward. And we appreciate that. But I know that you'll be looking at that very carefully. As you consider the policy changes that will come

forward for council to consider. We are depending on you to vet a lot of what will come forward. And hopefully nearly it's completed form. Although as you have seen in the past, if something comes up, we're looking at it with a new set of eyes as well. And making sure if there are any other items that need to be adjusted, we do that before we take that to a second reading. I also just wanted to let you know we did have our zoning in place. The emergency zoning in place that has basically it's expired. So again, now we can thoughtfully consider things as we need to and taking the time, we need to do that. Chair grobman. And I also discussed with staff the number of items that we have an agenda, as you saw in your last meeting, it was difficult to get through a lot of those items and truly understand what you were voting on. And remember, just because it says a consideration to come forward to council does not mean that at that meeting, that decision needs to be made, you can continue it, you can ask for further explanation, you need to fully understand what the impact is going to be and how that's going to affect those that are are going to be moving forward requesting permits their variances and other items. So please say You know what, we need more information. We need this, this and this, you need to be direct in what you're asking for and give clear direction to staff as to what you expect to come forward at the next Planning Commission meeting. So know that it doesn't mean you have to make that decision immediately. At our December 20 meeting, we covered many items, I'm not going to go through and go through the entire meeting, you have the ability to do that I know your time is valuable. I'm probably taking up more time than I need to right now. But there are some very clear directions that I wanted you to hear that I think will be helpful in what you're doing. Getting back to the agenda items that come forward. Certainly if it's a time sensitive item, or it's an applicant's variance, those certain those do take precedence. And we need to make sure that those move forward on a timely manner, because typically those applicants had been in that process for a very long amount of time, the hurricane stalled a lot but our business goes on 365 days a year. And so to the rights of our citizens to put forward what needs to be done. But if it's directed, if it is coming from a staff direction, those are the ones that we're going to look at a little bit more comprehensively, because those are the changes that we need to consider thoughtfully. One of the main things that happens since your last meeting was we did lift our restrictions on the causeway so we've been looking at the traffic counts housing has been affected. We will be having an update tomorrow evening. The location and the logistics of that update are to be determined. Now that so many more people are coming back on Island and we're back on island we were down on at least Street and we're not getting the audience that we used to have before so we're looking at the Facebook Live have a different logistical stance on it. So we'll let you know about that that will be going out sometime today, I did speak to the city manager in regards to that. I did ask for comparisons for last year's traffic counts at the same time. So that should give us a good indication. But I can tell you, for those of us that are on the island, driving around, people have been extremely respectful. There has not been the caravan of cars that were anticipated. And I think people are respecting what has happened on this island. And also if they are coming over coming to help those businesses that have diligently and bravely open, as I drive around this island, as I'm sure as you do, for those of you that are here, it's uplifting to see these businesses that are attempting to open in any way they can. And the residents are starting to return our community, our home is coming back and that is going to get stronger and stronger. And we need to look forward to that and embrace it and make sure that we support that in every way we can. So with that I have no further comments it Do you have any questions for me before you proceed to your meeting at hand.

Roger Grogman 11:08

Any questions from the Commission? Okay,

Mayor Holly Smith 11:11

thank you very much,

Roger Grogman 11:12

Mr. Smith, thank you for your leadership.

Mayor Holly Smith 11:14

Thank you.

Roger Grogman 11:19

Okay, we will now move into the public hearings. And I would mention also, as Holly did that items B, C, and D are recommendations to console which will be postponed to a future time. But items e and f are considerations also have a recommendation to console that will be discussed today. And recommendation will be made today. And item G is a discussion item regarding a recommendation to console. So that'll be a dialogue without closure on the dialogue for the recommendation. But now I'll move into our first public hearing. And of course for that hearing, I would ask planning director McMichaels could you please read into the record the title of the first hearing and then we'll go to the commissioners visit.

Paula McMichael 12:14

Good morning. Your first public hearing item is Item six a consideration of an application for a development permit pursuant to land development code chapter 82 article four Division Two subdivision three long form section 82 Dash 421 subsection one and section 82 Dash 422 scheduling a notice accompanied by a major subdivision plat filed pursuant to land development code section 114 Dash 106 preliminary plat to allow a unified residential housing cluster housing development, including six parcels for single family residential use and associated improvements known as a coastal Creek subdivision. The subject properties are located at a strip tax parcel number 13 Dash 46 Dash 21 Dash T two dash 000 2.2000 and 13 Dash 46 Dash 21 Dash T two dash 0000 2.4000 The subject application is submitted by Brian Smith and site Inc. on behalf of the property owner Buckingham 225 development Inc, Daniel W Dodgeville application number SPL T Dash 2022 Dash 000074 and application DP Dash 2021 Dash 00 1803

Roger Grogman 13:32

Thank you Director McMichaels city clerk Kelly would you please pull the commissioners on site visit ex parte communication in any conflicts?

Kelly Scotty 13:45

Chair grobman

Roger Grogman 13:47

site visit no ex parte no conflicts

Kelly Scotty 13:53

Vice Chair Pfeiffer

Eric Pfeifer 13:54

site visit no ex parte no conflict

Kelly Scotty 13:57

Commissioner DeBruce

Laura DeBruce 13:58

site visit I did have an email exchange with Matt DePaolis of SCCF. I will submit and no conflict.

Kelly Scotty 14:10

Commissioner Koechner

Matt Kirchner 14:11

Site visit no ex parte no conflict

Kelly Scotty 14:14

Commissioner Nichols

Paul Nichols 14:16

site visit. I'm not sure if this is ex parte but I did attend the meeting last night at the lighthouse restaurant public meeting with the applicant and some of the members of residents of the island. And I had brief conversations with the people there. So I don't know if I need to register that as ex parte John.

John D. Agnew 14:41

Thank you, Commissioner. Yes, that is considered ex parte and just be prepared to answer any questions that there might be about it. But I understand that was with the applicant as well as several members of the public is that correct?

Paul Nichols 14:55

Correct.

John D. Agnew 14:56

Yep, thank you,

Paul Nichols 14:57

and no complex

Kelly Scotty 15:02

Commissioner Storjohann

Karen Storjohann 15:04

site visit. No ex parte no conflict,

Kelly Scotty 15:08

commissioner Symroski. I'm sorry, he's absent. That's everybody.

Roger Grogman 15:15

Okay. Thank you. At this time, we're going to Wilson will swear in any members of the staff or the applicant that will be providing testimony today. And for those to be sworn in, if they'll please address city clerk Kelly,

Eric Pfeifer 15:36

if you're counting the public as well, yes, the

Roger Grogman 15:39

public Thank you. Yes, any members of the public who would wish to give testimony during the course of this hearing? You will be sworn you it's required that you'd be sworn in. So please approach how would you like to just approach the podium and simply state your name and your relationship to the testimony I guess resident or do you need the address

Kelly Scotty 16:10

all those giving testimony must be sworn please come to the microphone One moment please raise your right hand. Do you swear that your testimony and evidence is the whole truth and nothing but the truth? Please answer into the microphone with your name involvement and confirming that you do so swear.

Craig Chandler 16:40

CRO Chandler.

Kooroush Saeian 16:41

Kooroush Saeian, Board Member homeowners association house landing 5422 Sheerwater drive thank you

Kelly Scotty 16:49

I'm sorry I missed your name because somebody else said what was your name?

Kooroush Saeian 16:52

Who your science last name is SAE IA N first name is K or our or us h sir if

John D. Agnew 17:01

you can confirm that you do so swear. So for each of the individuals when you identify yourselves I did. Right I know that you did but at the very end confirm that you do so swear that the testimony you give us the truth.

Kooroush Saeian 17:13

I do. Thank you.

Robin Cook 17:17

Robin cook, I do so swear 5423 Osprey Court I'm one of the residents of herons landing, and I'm here to make comment. Again, I swear Thank you.

Jim Bajek 17:31

Thank you. I'm Jim Bajek 4578 Baldwin Bayou road here to present some information and I do swear whatever I say is the truth.

Kelly Scotty 17:46

Can you spell your last name for me please

Jim Bajek 17:47

B A J E. K. Thank you.

Ed Rydell Hoover 17:53

So swear, Ed Rydell Hoover 4547 buck key road. Some Sanibel bayous Homeowners Association.

Kelly Scotty 18:05

Thank you.

Ed Rydell Hoover 18:07

I do so swear.

David Kienzle 18:08

Thank you. David Kinzel que IENZ le 5439 Osprey court and I do so swear. Thank you. Thank you. Thank you.

John Connor 18:23

Good morning, John Connor 5426 Osprey court. I too am a resident of herons landing, and I do so swear.

Kelly Scotty 18:31

Thank you. Thank you.

Howard Simon 18:34

Howard Simon 50 for 10 hours for a court herons landing. And I do so swear that I will my testimony will be truthful.

Kelly Scotty 18:44

Thank you.

Menashe Ben-David 18:48

Menashe Ben-David 1980 Slee made turncoat at Heron's landings and I do swell.

Matt DePaolis 19:00

Thank you. Matt, the policy environmental policy director for SCCF and I do so swear

Melissa Laidlaw 19:11

Melissa Laidlaw 1983 My turn cord and I do so swear to tell the truth.

Kelly Scotty 19:16

Can you spell your last name for

Melissa Laidlaw 19:18

LA I de I a W

Kelly Scotty 19:20

Thank you. Thank you.

Andrew Ginipro 19:24

Andrew Ginipro at 1838 logpoint Lane Sanibel by us and I do so swear.

Kelly Scotty 19:31

Can you spell your last name for me please?

Andrew Ginipro 19:33

G I N I P as in Peter RO.

Kelly Scotty 19:40

Thank you,

Gayle Dendinger 19:41

Gayle Dendinger. Dendinger d n d i n g ER with a 5406 is recorded you swear

Brian Smith 19:53

Good morning Brian Smith within sight on behalf of the applicant and I do so swear that's smi th

Jonathan Wallace 19:59

o I'm Jonathan Wallace with insight Inc as well. I do so swear.

Dan Daughdrill 20:08

Dan Daughdrill President Buckingham 225 And I do so swear.

Sawyer C. Smith 20:13

Sawyer Smith of Wilbur Smith we represent Mr. Daughdrill now I will be giving testimony will be making arguments and I swear that the argument I make will be honest and truthful. Thank you.

Roger Grogman 20:25

For staff

Craig Chandler 20:27

Craig Chandler and planning supervisor I do so swear. Thank you.

Dana Dittmar 20:32

Dana Dittmar environmental biologist I do so swear.

Holly Milbrandt 20:37

Holly Milbrandt Natural Resources Director I do so swear.

Paula McMichael 20:43

Paula McMichael planning director, I do so swear.

Roger Grogman 20:49

Any additional of folks who would like to participate during this hearing on this particular issue? There'll be none. I think we've got everyone sworn. And at this time, I'm going to be introducing, planning supervisor Chandler, but we're going to have a little bit of a change. Rather than wait to ask questions to Craig Craig is going to in we break it into four pieces. And Craig is going to indicate any questions on this section. As you all know, we usually do it we wait for the applet for that Craig to finish and then the applicant, but this way we should be able to digest the majority of the questions and and Craig will kind of guide us through that question period. So planning supervisor Chandler if you'd please provide us an overview of the presentation.

Craig Chandler 21:39

Thank you Chair. Good morning commission. Craig family planning supervisor again for the record. First I'll enter in the staff report, which is dated December 13 2022. Into the record as city Exhibit C one and and then also note, there's a table of attachments on page two of 15 that can help maybe guide you through this presentation. I'll start by giving a description of the background. The subject properties are two of them are located at 5301 and 5325. Sanibel Captiva road combines for a parcel size of approximately 3.35 acres. And these parcels are situated in two ecological zones. One is the D to upland wetland zone, and the other is G altered lands. And for this proposal, which is residential cluster development, that uses a primary intended permitted use per sections of the code 126 Dash 391 and 451. There's one existing structure at 5301 Sanibel Captiva road this is the parcel on the east side of the two. It's an abandoned office that was constructed in 1973. This was a real estate office that at one time was conforming but currently is a lawfully existing non conforming commercial structure. And that office was used for the Sanibel by us Development Corporation. specific amendment 82 Dash 43 that's found in the attachments amended the city's future land use map to permit commercial use at 5301 Sanibel Captiva road to permit a neighborhood retail shopping center which was never implemented. The property remained in the general commercial district until 2008 When an agreement was executed between the city of Sanibel and Wolfert properties LLC, and National Investment and Development Corporation. Some property owner slash developer as necessary to clarify residential uses and density

established rights and obligations and restrict commercial use to residential. So as a result, the one and a half acre property at 5301 Sanibel Captiva was effectively removed from the general commercial zoning district and restricted to residential dwellings and associated accessory uses. This agreement established the total maximum residential density of six dwelling units between these two contiguous parcels 5325 Sanibel Captiva road again on the on the west side between the two was once the site of a private wastewater plant site operated by Sanibel by us utility Corporation until 2008. So as a result of that, 2080 premier city acquired 2.91 acres of private wastewater plant site, the developer returned 1.86 acres of the plant site as well as the 1.5 acre formerly zoned commercial parcel that I just described. The sewer plant was subsequently decommissioned in 2008, pursuant to FTP permit requirements. Additional background pertaining to the decommission of the former Sanibel by us wastewater package plant is provided in attachments P and S. A neighboring land uses to this site includes the city owned parks To the west and south that is designated open space density reallocated area, which is located in the city's environmentally sensitive Lands Conservation District. Further south is a herons landing unified residential neighborhood. And to the east opposite of Sanibel by us road is Sanibel by us residential neighborhood and to the north opposite of Sanibel Captiva road. And the city's shared use path is a county on vacant land, which is dedicated to conservation open space. So that's a summary of background information. If there are any questions at this time, I'll take them. If not, I'll move on to the proposal. See no questions. I'll continue with my presentation. The proposal so the applicant is proposing a major subdivision in the form of unified residential cluster housing development. This includes common subdivision improvements such as a roadway drainage infrastructure and landscaping in addition to six home sites. Each of those home sites proposed for single family use and associated accessory uses access to the subdivisions via Sanibel Sanibel by us road. Each home site is proposed to contain approximately 5000 square feet the entire home site is prepared or is proposed to be cleared of existing vegetation in association with future construction of a single family residence. All improvements serving an individual's single family residence including associated placement of Bill will be contained entirely within the home site as proposed. The applicant has provided a paving grading and drainage plan consistent with the city of Sanibel stormwater management standards and with the applicable applicable requirements of the South Florida Water Management District. There are no no other site alterations proposed within the common area tracts of this development. And then, finally, due to its location adjacent to a arterial road, Sanibel Captiva road, a landscape buffer plan was provided pursuant to chapter 122. Article Two landscaping Division Three residential development along arterial and collector roads. And staff would also like to note there are four common element tracks provided as a part of the proposed subdivision. tract A is dedicated for the private roadway access easement. Drainage easement public utility easement, tract B is dedicated for landscape buffers. Frac C is dedicated for conservation of natural wetland, and tracks D and D two are dedicated for drainage and open space. So with that, I'll take any questions about the proposal. And if not, we'll move on to analysis. Yes, Commissioner, go ahead.

Karen Storjohann 27:45

Good morning, everybody. My question concerns how as a body we have the authority to say somebody else can use someone else's private property the road into the heaven landing subdivision is supported by them. Were in all of this and I've read it several times. I can't find where this compensation coming from the new subdivision to help contribute towards the support of that private road. Only their own private road is mentioned.

Craig Chandler 28:30

Um, thank you for the question. I believe that's described in analysis but if not directly to attachment W and that's a page from the deed that does grant an easement for use of Sanibel bayous road for access grants

Karen Storjohann 28:44

to whom I'm sorry I didn't hear that

Craig Chandler 28:46

To the property owners of the subject properties

Matt Kirchner 28:53

can you speak that again, please? Yeah.

Craig Chandler 28:56

Attachment W.

Karen Storjohann 29:00

renarenGive us a second to get to W

Craig Chandler 29:01

Yeah, I have to scroll down to find the page number. Oh 245

Jim Bajek 29:59

Thank

Laura DeBruce 30:00

you What attachment is that Craig? W?

Matt Kirchner 30:38

Greg, you're referring to this piece of paper? It looks like it was stapled and attached to this deed.

Craig Chandler 30:47

Yes, it's a copy of the deed for the property.

Roger Grogman 30:53

said July July 20 93. That's what we're talking about.

Craig Chandler 30:58

Yeah. If you would like I can read the portion of the deed that is relevant to Commissioner Storjohann's question into the record, would you please? Absolutely. So it says grantor further reserves unto itself and its successors and assigns an easement over that portion of stainable. By use road fronting upon its commercial parcel to make perpetual non exclusive use of that portion of Sanibel by use road in the

entrance. And grantee may take no action to LinkedIn or enlarge the landscape entrance Island, or take any other action which would impede such access as it as it exists on the date of this deed.

Matt Kirchner 31:43

To the same about buyers homeowners association agree to this. Because it's talking about their property. They're not to be something that they agreed to.

Craig Chandler 31:56

This is a deeded easement. I don't think it's in dispute.

Matt Kirchner 32:02

So would it have been on the previous sale? And was it always set up that way prior to this deed?

Craig Chandler 32:16

Frankly, I don't know the answer to that question. And perhaps the applicant does.

Matt Kirchner 32:21

Can we hear from the applicant witness or the homeowners association?

Sawyer C. Smith 32:35

For the record, Sawyer Smith on behalf of the applicant, the deed grants the right to the successors in interest to the property and that becomes Mr. Dodd rules LLC when he buys it. So by right when he buys the property, he buys the deed, or excuse me, the easement that's contained within the deed. It's by right

Matt Kirchner 32:56

was it in the original deed when this property was divided

Sawyer C. Smith 32:59

up? This was this deed is dated originally in 1985.

Karen Storjohann 33:09

But when did this subsequent paragraph get added?

Sawyer C. Smith 33:13

I'm reading the deed by William Broder data dated let's see sale by us homeowners so she sociation Inc, a Florida not for profit corporation whose addresses care of JG McCormick excuse me I've misread the day 1985 sale buyers road and this is in 19 appears 93 I apologize for that. I misread that. So this goes this is from the homeowners association granting it to the the land owner so the association themselves did this

Matt Kirchner 33:57

anybody from the home owners association Thank you have a comment on this

Craig Chandler 34:04

excuse me clear

Andrew Ginipro 34:10

Good morning again antigenic roll with the Sanibel by US resident and also policy director Homeowners Association. The deed in question that you raised. We did request from the applicant previously for documentation that legally gives the right of way to anyone other than the herons landing, Hoa and its residents. The document and questions that I present is the dated one that may have just been mentioned in 1993. And that specific document gives the right of way to herons landing residents and the herons landing, incumbency and years, but we had requested any further documentation not only from the applicant, which was a recent request only because there was a recent public meeting with regard to this application, and also to the city of Sanibel, and also to Lee County, with regard to whether any other existing documents, giving the right of way to anyone other than the herons landing community to our private roads, as of this date, and this time, we have not received such documentation. So I am presenting the fact that we'd like to have those documents presented, which does give the right of way to the applicant to enter our private roadways.

Roger Grogman 35:40

Thank you. Thank you.

Eric Pfeifer 35:42

Are you questioning this legally recorded deed?

Andrew Ginipro 35:45

I questioned anything because we haven't received anything with regard to but this is publicly. We asked for that extension. We have nothing that came to us after 1993. They're presenting a document previous to this. But the document that comes out in 1993 on it gives the right of way to or access ingress and egress to the airman's land in association and its residents.

Eric Pfeifer 36:09

So are you questioning or disputing this legally recorded deed?

Andrew Ginipro 36:15

I don't know what the question I cannot respond to wording that I don't know anything. What's in the report?

Laura DeBruce 36:23

Sorry, other questions, the document that you're referring to where you believe that the access to the road is restricted to herons landing owner and the

Andrew Ginipro 36:34

residents of the city? Where,

Laura DeBruce 36:37

what document is that that you're referring to?

Andrew Ginipro 36:39

We have a this was a DITA document adventures application from from rota to Sanibel by us as the herons landing community, allowing them access with regard to also maintenance of the private roadways. I have no other applications that allows anyone else to come utilize our private roads, and also to participate in the maintenance of our private roads.

Laura DeBruce 37:06

And is the document that you just held up? Is that in our packet, or is that in the presentation here? I just don't know if I'm

Andrew Ginipro 37:13

not mistaken. And I'm sorry, I did not go through page by page on on presentation. But I believe the page that was presented in the attendance in the appendix on is an excerpt from a deeded document. It doesn't show the entire document, nor was this specific document presented in the planning presentation or the applicants presentation. Thank you. Maybe a very difficult answer. But just as much as I would like a copy of that.

John D. Agnew 37:49

I would like to see it and I do have a brief suggestion. I know that there is a lengthy application. I know one of these issues is a threshold when I my suggestion, Mr. Chair would be to get through the bulk of the presentation to your body and allow you all to ask questions and reserve the public's questions commentary for the end just for to facilitate completing this in a timely way in an efficient way.

Roger Grogman 38:23

Okay, let's let's proceed on taxes

Eric Pfeifer 38:25

don't understand the concern if that's a legal recorded deed giving parents lading and the by US residents access to the road and this is a continuance of the legal description granting an easement to this property under discussion. What's the question? Just because you hadn't seen it? That's the question. That's your concern.

Andrew Ginipro 38:47

I'm sure I can answer that. I don't have any legal background to respond to that.

John D. Agnew 38:52

I mean, to answer Commissioner Pfeiffer's question, I think you're exactly on point. It's a it's a deed from the then owner, you know, providing to the grantee and their successors that it's it says it's an easement that runs with the land, and it's

Eric Pfeifer 39:11

illegally recorded and 93 Yes, sir. So we can't change that.

Roger Grogman 39:18

Thank you. Well, we can proceed on

Karen Storjohann 39:20

because Well, I think that fine is that does answer my question, by what authority? Are we being asked to do this? I was concerned about giving somebody the right to use private property. They have the right to it, there's an easement.

Matt Kirchner 39:39

But if this was done without their knowledge, the association it would it stamped, well, who

Karen Storjohann 39:45

signed it? Who is that person who says

Matt Kirchner 39:49

I'm looking at a document here that has staples on it and a piece of paper and somebody's initials

Roger Grogman 39:59

pasted It's obviously a legal document.

John D. Agnew 40:05

Mr. Chair, if I may, the speaker provided me with a copy of what he had an omission on our part staff that what you have is simply an expert. What he provided to me is both pages of the document what's on here is exhibit w is just page two. That describes the pertinent part but it is only a two page document. Be glad to provide it via email so that everyone can see it but it is from Nationwide Realty Corporation. And Sanibel by us homeowners association. It describes the easement the various signatories are for nationwide Realty, it appears that it's Harriet Cohen and William, broader Broder as president and Danna Martinez is the other signatory on the front.

Karen Storjohann 41:19

I take a day with the officers of the homeowners association

John D. Agnew 41:24

indicates William Broder is the president.

Eric Pfeifer 41:27

I think he owned the land that is being developed. Now Deke brothers,

Matt Kirchner 41:31

okay. Which should always come with questions.

John D. Agnew 41:42

But it this is the document that the gentleman has is the complete document for what's partially referenced in Exhibit W. I'll email that we can make a copy of this

Eric Pfeifer 41:54

available. So he did have page two and he handed it to

John D. Agnew 41:58

Yes, yes, sir. Thank you.

Laura DeBruce 42:01

And John, nice to put you on the spot. But does it appear to you then that this is about easement that the applicants have? Yes, ma'am. Thank you.

Roger Grogman 42:10

Thank you. Thank you, Greg, if you could please continue.

Craig Chandler 42:22

Thanks for the question in the discussion. I appreciate it. So moving on to analysis. I'll start by reading briefly the definition. Just so everybody has a clear understanding of what a unified residential housing and cluster housing development is, as well as the the purpose of such development which is provided in Section 86 Dash 132. So unified residential clustering, excuse me. Unified residential housing and cluster housing means a type of development produced by condensing the arrangement and layout of single family and duplex structures. Based on the minimum distance between buildings rather than the minimum setback from single family or duplex plotlines. The regulation of cluster housing is in place of the limit of one single family dwelling unit on a lot in the minimum lot size requirement for residential development, while promoting the preservation of open spaces within the development. It may include the subdivision of land create individual lots for single family and duplex dwelling units. Preservation and common area tracts are typically created in the subdivision of cluster housing. Subdivision of land for cluster housing, can occur either before or after destructors in the development are constructed. And the purpose states cluster housing provides an opportunity for alternative development and flexibility in design and layout of single family duplex dwelling units. Cluster housing promotes the provision of common areas and can reduce the need for roads, sewer lines and water lines to be extended. Cluster housing provides incentives for preserving open spaces. So in the analysis that found that the proposed subdivision does comply with both the definition and the purpose of a residential housing cluster housing subdivision, which is supported by the principles the policies, goals and objectives of the Sanibel plan, found in the future land use element section 3.6 point two. Furthermore, staff finds that the proposed subdivision which proposes six single family units is consistent with the maximum residential residential density cited in the 2008 agreement. That staff has provided on page six of 15 table one and this this table organizes staffs review for come client's with section 86 Dash 112 setbacks all of which were found compliant, I will draw your attention to D however, there was a homesite number six that provided a small encroachment 9.75 feet and staff has provided a recommended condition to address that specific encroachment to be resolved during the application for development permit for new construction. Table two, which is provided on 715 provides a summary of our review for compliance with section 86 Dash 114 Subdivision standards. This is also

setbacks and minimum distance between buildings. Those standards were also found compliant upon review, or excuse me, the proposal was found compliant. Upon review, table three, which begins on page 715 and continues on page eight provides a summary of staffs review for compliance with section 86 Dash 114 Subdivision standards. This is limitations on vegetation removal developed area and coverage with impermeable surfaces. Staff also found the proposal to be compliant with all alpha applicable standards. And then, it stated in the definition and purpose of unified residential development, preservation open space our key advantages of this type of development pattern in the context of Sanibel playing goals. This application proposes to designate a total of 82,012 square feet which is 1.88 acres, a little more than half the total parcel size to common open space and preservation. Staff finds a preliminary plat and draft Association documents do properly dedicate these areas to coastal Creek Property Owners Association Inc, pursuant to section 86 F 114. Subsection four staff finds that the only proposed alterations within tracks B D one and D two are for roadside drainage and placement of Phil to construct a berm as part of the stormwater management plan. Furthermore, staff finds the proposed volume of fills the minimum necessary to achieve compliance with the South Florida Water Management District permitting requirements and that generally the berm will not require removal protected native vegetation. All other areas within tracks the D one and D two will be undisturbed as existing grades will serve as drive retention areas as shown on the development plans. Track see which is proposed as a wetland conservation track is not to be disturbed by development activity of any type. And then, briefly, I'll provide a description of section 3.3 point two conservation element and Sanibel plan, which relates to the environmentally sensitive Lands Conservation District, which will relate to a condition that I'll present later on in this report. And it states as follows The purpose of the environmentally sensitive Lands Conservation District is to ensure the preservation of environmentally sensitive lands owned and managed for conservation purposes, to restrict development in environmentally sensitive lands. That is not consistent with conservation purposes, to promote coordinated management of environmentally sensitive lands, and to encourage enhancement and restoration of disrupt disrupted natural systems. So pursuant to this purpose, and the goals, objectives and policies of section 3.2 point two, including policy 1.3, which I just read, an objective set, seven step recommended zoning designation of track see the wetlands conservation track to be added to the environmentally sensitive Lands Conservation District and associated map. So with that summary, I'll take questions at this time and if not, Natural Resources Department will proceed with their summary of the memorandum included in the attachments of this report.

Roger Grogman 49:23

Commissioners beginning with Commissioner new Bruce, do you have any questions for planner? chamber?

Laura DeBruce 49:30

I think my biggest questions in this regard have to do with the Natural Resources Department. So I think it probably makes sense to allow that from my point of view to allow them to go ahead and make their presentation.

Roger Grogman 49:44

Let's let's do that. Before we question

Craig Chandler 49:47

and just briefly I would like to enter as a supplement to attachment w. And this is being handed out right now. It's the entire copy of the deed. Thank you for being added by Mr. Jim Crow. For your review, thank you and enter into the public record. Thank you.

Dana Dittmar 50:11

All right, good morning, Dana Detmer with the Natural Resources Department for the record. So I'm going to present two, which what is attachment s in your packet, which is the natural resources memorandum, which is dated December 2 2022. Beginning with the vegetation assessment, pre hurricane Ian, on August 8 2022, the Natural Resources Department performed a site inspection to evaluate the natural resource related impacts of a development permit application to install infrastructure, roadway stormwater, etc associated with the planning of a new six unit single family resident residents major subdivision. So at the time of that inspection, there were some issues with the vegetation plan, which that the the plant inventory was not accurate. There were some notes about impacts of vegetation that were outside of the development footprint. And there were some revisions that were noted regarding the Master Plan schedule for the front buffer. Those were communicated to the applicant and we had a site meeting to discuss those, the issues with the vegetation plan. However, on December 2 2022, natural resources visited the site again to inspect the site post hurricane in because we wanted to see if how the property was affected by the hurricane. And there has been some storm related damage to vegetation in both the area to be impacted by the site development activities and the front vegetation buffer. So it is likely there'll be less impacts to the native vegetation than previously documented within the area of development, and that more vegetation will need to be installed within the front buffer to achieve compliance. So the applicant will need to update the plant inventories and the impact of the Sun the vegetation plan, so natural resources recommends the planning commission require the applicant to obtain a vegetation permit as a means to prove the vegetation plan once revised plans had been received. Or the applicant was required to get permits from other governmental agencies. So as part of the plot development of this property, the applicant was required to perform an environmental assessment to identify the potential for Florida Department of Environmental Protection and or South Florida Water Management District jurisdictional wetlands as well as determine the potential presence of listed species inhabiting the site as regulated by the US Fish and Wildlife Service. And the Florida Fish and Wildlife Conservation Commission, which was conducted by bears paw bear paws environmental consulting for the wetlands assessment natural resources was present for the wetland delineation meeting on June 18 2021. Between the applicant DEP and the Water Management District, in which approximately 0.54 acres of mangrove swamp wetland was verified. As proposed the development of the subdivision will not result in any impacts to the on site wetlands. The applicant is proposing an approximately 0.86 acre preserve which consists of approximately point three five acres of tropical hardwood forest and the approximate point five four acres of mangrove swamp wetland that will be placed under conservation easement and maintained as such in perpetuity by the owner by the owner and their successor. The Preserve will be located along the southern portion of the property between the proposed development and the city owned mangrove fringe. The tropical hardwood hammock portion of the preserve will serve as a buffer between the subdivision development and the mangrove swamp wetland and bird rookery, as required by the Water Management District. And the applicant has submitted a preserve management plan with the goal of improving the condition of the preserve as wildlife habitat over a five year reporting period.

enhancements will include the annual removal of exotic vegetation and native vegetation planting if areas do not naturally recruit vegetation at the end of two years. The plan also indicates its purpose and intent is to ensure that wetland preserves conservation areas, open spaces or undeveloped areas are maintained free of exotic plants in perpetuity. The maintenance and longterm management portion of the plan indicates that inspections of the preserve area will be conducted annually and maintenance will be conducted and perfect. tivity the applicant is required to submit annual monitoring reports to the Water Management District. Natural Resources would recommend that the applicant also be required to provide a copy of each annual report to the city. For the wildlife its assessment of bear paws environmental consulting noted in the environmental assessment that no protected species or signs thereof were observed on site during a protected species survey, prior to hurricane in natural resources, had also inspected the lot for protected species and was in agreement with the environmental assessment. Natural Resources visited the property post hurricane just to determine if any displaced wildlife are now utilizing the site however, the results are negative. So on to so we provided a section to about that provides additional background about the area in relation to water quality. So we'll go over the background for the area. And then we've also provided recommendations that for the protection of water quality for the area that we would recommend the planning commission adopt as required conditions of this development. So the subject parcel was part of a larger area comprised of 50 450-301-5325 and 5491 Sanibel Captiva road that was once the site of the former Sanibel by us herons landing wastewater package plant. Under under FDP permit the privately owned and operated plant discharged minimally treated effluent into onsite on unlined holding ponds. In 2007, routine water quality testing by the Florida Department of Health resulted in repeated beach closures at Bowman's Beach Park. Further water quality testing in the in the form of nutrient source tracking identified the package plant as a significant source of sewage pollution, bacteria and nutrients to the surrounding coastal waters through the interaction of the effluent from from the plant and groundwater. In 2008, the city purchased the package plant in an effort to protect water quality and local beach conditions. existing users were connected to City Central sewer system in 2008, and the plant was decommissioned by the city in accordance with DEP requirements including the removal of all structures and excavation and capping of the discharge lagoons. The package plant site was subdivided into smaller parcels, with the city maintaining the western portion of the parcel and the entire mangrove fringe along the southern property boundary to protect a highly productive bird rookery. Although no further action was required by the DEP, the city completed a \$50,000 restoration effort on the city owned parcel in 2015, creating the Sandwell buyers preserve restoration activities included exotic plant removal, creation of two seasonal wetland features, and extensive wetland and upland vegetation plantings. restoration was funded through a \$25,000 grant from the FWC partners for wildlife program with matching funds from the city. But despite this effort, the city on parcel on city on parcel legacy nutrients from the package plant persists in the soils and groundwater contributing to water quality impairments of the adjacent storm water lake. Through the Sanibel communities for clean water program by annual water quality sampling is performed on 84 water bodies throughout the island. Each sampling year the water bodies are ranked from the most impaired which is one to the least impaired which is 84. The water bodies in the vicinity of the former package plant consistently ranked as some of the most impaired lakes on Sanibel, and are hyper eutrophic, or excessively nutrient rich. City has completed a number of studies in the area of the former package plan including surface water sampling bathymetric, mapping, sediment coring, groundwater sampling and movement and heavy metals to better understand the dynamic of the system. And as it pertains to the heavy metal sampling, all the

sampld metals were below probable effect levels and a probable effect level is a level of wish at which you would expect to see a toxic response. So they were below the probable effect level. So all results from those studies point towards the existence of the package plant legacy nutrients in the soils and groundwater as a primary nutrient source for the area. The city assists in Herons, landing and the development of a lake management plan and has also entered into an agreement with the nine lakefront property owners to install an aeration system to help address ongoing nutrient related water quality issues. Development in the subdivision will result in a loss of vegetative cover and an increase in pervious surface. This change will increase the amount of stormwater runoff generated by the property and result in less vegetation. To remove nutrients from the soils, both of which have the potential to negatively impact water quality. So, as a result, the natural resources department recommends that the planning commission consider the following Nutrient Reduction Strategy strategies to be required as part of the subdivision development. So, one landscaping on the single family lots shall be 100% native vegetation to the use of fertilizers containing nitrogen phosphorus is prohibited. And this is because the installation of the stormwater berm around the entire subdivision in effect makes the area within the single family lots common areas etc. A stormwater retention area section 30 Dash 144 E of the land development code which discusses the use of fertilizer and this is referencing the buffer zones prohibits the application of first fertilizer in or within 25 feet of retention areas. And three within the common area lands excluding the six single family lots, the use of sod shall be prohibited and shall be planted consistent with section 118 Dash 286. In this is related to the standards for stormwater control planting which states such surface water retention areas shall be planted with types of native vegetation species that can survive in wet dry conditions of those areas. And that that concludes the section on on water quality protection but there are a couple more items related to the site. So additionally, the site plans to the site plans proposed to remove an existing fence on the coastal Creek parcel which runs along the western property boundary. The fence currently provides separation between the subject parcel and the city on conservation land. To keep the Sanibel by use preserved protected from potential encroachment from the proposed subdivision. Natural Resources also recommends that the applicant applicant be encouraged to install a native plant buffer along the western property line. This could serve as a receptor site for some of the transplanted native vegetation. The southern proper boundary of the parcel is adjacent to a city owned mangrove fringe which was acquired in order to preserve an active bird rookery during the decommissioning of the package plant. The city will not authorize any mangrove trimming for views of the stormwater Lake to protect the rookery habitat and water quality. And then pursuant to section 122 Dash 169 Three and section 122 Dash 191 all city listed in Florida invasive species Council listed species shall be removed from the site and maintained free in perpetuity. And then I'll city attorney I don't know if this would be an appropriate time to ask for questions from the planning commission or to wait.

Holly Milbrandt 1:03:15

Okay, okay, sure. Good morning, Holly mill, branch director of natural resources for the record. Thank you, Dana. for that report. I have just a couple of items to add. Early this morning. We shared with the planning commission via email, I believe and copies of the letter are also available with the agenda for today. We have had an in hearing the public comments we have had additional conversation with the DEP regarding the decommissioning of the plant in 2008. And that letter that was provided just notes that the plant was decommissioned and in accordance with DPS expectations. The Public Works memo that's included in your packet does include the details of well includes a general description of what was

done to decommission that plant, including the removal of structures, removal of soil from the existing site, approximately 2000 cubic yards, and then the placement of 6000 cubic yards of clean fill in 2008 and then an additional 15,000 cubic yards of fill in 2009. I did want to note in the final paragraph of the letter from the DDP one of the items that they didn't know was that in a situation such as this where the site is being converted from an industrial or commercial use to a residential use. I'll read the language directly from the letter here to so as to not speak for DTP. out of turn but DTP frequently recommend soil and groundwater screening to ensure the Safety of future residents. Consistent with that principle, DEP recommends that the developer collect and analyze soil and groundwater screening samples for nitrate, nitrite and RCRA, which is an acronym for the Resource Conservation and Recovery Act of the US EPA, eight metals. For soil screening, DDP suggests at least one soil sampling location per proposed residents with discrete vertical sampling intervals at each location of land surface to six inches, six inches to two feet, and two foot intervals thereafter to the groundwater table. For groundwater screening, two sampling locations should suffice. All sampling and analysis should be destroyed, not composited. And that ends their letter. And I just wanted to bring reference to also attach, which Dana mentioned some of the work that we have done in the past, particularly as it relates to water quality to better understand the conditions of this site and the impacts on the water body between the sites to the north and the neighbors to the south. We have attached a report that sccf provided to the city in 2017. That looked at a groundwater movement in the area of concern as well as did some soil sampling at that time. I just want to note that while that report gives us really valuable information, it was also limited in scope for a number of reasons. So the the soil samples that are mentioned there sampled for five metals, which would not fully comply with this recommendation that's here by the DEP, which has a list of eight metals. The soil samples were also only collected at one location. And that location was on the city owned parcel, but was within what would have what was previously the footprint of one of the percolation ponds on that site. For us to get a better sense of what might be left behind in those sites. Metals are not a common component of the wastewater processing process. So those sorts of analyses are not required by DEP. But in our work with the herons landing subdivision over the years. We wanted to proceed with that sampling for our knowledge as well as for theirs. And that concludes my comments. And we'll

Roger Grogman 1:07:30

turn it back over to information we're looking for. Is that Commissioner Bruce, is that provide bail? Yes. Are we good questions?

Laura DeBruce 1:07:44

So I find so if I understand correctly, then was the last time that an in depth analysis of the soil or the groundwater the 2017 sccf. Report?

Dana Dittmar 1:08:00

Yes. And I wouldn't say in depth we for that soil sample. So we took several groundwater sampling locations to study the movement to better understand it. But as far as the heavy metals testing, it was only one sampling point that was within the the formal former percolation pond. We had a budget, so we had to pick and choose, you know, what we were going to sample and what we were not going to sample at that time. But yes, 2017 was the last that we've done groundwater and heavy metal however, through the Sanibel communities for clean water program, we sample all those water bodies every

every two years. So our last sampling event for that was in 2020 21. And that was just for surface water. So the water within the ponds that are there.

Laura DeBruce 1:08:58

And it seems to me based on that report, that one of the biggest problems to us a laypersons term is that the soil in this area is heavily polluted with nutrient with nutrient, yes. And that even now without development that that flow into the water body there is what's causing that to be the most polluted water body in Sanibel.

Dana Dittmar 1:09:29

Yes, the existence of the legacy nutrients in the soil is the primary nutrient source for the area that's causing impacts to the water bodies,

Laura DeBruce 1:09:40

the DDP recommendation and I'm surprised that it's come so late. I'm surprised that neither city nor developer nor community thought to ask the DEP for an opinion of this nature, because I think that it raises some great points in it. makes what seems to be a very matter of fact, you know, level of analysis, which is what do the, you know, how, what does the soil? How does the soil register right now? And it seems like we don't actually have an answer to that question. So I don't know if based on what you guys did the work you did in 2021. If there is some way that you feel confident that this type of screening would not need to be done before development is permitted or not. But it just seems surprising to me that this type of screening hasn't been done, or hasn't even been questioned whether it should be done as far as I can tell from the reading.

Dana Dittmar 1:10:49

And that was a recommendation from the DEP it's, it's, I don't believe it was it's a requirement to be done. And then, based on the heavy metals testing that we did, although not as comprehensive as the DDP, which was in, in an area of that, where the discharge was going into into one of the lagoons, there were, you know, very low levels of heavy metals. And that's those results are not surprising, because heavy metals are not typically used in domestic wastewater processing. So it was prior, we did that at a request a request of the herons landing property owners that we were working with in the time to help them with water quality in their in their pond. We were not overly concerned about heavy metals, because we knew they weren't used or utilized in wastewater processing. So these results to us were not unexpected. And so are the main concern really, is the nutrient pollution in the area from the pot or from the former package plant?

Laura DeBruce 1:12:06

And is that primarily in the form of the phosphorus?

Dana Dittmar 1:12:09

Yes, nitrogen and phosphorus both are very elevated in the area.

Laura DeBruce 1:12:14

Okay, thank you.

Eric Pfeifer 1:12:18

Sure, as I stayed at our last meeting, before we continued, and after reading all of the opposition to this, my only concerned concern really is the groundwater. And after reading these 277 pages, I felt satisfied after reading the sccf Marine Lab report that it was investigated back in 2017, which I presume was the beginning of the talk of this development, which then led to what I observed as the most stringent restrictions of any development on Sanibel, which is all 100%, native vegetation and no fertilizer at all, on the properties not just within a certain distance from the open body of water. And then this morning, we received this report and I'd like to know what prompted Jennifer Carpenter to write director mill Brandt on Friday, was it a request from director Millbrae, or the city because of the letters written to the city in opposition to this?

Holly Milbrandt 1:13:31

It Hawley Millbrae, Natural Resources Director for the record, it was a conversation with TTP that occurred, in part because we've had a lot of interactions with TTP post hurricane or en, but I'd specifically brought up this proposed development to them, to receive from them whatever they would have in their records in terms of completion of this project. And the decommissioning of the plant by the city. I, to my knowledge, the city did not have a letter of completion or compliance or anything that was written by the EP following the decommissioning of that plan. And I was unclear if any of that any letter of that sort existed, if it had been provided previously, and the information I received from the EP was that it likely was not that the project was completed and without any other interaction. It's not there's formal practice to provide a letter of that kind. So we had further discussion. And Jennifer Carpenter, who was the director of the South district of the DDP, stated that they would provide a letter to that to that effect.

Eric Pfeifer 1:14:47

Were you personally satisfied with a 2017 marine lab report? And then, prior to this letter, Were you satisfied with proceeding

Holly Milbrandt 1:14:58

so it is important When we discussed the report of 2017 is just to recognize its limitations. So it is certain was certainly not broad enough in scope to follow this recommendation in terms of what they're recommending is a sampling on each, you know, potential home site. We didn't do that. But we did feel like the results of that study gave us confidence that there was not a significant heavy metal problem to be concerned with on this site. And again, as Dana mentioned, with the metals not being a particular component of wastewater treatment, we weren't really expecting to find significant concern in that regard. With regards to the nutrients, we were not surprised, again, to find extremely high elevated levels of nitrogen and phosphorus. Those are compounds that are associated with wastewater treatment. And so for those ponds to be unlined, and to have stored wastewater for the number of years that they did, it is not uncommon that those soils would have absorbed and be have heavy concentrations of both nitrogen and phosphorus. While we know that those compounds can move through the groundwater, and we, the work that sccf did was help us better understand the directions that groundwater is moving in that particular location, there is no agency or authority who's going to measure for nitrogen or phosphorus and come to say, well, these concentrations are too high, there

needs to be remediation work. We know that. And so the way you remediate for nutrients is through typically the inflammation implementation of best management practices. So on the portion of the land that the city owns, we looked at ways that we could restore that land that would help to mitigate for those nutrients by planting native vegetation that can uptake nutrients by creating those wildlife water features. So there is some removal of soil there any soil that was removed from the site was taken off the site, and then vegetating that. So that's another opportunity for plants to uptake those nutrients. So we know there are still nutrient concerns in the area, we've continued to see that with our repeated sampling, and with our work with the herons, landing property owners to look for ways to mitigate water quality in that shared water body. But in I guess, what's the long answer to your question? Yes, we did feel confident in the results that we got from the sccf greenlab least in the laying the concerns related to heavy metals.

Eric Pfeifer 1:17:54

But your concern, is it only tested for five heavy metals? And not eight? Are you suggesting we hold up this development to run additional tests to test for the additional three heavy metals? And if the test comes back positive, what additional conditions would you implement? What's our goal here by if we've already tested and we know it's trying to think of the word eutrophication heavy with minerals and nutrients? What can we gain by running additional tests? And is our goal to hold this development up?

Holly Milbrandt 1:18:31

That is not staff's intent at all. Our testing of the five metals was based on our understanding at the time of what the the most potentially concerning items might be on that site. As Dana mentioned, all of them came back below the probable toxicity level. And I can't speak for for the EPA recommendation, it's just a bigger suite or through the EP related

Eric Pfeifer 1:19:03

metals, we've already, you're already proposing a condition to restrict all fertilizer, and to make it 100% native, and I'm certainly going to ask the applicant if they're comfortable with that. But what additional information could you gather? And then what additional conditions would you implement? Or is it just Are we just waiting to wait?

Holly Milbrandt 1:19:26

So I'm not recommending waiting? And I would agree that I don't know that anything that's in this DTP recommendation as far as nutrients is going to change the current situation. Their recommendation has to do primarily with metals it does mention nitrate and nitrate, as those do have implications for drinking water but drinking water is not a concern in this particular situation. So those are not mentioned as a form of eutrophication. So to the to the extent that there are elevated levels of new trillions here at this site, your additional testing is not going to alleviate those concerns at all.

Eric Pfeifer 1:20:06

So you're okay with if this were to be approved today, moving ahead, and you would still do the additional testing or sample soil samples.

Holly Milbrandt 1:20:18

So all I'm doing is presenting the recommendation from the DEP. And as the agency for environmental protection, I have to believe that if that's what they would recommend under this situation, then there's probably some value at least in doing that, my sense is that they can add the additional metals that we did not test for that they will not find those to be of concern, and there will be no mitigation required. But unlike for nitrogen and phosphorus, the the metals if they were found to be in elevated levels, I do believe that DEP through the EPA would require some sort of mitigated

Eric Pfeifer 1:20:56

effort. Okay, but we don't have to wait for those results to approve, correct. And are you implementing the same restrictions on herons landing which also is adjacent to this lake? As far as no fertilizer and 100% native?

Holly Milbrandt 1:21:12

We have not.

Eric Pfeifer 1:21:16

And your suggestion for 100% native is only for this particular subdivision because of the eutrophication of that lake that is correct. And then it says no invasive vegetation. So with that, I really hesitate to ask this question, but does that mean no coconut

Holly Milbrandt 1:21:36

does? It does because that that reference Well, sorry. It at this point, the way this the city's definitions are and as you know, we are in a process to look at those vegetation vegetative codes. But as far as the city is concerned, the city's definition for invasive exotic plants currently references the Florida exotic pest plant councils list, it does not distinguish between category one and category two species. And the coconut palm was added to the list of Category Two invasive plants in 2011. The other place that that recommendation you may have noticed came through within the permit through the South Florida Water Management District related to the conservation areas of this site that also requires and like many agencies also references the same Florida exotic pest plant Council list. So the South Florida Water Management District permit also has the same language saying that in those conservation areas, those species will not be permitted. So again, as that list is taken in its entirety as it reads currently, one of the things the city had presented and discussed with the planning commission at the last meeting was a carve out or an exemption for the coconut palm as it relates to that list. But barring those changes being accepted, that's the way the code currently reads.

Eric Pfeifer 1:23:09

Okay, so when we get to the applicant, I'm certainly going to ask the question, Are they comfortable with conditions? I think 16 and 17 100% native, no fertilizer, and then I would like to hear from someone inherence Landy, specifically an owner on Osprey court, if we think it's fair to impose the most stringent restrictions on this six unit development, should everybody on Osprey court then be regulated as well? So

Dana Dittmar 1:23:37

well, if I could, Can I Can I just add something about the agreement with herons landing. So while they might not have been required to do 100%, native or no fertilizer, there are some items in the agreement that were conditions of that agreement that are above and beyond what we would normally ask other people to do. One is that let me just find the agreement here. So I'll read from the the herons landing agreement between the city and herons landing to help to improve water quality in the area is that within one year of the installation of the aeration system by the city at the city's expense, the owners also agree to work with the city to develop and install a vegetation planting plan. Such plan shall include at the owners option plantings in the latourell zone of the lake adjacent to the owners property, or equivalent plantings on floating on floating mats on the lake or a combination thereof. With such planting plan to be implemented, when monitoring tests have indicated the oxygen levels have increased to a suitable level as determined by the city. And so it goes on to say if the elected planting plan consists solely of floating maths the city requirement, the city would require a minimum of C 16 1650 square feet of flooding mats to be purchased, installed and maintained during a term of this agreement for cost not to exceed \$35,000. And then it also goes on to say that the owner shall further shall implement the following additional best management practice practices within one year after the adoption of this agreement. And A is established, at minimum a 10 foot wide native plant buffer along the shoreline of each private property for water quality enhancement. So those are two things. So we're requiring herons landing to do a 10 foot native plant buffer along all their shorelines that are on this lake. And that we're also asking them to establish either a literal zone or floating islands within the lake to help improve water quality. And I think

Eric Pfeifer 1:25:52

that would be more fair than what's required of this applicant for this development. Well.

Dana Dittmar 1:26:00

Yeah, and so but the issue, so the city actually owns the shoreline along this new development. So we own the mangrove fringe there. We maintained it, because we knew it was an act of bird rookery. So this property, the proposed subdivision doesn't actually own any shoreline of the area. So they can't be it would be this, we have a mangrove fringe there. So they wouldn't have the opportunity to install a tutorial zone or do it a plant buffer. Like we've required herons landing today, that's

Eric Pfeifer 1:26:39

simply not enough. As far as you're concerned, we want to further regulate the individual home sites here.

Dana Dittmar 1:26:49

Well, as Director milbrandt mentioned, I mean, there, there is a nutrient issue in the area. And it would be I think, in the best interest of everyone to help protect the water quality in the area. And the way that you do that is to institute best management practices.

Eric Pfeifer 1:27:06

If it's for this subdivision only and the applicants okay with it, then I'm okay.

Karen Storjohann 1:27:16

And I think it might very well be the case that has other properties, come up for subdivision consideration, we might find others that fall into the same category. So I'm not as alarmed by this. Request that more directive that the adhere to 100% native and no fertilization, it just seems self evident that the property calls for that. And if other subsequent properties come up with the same problems, that we're going to, again, say that that's the recommendation. I, I'm concerned about some of the timeliness of this. It would have been nice to have all of it together. Right at the beginning, instead of coming out like this, but it is what it is. And it's it's obvious what it says. And so I think we should move on.

Matt Kirchner 1:28:28

No further comment at this point.

Roger Grogman 1:28:31

Mr. Nichols?

Paul Nichols 1:28:33

Yeah, most of my comments have been covered already, I think. I mean, the only thing I just wanted to clear up was we're saying this is the most traffic measurement on the island. But I noticed now it isn't, I'm just interested, what are the other lakes that are in a worse condition? I mean, I live on the dunes. And we've had tons of problems with dead fish and smell and things like that over the years, and we've put in best management practices and aeration, the HOA and the club. The dunes pay for aeration in the lakes, and it's certainly improved it to a great extent. So I guess I'm just, you know, what are we comparing this with, you know, there are other lakes now which are in worse condition. You know, I don't think the water quality around lakes in the island is great at the best of times, with all the nutrients and the all of the irrigation that goes on. So, you know, as I say, I live next to a lake which had a lot of fish kill, and we did something to improve it. So I'm not quite sure why we're, we're picking on this particular set of six properties to try and solve world hunger, you know. So, question in the professional opinion of natural resources, and I'm sure we'll hear from sccf as well. Will the development of this property leave the condition of these lakes in in the same condition in a worse condition or in a better condition.

Dana Dittmar 1:30:06

So, before I answer that question, I just wanted to make a comment about, you know what water bodies might be more polluted than this one. So as part of the, our Sanibel communities for clean water program, just because of the the the site has moved down in the ranks and may not be number one does not mean that the water quality improved, it just means that there could be other lakes that are worse at that point in time of that sampling. Because again, it's just a point in time. But typically, the lakes that we see on the high end of the list are really related to the read we sample some reuse water ponds. So at pond Apple Park, those ponds hold reuse water. There's a pond on Sanibel Island golf course that holds reuse water. So those are the ponds that we typically see, you know, as our number 123 rankings because they're holding storm or wastewater effluent that's treated. So those are usually the ones at the top of the list.

Paul Nichols 1:31:11

So just on that point, and that is the water that is then sprayed every day, onto the golf course at Sanibel Island, and the dunes. So we're having that water sprayed on to, you know, all of the greens, the fairways at the dunes. And I can assure you some of that comes into our property as well. So yeah,

Dana Dittmar 1:31:30

that's correct. So those typically are the ones that will rank highest on the list. And so, but as far as what this development might do to water quality, I mean, I can't say for sure, but what I can say is that you're taking an area that has vegetative cover right now that has vegetation rooted in the soil, the roots are, are taking up nutrients, or those legacy nutrients that are left in the soil. And in areas for this development, you'll be removing that vegetative cover and replacing it with impervious surface that no longer will, will be uptaking nutrients, and it'll be generating more stormwater. So we can assume that there will be a negative impact on water quality because you're losing vegetative cover and increasing impervious surface on those properties.

Paul Nichols 1:32:25

But But to be clear, what I'm asking is with the conditions that you're imposing, would that correct that issue? In your opinion? I'm assuming it would, because you're recommending that this goes forward.

Dana Dittmar 1:32:36

I mean, you we would assume that it would help because that's what the best management practices are supposed to do. They should they should help if you you know, allow fertilizer to be applied to a property that just adding more nutrients, anything that doesn't get taken up by whatever you're fertilizing, it just percolates down into the sediments and the groundwater. We're recommending 100% native because we know that natives don't need fertilization practices. So you're eliminating that need for extra nutrients being placed on the landscape. That would add to the nutrient problem. okay for now. Counselor

John D. Agnew 1:33:23

Thank you, Mr. Chair. I just wanted to add a couple of clarifications one had a chance to look a little bit longer with the deed and want to clarify something on the record with respect to the deed that we discussed that is now you know, the amended exhibit w if you will, it was from Nationwide Realty corporation to Sanibel by us. Within that the it describes a conveyance of property to Sanibel by us and with respect to the entrance. It's conveying that to Sanibel by us. But it details a perpetual non exclusive easement to herons landing and then further clarifies that it is reserving for itself. That's that second page that was initially just their reserving for itself the future right to use it and easement over the portion of the of the road for access purposes. So the analysis the end answer is the same but I wanted to clarify the applicant here is a successor in interest to the grantor nationwide Realty corporation. So when it conveyed its rights to subsequent owners and I believe they are now twice removed from it. They're they're granting the whole bundle of rights if you will, and a bundle of rights in that conveyance would would be inclusive of the reservation to use this the the easement rights for the access. So that was one just clarification Shouldn't the end answer isn't different? My analysis is absolutely they have those easement rights as detailed in the deed that we discussed. The seconds with respect to the letter that director no grant referenced, I think, although unfortunate that it appears for the first time today was just something that was potentially relevant that wanted to be provided. But

as you heard, it doesn't change the analysis, I think a lot of what's been brought out as a concern is the quote unquote, the property being polluted or something to that effect, and I think pollutants to most people connote something dangerous. And for that reason, that's the discussion of, of the heavy metals, the city doesn't have any knowledge of any heavy metals or, or any belief that there would be heavy metals on the property. And the testing that was done in 97, doesn't indicate that there were any in that area, not in this particular property. But in that area. The concern had always been relative to the nitrogen levels, and the phosphorus levels and nutrient nutrient loads, you know, important distinction, nutrient versus, you know, some kind of toxin see humans that were that we're talking about. With respect to. And hand in hand with that, with respect to the conditions, there are certain conditions of any kind of development that are going to be required by the land development code general conditions that are mandated by code, then for every development, it's appropriate to consider what particular conditions there might be added, based upon the unique nature of it. The it is absolutely a unique condition to propose that it be both all native and no. No fertilizer of any kind, however, in my discussions with the applicant, just this morning applicants counsel and certainly I'll defer to him to confirm, but there's not an objection from the applicant to those proposed conditions. And again, they are proposed. So for further discussion, I'll defer but I believe what you'll find is the applicant desires to be a good neighbor, and they don't have an objection to this, even though it is more stringent than then anywhere else. Just wanted to provide those clarifications,

Eric Pfeifer 1:37:48

but it is more stringent than everywhere else everywhere.

John D. Agnew 1:37:50

It is. It is and the proposal. I think there was a question, can we make something to the effect Commissioner Pfeiffer can we make Karen's landing at here to those It's a condition of development, if there was some kind of further development, the city could suggest some kind of a condition the same way a staff is suggesting in this instance, that that would be that would be the best management practice for this particular development, considering its history, I think the applicant and taking that and totality into consideration and said, We understand that we're good with it. But again, I'll defer to them to

Eric Pfeifer 1:38:33

answer for the record. I'm not proposing that Herons, Landy and specifically Osprey conformed to this. This body of water is also connected under Sanibel by use road to the body of water by Buck key. I'm not proposing they adhere to this. I think it's too stringent. I'm happy with the restrictions that we currently have, which I believe are 75%. Correct me if I'm wrong, but I'm just not in favor of those two conditions. Thank you. Yeah.

Karen Storjohann 1:39:05

I just want to pick up on something you said you're recommending all data because they don't need fertilizer. Is there a plant category? That would be heavy feeders of the fertilizer? That's the the nutrients that are normally a fertilizer to take them up faster? Is there a list like that? I see Holly nodding. Yeah,

Dana Dittmar 1:39:37

but are you asking are there plants that are better at uptaking? nutrients than than others? Yes. Yes. I mean, there's there's definitely studies on on that. But a lot of like, well, the best is cat tails, but nobody likes those. But grass or grass is too quickly, like Spartina, things like that are very good at taking up nutrients. And then really any, any plant that has the ability to, or the natives that can grow more rapidly are better at uptaking nutrients. So like, like shrubs and things like that. And then, but yeah, I mean, any plant is going to is going to take up nutrients, but I'd have we'd have to look into the literature. But yes, there is literature that discusses what plants take up nutrients,

Karen Storjohann 1:40:35

rather than to develop a list that is both native and heavy feeder for situation like this. help solve the problem faster.

Roger Grogman 1:40:51

Thank you. Thank you. My comments on this are quite a bit similar, some others that have been made, so I'll hold off from them. But I do see this as being so singularly restrictive of which, though, perhaps the applicant would would prefer it that way. Perhaps not, I'm not certain. But it certainly represents a trend to try and patchwork across our community, different levels of enforcement that become necessary to be able to seek compliance and see whether that compliance occurs or to what degree and of course, that begs the question of the people next door saying, Well, I can use fertilizer, but they can't, we can use. So you're gonna, it will become rather complex. The second is with the definitions here is that when the one which now includes coconut palms, I thought we had pretty thoroughly vetted that at previous meeting. And it would be easy enough to use the vet that we had that allowed them to still continue, but to now have a portion of the island, that is a community that is not allowed to use those, it's starting to get a little bit to the point where it's becoming a very difficult to try and determine who's what and who's where and what conditions exist here so that every lake that has an impairment on it, some of which are on golf courses, suddenly becomes a candidate for a restrictive element. And that can only be enacted if a development permit is applied against it. And I see that opportunity has been one that would result in a negative outcome for our community, this side of the street is this way, this side of the street is that way. And I don't think that's the approach that is consistent with the sandable plan, in my opinion, secondarily, the the actual drainage of water, you know, the Public Works showed for this particular area, I think it's going to end up to be a positive, you know, for the reduction of groundwater elements than what it is today, which is nothing, you know, there is no drainage element associated with it. So I think some of the benefits will occur simply because because of that. And I guess my last point is, you know, are you throwing the chicken out with the baby out with water? Maybe I'm not saying that. But the idea is that grass requires fertilizer. Sod is the way you've mentioned it here. And it's my opinion that if you want to start restricting things up the food chain, to prime prime to red fertilization, you can't have it both ways, no fertilization, no sod. I mean, the ideas as we heard earlier, education goes a long way. You know, we have to realize that people who are members of this community, have a very, I believe, both good education background and in strongly support the environment. I believe when you recommend, as you did with the remainder, part of Herons, landings, that they have certain best practices, they felt that they tell that they'll follow that. I do believe that when you try and start to legislate everything to make it easier, I guess, that you begin to segment the population, you get people saying was I'm forced to do it. But you over here, you don't have to do it.

We're just recommending it to you. And I think that's a bad habit for us to get into. And that's just my opinion on that. What I would like to have is Craig, articulate each of the 22 conditions. And I'll make a point here that 23 is not a condition of this. You're asking a separate recommendation of the planning commission to counsel and that does not involve the applicant to that degree, that would be a separate issue. But all of those 22 different conditions if you could go through those And then from there, we'll ask questions again, on the conditions if there are any. And we'll move into the applicants presentation.

Craig Chandler 1:45:07

Thank you chair. And actually, I'm going to pick up staffs presentation at page 10 of 15. There's just a little bit left before we get to the recommendations and conditions. And so after the Natural Resources memorandum summary, I'm just going to briefly provide on behalf of Public Works Department, two key points that haven't been discussed already. One is that the stormwater management plan as permitted by the South Water Forum, excuse me, South Florida Water Management District exceeds the required minimum required stormwater standards of the st ml and development code. And the second thing I'll direct your attention to is that all excavated fill is required to be removed from the site. The other points from their memorandum have been covered at length.

Laura DeBruce 1:46:01

Sorry, Craig, a quick question on that from the site and from Sanibel.

Craig Chandler 1:46:07

That is correct. And a copy of them memorandum is included as attachment P. The last thing I'll mention in regard to staffs analysis and review of the application is in regard to the preliminary plat that's provided as attachment C. So the preliminary plat together with associated documentation, staff found compliant with the requirements of section 114 dash one of six titled preliminary plat. Any questions on that before I move on to a brief summary of public comment?

Eric Pfeifer 1:46:49

So only because it's on this page? Can I ask one more question for natural resources? One requirement is no mangrove trimming at all, where the current rule is 25% of the leaf. That's not true.

Dana Dittmar 1:47:02

They don't own that land. They don't own the land the mangroves around the city does. Thank you.

Craig Chandler 1:47:10

Okay, so real quick. Steph has received quite a bit of public comments. So as of January 3 2023, staff had received 25 written public comments, I believe, there were a few others that came in after the publishing of this staff report, which were distributed to planning commissioners in advance of this hearing. And that is included within the staff report is attachment x. And then before I get to my summary of recommendations and conditions that come in and go back to the top, which is page one, and reiterate the issues that are before planning commission today, and the recommendations will directly correspond to these questions. So number one is the proposed unified residential housing cluster housing development consistent with the Sanibel plan. And with LDC chapter 86, Article Three Division Three subdivisions one and two. Number two, does the preliminary plat and accompanying

documentation provide all required information cited by section 114 Dash 106 preliminary plat and number three, that Planning Commission approves the application what additional conditions should be required? So back down to I believe it's page 14, she's been I apologize page 11. There are 23 conditions, the 23rd item is easily condition recommended by staff. And to summarize these conditions, one through 15 and 22. Our standard two subdivision applications, of course adapted in the context of this application. And I'll note actually, before I get into this three conclusions that again relate to those issues that I just read. Steph found the unified residential housing cluster housing development coastal Creek is consistent with the st. Mo plan and does demonstrate compliance with chapter 86. Article Three, Division Three subdivisions wanting to step finds preliminary plat, and documentation provide all required information cited by section 114 Dash 106 preliminary plat. And finally, Staff recommends planning commissioning consideration of additional conditions related to the protection of natural resources and improve water quality. And then as it relates to that last point, so I'll just point out again and I know we've had quite a bit of discussion about these conditions already, but conditions 16 through 21 refer to recommendations from the Natural Resources Department memorandum. And specifically conditions 1617 and 18 are specifically included to mitigate nutrient load of nitrogen and phosphorus and mitigate those conditions or mitigate worsening the potential for worsening those conditions at the subject parcel. And then finally, planning department included condition number three, which recommends designation of track see for inclusion within the environmentally sensitive Lands Conservation District recommending it's an addition to the map upon the net Sanibel plan, Volume Two amendment Volume Two, the stainable plan is the map series, which includes the environmentally sensitive Lands Conservation District map. Any questions?

Karen Storjohann 1:50:51

Yeah. Would this require them to put in the common infrastructure prior to any individual house being built? The sewer lines, the water lines, all of that kind of thing so that you're not disrupting the neighborhood? Six times.

Craig Chandler 1:51:09

Understood? Yes. So precisely. There are two applications before you. So one is the subdivision application 2022 Dash 74 as well as the long form development application 2021 Dash 1803. And the latter is what would approve the development activity for subdivision improvements, such as connecting the utilities, constructing the roadway, constructing the stormwater management plan, and preparing the sites for development. Now, certainly subsequent development or excuse me, subsequent permit applications that we're anticipating would be for each individual home site.

Karen Storjohann 1:51:52

It occurs to me that that would make sale simpler to, which brings me to the other concern I have with this. We have a usually a two year and a two year, two year for building and two year extension. I think, given the circumstances we're in right now, that might be unrealistic. We might want to think, consider lengthening that timeframe. The scarcity of contractors, and the even greater scarcity of materials. Could well necessitate this being a much longer timeframe.

Eric Pfeifer 1:52:32

Well, it says in here that we can extend it on this board from two to four years if necessary.

Karen Storjohann 1:52:38

So but they would have to come back to us for that.

Eric Pfeifer 1:52:41

For a quick extension.

Laura DeBruce 1:52:43

Maybe we'll hear from the developers on that point, whether they would think they will need more time, in which case we can consider that.

Roger Grogman 1:52:53

Commissioner Nichols any additional questions?

Paul Nichols 1:52:57

No, I've got some questions for the applicant, but nothing else.

Roger Grogman 1:53:00

Commissioner. Vice Chair, Commissioner Bruce?

Laura DeBruce 1:53:06

No, I think that it's a you know, I unlike some of my fellow Commissioners, I actually think that the restrictions make a lot of sense. And I'm glad to hear that the developers had not indicated any problem. It seems like it's a, it may be an unusual step. But it seems like it's a good way forward for one of the most polluted areas of the of Sanibel. And so if we can't be the one to start establishing stricter standards, and I don't know who else would do

Roger Grogman 1:53:41

it this time. Rather than go to public comment on this, I'm going to ask the applicant to make a presentation and that way we'll have both elements of it available for the public to comment on. So I would ask the applicant if you would please come forward.

Sawyer C. Smith 1:54:07

Good afternoon, or I think it's afternoon by now. For the record against Salyers Smith on behalf of Dan Dodgeville. President with me today. Staff thank you for a very thorough report. And to my learned colleague, Mr. agony, thank you for participating us and we would like the Dyess to accept the staff report, as made on that point, though, I would like to to, to address Mr. Pfeiffer and Mr. Grog and some of the comments you made as well as to Bruce and and while it is pretty clear that there's appears to be enough phosphorus on this site to last a lifetime and we may not need to be fertilizing. Yes, what the staff is recommending is quite restrictive as So has been brought up more so than anywhere else on the island. If that's what the planning commission would like us to do, we will accept that because we do want to be part of the solution to the problem that we did not create that was there when we bought this land and decided to do this development. Preferably, we would like to be able to do the 7525 on the six small home sites and the 100% native on the rest. But again, if this board if this commission deems

that that's what needs to happen in order for the Dodgeville family to proceed with, with building the six homes and on the small development, then we will accept that recommend we will accept that from this board. The what is important to us is that we do get to proceed with this development. You know, this is a problem that was not the doing the developer. This is a problem that was created when 175 Or excuse me, 150 residents, 116 multifamily units and four general service agreements for this package plant operated for a great number of years, and then with very limited, treated effluent discharged into ponds, and then with an agreement with the City of Santa BL. The previous owners, as Mr. Agnew pointed out to remove entered into an agreement the city so that they could decommission this this plant and hook up to city sewer. That's still surprising in this day and age we have well in septic anywhere, but we do and we all know what that does. And it's a terrible thing and thank God now it has been replaced and the city has gone and removed. I think I heard 2000 cubic yards of fill and then another maybe 5000 cubic yards of fill in some was taken, I think to Hendry county believe some might have been taken somewhere in the Midwest for proper disposal and clean fill brought in. And I also heard that in fact, when this property is done, it will be burned. It will hold its own water which will help the water matriculate through this native vegetation so that it's not discharging right now rain hits that that land and water flows into the I believe it's Buck ki pond, which I associate Bucky with the sandbar but but ki pond and then Herons, Glen pond, or the two ponds east and west at the city created Well, based on what the development plan is with. And the the fine engineers with inside have done. There'll be there'll be burning this property to hold the water so that it slowly matriculates back and hopefully that does in fact improve the conditions on the land. So to to address directly the staffs recommendations. Do we love them? No. Do we want to be good neighbors? And do we want to clean up the land that's there? Yes. So I will I'll let Mr. Dodgeville address the Dyess as well. And with that you guys can also ask any questions you may have with us or the engineers and planners live inside.

Dan Daughdrill 1:58:22

Thank you for your time. Probably the biggest item is this native vegetation. State your name for the record. I'm sorry. Dan Doblin with Buckingham 225 development. I also represent an own Daniel Wayne homes, he'll build the houses in there. One concern I have of 100% on those building pads is and I heard staff say, Well, you couldn't change stuff in other neighborhoods unless there was a development order. Could that bleed into because I build on the island, we've completed about 75 single family home projects on the island from the Gulf to the bay and everywhere in between. So in the future, because there's a polluted pond, I think Commissioner Nichols mentioned that, you know, is my development order for that home site, then going to include include a recommendation that 100% of the vegetation built on that neighborhood on that one home site? And it does create an enforcement problem? Where How do I tell my customers? You can't do a coconut palm here. But if you bought this lot over here, or that guy over there that just built, you know, I'm saying and I think you guys have alluded to that. We will agree to it. Ideally, if we would rather have the 7525 on just the 5000 building pen. And when you take out the house coverage and the driveway coverage, you're probably talking less than 500 or 1000 square foot. My concern is my clients who I'll build for when they come down from the Midwest, and I've heard it 100 times Have you ever dreamed of what's happened? One coconut in my yard or something else is not native, not invasive and not native, you know? And so how do you explain to them the whole process that led to this, and we're not trying to run from the problems of that site, but try to improve on them. And I think the drainage plan will be a huge improvement, I think 100% native and no fertilization anywhere else on the project. But we're looking at about 3% of the total

landmass could have the 7525 and streamline enforcement of the existing vegetation guidelines and education of the clients, then they come down, that you can't have maybe something non native, but you can't fertilize, you know, needs to follow best practices. So that would be our preference, though, obviously, you don't want to throw the baby out with the bathwater, if that's what the board ultimately decides it has to be 100%. But I would prefer to have that. So enforcement, it'd be a lot easier. And you know, people aren't basically buying a piece of real estate and a house and having to become a criminal if they want to plant a gardenia Bush by their front door because they liked the smell and gardenia. questions. Any questions from the commissioners? Nichols

Paul Nichols 2:01:31

just started the oven for a second, I did have one article to find it. About You know what it was, I noticed

Roger Grogman 2:01:37

that you commissioned your brochure.

Paul Nichols 2:01:39

So I know it's I know what it was. If you were to be given the go ahead today, when would you anticipate that you would actually be submitting the individual homesite permit plans and actually starting to build on this?

Dan Daughdrill 2:01:58

Well, it's my understanding, we'd have to put in the infrastructure, you know, road water sewer, that could start, you know, as soon as we had all the permission to do that right away. And then we would follow that up at, you know, simultaneously, if possible through staff to submit a plan for, you know, obviously the first house, we have a plan in that process that's about done with structural engineering, so that that could be ready to submit, you know, relatively quickly.

Matt Kirchner 2:02:34

Or no questions?

Roger Grogman 2:02:36

Commissioners, right?

Karen Storjohann 2:02:38

Yeah. Do you already have a customer for that it was at a spec?

Dan Daughdrill 2:02:44

Well, we haven't sought out customers, because first, we thought it'd be prudent to get final approval. So we knew what exactly we'd be marketing. There has been some interest, but you know, we don't have an exact customer for that. So I'd probably be

Sawyer C. Smith 2:02:59

I'll take the hit on this. And I won't let him market until he's got his permits, because then I'm going to defend him to get sued for not delivering the product that he sold.

Karen Storjohann 2:03:06

Yes, but he's a builder on the island. And somebody could easily say to him, you know, you've got any lands coming up? I'm not saying you have a signed contract. But is there interest already established yet?

Dan Daughdrill 2:03:21

We haven't done any marketing. But yes, there is. We have talked to this individuals who have heard about it and stuff like that, and they are interested in, you know, purchasing and living on that site.

Karen Storjohann 2:03:31

Okay, what about the timeframe that's in here, the two into two,

Sawyer C. Smith 2:03:38

it's a little tight considering everything. We're in a different position than some builders and developers, because it's, it's it's slightly vertically integrated, but it's, it's tight, we have to come back and ask for an extension. We will have made some we will have made progress. That point.

Karen Storjohann 2:04:02

Does that extension cost? Is there a fee associated with that?

Craig Chandler 2:04:08

That's a good question. And frankly, I'm not aware of the answer. We'll do some quick research here. And meanwhile, I'll make just one quick point of clarification. So whatever conditions are ultimately adopted in whatever form they take for the preliminary plat, I just want to be known that those conditions would be applied evenly to all six developments. So there there won't be an outcome in which homesites one through three have a different set of conditions applied to the single family home permit and homesites four through six

Roger Grogman 2:04:54

we Okay. Ignition reverse

Laura DeBruce 2:04:59

you So thank you both. So, as you know, we've heard a lot from the herons landing Homeowners Association, and I imagine that you have as well, and hopefully there has been some engagement of conversation. One of the concerns that we've heard from them is that they're afraid that if homes begin to get built, and people discover that it's built on a former wastewater plant, that there will be an issue. Obviously, you don't want to put that in your marketing. But is there some, is there some intent on your part to let prospective buyers and owners of these lots? No?

Sawyer C. Smith 2:05:41

Well, if you think about the title history, there's no way nor would we ever hide anything. So people are going to know, especially if there's debt on this, if they put debt on a house, you run the title search on it, you're gonna know the history of it. So how that's going to be addressed? I don't think Mr. Dodgeville

has come up with exactly his talking points for that. But yes, there's gonna be nothing hidden. I will tell you this much, Mr. Dodd was reputation this community's been here for quite a while and my family's been here just a little bit. And we're not interested in hiding things from people. So this, it will, we will come up with a way where we're going to explain things to people, which is fair and honest.

Laura DeBruce 2:06:25

And the idea of removing the soil carting it off the site, taking it out of Sanibel, is that something you guys have factored in as you're looking at your development plans? The excavation?

Sawyer C. Smith 2:06:44

That's more of a planner engineer, but what he's whispering to me is, we just look like we're gonna be doing much less excavation, if any at all. Okay,

Laura DeBruce 2:06:55

no more questions. Thanks.

Roger Grogman 2:06:58

The question I have is, do you accept it? 22 a group? Conditions 2323 conditions?

Brian Smith 2:07:09

I'll let Good afternoon up. Nope. Still morning. Good morning. This is Brian Smith with hand sight again. Thank you. Looking over the conditions, I don't think we have an issue with it. I would have a question for staff is conditioned 23 talking about putting that the environmental tract she within conservation sensitive lands? Is that going to be a city initiated process? Meaning that our applicant would not have to take care of that portion of that?

Craig Chandler 2:07:38

Absolutely. Really what that condition is about is to maintain continuity of our environmentally sensitive district map. That action has been been taken on other unified residential cluster developments. Now, we don't have a plan amendment in front of City Council today. But certainly we expect sometime soon those those maps will be updated as a part of discretionary evaluation and appraisal report would not involve the applicant. But it's helpful to have that recommendation on the record.

Brian Smith 2:08:09

Is there any further restrictions within your zoning code or that designation that would limit or further restrict him in terms of what he asked to already be required with the conservation area through South Florida Water Management District?

Craig Chandler 2:08:24

No. So this recommendation applies only to track C, which is through the proposal that the applicant made, proposed to be in conservation in perpetuity for wetland protection, and it's limited only to Trixie.

Brian Smith 2:08:40

The only other thing I would like to mention here is we've been working with Dan for a long time on this project. It's since I think 20, we actually started on the in 2020 or 21, early 20, early 21. And here we are in 2030s. That means what we've done is to our planning and our in our efforts with engineering, we work with staff extremely closely on this for over a year to make sure that the outcome of this project was the best and as low maintenance prop property as possible. So there's been a lot of effort behind the scenes of course, as you know, I mean, just staff reports 327 pages so it's it's a lot of work that goes in involved in this and you'll notice if you do read the drainage report or you do see the drainage plan, we're actually going to make this this property better. We're we are burning off our site, our development site, we actually are holding our water on our property, allow it to slowly discharge back into that wetland and we are a concern amount of feet away from the existing lake before we start any development of any home site to go vertical. Thank you.

Roger Grogman 2:09:43

Thank you it back to the conditions so you do accept the conditions as they are stated and we've clarified to 23

Sawyer C. Smith 2:09:52

right with with that asterik we'd prefer the on the little the individual home sites, that small foot grant the 7525. But we will leave it to the discretion of this board you are the driving force behind planning for the city of Sanibel. So we leave it up, we leave it up to this board. But we would prefer on as, as Dan said, I think would you say 3% of the Landry percent, you know? But, but overall Yes, sir, we do exactly.

Andrew Ginipro 2:10:25

Thank you. Yes, sir.

Roger Grogman 2:10:28

When crushing crack chair, yep.

Craig Chandler 2:10:30

I just like to briefly follow up to Commissioner StoreOnce. Question about fees. So there is a section it's 90 Dash 11 extension of an expiration date that does involve application of fees to return to planning commission. So I do think it would, it would be certainly in the applicants interest and Steph would not object to a longer timeline for this development, given the context of what this island is dealing with.

Karen Storjohann 2:10:55

So would three years and then a two year extension, meet with your approval?

Craig Chandler 2:11:02

I frankly, would defer to the applicant can't answer that.

Sawyer C. Smith 2:11:09

This is outside of my skill set for sure.

Brian Smith 2:11:15

Try Can you can you answer if we got the three and two, is the three mean we have to pull our first building permit? Or is it mean we have to be complete with the development because as you know for phase one, of course is, again, Brian Smith sorry, is of course the infrastructure where we will be making only one tap at one time sewer connection at one time and running the infrastructure for all the six laws.

Craig Chandler 2:11:42

Bear with me just a second, I want to be able to review the specific language of this condition before spawned. Right so I believe it would be the not the home sites themselves to be developed. But the actual infrastructure for the subdivision, it would be after which would be the time actually that final plat approval would come forward to city council for their consideration.

Brian Smith 2:12:32

So within so after the final plat approval goes forward, that's when that time period would potentially start would be after the final plat approval. So if we did the three years after that point, we have three years to actually build that infrastructure.

Craig Chandler 2:12:49

Well, I believe that the the infrastructure would need to be done in the three year time period and filing an application for final plat approval. And then development of the individual home sites would be subject to the typical one year timeline for development on Sanibel, though those are are being extended upon request as well. Given the context of the storm, I would expect that to remain the same.

Brian Smith 2:13:26

Three years, it's fine. If so moved. We'd love to add the three years and the two years potential extension. Do you want

Karen Storjohann 2:13:33

to take that into consideration now

Laura DeBruce 2:13:36

before we ask the public for their Yeah, I think that's a

Karen Storjohann 2:13:40

good one. Let's do this first amongst ourselves and then as the public.

Laura DeBruce 2:13:44

I have one other question. While we have our engineer up there. The the homeowners association brought up the concern about the berms, as you were describing the berms, it sounded as if it would be a way to slow down the groundwater flow. They were afraid that it would have opposite and negative effects of increasing flooding. What is your experience? I don't have experience in this.

Brian Smith 2:14:13

Okay, no problem I'm going to actually call on Yeah, typically it helps. It always helps. And when we say a berm I mean most people kind of in their mind they think of a larger berm. Most of the piece of property is elevations between 342 and then it goes down of course to the to the lake so our top of berms is only five feet, five feet tall, so meaning five foot elevation, so we're only actually raising the ground just a little blip and all that allows us to do and that is actually past the wetland past the which is what's called a an open upland buffer area. So it's past all that so all the water that does hit that hit that site, on top of the roofs on top of the roads, etc, is kept on that site till races up to a certain elevation before it can actually slowly discharge into the actual exists wetlands. But if you have any technical questions, I'm gonna, I'm gonna put it over to the engineer record. That's Jonathan Wallace with our group,

Jonathan Wallace 2:15:11

he's gonna pay attention well, so yeah, I mean, that is the idea of Jonathan waters who then second, just for the record out, the berm will keep most of the site within develop most of the rainfall within the developed area on the site detain it allowed to percolate in the ground and undisturbed areas with the native vegetation. And there'll be a slow discharge out to the wetlands. And that's standard treatment for water quality in the south Florida Water Management District that's been going on for a long time.

Karen Storjohann 2:15:37

Thank you. In turn, what what concerns did you have? Well, I want to know if we are all in agreement on this story to be so that when we go to the public, yeah. Yes. Okay, so that's, that's good. The other concern I have. I'm originally from New York, in case you hadn't guessed. And I had a perennial border, and I had a vegetable garden. And I'm concerned, which I've raised before that saying 100% native might preclude somebody from having a vegetable patch. And, you know, perennials, such as they are here on in southern Florida, which is nothing like what you grow in New York. So I'm kind of leaning towards 100%, Native in all of the common areas. But I liked the idea that you raised of having 7525 in the actual plots that are owned by a home owner. And I was wondering how that compromise fits with my fellow board members thoughts? Well, I'd

Eric Pfeifer 2:16:59

like to say I'm in favor of that. And I stated that all along. And furthermore, I'd like to point out to my colleagues that outside of a modern platted subdivision the minimum lot size on Sanibel is 10,000 square feet, these home sites are only 5000 square feet. And 75% 25% has worked for larger lots, and it should be able to work for these lots.

Laura DeBruce 2:17:21

I think it's a nice compromise. Karen.

Roger Grogman 2:17:23

I agree.

Paul Nichols 2:17:24

Just just one follow up question to that to the engineer. If you were allowed 7525 on that. 3%? I think you said Would that affect your comment about the drainage?

Jonathan Wallace 2:17:37

Not not? Thank you,

Sawyer C. Smith 2:17:40

Mr. Chair. And I'd like to point something out that this totally unrelated to this. But a few years ago, the Florida Legislature preempted cities, or counties statewide from regulating people from having vegetable gardens, so anybody in the state of Florida can have a vegetable garden in their yard, the sooner we can stop people from growing

Roger Grogman 2:18:02

interest, native

Karen Storjohann 2:18:06

food. So we could undo a stretch tomato, since that's how we raised a great deal of money in the early days of Sanibel by selling to

Laura DeBruce 2:18:15

actually increase the price started out.

Roger Grogman 2:18:23

I think that concludes our questions. And you've answered our concerns. And we're up to three, two and 7525 as a group reflective of those comments that you shared, and that we've shared back with you. We now have in a moment, I'm going to ask your support, because we're going to ask for public comments and the public comments, some of which might be directed specifically at IBM said, you know more about and have been disclosed today relative to the proceedings. So I would ask that this time, they'll do public comments, you can have a seat. Thank you. We'll be right over here. And I would ask for public comments and I believe we have an organized public comments and I'll ask Howard to please introduce us into those public comments.

Howard Simon 2:19:28

Yeah, so I am Howard Simon again, I introduce myself previously I'm here with several of my herons landing homeowners neighbors, and I believe that there are several people here from the Sanibel by us Homeowners Association as well and I presume they will want to speak. I work on water quality issues as a as a board member of Colusa Waterkeeper. And I am also president of a foundation that addresses the link between toxins produced by blue green algae, and various neurological diseases. And in that regard, I just want to just throw this in. It's another subject we can talk about later, there's a significant difference between the dangers provided presented by nitrogen and phosphorus and the heavy metals that are in the soil. I'll let the people from DNR who have more scientific experience than I do correct me if they think I'm wrong, but nitrogen and phosphorus cause blue green algae, Blue Green Algae creates toxins, numerous toxins, many of which have not been examined yet. But one of those toxins is BM a for short, which has been linked to various neurological diseases, including Alzheimer's and ALS. Heavy metals in the soil are a remnant of frankly, excuse me, human and animal feces. And that's a remnant from the wastewater treat treatment plants. But I just wanted to point out, there's a

different problem requiring a different analysis. I want to say that some of my comments come from our neighbor, Doug Stimmel, who is not able to be here today due to COVID. Doug is a landscape architect and founder of a landscape architecture, land planning and civil engineering firm. He has been involved in public and private projects for 40 years throughout nine southeastern states. There are two areas of concern that we have about the coastal Creek development two general areas. The first is contained in our August 24 letter to the planning department, which several of my neighbors will talk about as soon as I'm done. The other involves the impact of this development on a five year project to reclaim herons landing lake, it varies. It's either the number one polluted, or at very least, maybe we've improved to the number three most polluted lake on the island. You should be there sometime in the colder weather. When the smell from the lake pervades the entire neighborhood. It's pretty horrible. And people can't go out of their homes at that time. But nine homeowners and the city council and the city attorney and the former city manager spent a year and a half creating the agreement for this joint joint project. And one of the things that I wanted to address was been said and I didn't have an opportunity previously, but I'll I'll do it now. Is the record of the requirements imposed on coastal Creek, the most stringent the most heaviest rehire restrictions imposed on any community on the island. The answer is no. The agreement that we entered into for the nine homeowners on the other side of the lake also requires no nitrogen and for and phosphorus based fertilizer, no native plantings, and no sod in the backyard was a cause, or the common area. Our our we've we've entered into that agreement. And I want to say it I think equity requires that if we are under those restrictions, the people on the other side of the lake shouldn't be on the on the those restrictions. If you choose to go to a 7525 Well, then that freedom should apply to people on the other side of the lake as well. But whatever you do, you should be aware of some requirements of some some equity

Eric Pfeifer 2:23:58

scuze me is that a recommendation or requirement?

Howard Simon 2:24:01

It's a requirement. And people from DNR. It's not just a recommendation. We it's a little bit complex were required to adhere to best management practices.

Laura DeBruce 2:24:14

And if I understand correctly, that was through your agreement. Was it the sixth homeowners nine nine homeowners that are right bordering the lake? Yes. Okay.

Howard Simon 2:24:26

And an exhaust the lake is shared?

Laura DeBruce 2:24:28

Yes. And in exchange for that agreement, the city has also is also bound to certain obligations to help clean up the lakes. And it's mostly air aeration. The homes that we're talking about on coastal Creek are not going to be on the lake. Is that correct?

Roger Grogman 2:24:49

Yes, it is correct or not.

Howard Simon 2:24:52

There's no there. There are a little bit the city owns the prop the mangrove property But as you've seen in the report, there is an increase in impervious surfaces surfaces. And there's a delay in the water coming from the homes to the lake. So yeah, the the homeowners, coastal Creek is not directly on the lake. The city owns the mangrove, but coastal creeks water will ultimately be flowing into the lake.

Eric Pfeifer 2:25:23

And then there's a buffer of native vegetation between the home sites and the city

Howard Simon 2:25:28

as there is on the other side of the lake. Anyway, I want to say that the most significant study this has been has come up of the herons landing lake water quality and groundwater and soil conditions of the land. Adjacent to the lake is the 2018. City joint city sccf lake management plan for herons landing like I want to read two conclusions of that study. That study concluded that extreme nutrient loading into the lake comes primarily from the remnants of the wastewater treatment plant decommissioned by the city in 2008. And closed in 2009. So I'm I'm reading from a report that's nine years after the decommissioning of that plant that so 2018 report, The study concluded and I quote, The evidence suggests groundwater flowing from the former percolation ponds site is a significant source of nutrient input into the, into the lake. It also reported another conclusion, the magnitude of nutrient loading from the percolation pond site suggests legacy nutrients are having major effects on nearby water bodies through groundwater connections. Four of the six homes that are proposed for this coastal Creek developments will be built directly over the former wastewater treatment plant, with unknown and potentially counterproductive effects on the city and the homeowners five year project to repair this lake. Most importantly, I want to say that all of the reports almost all of what is contained is a very professional staff presentation and report. But all of the reports and studies of this proposed development, address wetland mitigation, and endangered species and vegetation virtually non cause focused on fixing the real problem of impaired groundwater under the sight. No mention of solving a problem identified in the city sccf report, namely groundwater contamination. If that elephant in the room is not addressed, or only dancing or dancing around the major problem, the herons landing HLA letter raises 10 serious issues that should be considered before the project can be approved. at very least, I think that requires conditions that are attached to any permit that you may offer. That you may authorize says me. The staff report does not indicate whether the reasonable concerns and I think they are entirely reasonable. In that letter of August 24, the reasonable concerns raised by the Heron landing residents were considered or ignored. But given the potential impact of this development, on the environment, on our community, and on the five year project to reclaim the lake, that the city and the residents entered into our concerns deserve to be addressed. And we don't believe they they haven't. On behalf of the 43 Herons, landing property owners, we urge that you do not approve the proposed development as presented. Instead, we urge that you attach conditions to the application that reflects the reasonable concerns of the homeowners raised in their August 24 letter. i That's I want to turn it over now to the rest of my neighbors unless you have any questions. Oh, you reserved your first Yes.

Laura DeBruce 2:29:34

So did has there been any discussion between the homeowners association, the owners of the land and the city on bringing them into your the the very important project to keep the lake or to clean up the lake?

Howard Simon 2:29:52

Boy, is that a good question? Thank you so much. And boy do I wish there was an opportunity to discuss this issue. I wish we were here today to say to you that we've met with the city staff, we've met with the builders, the contractors, and so on. And we're here to report to you that we have arrived at an agreement on how to compromise in all of the concerns that we have. All letter was sent to the planning department. A copy was given to the developer. The letter was dated August 24. We could have had meetings months ago, months ago. Instead, I have to say, we were given 72 hours notice of a public forum that was held yesterday afternoon. And with no time whatsoever. So listen to the developer and vegfa to have the Homeowners Association Board of Directors consider whether or not we now approve, it was just no opportunity. But boy, these that kind of meeting that you are referring, so could have happened should have happened months ago. I don't know if that's responsive?

Laura DeBruce 2:31:07

No, it is. It's just that I don't see. I mean, it's just a shame that we are, you know, it's hard to speculate on something that hasn't been even presented. We don't know that the owner and the developers would be amenable, perhaps there's a way that they could have been incorporated into it. But at this phase, it's hard for us sitting up here to sort of enforce something that hasn't even been proposed or suggested yet, as far as I can tell, other than through a letter. But I do appreciate that. Thank you. Commissioner Nichols. She

Paul Nichols 2:31:40

had just on the five year project that you spoke about, I'm sorry, sorry, on the five year project, but yeah, spoke about who's funding that? How's that funded?

Howard Simon 2:31:49

Well, the city has put \$50,000 into its budget of the previous year's budget, somebody named Ian has disrupted all of that. And the homeowners are absorbing cost amongst themselves of a minimum of \$55,000. With, especially if we went to literal planting as the Department of Natural Resources recommended a much greater expense. So the short answer to your question is that it's a joint project, and it's a joint expenditure. Okay, I'm out of joint expenditures on both sides.

Roger Grogman 2:32:29

Make sure.

Eric Pfeifer 2:32:30

Mr. Simon, I take the your concern of the groundwater contamination very serious. And I stated that earlier, but I also take property rights very seriously. You're saying if we approve this, you would like additional conditions imposed, but you haven't stated what conditions? You're you would like? Yes. This we just got

Laura DeBruce 2:32:54

it was the letter itself was in the packet.

Craig Chandler 2:33:00

The letter is actually on page 255. And I believe there's 257.

Howard Simon 2:33:06

I mean, we haven't. I apologize. But we have circulated that letter so many times. It's in the packet. I think we sent it to you individually. It's in the packet again, today this morning. But that that letter, the lists, eight lists 10 proposed conditions.

Eric Pfeifer 2:33:25

And Mr. Chandler you've taken those into consideration with your conditions.

Craig Chandler 2:33:32

Staff did review public comment. And one thing I'll also clarify that there was a point of contact identified to staff early in this application process as it relates to the HOA, and that was Mr. Ducks demo. I understand he's not able to attend this meeting. But I've had numerous conversations with Doug, in regard to this application. I reject the implication that staff is not engaged with the public. And

Howard Simon 2:33:57

I'm sorry, I didn't mean to give that implication Douglas Demel has had numerous conversations with Mr. Chandler. I was responding to your question. With regard to I wish we had an opportunity to meet with the developer. But I'm sorry, Craig, if I gave that impression. Now. You've had you've been very responsive to dogs telephone calls.

Eric Pfeifer 2:34:16

Thank you. And are you satisfied, Craig with the progress the city's making with cleaning up these legacy nutrients?

Craig Chandler 2:34:28

I don't think that's planning departments placed to answer that question. I will say that in regard to the conditions that were presented in their letter, Steph has drafted a staff report that responds to the ones in which the city is responsible for regulation. There were several in the letter that, frankly, are not within our purview in terms of review for code compliance. And I'll defer any answer response to your question, Commissioner Pfeiffer to National Risk versus if they have a response?

Dana Dittmar 2:35:18

Can you repeat the question again, just to make sure that I've got it about?

Eric Pfeifer 2:35:21

Well, I think we all agree there are legacy nutrients in this lake, and they have to be addressed. They were not caused by the applicant. And the applicants making concessions are willing to make

concessions to help the cause. But is the city addressing this? The legacy news? Yes, yes. In addition to just the aeration,

Dana Dittmar 2:35:42

right? Yes. And we did that. So that was part of the restoration of the the city owned portion of the wastewater package plant. We created the seasonal wetland features that have wetland vegetation, it taking up nutrients, we planted the site with native vegetation so that it's actively working to take up nutrient, the legacy nutrients that still exist there. The issue is that this site is overwhelmed with nutrients. And that nutrient remediation doesn't happen overnight, it takes a long time to clear up the site. But what we've done, you know, may have had an impact. But I mean, the site is still very, very nutrient rich. And so we are trying to make sure that that we're doing this responsibly, you know, to make sure that we're not making it a bigger problem than what it is now. And so the only way to do that is to implement best management practices, which is what we've recommended.

Laura DeBruce 2:37:03

And on that point, was there a was there a thought as this was being discussed that perhaps you would bring the developers into the agreement between the city and the homeowners, given the given the impact?

Dana Dittmar 2:37:17

No, that was not discussed. Our I think the way that we thought that we could help or to have this new development be a good neighbor, you know, in improving and protecting water quality would be to implement the recommendations that we had in our staff report.

Paul Nichols 2:37:43

Those conditions don't look unreasonable to me. Have they been considered and rejected? Or have they not been considered? And would the city accept those conditions?

Dana Dittmar 2:37:51

As far as in the agreement, or in the herons landing agreement or for

Paul Nichols 2:37:58

the three conditions in the letter of August 24. One's regarding testing runs regarding sharing costs, and the others talking about the buffers being remaining in place.

Matt Kirchner 2:38:11

There's also some other conditions or proposals that are asking.

Dana Dittmar 2:38:16

Yeah, and we've talked about condition one, again, about the additional testing, I think we adequately covered that, and that we know that there's a nutrient problem in the area, we've done enough testing to know that that's an issue. And then, as we mentioned earlier, because, you know, again, heavy metals just aren't part of normal wastewater processing. You know, we don't suspect that there are, you

know, elevated levels of heavy metals in the area. As far as condition two is being part of the agreement, I'm not sure how

Paul Nichols 2:39:00

sorry, I actually misspoke. There's actually 10 conditions in there.

Dana Dittmar 2:39:03

Yeah, not the one I can only speak on some of them are related to natural resources. Yes, yeah. And then for

Howard Simon 2:39:18

sure, there was a PowerPoint that we have. It's on.

Kelly Scotty 2:39:23

It's on it's on the screen right here. It's on

Howard Simon 2:39:25

the screen here but yeah, there.

Dana Dittmar 2:39:27

And then as far as condition three for the areas labeled as wetland preserve an upland buffer shall be clearly laid labeled as undisturbed buffers and all vegetation existing trees in the area shall remain that's part of their preserve management plan. So that is already part of the plan. And those are the

Howard Simon 2:39:56

if I if I might, if I want to hunt I'm interrupting, Dana. But I want, I want to say that one of the one of the issues that we have is that, from the herons landing homeowners association, again, 43 of your, your neighbors. We feel neglected, frankly, and we sent this letter. And we heard, we feel like the concerns that we raised had been ignored. And we could be, I want to say, maybe we're wrong in some of these, but tell us that we're wrong, or tell us that they've been addressed. But we raise these concerns. I think they're reasonable concerns, like, you know, somehow, I think are simple. Like you were talking about the easement earlier, you know, so the easement gives you a right of access, fine as a right of access, but No, mate, no responsibility to maintain the road. I mean, that's kind of a simple expense, that all the neighbors around the area. Sharing that that seems to be a no brainer. But you could at least have tell us whether the conditions that we are suggesting, are either have already been addressed or unreasonable are reasonable. Nothing? Absolutely. We feel like we've been totally disrespected and ignored.

Matt Kirchner 2:41:20

Should we go through these then? I think.

Laura DeBruce 2:41:24

And I think that and I'm glad that we had the opportunity. And remember, we did postpone till now. But we could have you all here.

Howard Simon 2:41:31

Let me make a suggestion before you go through it. There are other neighbors who are going to talk about pieces of our presentation. So maybe you want to hear from them first. And then we can go back and go through. And you can consider how reasonable or unreasonable or requests are.

Eric Pfeifer 2:41:50

I think that's good. If it's additional information versus see exact same information,

Howard Simon 2:41:55

what happened? Well, there's some additional there's some additional information. Nobody has a presentation for because we thought we might only have three minutes each. Nobody has a presentation more than three minutes. Okay. Okay with you,

Roger Grogman 2:42:13

introduce the next speaker and try not to be repetitive.

Howard Simon 2:42:17

Our next speaker is.

John Connor 2:42:23

Good morning. Again, John Connor, our family lives at five, four to six off record, we are part of the nine homeowners that have entered into the agreement that Doug's demo and Howard and certain other neighbors, much more so than me work so diligently to secure so that we can improve the the situation at the herons landing pond, just a little bit of background, I try to be brief, we purchased our home in 2001. And, you know, looking back, it's absolutely one of the best decisions that we've ever made, you know, because we did get a little slice of paradise. And in spider V, and we are continuing to enjoy that slice of paradise, what I would point you to is exhibit two in that package that I think is like the fourth page in the package. And it is a pictorial because again, I am an account that I'm not an environmental engineer or civil engineer, or a scientist. So you're gonna get a laypersons view of the situation as we see it. And we think it's obviously important, a lot of people have worked hard on it. But we want to make sure that you all are clear on exactly what we're talking about. This the six home sites are depicted on that slide in the in the photo, and you can see that four of them are on the site of the former war, water trees sewer treatment plants. In 2008, Sanibel decommissioned that our family was thrilled because we felt like we we had come out of pre historical medieval times and now are able to join the Sanibel water system in 2008, and 2009. Although I clearly wasn't aware of that, because I was working hard at the time, the city completed two restoration projects that remove soil from the ponds and replace them clean Phil, in connection with the development what we've been talking about today, and it's been a very helpful process for me, the staff, and the developer has gone through a number of different steps to move the application process forward. I guess what I would ask you to consider is that as an accountant and having sat through a lot of transactions and situations, we always try to look at the form and the substance of the situation. And we've talked a lot about the form, but in in our minds the substance is that despite everything that's been done all of the efforts that everybody has taken, this site still has serious documented groundwater problems, almost 15 years after the

decommissioning of the sewage plant, the 2015 restoration projects that were done by the city focused on city owned land, not the site of this of these home sites. So again, a lot of the information that we've talked about today doesn't apply specifically to the actual sites that these homes are going to be built on. And that's why when you look at the conditions that are, are geniuses have come up with is ideas for you to consider before the application processes move forward, is we think that those are the bare minimums that should be done to protect those future homeowners to protect our neighborhood, and also to protect the community of Sanibel. The staff is has mentioned several times today, what we think is the as Howard would say, the elephant in the room. Okay. This is the Jurassic Park in the room. The staff report states despite this effort on the city owned land parcel, legacy, nutrients from the package plant persist in the soil in the groundwater, contributing to water quality impairments of the adjacent storm water lake. Another quote all results point towards the existence of package plant legacy nutrients in the soil and want groundwater as the primary nutrient source for the area. You've heard about the the plans to try to mitigate debt. Our folks are telling us that's not enough. We don't have the answer. We just think more work needs to be done to figure out what the answer should be. Should that site involves significant cleanup by removing the existing soil? Should aligner be put in? We don't have those answers. But the Howard's point, we think that that we need more focus on the root of the problem. And with all due respect, I mean, the concern about presidents. I don't know how many sites are on Sanibel, where homes are being built on the former site of the sewage treatment plant. We think this is a unique situation. And it requires a unique approach to try to come to a conclusion on it. So for that reason, we asked you to look at the August 24 letters in detail, and pick one of each condition one by one and then make a decision. You know, we have been blessed as a neighborhood by residents who understand these issues and had been working to fix the problems. When I first heard that there were concerns. I'm like, Well, is this a situation where it's not in my backyard? Well, let me tell you as an even as an accountant, when I listen to the explanations, this is not a situation where it's not in my backyard at the driving force. This is a situation where people who know who have experienced in this area believe that additional efforts need to be undertaken before the application process should be approved. And that's the conditions that we have provided. And one last point in 2018 what I used to call a wall, our Walden Pond, turned into our putrid pond. All right, it was absolutely disgusting. The color of the water was a beyond imagination. And there are drone photos out there that you can look at the the odor that Howard talked about was absolutely, unbelievably not just uncomfortable, but it was it was something that lit in my mind could lead to a serious medical condition. And so for that reason, we would ask you not just to focus on the technical metal versus nutrient, because my simple mind says we have a little microcosm of all the water management districts that Florida encounters every day, the Lake Okeechobee, and this is a situation very much like that. I see lots of parallels to it. And we can't just solve it by by controlling the landscaping around these homes. It requires more attention than that. And with that, I just want to thank you all. I mean, I think you go through a very deliberative process and you truly are looking for the right answer. And I just can't say enough about the fact that we truly appreciate all of your efforts. Thank you. Thank you.

John D. Agnew 2:49:42

Mr. Chair. Yes. May we take a brief recess. May we take May we take a brief recess. I saw some of your other members. Sure, looking to take a brief recess

Roger Grogman 2:49:56

over the 10 minute recess.

Eric Pfeifer 2:49:59

Just hands When we're breaking for lunch,

Kelly Scotty 2:50:02

she went to go pick it up. It's not here yet, but she went to pick it up. It's not here yet.

Roger Grogman 2:50:06

Can we wait? We wait. Could we wait till the coach arrived and then take it at that time? So we have time for another speaker probably do one or two more.

Robin Cook 2:50:23

Almost Good afternoon. Thank you for listening to us.

Karen Storjohann 2:50:29

Would you bring the bike closer place? Yeah. Oh,

Robin Cook 2:50:31

yes, Karen. Thank you. Thank you, commissioners. First of all, my name is Robin cook. I live on 5423. Osprey court. And I want to thank you all for your patience. This has been forwarded to this date several times. And having been a former planning commissioner in Minnesota and even on a city council. I know, there are incredible number of documents that you read. There's many conversations, and a lot of things that you have to heed and listen to, in addition to all of our regulations and variances, so thank you, on top of hurricane Ian. So we truly appreciate it. There's a few if, if we are on exhibit number three, are you seeing this in front of you. exhibit the be the next slides to three please, if anybody can know who's doing making they're just too I'll quickly run through what our comments are on this part of our presentation. And these would be key facts taken from the sccf lake management plan for herons landing, which was in 2018. We've lived on us record since 2014. And when the sewage plant was decommissioned and then everything was progressing. Not only that side of the the West Lake side of the street, we're able to have the odiferous smells coming through but we also did every time I would come out my front door so it affected the whole street and in fact, the aromas wafted down through the entire development. Some of the key facts are in front of you. Number one, the herons landing stormwater pond just south of the study site has the highest concentrations of nutrients found in any water body or on adjacent Sanibel. And I've heard you say, since 2018, we're not number one anymore. Darn. We're number two or three. That's great. Second on the list of facts from that 2018 study, the magnitude of nutrient loading from the PERC pond site suggests legacy nutrients from the former perc ponds are having major effects on nearby water bodies through groundwater. There's that word again connections. The soil currently covering the former perk ponds are primarily sands with low organic content which has little capacity to hold phosphorus in a saturated to the point that it releases phosphorus whenever and inundated with groundwater and stormwater. So the eastern portion of the site where coastal Creek is proposed. The city on West portion of the tract is a vegetated wildlife pond, which has shown improvement of water quality. Number three, all results exceeded state water quality standards for phosphorus and nitrogen. phosphorus levels were two orders of magnitude greater than

the state criteria while nitrogen levels were about seven times greater than the criteria. phosphorus levels on the stormwater Lake were similar to groundwater levels from the PERC on site. Number four the groundwater flow towards herons landing stormwater pond was greater from the eastern portion of the perk pond area than the western portion where the city has constructed vegetative wildlife. And finally number five, the herons landing Western Lake has two known discharge points. The other discharge location is a heavily vegetated channel at the northwest end of the water body and can connect the lake to clam Bayou at extremely high tides, or lake levels. The developments run off especially resulting from heavy rain can further contaminate water quality and herons landing lake as well as clam bayou and then into the Gulf, which really hasn't been studied, discussed extensively today. Are you willing to take that challenge and then as you've seen, our proposed conditions are number one, soil and groundwater must be tested before during and after construction. Number two, developer owners must participate. We would like them to participate in five year Lake remediation agreement. And then number 10 on the list developer in the agents must disclose former land use to as as Realtors would do in their documents. Then, please go to exhibit four please and we'll talk about our watershed concerns. This map is taken from the SC city sccf study from 2018. The yellow highlighted area on this is the area of drainage for the watershed. The only owners of the land in this watershed are herons landing city of Sanibel in the proposed coastal Creek developers, all of these owners drain into the impaired herons parents landing Lake second point I'd like to make city of Sanibel inheritance landing agreement of 2022 That's very recent. By the way, it's still a five year goal need done almost one year. The city of Sanibel has invest 50 grand and five in this five year project to reclaim the herons landing Lake along with nine property owners on that side of us record and the those owners have an investment of at least 55,000. This should tell all of us that there is still serious water quality issues under this proposed coastal Creek site, which could be exacerbated by the proposed development and especially by runoff from impervious surfaces of the development as Dana was discussing previously. Number three coastal Creek should be part of the solution. They are the only entity not contributing to the long term improvement of the water quality of the herons landing lake. So we would like you to add our proposed conditions of one until per the August 24 letter. As for the storm management plan, the developer and city say the plans will exceed the requirement and discharge into the conservation area which allows for better water quality treatment. We know this is admirable and is a good stormwater management plan for their development. But is this going to solve the groundwater problem under the site as we have been discussing before and trying to emphasize with you for the rest of us. The entire coastal Creek site has been an undisturbed buffer since 20 20,008 to nine in the groundwater is still impaired and discharging legacy nutrients into herons landing Lake Why would reducing the buffer or the berm from 3.3 acres down to 1.1 acre and building homes and pools on top of the remaining buffer solve the problem storing the stormwater for three days and holding it will only exacerbate the infiltration and release of excessive nutrients into the herons landing lake. So in conclusion, and thank you again for your attention. Please attach the conditions that reflect the recommendations in our August 24 letter from your neighbors. Specifically one two and 10 Thank you very much

Menashe Ben-David 2:59:24

my name is Menasha Ben Davies I live

Karen Storjohann 2:59:27

could you bring the mic closer to thank you. Spell No. I was this. Speak very softly sir.

Menashe Ben-David 2:59:40

Well, let me raise my voice. My name is Menasha ben David I'm living on my term coat. I telling the ending i i also the treasurer of the homeowners association and presenting the whole All homeowners association. If you can put slide number five or six, I won't go into how we talked about it. You guys discuss it, I can see the concern that you have. The one thing that's missing here is that we talking about sccf report it was done on 2018. We are now in 2020. Suite. And the report did not take into consideration at development. This is half the size of the of the lake. The report, as you know, say that this is the most polluted area here on the island. This is send any water that's coming in the ground waters coming up, it's really not a stable place. The fact that we talking and re spending so much time, we all realize that we're dealing with with a dangerous site, I understand the developer does not want to publish the fact he says they can go and see on the deed what was there before, but we here knows we had a problem on our hands. And now we're going to take 62% of that area, we're going to do something with it. We don't know how it will affect the area. We don't know what's going to happen. In addition to, to the to the amount of effort that we putting on this area. I mean, we are clearing about two acres out of the three acres, it's a major effort, we've putting a burn all around it. How does it affect in the future? We don't know. We don't know what will be the effect. I don't know if it's good or bad. But we cannot assume that it's going to be good. Just assume it's going to be good for the whole area or specifically for the lake, which as you have before is one of the most polluted lakes on the island. And we putting so much effort to try to get it get it better. I I know It's almost lunchtime. So I want to take more of your time. Thank you.

Melissa Laidlaw 3:02:39

Hi, I'm Melissa Laidlaw. I live at 1983. My turn cord inheritance landing, I would just like to clarify one thing that Manasseh just mentioned. And as the developers one question, they said there was going to be no excavation, how do you put in a pool? And how do you do a pad for a house without any excavation? If that's going to happen? This 62% of disturbed land is going to be disturbed way more than they're saying. So this percolation that's going to happen is going to increase our phosphorus that's coming into the soil. Excuse me. Also, it kind of evaded the question as to alerting the public about this. When has a customer who's done a title search actually read the title search that's been given? We're just told it was approved. We never look at it in the packet. It never says anything that's shown up in that title search, just that it's clear. So how is this going to convey to future owners that they are being led to buy property that's on a former package plant? I don't see how that's happening. Excuse me. The other thing I wanted to bring up is actually I forgot to say that I'm on the Ding Darling advocacy committee for water. I'm also on the new committee between the city dang and sccf for resiliency and I'm also the chairman of the landscape committee for the herons landing. I have a concern for the rookery, which is slide I don't know which side but previous to that we also have a concern with the traffic coming in. We understand that they have an easement which they have to be able to get into their property but we are paying and contributing to the upkeep of the road, the landscape. And we feel that as a homeowner in that area they should be contributing also. The other thing we're concerned about is the truck traffic coming in. It's very tight coming into that community. It's a busy intersection. We also share a cross section Wolfert road and coming out of Ding which I'm sure There's not going to be anything coming out and doing for a while. But Wilfred is busy. Is it possible for the truck and construction traffic we propose that they use the current cut in the curb on the SAM cap

road, if that's possible, instead of coming into the Sanibel by use wrote. The other thing we're concerned about is our rookery. We've had Department of Natural Resources out last year for a talk about our native plantings and the tortoise preserve that we have built in our neighborhood recently, and it was brought to our attention that we are a unique, unique community on Sanibel. In that we have a lot of mangrove buffer, we have a lot of common property that is mangrove and is left native. Everything is native, we don't touch it. But we also have, if not the largest, if not one of the largest rookeries, the largest rookery on sample. And this development is going to affect that rookery. And we want to ensure that it remains because it's extremely lively, especially this time of year, I don't know this year within, but it's usually covered with white birds all the time. And this community coming in with lighting at night could disturb the rookery, when we propose that we limit the lighting to the south of this neighborhood to no motion detectors No. No spotlights in the evening. And also, we would request that any kind of construction is limited to nine to five, only on non holiday weekdays if possible. So those are our proposals that we are putting forward to protect this area. Our rookery, this special, we want it to stay that way. The city thinks it's special. That's why they've protected this land, and why it's held in conservation. And we as the community ourselves are aware of our uniqueness. We are working towards becoming more native, less landscape fertilization, and less irrigation in order to maintain that. So we would like our neighbors to work with this on this. Thank you.

Laura DeBruce 3:07:26

Thank you. And if you don't mind chair, could we ask our developers to address at least one of those points regarding though I think, you know, Miss Laidlaw raised a number of very interesting points, but I think we're gonna

Roger Grogman 3:07:40

go through one through 10. Might be because other say questions earlier once we just start with 123. Again, if that's okay. This is taking a while.

Kooroush Saeian 3:07:55

Um, the last one that is planned so you guys can hopefully get your lunch Emperor Sianna. I live on Sheerwater drive member of the HOA board. I just want to summarize our concerns regarding what's going on we have a site which we know is in contains significant one nutrition, nutrients that we know it gets released. And I find it amazing to say that we know we're going to put burns around it, but we're going to dig it out and the amount of nutrients are going to leak out is not going to change. My background is in cardiology and I took physics as a hobby in college, it's impossible to assume none of these nutrients are going to get through these to our lake. I can't imagine how you're going to build something and not release all the nutrients, you remove the in the pervious area, make it impervious and more drainage is going to come to the lake. So I really would like to emphasize the importance of the 10 points that we have submitted to you through our letter on the 24th. I know everybody has limited amount of time, we'd like to get to the point. But it's critical for us not to continue to contaminate this lake. And I understand you can put a burn around it. You can delay the release of the nutrients for three more days. But the same amount of nutrients is going to get back into the lake. You are not treating the water. You're just delaying the release by three days. So I strongly recommend for you to think about that. And I know what you were saying about native plants as part of the restoration of our plants on herons landing, as Melissa Laidlaw pointed out, we are only putting native plants in this

section of the townhomes that I live in. We are not putting grass in we are trying to minimize the amount of water use so we actually doing what we preaching others to do and is strongly recommend for you to do what's right for our plants, for ecology for our scenery for you know, people come to Sandwell for a reason. Same reason they don't go to Naples or Marco, they want to come here because it's natural. Let's keep it natural. Thank you.

Roger Grogman 3:10:18

Thank you. Okay, that's a conclusion. One more.

David Kienzle 3:10:28

David Kinzel, a 5439 Osprey. And I hope I bring a bit of my background. I was an urban planning geography major in graduate school, and then ended up as a current planner for the Toledo Lucas County Planning Commission. And when I was in law school, I wrote their current planning manual involving planning subdivisions, and all zoning, etc. I was 11 years chairman of our township Zoning Commission, so I'm trying to wear the hat that I think you're wearing. And I'm listening and learning a lot from the staff and from everyone. But when I first think about this, I think, you know, what kind of a problem do we have here. And it's a very serious problem. In 2007, you are the most polluted site on this island, we're dealing with 2007, it was recognized that the plant was inadequate was not running properly, which is very typical and packaged plants. Back then they were a disaster everybody wanted to get rid of and they're called package glance, because you pulled the equipment off the shelf and put it in it was a private system. The biggest problem we had, and it was not recognized because everybody's obsessed with heavy metals was phosphorus. And that's where we're seeing a huge problem in this country. I'm in Northwest Ohio, for about two weeks, the million people that were receiving water from the Toledo water supply didn't have water, because phosphorus, which is a food for algae was feeding it to the point where the inlet channel was clogged by algae. And that is a nice word for what it really is. And I'm glad somebody talked about the mental health aspects of it. It's really a deadly poisonous bacteria Microcystis and it causes Alzheimer's. So that's the problem we're dealing with. It shut down Bowman's beach in 2007, you recognize you had a huge problem you brought in Florida DEP, you follow their guidelines. And then you found out because the herons landing, people complained that your solution was not a solution. Your decommissioning was a total failure. And we also found out that report that concluded that was not an adequate report, it was not adequate in scope. I think Holly and Dana pointed that out, there was not enough funds to make it extensive. But what you did find out is that you had the most polluted site, you had extremely high levels of phosphorus, and nitrogen. So you've gotten a huge problem. And what did you do with that report? To my knowledge, nobody's really finished up on it. Nobody's carry forward and said, What do we do about this problem? And I can tell you now I put on my planning hat, and I'm in your position. And I know, at the Toledo, Lucas County Planning Commission, we would turn to the developer and say, present us your no further action letter. Do you have a no further action letter? I don't think so. And I'll tell you why it's so important. And why it is used is because the developer is going to go to the bank and get financing. He's going to go to the buyers and they're going to ask about the land. And he hires he pays for and receives this no further action letter with Jesus admits, the Florida DEP in my case, Ohio environmental protection, this letter that has he is paying for an independent environmental engineering firm to come in and fully assess the situation and determine what's been done. So he can turn to the bank and say we have taken care of the problem. I'm sitting, where is the no further action letter? I see none. And in

fact, really strong developers, can you present it to DEP I'm sorry. And Florida DEP and say we want a Covenant Not to sue? Because we don't want to go ahead and proceed with this development and be sued by Florida D. P, or by the homebuyers. I don't see one there. I don't see any mention of environmental liability insurance. I don't see any money being escrowed at this problem really escalates when we start digging up this land and putting in this development. So as I look back, and I listened to the City, Utah tried to decommission it properly, it failed, you found out 10 years later it failed. You did a study that, as they have pointed out was inadequate in scope. And you didn't do anything further with it that needs to be done, that needs to be completed. And this development should not proceed until that is done. You have the most polluted site on this island, and you're letting it continue. You've got a lot of phosphorus, which has become the most dangerous of all even worse than heavy metals in terms of what is coming out of sewer treatment plants. Thank you.

Roger Grogman 3:15:43

Okay, I'll ask Does that conclude public comment?

Matt DePaolis 3:15:59

Meant to Paul's for the record environmental policy director for sccf. sccf is here today to show our support for the Staff Department of National Department of Natural Resources recommendations. We think that they're well thought out and they do a good job of mitigating some of the history of this site. As mentioned, this is a pretty unique site that we're dealing with. There are those legacy nutrients. And I think incorporating some of these recommendations that the staff has put forward is a good way to at least get started with not exacerbating the problem. I won't reiterate what's been said a lot of people have brought up a lot of really good points. But I think that we do have huge problems with nitrogen and phosphorus in this site, not adding more nitrogen and phosphorus to that site through fertilizers certainly a great additional additional precaution to take in addition to that, I think the native plantings is really important because people have been talking a lot about how native plants don't need that additional fertilizer. What native plants don't need also is additional water that some of the exotics that come in require and any water that's put on any of the plants in these sites will percolate through that ground water or ground soil into the groundwater, collecting phosphorus and nitrogen along the way and making its way into these water bodies. So I think 100% native plants is something that's definitely worth considering and taking into consideration as you make your final decision. Something that's been touched on but we haven't gotten a clear answer is the the excavation of the soil. This site has been contaminated, there was a lot of mitigation brought in with the decommissioning of this site. A total of something like 20,000 cubic yards of clean fill has been deposited with that 2000 cubic yards that was excavated from the percolating pits and brought off site to Henry County to be disposed of properly. I think that that needs to be taken into account when any additional excavation is going to be done. If it is going to be done. It sounds like there's not going to be that much. But if there was going to be any excavation that would push past the 2000 cubic feet that had been excavated previously. And the additional fill that has been brought in. I think a similar solution of transporting that soil off site. Depositing of it in a safe way just like the previous soil was deposited as well would be a good way to deal with that. But overall, I think the staffs recommendations are are good and they should be taken into account. Thank you. Thank you.

Roger Grogman 3:18:38

Scotty are we

Laura DeBruce 3:18:40

we have one more gentleman here. I'm sorry.

Jim Bajek 3:18:46

I'm Jim beige ak 4745 70 Bowen Valley Road. My wife and I are year round residents. And we're members of the Sanibel by US Social homeowners association regarding the proposed coastal Creek development, we're not aware of any recent soil testing that has been done to date where the six homes are being proposed. And that's I'm saying recent testing. Construction of these homes will require support piles to be driven into the ground. Possible soil excavation for the swimming pools, excavation for the roadway, excavation of soil for the for the sewer pipes and the water lines and possibly for the there's going to be electrical lines that are buried there's there's going to be soil movement all over the place, possibly exposing this phosphorus and whatever else might be in the soil. The original soil tests from the former wastewater treatment plant you We're taking some time between 2008 and 2010 When When a part of that property was remediated may not have met today's state and federal standards. When the site was remediated was remediated to residential, or was it remediated to industrial standards? I would assume that it was remediated to industrials or commercial standards, which are much different than residential. So I wonder if anyone here has reviewed those results, to see to compare the data to the residential standards, and the standards might have been different at the time that this testing was done. So unless unless somebody has done a complete, thorough review of that, and if, if this development is allowed to occur, and if someone finds that there's soil that's affecting people's lives there who's going to be responsible for that? Is that going to be the state, the developer, or the city? I hope you can answer that question. Thank you.

Roger Grogman 3:21:26

Thank you. Any additional public comment?

Jim Bajek 3:21:40

I'm Wyman Welch. I live in the Sanibel by us.

Kelly Scotty 3:21:44

Mr. Welch. I need this WHERE ARE YOU and you didn't swear in earlier? Oh, no, I did not. Okay, please raise your right hand. Do you swear that your testimony and evidence is the whole truth and nothing but the truth? Please answer into the microphone with your name involvement and confirming that you do so swear? Yes, slime in

Howard Simon 3:21:59

Welsh. 2098 well behind drive in the Santa well by us development. Heard about this through our housing association. Heard about the concerns so I appreciate the attention you've given it today? Well, I would say is I'm very concerned about the the pollution in this area that you're going to be disturbing through the proposed development. One thing that that came up during the presentation was Florida DEP made specific recommendations on soil testing that should be done in this instance, that has not been done because the soil testing that was done before was done in a different area and

didn't cover all the heavy metals that should be tested for so one of the I'm glad you're going through the conditions that the homeowners association proposed one of those was to require additional soil testing. And I think one of the conditions you ought to put on this is to do the DEP recommended soil testing before and after they do this development and have the developer paid for the soil testing to be done so that you can be assured I mean, we know it's going to find phosphorus and nitrate nitrate pollution from the from the plant, but maybe there's there's metals there we don't know because the testing hasn't been done. So you want to require that the testing be done to the DEP recommended level and that seems like common sense and we give assurance to the to the buyers of the homes that everything is is okay before they purchase the property there. Thank you

Ed Rydell Hoover 3:23:45

Ed Rydell Hoover Sanibel values homeowners association it's been touched on a couple of times about the entryway just this property on Sanibel values road should also be mentioned that Sanibel by us homeowners association is responsible for the maintenance and upkeep of the entire street area with the inheritance landing as well as cinema values. And there is a financial expectation from us as well as Aaron's landing and we would expect that from coastal group. The entryway and most of you have probably seen it you want in is very narrow, very tight and to make the turn into where coastal Creek is going to build is going to be very difficult for any large construction trucks. And until you know that the curb cut on San cap Road, which the city has said is two days dangerous because it's a major thoroughfare that should be where any and all construction and any other business trucks or cars go in and not through our entryway as it exists today it's it's hard to imagine that that our exit and entrance on Sanibel values on the San cap road is not considered to be dangerous and yet coming from Captiva is a curve before you get to San cat or Sanibel valleys road. And it's been many times that I myself have pulled out thinking nobody's coming because you can't see him from cap table and the curb cut into San cap road that's within coastal creeks, sub new proposed subdivision is before the curve. So seems to me that big more safe and the one we have for sanbo by us. So that's my 10 cents for Thank you. Thank you

Roger Grogman 3:26:29

any additional public comment?

Gayle Dendinger 3:26:46

My name is Gil Denninger. I live at 5406 Osprey chord. Or if you guys ever had a chance to go to 5418, osprey court, that's where Doug lives, he's the guy that didn't make it today, you will see absolutely the most beautiful thing you've ever seen in the world, which is about 100 to 200 white birds that fly in every night. This time of year is absolutely incredible. So you probably doubles the value of this property as far as I'm concerned. So that's what we're all interested in is the rookery, my dad was a farmer. And he really loved the land. And he was really, really good with animals and good with kids. And so in our background, we have an awful lot of love for nature. We happen to have a little bit of property along the Platte River in Colorado, and we're working with the Butterfly Pavilion to go get the right kind of plants so that we can get the right kind of insects so that we can start recovering some of the land and trying to work with people like that. I own logistics company. And I'm telling you that because it's very litigious. I'm also the head of the Colorado Business Roundtable. And so within Colorado, our group consists of about 50 CEOs. And the National roundtable in Washington consists of

about 200, CEOs and fortune 500. Our model is to connect and collaborate. So what we try to do is we work with what we call ABC, G work with academia, work with business, work with community and work with government. And we've been able to do some incredible things. And I would like to thank the Mayor and the City Council to go put up with all the BS that we have brought forth so far. But they've really been absolutely incredible, as far as trying to take this problem working with the community. And we're hoping that over time, that we can get that kind of relationship after we get to know each other a little bit and get past the angst and the other kind of stuff. The other thing that we do is we are a media company. And we do an awful lot of marketing. And one of the things that we do is we have a database. And that database consists of about a million companies. And there happens to be about I think 10 to 20,000 people that we have the information for for Collier and Lee County. Okay, and I'm telling you this because what we heard from the developer was sort of a caveat emptor type thing. You know, let the buyer beware, you know, go in there and check your deed or whatever. Every one of us that bought our land, no one told us that we were on a contaminated Lake. Nobody. So you know, we find out over time that you know, we're sending out a bunch of poisoned stuff soon a bunch of stink. And it just seems like that's not fair. So you know if the developer doesn't want to go let everybody know what kind of a ship pit that there is there. I will make sure that they know. Thank you very much. I'm not trying to be an asshole. I just can't help it. It's my nature. Sure, but we want you guys to see all the good. I'm the only person here this guy shitty personality. Everybody else is really, really nice. Thank you guys for listening to us. I'm gonna leave right now so I don't contaminate the rest of the room

Roger Grogman 3:30:19

any additional public comment? Any comment, Senator at all, any comment on the right? Okay, there be no additional public comment at this time. We're going to have a very brief break. We're gonna adjourn for 10 minutes. And we'll get organized up here and then we'll be back in session in about 1010 minutes, so I've got a 1230 so

John D. Agnew 3:30:54

10 minute recess.

Sanibel-1-24-23-Sequence 01

Mon, Feb 13, 2023 4:24PM • 3:00:01

SUMMARY KEYWORDS

variance, commissioner, property, house, driveway, staff, resolution, site, proposed, condition, road, applicant, application, standards, plan, area, structure, planning commission, home, construction

SPEAKERS

John D. Agnew, Roger Grogman, Bob Young, Kim Ruiz, Lyman Welch, Eric Pfeifer, Florence Young, Laura DeBruce, Ty Symroski, Amy Nowacki, Joel Caouette, Matt DePaolis, Caleb Melchior, Craig Chandler, Kelly Scotty, Larry Schopp, Kenneth J Colter, Sarah Peck, Paula McMichael

Larry Schopp 00:00

and make sure that everybody understands and there's clarity to what we're doing moving forward. And that's really the essence of what we are looking at when we are going into our st our land development code. And making these cleanups, as we want to make it easily accessible for people that are doing what they need to be doing on their properties to understand how they can and what what is allowed and what isn't allowed. With that, that's really a summary of of what we had for planning commission items. I'll be heading to Tallahassee this afternoon, as we're all going to be working on are asked for, for our upcoming legislative session. Many of you have contributed to those asks, thank you very much. We we know what our priorities are, I can tell you that we've already had some good news. And that will be announced publicly with dollars that are coming and make sure that that will keep those dollars coming. Do you have any questions for me at this time? Thank you, I know you've got a heavy meeting ahead. Thank you again for your service.

Roger Grogman 01:08

Mr. Smith, thank you for your leadership during this trying times, we greatly greatly appreciate it. I now move to the consent agenda. And we have the adoption of the January 9 minutes not to December 13 minutes. So if I could have a motion regarding the January knights minutes from a commissioner

Kelly Scotty 01:34

Move to approve. Second,

Roger Grogman 01:39

could we have a motion and a second? All in favor, please indicate by saying aye. Aye. Any would not agree and please say no. The minutes are accepted as presented. Counselor,

John D. Agnew 01:57

Mr. Chair, didn't know if you wanted to take public comment on those I know the vote already occurred. But in case there were any public comments. I typically take public comments on on each action item after the motion and second.

Roger Grogman 02:15

Any comments on on on on the minutes as public, any public comments? Thank you, there being no comments. The minutes are accepted as presented. We now move to old business now this is a final approval of a resolution. And I would ask that would that be? Director McMichaels? Who will read that into the record?

Paula McMichael 02:46

Yes, I'll read it into the record and then I will turn the mic over to Attorney Agnew to give you just a brief recap on the item. So item 10 A is final approval of a resolution approving a development permit pursuant to land development code chapter 82 article four Division Two subdivision three long form section 82 Dash 421 subsection one in Section 82 Dash 422 scheduling a notice accompanied by a major subdivision plat filed pursuant to land development code section 114 Dash 106 preliminary plat to allow unified residential housing cluster housing development, including six parcels for single family residential use and associated improvements known as coastal Creek subdivision. The subject properties are located at strap tax parcel number 13 Dash 46 Dash 21 Dash T two dash 00002 Dots 2000 and 13 Dash 46 Dash 21 Dash T two dash 0000 2.4000 The subject application is submitted by Brian Smith and site Inc. on behalf of the property owner Buckingham two to five development Inc. Daniel W Daughdrill application number SPL T Dash 2022 Dash 00007 for an application DP Dash 2021 Dash 001803

Roger Grogman 04:15

Thank you, Councillor Agnew, do you have any anything to say prior to our enacting on this?

John D. Agnew 04:21

Yes, sir. Mr. Chair, just a few things I know for the the members who have been on the planning commission in the past, this is more of an old hat something that you've done before to the extent there was action already taken on an item at a preceding meeting. And as a part of your motion, you close the public hearing and direct staff to bring back a resolution and conformance with what was passed. The vote on the resolution is simply a vote as to whether or not the resolution as drafted is reflective of the action that was already taken. Because this body although can configured differently, already voted on it. So as a reminder, the minutes for instance that were just passed reflect the following Vice Chair Pfeiffer moved seconded by Commissioner stroy your hand to approve application number SPL t 2022 000074. An application DEP 2021 001803 with a 23 conditions listed in the staff report and mending because conditions two and three to be three years with an additional two year extension, amending condition 16 to be 100% native vegetation for common areas, closing the public hearing, directing staff to prepare a resolution in accordance with the motion and bringing the resolution back to a future meeting for adoption. Motion carried for two with commissioners Koechner and to Bruce opposed, Commissioner, some Roski excused. So again, the only thing different in this time from the many times that we've done it before is we have two new members who are present who were not part of the planning commission before. But that doesn't change. Florida law requires everyone that is seated and

present at a meeting to vote on an item. There are only two different reasons more for the benefit of our new members, although they received an orientation yesterday, really only two scenarios in which you have a board member on a public board. And in Florida, at least a local government board where you're allowed to not vote, and where you're required not to vote. One is if there is a voting conflict, that's the one that we're most familiar with, where there's some kind of a pecuniary interest in it to your special benefit or or loss, or those of some individuals who are close to you and close familiar relationships, your employer, things of that nature. The other one is specific to quasi judicial proceedings, which this is one once in which a body is charged with being fair and impartial and and making judgment on it. And in that sense, Florida Statutes provide that in a quasi judicial proceeding, a member may abstain from voting on such a matter if abstention is to assure a fair proceeding free from potential bias or prejudice. I mentioned that one in particular, it's important to know anyway, but one of our commissioners, Commissioner welts new members actually spoke at the at the last meeting and opposition to it is a member of is a resident of one of the neighboring communities and expressed a bias there and intends to abstain. Correct me if I'm wrong, or if I've misstated anything? No,

Lyman Welch 08:01

that's correct. I'll sit in the audience while you proceed.

John D. Agnew 08:05

Thank you. So for this particular item, we'll have the five of you who are still seated at the Dyess who will vote on this particular item. Any questions? Thank you. So Mr. Chair, if you want, I want to lead the discussion on the resolution. I

Ty Symroski 08:23

have a question are you going to do we have to worry about ex parte communications on it such an Administrative Approval of a resolution drafting of a resolution

John D. Agnew 08:36

if to the public hearing portion is is closed, so we won't be swearing any witnesses, although I will say you were not present at the last meeting. So I do think it would be appropriate to disclose whether or not you have any conflict, whether there was a site visit, and I

Ty Symroski 08:58

did have a site visit. I've have no conflict. And I have had ex parte communication, primarily via the emails that I think we've all received. I think most of them have. The staff has been the conduit. I don't want to list them here. But I do not find them, biasing me towards this action today, which is a review of a draft resolution.

John D. Agnew 09:24

Thank you. So just for clarity, the record the ex parte communications, that you're referencing, the ones that have been distributed by the city clerk that were received, I believe they were all from the HOAs are members of the HOAs.

Ty Symroski 09:41

Yes, there was one by Sarah Peck and then there was another one recently, her recent communication was specifically to the approval of this resolution. And there was another one that came in. I forget that drafty but would want to have extra conditions attached to the revenue resolution. I don't find them biasing me in either way.

John D. Agnew 10:08

Thank you for the disclosure. Any other questions? Yes, ma'am.

Laura DeBruce 10:11

Yes. So it's interesting, because sometimes we'll have a resolution on the day of the meeting. And then that's approved, and we don't vote to bring it back. Right? That's correct. We voted to bring this back. And if it was simply administrative, wouldn't we simply be voting that the prior commission did vote for the two, and we're ratifying that that's what happened at the last meeting. But if there's an opportunity to otherwise change what happened at that meeting, by bringing this resolution forward, then that's a different story.

Ty Symroski 10:49

If we My understanding is, if we felt that we wanted to add conditions, then one of those people that was in the affirmative vote would have to make a motion to reopen the public hearing. And then we would presumably, have to act to repeal the resolution. And then then it's

John D. Agnew 11:18

so I'd be glad to speak to that point. It's true that the public hearing is the public hearing is closed. And the charge really is Commissioner Bruce, I think exactly what you said it's voting on whether or not the resolution is reflective of the action already taken. That's it. To the extent the planning commission had a desire to open it back up for something other than really the ministerial charge of is the resolution reflective of it. It's Robert's Rules permits a motion for consideration reconsideration. But as commissioner, some Roski indicated, the only two, the only individuals who could make such a motion for reconsideration would be the ones who were in the majority on the last vote. So for instance, in this case, we had afforded to vote. At the last meeting, the four that were in favor, were the chair, the Vice Chair, Commissioner stroy, hand and Commissioner Nichols. So the latter two are not present. So in the current case, if there was an interest in doing so that was that motion would have to come from actually would have to come from Vice Chair Pfeiffer, as we know that the chair can't make a motion. So if that was something that they wanted to entertain, they could otherwise the normal course would simply be to proceed with discussion and motion on the resolution.

Laura DeBruce 12:55

So I would strongly urge Commissioner Pfeiffer to reconsider opening it up to add at least two additional conditions. I think that both the HOA and the long discussion that we had, that it wasn't unreasonable to ask for the site be tested, that the results be published, and that the people who are buying the property in the future be notified. It doesn't have to be a, you know, a big notice in a newspaper. But I think it could be something as simple as in the HOA documents, an indication that because this site has been built on a former wastewater package plant, that we have specific restrictions that are required by the city of Sanibel that include, you know, 100%, Native in the common

areas, etc. It seems to me that that would be our responsibility, as a minimum, to have those two conditions added to this resolution, not to stop the project, but to at least require testing. And when you consider the fact that the Florida Department of the Environment, there are usually less restrictive than we are, in this case, this is their recommendation, and I think that we should follow it.

Eric Pfeifer 14:24

Commissioner diverse, I can tell you, as a realtor with a license, if I know of anything that could materially affect the value of the property, I have to disclose it. And if a realtor is selling one of those lots or houses, then it would be disclosed. So I don't know that it has to be put back into this application. As far as testing. I have a problem with reopening this whole hearing. We discussed this for hours and hours two weeks ago. And this isn't something that just happened. The plant was decommissioned in 2008 and the city has been Working with the homeowners along Osprey and herons landing on this project, so it's it's not something that I'm interested in doing right now.

Roger Grogman 15:13

With that, with that conclusion, we would move then on to validation of the accuracy of the resolution and approve the resolution or disprove it based on our assessment of desert state what we stated previously, at the at our last meeting.

John D. Agnew 15:34

Just that, again, I'll read the title of the resolution city of St. Louis.

Eric Pfeifer 15:38

Second, I just want to amend my last comment. I'm certainly not opposed to testing that can all happen concurrently during the development and should have been happening over the last 15 years. And there has been some testing

Laura DeBruce 15:50

not said Not really, I think that the only testing was done by sccf and that was in 2018, if I'm correct, and that was on the flow to the lake. I don't think that that site itself has actually been tested anytime recently, and very deeply and for all the minerals that were recommended by the Florida Department of Environment

Eric Pfeifer 16:22

I have no interest in making a motion to reopen this area.

John D. Agnew 16:30

The then reading into the record the title of the resolution city of Sanibel Planning Commission resolution 23 Dash 001 a resolution of the planning commission of the city of Sanibel approving the development permit application number DP 2021 001803. And minor subdivision applicant SPL T two one and 22 Dash 000074 filed pursuant sections 82 Dash 421 sub 882 Dash 422 and 114 Dash 106 of the land development code for preliminary plat to allow unified residential housing cluster housing development including six parcels for single family residential use and associated improvements known as coastal Creek subdivision on property owned by Buckingham 225 development Inc, Daniel W.

Dotterel. And located at 5301 253 25, Sanibel Captiva road more fully described herein and providing an effective date.

Laura DeBruce 17:37

Thank you, Attorney Agnew. I wonder if because I feel very strongly about this matter. And I think that former commissioner Kirchner did as well, that would it be possible to at least indicate on this resolution that it was passed by a vote of four to two?

John D. Agnew 17:59

Yes, ma'am.

Laura DeBruce 18:00

Thank you, because otherwise I won't be able to vote for it. Even in it's even as an administrative matter. I feel that strongly about this issue.

Ty Symroski 18:09

I agree with Commissioner DeBRUCE, that the testing is a very reasonable thing to require. Yeah, and the next step is going to be a lot of work on the site. And they're going to have to come back for a final plat approval. And I wonder if that could be a point to reinsert on the final plat. The disclosure of the potential contamination.

John D. Agnew 18:48

Mr. Chair, if I may, just so that we're clear on the record that kind of the proposed amendment by Commissioner to Bruce where I believe it would be most appropriate to insert the final, whereas recital, to state whereas after providing the applicant staff and the public an opportunity to present testimony and evidence and having reviewed the record, the planning commission finds by a four to two vote, that the criteria for granting the applications have been met and the application should therefore be approved. Is that an appropriate amendment from your perspective? Thank you.

Ty Symroski 19:27

Could there be aware as there was a long discussion regarding the potential contamination due to a former sewage treatment plant on the property?

John D. Agnew 19:39

Say that one more time Commissioner

Ty Symroski 19:43

a whereas that there was extensive discussion about this property's potential contamination due to a former sewage treatment plant on the property.

Laura DeBruce 20:02

I agree that would be a good addition.

Ty Symroski 20:06

That then would allow just a little bit more informed information to be given to if there could be other realtors that might not fully realize some of these things affecting value. This is just a simple way to not reopen the whole meeting, but to in Hance the disclosure of the former use of this property.

John D. Agnew 20:34

So Mr. Chair, I mean, from my perspective, that was certainly discussion that was had and could be a proper motion to amend if, but again, what we would be looking for is a motion to approve with the one or two stated amendments or neither. So the procedure is someone needs to make a motion. But that would be

Ty Symroski 21:00

I would like to move approval of the resolution as drafted with the addition of the reflection as to the actual voting and including the whereas statement that I articulated earlier.

Laura DeBruce 21:21

I would second that.

Roger Grogman 21:24

Any further discussion on that? addition to the resolution? Will there be none? I would ask Scotty Lin to call.

John D. Agnew 21:34

Mr. Chair, if you'll allow public comment before the vote, please.

Roger Grogman 21:39

Okay, just time we'll take public comment on on the addition that has been requested or in a motion has been made. And seconded. So anyone to my left? Anyone in the center section?

Sarah Peck 21:59

Good morning. I'm Sarah pack on the president of the herons landing HOA. I'm very happy to hear this proposal to make this amendment to the resolution. I think it's important to make these disclosures. And I strongly encourage the commissioners to approve that. That that resolution that proposal. Thank you.

Roger Grogman 22:23

Thank you any additional public comment? Any comment to my right? Yes, sir. Please state your name. Matt, didn't recognize you for a minute.

Matt DePaolis 22:42

Matt, the policy environmental policy director for sccf. I'd like to first off just congratulate and welcome our new commissioners and looking forward to working with you and our partnership. I also would like to support this motion going forward. I think the disclosure component of it is it's there. And I think people are pretty aware of what's going on. But I think also going forward, it is important to consider the testing of this area. And maybe that comes up in a plat. But it is also important to think about what we what we're trying to accomplish here throughout this discussion that we're doing and what we've been

doing. And what we're trying to prevent is more pollution. And we don't want any more pollution on the area. And the way that we're gonna get more pollution is by applying more nutrients and more water, which allows the water to percolate through into the groundwater and stir up the nitrogen, the phosphorus, any potential heavy metals that are well, they're not dangerous, they are elevated. So I think as we move into the next stages of this project, I think the the recommendations that have been brought forth by the staff and by the homeowners association had been good. And we also should consider whether or not we're regulating just really educating people to understand that the more irrigation we have on properties like this, that's going to affect the groundwater, the more we're spraying chemicals that might contain heavy metals, that's only going to add to more heavy metals that may or may not be there. So whether or not it comes in the form of regulation that's being put specifically on this development, I think we need to be thinking holistically about the problems we're trying to solve here. It's not just one tree or one bush, it's the overall solution. And that applies islandwide. So especially in the face of the rebuild that we're undergoing post hurricane Ian, thinking holistically about these larger issues is something that we need to be doing as a community. And I think this is a really good first step to doing that. So I appreciate all the work that's being done here and the great conversation that's leading to these solutions. Thank you.

Roger Grogman 24:48

Thank you, Matt. We've heard from the public any additional discussion from the commissioners?

Ty Symroski 24:55

I just would like to disclose since I wasn't at the meeting. I did listen Too much of the tape that was provided and was able to. I didn't listen to all four hours, but I listened to a lot of it. And I listened to the section particularly regarding the making of the motion. And I reviewed the minutes and I do feel that I am able to vote based on that history, that experience. And I also learned that it's Scotty Lin, it's really important to talk into the microphone. Yes, it is. So thank you.

Roger Grogman 25:27

Thank you, Commissioner. With all the discussions closed on that, Scotty Linda please call the roll and pull the commissioners.

Kelly Scotty 25:42

Vice Chair Pfeiffer? Yes. Chair Crossman? Yes. Commissioner DeBRUCE. Yes. missioner. murasky. Yes, Commissioner. Well, sorry. And that's why you moved from the Dyess?

Ty Symroski 25:58

We didn't get that on the microphone. Mr. Coulter? Yes. Yes.

Roger Grogman 26:05

Great. Thank you. Thank you. We now move on to our public hearing section. Welcome back, Commissioner. And director McMichael if you could please read into the record our hearing on the land development code variances.

Paula McMichael 26:27

So item 11. A is your first public hearing item is consideration of variances filed pursuant to land development code chapter 82 Article Three Division Three subdivision two variances, section 82 Dash 138 scheduling a notice in Section 82 Dash 140 standards generally, with the development permit application filed pursuant to land development code chapter 82 article four Division Two subdivision three long form section 82 Dash 421 subsections three and eight in Section 82 Dash 422 scheduling a notice to allow variances from land development code chapter 126 article seven division nine mangrove forest zone section 126 Dash 434 required conditions Subsection B height angle of light sea front yard setback G coverage Perkins impermeable and H vegetation removal and developed area for the construction of a single family residence with 4760 square feet of living area, multiple access driveway and associated improvements. The subject property is located at 1898 Woodring road tax parcel number 13 Dash 46 Dash 22 Dash T two dash 0010 0.0050 The application is submitted by AMI no wacky AMI no wacky architect LLC on behalf of the property owner John D. White trust application number var Dash 2022 Dash 000075 and B LDR Dash 2022 Dash 005213. Thank you. Planning supervisor Craig Chandler will give you the staff report.

Roger Grogman 28:11

City Clerk Kelly, could you please read pull the commissioners on site visit ex parte in any conflicts of interest.

Kelly Scotty 28:25

I'm sorry, Chair grobman

Roger Grogman 28:27

site visit. I do have ex parte and I've got that documented it was many conversations occurring over a period of approximately two years. Given the duration of this activity or this shearing being are occurring. Secondly, I do have a conflict of interest because during the course of those conversations, I've developed, of course, a friendship with John White, who I felt was a very philanthropic as well as active citizen of Sanibel and tried to encourage him to continue in this long going effort to seek a residence on Sanibel that was more aligned with what he felt his needs were so given the nature of the ex parte and the conflict. I will abstain from voting and discussion and simply continue my duties as a chairman unless you feel that that should be passed to

John D. Agnew 29:33

Mr. Chair just for clarification of the record don't have a Do you have a financial interest in the outcome of of this

Roger Grogman 29:41

person have no financial interest or or any?

John D. Agnew 29:44

So what we we have is not a voting conflict from that perspective. you're expressing that you don't feel you can be impartial to it. And so there is a bias and you're abstaining for that reason. So that would I understand,

Roger Grogman 29:58

I would type typify a counselor. More as a bias given the amount of effort that I put into trying to achieve this hearing, reflective of the concerns because it's a difficult site. And frankly, there's been much activity, I mean, department is very busy. And I've, you know, made it a point to see what's going on with his site, how's it going as everything's, you know, if he has an issue, I've tried to seek reconciliation with Craig on the issues so that he would understand better our, our way of doing things. To that end, I felt I had a little bias because I was pushing on the side of throughput,

John D. Agnew 30:41

I understand been somewhat of an advocacy role. With that in mind, my suggestion would be turn over the gavel to the vice chair to run this portion of the meeting on this hearing and just abstain from any conversation about it if you want to step from the Dyess you may if you want to sit there you may I would just suggest that if you have a bias that you not participate in

Roger Grogman 31:08

that conversation would have been perceived as that and you know, even in my mind, you know, given the positive nature of output, you know, I felt it appropriate to recuse myself

John D. Agnew 31:20

understood and thank you very much for disclosing cede the gavel to the vice chair and if you want to remove yourself from the from the day as you may

Eric Pfeifer 31:32

okay clerk Kelly please continue in polling the commissioners site visit no ex parte no conflict commissioner to

Laura DeBruce 31:42

site visit no ex parte no conflict

Kelly Scotty 31:47

Commissioner Coulter

Kenneth J Colter 31:48

no visit no expert a I got nothing

John D. Agnew 31:55

no conflict yeah thank you Mr. Carson Roski

Ty Symroski 32:03

site visit no ex parte no conflict

Kelly Scotty 32:07

Mr. Welsh

Lyman Welch 32:08

site visit no ex parte no conflict

Eric Pfeifer 32:14

Thank you. Now clerk Kelly Could you please swear in the staff applicant and any member of the public wishing to make testimony in this hearing if you're in the audience please come up to the microphone

Kelly Scotty 32:35

first of all those giving testimony please raise your right hand do you swear that your testimony and evidence is the whole truth and nothing about the truth please answer into the microphone with your name and firming that you do so swear

Craig Chandler 32:51

Chris Chandler planning supervisor I do so swear Larry sharp Sanibel resident president of Cody I do so swear

Joel Caouette 33:02

joke Howard Natural Resources Department city of Sanibel I do so swear.

Eric Pfeifer 33:07

Sir, anyone else wishing to give testimony?

Ty Symroski 33:10

Is there any buddy here like the applicant?

Amy Nowacki 33:24

Amy Nowacki, architect or landscape architect, and you do the microphones? Yes, I do. I do swear.

Caleb Melchior 33:33

Thank you. I'm sorry, Caleb Melchior landscape architect with coastal Vista design.

Kelly Scotty 33:38

Can you spell your last name please?

Caleb Melchior 33:40

En el chi or?

Laura DeBruce 33:43

Thank you.

Eric Pfeifer 33:45

Thank you. Now I'll turn it over to planner Chandler to provide an overview of the staff report and presentation.

Craig Chandler 33:54

Thank you Vice Chair, correct Chandler planning supervisor again for the record. First of all honor the staff report dated January 24 2023. Into the record of city Exhibit C one. Several issues for planning commission to consider with this application. Number one does a proposed development comply with the various standards provided in land development code section 82 Dash 140. And number two is the proposed single family residence consistent with the Sanibel plan. And with land development code section 86 Dash 43 appearance of structures size and mass of structures. And number three if Planning Commission approves the application, what additional conditions should be required. On page two of the staff report is a list of attachments to supplement the report and I'll start my presentation with a background summary of the subject property. So the subject property located at 998 Woodring road is comprised of three separate lots. It's located within the SP Woodring established neighborhood at subdivisions plotted prior to City's incorporation. There's an existing single family residence detached storage, garage building. There's also a boat dock and boat slip, and an onsite septic system. All of these improvements by the way were constructed prior to the city's incorporation. The property's residential density is three dwelling units per section 86 Dash 92 existing parcels, one for each of the three separate lots. The property is 1.52 acres in size. It's located to the south of St. Carlos Bay. It's to the north of lady finger finger Lake, and the mangrove forests that exists surrounding that net area to the east and west of the subject property or single family homes. The zoning of this property, the predominant zone is a mangrove forest zone, which is the purpose of these variance requests just under 26,000 square feet is located in the mangrove forest zone 24,636 square feet of the property is located in the D one lowland wetland zone, and 15,697 square feet is located in the Bay Beach zone. Site elevations on the property exists between 1.2 and 2.4 feet and AIVD and the pre development grade is approximately two feet and add hurricane effects the property did experience some minor land loss exactly 285 square feet due to the effects of coastal erosion from the storm. There's some permanent history on this vacant property. So in 2018, a variance and development permit were filed and approved. But those applications were never implemented. Therefore they expired. There's also variance history in this SV Woodring established neighborhood, four separate properties have received multiple variances in order to allow their development of the proposal summary. So this is a proposed single family home with associated improvements swimming pool, stormwater system and landscape plan a little bit more about the single family home so in order to provide a single family home of relative size to the rest of the neighborhood, it would the applicant believes require four separate variances so developed area is one variance coverage is another the front setback is the third, an angle of light height variance would be the fourth. The applicant is also notably providing a two access driveways, a horseshoe driveway, which we'll get into in the analysis a little later on. A little bit more about the landscape plan. landscape plan was provided for several purposes provides landscaping for the purpose of screening and softening the appearance of the principal structure for at 643 compliance. Landscaping is also proposed to improve stormwater conditions and to enhance Preservation Areas. A little bit more about the stormwater management plan proposed. There are proposed dry retention areas and placement of Phil is limited to a one foot high sided berm which avoids alterations within the B Bay Beach zone, which is a preservation district. The application is also proposing permeable pavers for the driveway that would assist in stormwater retention and management. For the analysis again, this is a review of the proposal relative to required conditions of the sea mangrove forests zone found in Section 126 Dash 434. That analysis is summarized by table one, which is on page five of 10. The staff report also on page five of 10 is a table summarizing compliance with the seven variant standards of 82

section 82 Dash 14 relative to compliance with height and front setback variance, which are both related encroachment within the front setback inherently means that there will be a penetration of the primary angle of light is that plane is established through a measurement from that front setback line. And table two or excuse me table three rather on on page six of 10 summarizes staffs findings, variances relative to coverage, maximum impermeable coverage and maximum vegetation removal and developed area and I'll get into each one of these tables so in regard to compliance review for required conditions of the mangrove forest zone, generally staff found compliance to all all standards except for the four of course that are applied for a variance in terms of the variances for height and front front yard setback summarized by table two. Staff found that the the applicant avoided encroachment into the baby zone, which in order to do so required an encroachment into the front setback precisely. The front setback is proposed at 37 feet. The required setback is 50 feet from the centerline of wintering road. And instead found that the linear depth between the front setback and the baby zone ranges from a minimum of 20 feet to a maximum of 50 feet, which staff found verified that there is in fact a hardship due to the site constraints on this property. Staff found that Woodring Road in general presents a challenging environment for development as evidenced by the multiple variances approved and filed on on other properties in the established neighborhood. Step found that the variance request is not self imposed. Step also found that structures are proposed where the property has the greatest depth between Woodring road and the Bay Beach zone. So there were no alternative or alternate site designs that would avoid or further minimize the variance request. As far as the the use, it's a single family use, it's proposed and would not be used for any other purpose on lawful purpose such as resort housing. And, once again, the existing development pattern of the SB Woodring established neighborhood does consist of several structures that lawfully encroach within setbacks due to the unusual nature of Woodring road. So, staff found consistency with the request relative to to other developments similarly situated. And, just to reiterate, again, and this is some of these standards do overlap in terms of staff analysis, but the applicant staff found did reduce the design to eliminate the need for a variance from the baby zone setback, and staff did not find any apparent opportunities to eliminate an encroachment within the front setback. Now in regard to the next two variances, which staff provide an analysis for together because they are related in terms of site area calculations, impermeable coverage and vegetation removal and developed area, the mangrove forest zone limitations on developed area is 1329 square feet maximum coverage that would apply to this property is 663 square feet. That staff found verified that there is a hardship in terms of a strict application of the predominant zone standards to this property relative to the house sizes in the neighborhood. Staff found that few developed or developable parcels exist exist predominantly in the sea mangrove forests own those that do have sought variance relief. Therefore, staff also found that the variance request is not self imposed. Once again, you know single family use is is proposed which is consistent with permanent uses for for that zone. In terms of compatibility with site compatibility with the rest of the neighborhood staff refers to the Architectural Review letter which is provided in the staff report as attachment F. And in terms of minimizing the variance request for site area limitations, such as coverage undeveloped area. staff spent a great deal of time working with the applicant during the pre application process. And what the applicant proceeded to do with with this application was develop a site plan based on not the predominant zoning standards but the secondary zone, which is D one lowland wetlands. lowland wetland zone permits 20% developed during a maximum and a maximum of 15% impermeable coverage. And until the revised survey after Hurricane Ian, the application was consistent with those standards now effects due to Hurricane II and again I mentioned there was a 280

85 square foot reduction in lot size. It did have a minor effect on compliance using the D one standards is as a guide. So staff notes that the proposed developed area is now 38 square feet in excess of the D one zone maximum as a result of that land loss. Regarding the applicant's request for multiple access drives, at City Council resolution 98 Dash 100 provides construction standards for driveways and parking areas on on page 10 of the document is provided as attachment H. Because the standards are not codified in the land development code, the request to deviate the standards is not applicable applicable for a fifth variance what would have been a fifth variance in this case. So here's precisely what resolution 98 Dash 100 states says parcels of budding more than one street may have more than one access driveway. If more than one driveway is needed for the safety of the development ie hurricane evacuation access by emergency services etc. Or if necessary to reduce potential traffic congestion in the multiple access driveways will not create a traffic hazard as determined by the city manager or planning commission. So this is a request although not a variance request, it is a request that would go in front of planning commission for for authorization. Steps five findings to that end is that the property is not about more than one street staff did not find that that a second access driveway is necessary to reduce reduce traffic congestion. And staff finds that multiple access driveway would would not create a hazard for the three developed properties west of the subject property. So Furthermore, elimination in the second driveway cut would also resolve the minor inconsistency with the developed area limitations, if again, using the D one lowland wetland zone standards as a guide for the variance request. And lastly, Natural Resources Department provided the landscape or excuse me, reviewed the landscape plan provided as Attachment D and provided a memorandum to that end with their findings. And I'll turn this portion of the summary over to Joel cal-vet who conducted that review and drafted the memorandum.

Joel Caouette 48:38

Joel COVID For the record natural resource department. In reviewing the reviewing the site plan and everything the Natural Resource Department is in supportive of all four variants Requests section for the variance to 26 434 the coverage of natural resources we support the request, it appears that the applicant did took all the steps necessary all the steps to remove and reduce any impacts or development into the Bay Beach zone. And we kind of mirrored it will for Section 126 434 H the developed area we also support this request for the same for the same reason, with the ecological sensitivity of the Bay Beach zone, all development was moved removed out of there for the front yard setback in the height is kind of all in the same in the same vein with the the removal of any encroachment of development in the Bay Beach zone and no drainage in the beach Bay Beach zone. Natural resources departments supports all these all for these variants requests and with certain conditions which we can go into later or now or whenever but more or less of your support these variance requests.

Eric Pfeifer 49:59

Thank you Yes, sir, any other staff member?

Craig Chandler 50:03

That will be all for now, I'll just move on to a real brief summary of the public comment. Okay. So as of January, January 11 2023, there were three written public comments provided to staff following the legal advertisement. And a copy of those public comments is also provided in the report as attachment

i. And with that, I'll move on to recommendations and conditions. So just for the benefit of the new members, I'm going to reiterate the three issues that I've summarized at the beginning of this presentation. So number one, does the proposed development comply with the various standards provided in land development code section 82 Dash 140. Steph did find that in all four variants request, that the applicant demonstrated compliance with the seven variant standards. A number two is a proposed single family residence consistent with the standards of 8643 the appearance of structure size and massive structures. Staff also found that the applicant demonstrated conformance with what that section. Staff found in regard to the proposed driveway design, however, that there was not sufficient demonstration by the applicant for the necessity of a multiple access driveway as it relates to safety. And lastly, in terms of additional conditions that planning commission may consider Staff recommends Planning Commission consideration of conditions related to the driveway design, vegetation and the protection of wildlife during construction. And I'll provide a brief summary of the recommended conditions. There are 14. So starting with condition one, I'll just go ahead and read it verbatim. Staff recommends the applicant shall provide a revised site and stormwater management plan for approval that redesigns the driveway to effectively eliminate multiple points of access at Wittering road prior to commencement of the development activity. And again, that that relates to staffs findings relative to resolution 98, Dash 100. Conditions two 910 1112 13, and 14. All relate directly to standards that exist within the land development code today are considered standard but of course, adapted in the context of this specific application. Conditions four or 567, and eight are all related to vegetation and wildlife as described in the Natural Resources memorandum, and alternative to Joel to provide a little more detail on these but one, one of the conditions condition five is relative to a requirement for 100% native salt tolerant vegetation within specifically the Bay Beach zone, and D one lowland wetland ecozone due to low lying nature of the lot the frequency of sunny day flooding due to king tides, which has been observed on this property and others on Woodring road. Step does note as well, though, that through the pre application process, the landscape plan that is proposed by the applicant does conform with this condition currently. And as it relates to wildlife, specifically, condition eight. The subject property is unnatural Osprey habitat development activities shall comply with the land development code section 126 Dash 754 Wildlife site alterations to minimize any interference with the natural use of interior wetlands for feeding, foraging, resting, nesting and breeding by indigenous and migratory birds, shellfish fishes and other wildlife. So while that is a condition of the land development code, I wanted to highlight that specifically because this is Osprey habitat document and osprey habitat as are all the properties on Woodring road. So with that, I'll turn it over to Planning Commission for questions and I'll respond.

Eric Pfeifer 54:43

Thank you before we turn it over to the commissioners for questions. I would like to see if the applicant or representatives of the applicant would like to add anything at this point and then we'll ask questions of both staff and the applicant.

Amy Nowacki 55:00

Oh, wait and be happy to respond to any comments further clarifications needed on the design,

Eric Pfeifer 55:05

okay. Then we will go to Commissioner questions for staff and the applicant don't want to put the new guy on the spot immediately. So we'll start with Ty and then come back to the newer members at the end.

Ty Symroski 55:23

Thank you. First of all, it's it's a big house. I'd probably spend two hours a day looking for my glasses if I lived in this place. If I had it this morning, and never would have made it in time to this because I had to look for 30 minutes from my glasses. First question to staff, is you mentioned the architectural design standards that apply to bulk and massive houses. Now, that's not they're not requesting a variance to that today, is that correct?

Craig Chandler 56:00

That is correct. But the way that the manner in which this application was advertised did include a long form development application pursuant to land development code section 86 Dash 43. So Steph wanted to make sure that this was a part of the analysis. In terms of architectural compatibility, if staff feels it's warranted, to defer to Planning Commission for that approval. And certainly, in this case, we did want that to be a part of the conversation, because

Ty Symroski 56:33

the reason why I'm bringing that up is when we do a public notice that says, we are considering a, b, c and d. That's what we have to consider. We can't bring up like a variance to something else that never was advertised or anything like that. And grant that we really have to the notice kind of narrows the scope of what we look at. And when I saw the variance request, I was wondering whether we are restricted to reviewing those variances. But it sounds as though the way the notice is made, we are able and I was prepared to look at the variance requests. I was prepared myself, but I wanted to make sure that we had authority to get into the architectural design standards.

Eric Pfeifer 57:33

There are two applications on the table once multiple variance requests, and then the other is the development permit. So we can discuss both.

Ty Symroski 57:42

Okay. I guess I have a series of glad we got that. So this is essentially two houses. I mean, when I look at the floor plan, it's got a three bedrooms section with a large family room. And then it's got the part where they live primarily, I believe, and I think that three bedrooms is probably for house guests, that sort of thing. So it's we're kind of looking at two houses here, but it's combined into a single unit. From an architectural design standard compatibility with the neighborhood. Maybe it would be better if it was two houses. That's that common. There is saltwater flooding. I have seen it. I've been by it on the water a million times because working at tarpon Bay explorers, I give boat cruises right by these houses and I'd seen it this property actually flooded with saltwater. And so I really hope that the landscaping will survive that's saltwater inundation the king tide as staff has called it because I find the landscaping very attractive and a one of the things to lead me to approve it. So I want to make sure it survives I am one of the things the staff in regards to the two driveways. I don't have a lot of opposition and they would ring road is 15 feet wide by Platt and, in reality, it's maybe about 16 feet wide. And staff quotes the

narrowness of the bed of Woodring road as being one of the supporting reasons for their A recommendation of approval. That road is really narrow. Now I know it is illegal for landscape trucks with their trailers to park alongside the road. They do it all the time. And UPS, FedEx all these things parked there. So I would like to propose that if they get the two driveways that they require, it'd be a condition or requirement that the service vehicles have to use the driveway, so they aren't blocking the road. Because it's really easy. And those, we've all seen it. And I know, we repeat the regulations frequently in the resolution, this is one regulation, I think, would be very important to reiterate, because of the impact that it would have on the traffic congestion, which is one of the criteria to consider when looking at driveways. It's a really nice looking house, I think it's very pretty, it's very big. I'm not going to judge on how long it's going to take me to find my glasses if I lived on it, I don't know. But I do find that a big house like this can have a lot of construction activity, that can be a real kind of nuisance to the people living next to it. And I find that maybe it would be good. If we require that the landscaping in that front, the very front landscaping right along the road, be installed first and shielded from construction activity. And then it'll be have developed that chance to mature and be there when the house is completed. And I think the same would apply, I've dropped the landscape plan. Think the same would apply for the landscaping that is in the Bay Beach zone. And I think it would be good to have that also the Bay Beach be fenced off effectively. So that inadvertent intrusion, by construction activity doesn't damage this conservation area. They might have there's some places where the building gets very close to the baby zone. And they might have to make an adjustment say on the left side of the building. So I'm would like to propose that if we go forward with a recommendation of approval, as the staff is recommending that we consider that some of this landscaping be installed First, to minimize the impacts on neighbors and to enhance the you know, part of the reason that Wyatt Staff recommends approval is because of the beautiful landscaping. Well, I want to make sure the landscaping is there and healthy and mature when the house is there, not three years afterwards. So thank you very much.

Eric Pfeifer 1:03:43

Thank you, Commissioner murasky. Commissioner Welch, are you ready?

Lyman Welch 1:03:48

Yes. Thank you for the staff analysis. I've several questions. The first one is you. You consulted at GE architecture LLC, to conduct a review of the applications for the LDC 8643 determination. So, I'd like to know what was the basis for their conclusion? I'm wondering did they examine surrounding properties, which ones? That sort of thing? Sure.

Craig Chandler 1:04:25

In terms of the information that staff provided ADG we provided them with a copy of the relevant section of code. We also provided them with a copy of the established neighborhoods map which includes the SB Woodring established neighborhood. Now, while individual properties are not specifically cited in their letter, staff's understanding is that they did review the existing conditions for this for that established neighborhood which is Woodring road. It's no greater than that, in turn reams of drawing their conclusions.

Lyman Welch 1:05:03

Okay. None of that was specified in the letter, I think it would be helpful in the future if we're getting Architectural Review Letters that they state the basis what they reviewed what they considered, it's hard to give a lot of weight to this one opinion without knowing the basis or what they reviewed. I'm have a concern with the size of the structure and whether it fits in with the neighborhood, just looking around a lot of the buildings around are a lot smaller in size than than what's being proposed here. So that's a real concern for me. I have some other questions as well. One of the neighbors talks about the Western placement of the home encroaching on the mangrove buffer, and claims that the survey data on Route locations is old. And so I'm wondering, is that accurate that the survey data is is out of date? In general, I'm wondering what kind of damage is going to be done to the mangroves from building the structure?

Craig Chandler 1:06:07

In terms of the survey date, this survey was provided prior to the application, I think was originally submitted in 2020. But but then was again revised after Hurricane Ian. So I pulled up the survey here, let me find the specific date. Applicant many to respond to that question. I don't see a revision note in the in the survey that I pulled up. I do have a date. For the original survey though it 616 2022. And in terms of mangrove impacts, I'll defer to natural resources on on that portion of the question.

Joel Caouette 1:07:00

Yeah, so Joel COVID Natural Resources for the record. So to your question about the impacts to the mangroves, so they're the mangrove, the root line does extend into the existing there's an existing structure there that's elevated, and there's some black, black mangrove metaphors, the root structures that could pop up out of the ground that have, you know, grown underneath the building over time. But the plan that they submitted, they do have, they do specify that there's gonna be impacts to 24 red mangroves, generally they have vegetative impacts, like for particular trees, there's a question about gumbo, Limbo, you know, a Gumbo Limbo that wasn't on the plan, which I agree with, but when when the development permit is applied for the vegetation impacts, you know, our address at that point. And with the the, the development footprint will be staked, and we'll be able to have a, you know, concise idea of what exactly is that, you know, particular trees and things that are impacted, and those will be addressed? Like actually their condition, our proposed condition number three with the vegetation permit and the application for the development permit, those impacts will be addressed, you know, at that at that time, or will be mitigated and addressed at that time.

Craig Chandler 1:08:14

And one last thing, Commissioner wells? Well, I did, I did actually find on the survey, the revision note here. The survey was updated on 1214 2022.

Lyman Welch 1:08:28

So if I understand you're saying that the impacts to the mangrove, I'm a little unclear whether we're taking out 24 mangroves, and we're approving that if we approve what the staff is recommending, or if it's coming up for a development permit later, and those can be protected in some way?

Joel Caouette 1:08:49

Well, they on the proposed residence doesn't wait when looking at page 34 of the of the packet, where it shows the overlay of the existing buildings, and the proposed residence actually shows that it's not going further west than the existing building right there. So and I think that there were some packs, that those 24 may read mangroves might be impacted, you know, as a result of the development. And, again, when when a property is staked, that's when we go out and verify actual impacts to the to the vegetation. could, you know, this plan was submitted without you know, there was no staking so the exact footprint you know, it's in terms of vegetation plan, that that'll be, you know, addressed with through the development after the after demolition, and then the development plan and actually what the what the demolition when the demolition permit is issued for this property. The vegetation impacts for the demolition will be addressed at that time and vegetation will be transplanted as a result of We have a demolition for the crews to work around the building.

Lyman Welch 1:10:05

Okay, and if I understand you correctly, the Gumbo Limbo, there is also a there's a Gumbo Limbo by this garage. And there are others that aren't really shown on the plans are those going to be left in place and protected in some way or they've been trapped?

Joel Caouette 1:10:20

I mean, if they're outside started, sir, if they're if they're outside of the development footprint, then there's no need for them to be impacted, they'll be left in place if when, when the development footprint is staked, and when we do our, our inspections for the the applicable permits, they will have to be you know, if they are impacted, then they're going to have to be transplanted somewhere on the site so or mitigated for if if the tree has to be on if the tree doesn't survive Mitiga transplant

Lyman Welch 1:10:49

Okay. Another question I had and maybe the applicant can add to this I didn't see any vegetation planned and in the beach area to protect against erosion and we've seen already with in some coastal erosion here at the property. I'm wondering is is vegetation on the beach to prevent erosion good idea or or not, for whatever reason, what's the recommendation there?

Caleb Melchior 1:11:28

Coastal design Craig, which agent is Hackett? Craig, which page of the packet has the planting plan on it? I know it's I'll be too

Craig Chandler 1:11:35

sure. No problem, page 29.

Caleb Melchior 1:11:39

So that's the proposed LP two planting sheet and we've proposed multiple levels to create structure of native beachside plantings including Sabal palms, US solar saw palmettos and native grasses. So those would help create a stabilization as well as helping screen the first floor of the home from the water.

Lyman Welch 1:12:00

Right, and how would they help with erosion? Is that something that the plantings are designed to do?

Caleb Melchior 1:12:05

Yes, they're all native plant species that you'll see in those ecological zones throughout the dunes and their root structures help hold the sand and soil in place. So they're designed to create and capture sand along there.

Lyman Welch 1:12:19

Okay, thanks. You're welcome. Another question I had relates to the driveway. And reading the, the staff report, it sounded to me, like staff was saying the commission doesn't have authority to approve a variance to allow a to access driveway. So I'm wondering is that that? Is that the case? Is that a correct statement of law that because of the City Council resolution, we don't have the authority to approve a variance to allow the driveway whatsoever, so they need to redesign that?

Craig Chandler 1:12:56

Yeah, I'll make sure I clarify the record on that. So planning commission does have the authority to grant an additional access driveway, but it's not subject to compliance with the with a variance application procedure in terms of filing advertisement, and more specifically the variant standard seven variant standard. So the applicant does not need to demonstrate conformance to the seven variant standards. The first for example is demonstrating a hardship exists due to the lot size or configuration. There are there is criteria provided in resolution 98 Dash 100 for staff and Planning Commission to consider as to whether or not a multiple access driveway would be granted. And it staffs analysis that the application did not meet that standard. But planning commission does have the authority to grant a second access driveway if if chosen.

Lyman Welch 1:14:06

Okay. One last question. I have I guess for the applicant. I mentioned earlier, one of the concerns I have with this is the sheer mass of the structure compared to the neighborhood along Woodring and the other houses there. And I'm just wondering if the applicant has anything to say as to how this structure will will fit in terms of mass and size? With everything in the neighborhood.

Amy Nowacki 1:14:39

Yes, Amy Nowacki architect? Is it possible to get up on the screen or you can look on your own that it's the aerial site view the first page of the architectural drawings, and it shows the proposed home overlaid on the existing structures on the property.

Craig Chandler 1:14:55

This would be page 34 or any staff report

Laura DeBruce 1:14:59

that would be held Well, if we could put it on the screen in front of ya,

Amy Nowacki 1:15:02

because what I want to point to or their relationship, at least of the neighboring properties that you'll see in that image. And just to touch on a few things about neighbors, a lot of considerations on the best way to proceed on a house. Yes, it is. Pushing it with the gross building area, if you will, is all on one level. And that's due to the nature of the lot, we did spend some time considering trying to make a smaller footprint and going up. And what I found there was that, again, because it's so narrow front to back, you go up with the second floor and to try to set it back and make it look nice. That became too small. So it almost forces you to go straight up. And so then you even though you end up with maybe a smaller footprint on the lot, you've got a mass that goes straight up with a roof and pushes the maximum height. So I think it's important to realize that mass and appearance has as much to do with height, and articulation, as it does with the footprint. So what we decided upon doing here is Mr. Singh murasky pointed out yes, there is almost like a guest wing. And if you recall, this is actually three lots, doing three homes would have created three long skinny homes, a whole wall of homes, each for the driveway with 20 foot, you know, slots between out to the base, so we knew we didn't want to do that. So the idea was to take homes have a look at this house in three sections. So each of these sections, if you look on the far left standing on the road, that guest wing, if you will, including the little connection piece is 16 160 square feet, which is a very modest size home if you want to think of it that way. The middle living area 1840 square feet, the master wing with their offices and suite offices, 1200 square feet. And then the other aspect of that is the roof, the roof adds a lot to the mess in appearance, we chose not to cover the decks, we chose to keep the pool underneath the home. So wouldn't be a further improvement on the site. All of those, each of those almost like pods, if you want to think of them that way. They're connected, it's one structure, but they're designed in a way that you have these kind of breezeway connections where the roofline changes, the facade can move front and back. They're all basically one room wide. So if you think of a roof, they're anywhere from 20, to at the most 30 feet wide. So if you think of a roof going up like this, as opposed to making it one big, square 40 feet wide, the roof would be that much higher, then you forced, you get forced into kind of flattening the roof or doing some other treatment to stay below that height. That being said, the median roof height is 25 and a half feet substantially under the maximum allowed, which allows the vegetation to grow up in that realm. Within the height of that roof. The highest ridges are only 29 feet. So again, we're well under the maximum height, trying to respect the scale of it in relation to the trees, we definitely wanted to preserve that Bay Beach zone with a full 50 foot setback. On the front, the main entrance, the front door is at 50 feet. It's the two garage additions that pop forward and require that 37 foot setback, which is considered you know, similar, you know, what's the word? If you'd look down that whole strip of what ring road, many of the homes have at least, you know, 37 If not, some are even quite a bit closer, some of those homes are within 1015 feet of the road, they barely have a driveway to get in. The other thing we did preserve was we looked at the site. And if you look at that aerial view, it's largely gravel, there's the former septic field to the right, that's just gravel. There are the two homes when we looked at the area, the site that was already, you know, impacted with structures. And we cited the building on the same footprint of those two structures. So in terms of trying to understand the scale, I think when you look at the renderings, I'm focused in just on the building, but you're really forgetting there's another 130 feet of open space to the right, and all the space to the left. So we chose not to impact any further other areas of the site that weren't already altered in a way by previous construction. So we have not gone any further to the west. In fact, by turning that into the building at a 45 we're allowing more room for those mangroves than the current garage where it sits. And then to the right of course where we maintaining that whole open. This will be vegetated and, you know mitigated and preserved and in fact

improved enhanced from a ecosystem point of view, if you will. And it also will maintain some open VISTAs as you go down the road out to the Bay, which you really don't have many of these other properties on the road, the houses are, you know, setback to setbacks, side to side. So I think that's also a plus in recognizing that we could bring this house, these various elements into one house rather than three separate houses or two separate houses are going up with the second floor. So I think that touches on I hope, many of the considerations, the thoughts that may be going through your head, it might have an appearance of size because of the linear pneus of it. But I felt it was and we felt my client as well as the best solution to achieve what they were looking for, was to arrange it this way as three smaller volumes of lower height, with a lot of relief. And this does not only underneath the building, but throughout the property, to allow the vegetation to really kind of meander in and out with the structure, so that it would really nestled in there, and when it's all full and grown in and matured. And then the comment on the driveway, if you note also there is currently a horseshoe drive there. And so again, the thought was, well, it's already existing, we're not doing any further destruction to create this horseshoe drive, we just like to maintain it, it works well. It does allow a great spot for access vehicles, you know, landscapers and other, you know, service maintenance services to park and pull in and out. If we eliminate the second cut, you're basically going to have like a hammerhead on that end of the driveway, you're gonna have all about the cut at the curb. But it's really not gonna eliminate that much by eliminating that, in fact, it might actually create more driveways, because I'll need a larger turnaround area than just allowing them to just drive straight out. So that was the thought and asking for that consideration of the two driveways. Just one more thing. I can't think of it just now. I think I touched on anything out there any other comments? I know I kind of went beyond your original question. But I thought it might be great to just put that all out. And hopefully that might clarify. Some other questions that could be coming down the road here?

Lyman Welch 1:22:19

Sure. Well, you I guess you raised one issue on the driveway. You say if we if we don't allow the to access drive, and you have to redesign it, you said it might require more area? Well, if you look at the staff was if you look at that the thing that would would help meet one of the coverage requirements because of the loss of property from Hurricane in?

Amy Nowacki 1:22:43

Well, so I think because we did study at one point a full turn around circle out to eliminate that second curb cut. And we ended up with much more area right to do a full circle. It's the it's the as you're standing on wood ring, you're looking at the house, you know the guests swing to the left, they would either have to back completely out. Or they would want to come out of their driveway and back around and then pull out straight. And so you need to be able to, you know, back out into what's now the second driveway opening to then pull out straight from the first driveway opening. So I know it's a picture up there. So that's that's what I'm talking about. You need you know, if you've seen parking lots, right, you can't just there's always like a little piece on the end of the parking lot where you can back out into and then go out. So that's what would happen that second curb cut would basically be where you would be backing out. So okay, we could eliminate the curb cut. But you'd still have to back out into that area, if you want it to pull out front, front wise without having to back all the way out of the driveway from the guest swing. So so that's what I'm talking about you to be a turn radius require there since you could back out of that driveway and then drive out. Frank lies, you know, onto the road. I mean, it's

something we can study, I think I believe for 38 square feet, we can nip and tuck work with the site engineer, I'm sure we can make up 38 square feet with aspects of this site plan to get us where we need to be based on the coast, the storm effects that have taken away some of the property.

Lyman Welch 1:24:19

Okay, thanks. Just a couple other questions. This first staff, one of the public comments looked at the self imposed hardship of this is one of the variance elements and suggested that we consider when the owner bought the property, what what their knowledge was of the state of the property and the existing or the previous variances that were there that we should consider that this is self imposed hardship because they bought the property knowing that there were these issues and they they couldn't comply with all the standards? Is that something that's fair for us to consider as self imposed hardship or not?

Craig Chandler 1:25:08

I did not personally think that was a fair comment. I mean, when the when this property owner purchased the property, there actually had had been permit history showing that a variance was filed not only filed, but also approved and ultimately abandoned by that property owner for reasons, personal reasons with my understanding. But, you know, any of these properties on on Woodring road for a new owner to do due diligence, you know, there is recognition of the challenges for development. But, but the variance application is always an option for an applicant for a property owner to pursue and should not be, you know, prohibitive of of that decision, in my opinion.

Lyman Welch 1:25:59

Okay. And I was just wondering with the pool, is that going to be an elevated pool or an inground? Pool? What is that require an additional application that's going to come to us for an elevated pool or anything,

Craig Chandler 1:26:12

no additional application, that swimming pool is not proposed to be elevated?

Lyman Welch 1:26:16

Okay. Thanks. So that's all I have

Craig Chandler 1:26:19

a quick, quick, quick correction, the record, there is an additional permit application for a swimming pool, but not a permit application that would come forward to Planning Commission.

Eric Pfeifer 1:26:31

Commissioner DeBRUCE

Laura DeBruce 1:26:33

Thank you, staff for your thorough report. And, and I would also say that the fact that this property is in the hands of the architect, Amy and Watsky, I think goes a long way. Because you, of course, have such a fine reputation in the community. So I really appreciate it. And it's a pleasure to look at this beautiful work. Having said that, you know, I also have a couple of concerns. I think that in the staff

report, you mentioned the other variances granted in the neighborhood, even though that you then remind us that each variance is looked at individually. But I think that just the fact those other variances exists and you've referenced them, remind us how carefully it is we should give variances. Because once a neighborhood is full of houses that have variances, it becomes a matter of fairness and equity to say whether or not we should grant new variances, you know, becomes this kind of, you know, domino effect. So in other places where we've looked at this, you've given us charts of size of house versus size of other houses in the neighborhood. And that was missing from this. And I I wondered why because I found that to be very helpful in other examples when there is a excessively large house being built. But perhaps in that neighborhood, it's not that excessive, so that I think would it be useful here?

Craig Chandler 1:28:09

And I think I know which other variants we're referring to was, I believe it was a house on Isabel drive and worked on that one as well. The choice I made in terms of analysis to exclude that kind of table is that, in retrospect, I found that that table, drew more questions and answers. And I thought there was a better way to approach this in terms of staffs analysis for compliance.

Laura DeBruce 1:28:36

When we look at the various varying standards, I think that the, you know, one of the more difficult ones is, is it, you know, is what's being asked the minimum necessary to mitigate the hardship. So in other words, is there another way that this could have been built, that would have not required a request for a variance? Or is the hardship seen with a very unique shape of the lot and the road? You know, did you look at or work with the the architect and the applicant to look at other design possibilities, so that you wouldn't have to come for for variances?

Craig Chandler 1:29:23

So in terms of how staff engaged with the applicant before an application was submitted, I mean, certainly it's the responsibility of the applicant to submit their own design. Now, staff did provide guidance in terms of what would be the variances necessary for application guidance in terms of what the standards are to be met when those variances are applied for but it was the applicants role to demonstrate you know, how those requests are minimized to the greatest extent. I think there was has a line or is a line in the staff report in terms of of how much depth the property provides for development, if all setbacks were adhered to, and I don't have that, that number off the top of my head, but to summarize, MIT staff found that that depth was not sufficient for even a single room in terms of depth. And, you know, as the applicant pointed out, in responding to Commissioner Welch's questions, the depth of the building, as currently proposed is essentially is the depth of one room across the the length of the proposed development.

Laura DeBruce 1:30:43

Thank you very much. I also, you know, I think that when we're looking at harmony and rhythm, it's interesting, Woodring road does have a mix of very eclectic houses. One, of course, you know, some, of course, are very large, some are not, you got modern, you've got more beachy. So it seems as if there isn't one particular style there. So I don't think that this would necessarily not fit in to the existing harmony. And I think the comments that have been made by the fellow commissioners as well, I also found that given all else, the idea of that circular driveway seemed, in fact, to fit very well with a very

narrow road. So I was surprised that that was the one variance that are the one request that planning staff was not in favor of, whereas in my mind, that feels like something that we could easily and probably should allow, should this go forward. That's all I have. Thank you.

Eric Pfeifer 1:31:44

Thank you, Commissioner Coulter.

Kenneth J Colter 1:31:48

Going Come on, I can make as the reference to it is three lots. And each section of that house isn't bigger than 1800 square feet, that does seem reasonable at this point, you either come on I'd make is about the vegetation. In front, sorry, at a construction site, especially on that road, there's going to be days where there's six or seven trucks, and that vegetation wouldn't live very long. I mean, that would be there has to be I think, a timeframe before you plant the front. Just because of the extensive construction traffic that'll be there and you don't want to be in the 16 foot road. That's all I got.

Ty Symroski 1:32:27

To respond to that, as well as to the plan out there is perhaps land to the right side of the property, that would be plenty of staging area for people to park workers to park their cars. But we brought up the reference to the part of the graphic where it shows the the overlay of the House over the existing buildings. And that shows the driveway. And it turns out that the two, the two driveways being proposed don't actually correspond with the two driveways that exist. And so I think that the plan should at least be modified to have the driveways be the existing driveways, locations. And then on a positive note, the proposed driveways are narrower than the existing driveways. So I think that all you need to do is move the the right driveway a little bit further to the right to just use the existing area that's already cleared. Thank you.

Eric Pfeifer 1:33:49

Thank you. My comments include number one, I was happy to see that three developable lots in other words, potential three dwelling units are now reduced to one dwelling unit to reduce the density on the island. The variance about the height, I was surprised nobody asked about the angle of light and that definition, but the height is only an issue because of the angle of light, the angle of light is only an issue because of the setbacks. And it's on the front and the back, I've never quite understood why an angle of light is a concern to it should be only concerned to the neighboring properties to the left and to the right. So that's not an angle of light issue. We're only granting the variance for the angle of light and the height because of the setback from the road and from the back. So I really don't have an issue with that happy to see that we're not exceeding the total height limit in general, and the median height limit is well below average. The driveway planter channel I just don't understand resolution 98 100 precludes two curb cuts, if you will, or circular driveway. But you said it's not codified and therefore it's not a variance necessary. But I've always heard that was a rule. I assumed I assumed it was added to the plan. That no circular driveways.

Craig Chandler 1:35:17

Sure, it's, it's a policy by resolution, but it is not a code in which variance can be applied for. And I don't John, do you have any anything to add to that? How do I do?

Eric Pfeifer 1:35:33

Okay, great. So it will never require a variance to have a circular driveway with to

Craig Chandler 1:35:38

it would not and the resolution states, you know, the the authority to grant a deviation, thank you would be would rest with the city manager with planning commission.

Eric Pfeifer 1:35:50

So I was inclined to agree with staff. Because we all have to compromise here with these variances to meet seven variance standards and stuff. And I didn't understand the need for a circular drive. But when the architect shows a second garage, it obviously makes sense. But then that begs the question, why do we need a second garage in general, but I'm willing to agree that in this particular location, a circular drive does make all the sense in the world I've driven down Woodring many times, and it's very hard to pass other cars. So it actually makes a lot of sense, I don't think it necessarily Commissioner some Roski has to be in the exact same location as the exact as the current curb cuts. So it clearly works. And it looks great. Regarding the vegetation, I know economics should never come into play when we discuss a variance but doing some landscaping first, that's going to get trampled by people and trucks coming. Um, that's why the landscaping is always done at the very end. So I would think the landscaping should remain at the very end.

Ty Symroski 1:36:59

I generally agree with that as well. This is such particular just the front line. And that's when you build construction fences to protect stuff. I've been involved with lots of projects where they build a construction fence around protecting trees and plants and landscaping so that it's there when it's supposed to be there not three years after it's had a chance to get grown in. So I think they can do it. It's done a lot. And just certainly the baby Beach, they shouldn't be working in there anyway. They should fence off that baby. So they don't have scrap lumber thrown over there. And they should tents it off so that they don't accidentally back up their truck into the Bay Beach.

Eric Pfeifer 1:37:47

I would agree in the Bay Beach area, but and at the front, it just doesn't work.

Ty Symroski 1:37:51

I think they can do it. Okay. And you're right. I don't think the I don't think this is really an economical project. I mean, it's economy. There's a lot of economy in this project. So I think that it's not an imposition, to have a good construction management plan that stages the installation of landscaping for the benefit of your neighbors when you're getting a variance to the front yard. And one of the big reasons why I feel positive towards this is because of that good landscaping. And as the architect pointed out, they are bringing down the height significantly. And I do think that probably three houses two storeys high above the parking, that might be more of a massive issue. So I can see both sides, I'm tending to lean towards approving the variances with the several conditions I mentioned.

Eric Pfeifer 1:38:57

And speaking of conditions before we turn it over to the public, could somebody from the applicant come up to the microphone and let us know if you do approve of the 14 conditions?

Amy Nowacki 1:39:19

Aiming to whacky I've reviewed these and the only one that perhaps still has my interest for further discussion and your consideration is the second curb cut on that driveway to allow the horseshoe drive to remain. But otherwise, I believe we accept all of these, many of them are in fact in line with the current plans speaking up the native vegetation, for example. So yes, other than the driveway.

Eric Pfeifer 1:39:45

I'm sorry, you said the second condition. And as built surveys required to verify compliance with all applicable development standards.

Craig Chandler 1:39:54

I believe she's referring to the first condition

Amy Nowacki 1:39:59

that dry While yes, I believe we can, in fact, you know, work on our site plan to make up that extra 38 square feet that we lost due to the hurricane erosion. But we would like I would like to not write off, you know, one of these conditions, I believe, requests that the second curb cut be eliminated. I would like to for your further consideration on that condition only on removing that condition only to allow the horseshoe drive to remain as designed.

Laura DeBruce 1:40:27

Thank you. Good question. Yes. So and the commissioner, some raw skis, proposals and concerns regarding the vegetation and perhaps doing this in stages. What is your response to that? Is that a condition that you would also be able to accept and implement? Well, certainly,

Amy Nowacki 1:40:47

we would agree protect the baby zone protect the mangroves that would go up as part of our construction site fencing, we do have the ability, you know, the east half of the property is already destroyed by the former septic field, right. So that's great construction, staging, laydown area. If it's possible, I think we can do our best to really confine construction vehicle ingress egress to where the driveway is ultimately plan to be, and do our best particularly I think, on the side, you know, the front part of the property, but to the sides. However, right, in that ingress egress point, it's gonna be pretty hard not to see things get trampled on and destroyed. But I think the goal would be to definitely preserve mangroves preserve a beach, limit, Ingress egress, you know, require vehicles to use that already disturbed area of the site for parking for materials, and to do the best we can to keep what's there. And now that being said, there really never was any native, established, well established buffer on wood ring, and whatever was there is destroyed at this point. So I think the plantings that we have in mind to go there, Caleb can speak to that, I believe are plants that don't require long amount of time to mature so that if they were to come in after construction is done when we can do a final landscape, I think, I think that's what Ty was referring to is giving things that require the maturation time to get in there.

Caleb Melchior 1:42:12

Yep, killable QR codes to listed design. If you look at I think the the existing vegetation impacts plan that's on page, it would be 28 of your packet shows that most of the vegetation that's currently in that little strip, there's a couple of coconuts that a natural resources would actually like us to remove as they're requesting those no longer be considered as neutral on the site. And so we have a couple of sea grapes and some smaller herbaceous plants that might be impacted as part of that initial relocation process. What we've proposed along Woodring Road, we're starting with larger screening plants, especially some gumbo Lambos and stables that are starting at 12 to 14 feet. So as those are installed as part of that initial construction, you'll already be having the first story pretty much obscured from Woodring Road, as well as layering in with other native shrubs and ground covers. So we're really looking at we also already have vegetation protection fence shown for both the east and west sides of the property, protecting both of those mangrove zones throughout construction. So we'd be definitely blocking those things off. It's typical around that outside of construction between the Eco zone D one and the Bay Beach zone to install a silt fence to make sure that there's no erosion happening from the construction out into the Bay Beach zone. So we'd also be pushing for that as part of our construction phasing. So we think that protecting the surrounding ecosystems and the existing plant communities on the property is really important. And that's what we've respected with this design. I think the area that from Commissioner some Ruskies questions that I would kind of push back on a little bit is the ability of keeping in that 37 foot strip, a buffer active through the course of construction. But we're going to be starting with larger plantings in there at the very end, so that we can get that established field that you're looking for a long wing would ring road as quickly as possible. The other questions for the applications.

Ty Symroski 1:44:14

So the fence that you would have on the base side of the property would be a silt fence. Yeah, those are wood and where would that be placed?

Caleb Melchior 1:44:23

Those would typically it would go on. See if you look at your plans, you have the division between ecozone and the baby each stone. So you have that baby son and you'd probably have a 10 foot offset from the actual footprint of the residence. That's the usual construction footprint. And along that you'd have a silt fence to prevent any washout from construction flowing down the hill towards the beach. So those are about two and a half to three feet high. They're buried a foot below the surface of the ground, so that you have no washout from your construction going into that sensitive ecological.

Ty Symroski 1:44:55

So are you confident that the silt fence would be sufficient to prevent a pickup truck from backing over.

Caleb Melchior 1:45:05

It's part of the typical process. And throughout our construction administration, we monitor them to make sure that there aren't that that hasn't been breached. It's also part of what natural retail, you're

Ty Symroski 1:45:14

confident that that'll keep a pickup truck from backing into that area.

Caleb Melchior 1:45:18

If it happened, like, I can't say that there's a guarantee that it won't happen in any way. But what we're doing is the best construction efforts to be able to keep anyone out of that location, it's going to be very uncomfortable to back over,

Ty Symroski 1:45:34

I have seen a lot of construction sites where they actually build a fence. And when I was in the planning department a few decades ago, we actually did require sufficient fences to keep activity from going into native plant areas.

Caleb Melchior 1:45:53

And you'll see that we yeah, we already have that vegetation protection vents, the bright orange specified for both the east and west sides protecting the existing mangroves, those are typically about four to five feet high, and they have stakes in there so that you're definitely not going to drive through, I think we're sometimes worried about that being closer to the Bay Beach sun, because we don't want wildlife to get tangled in it, because that any of those meshes can be a little bit easy for them to get tangled in. So that's why we prefer the completely it's like woven fabric that those silt fences are made up, because you won't have like little animals trying to climb through it and getting stuck in any way shape or form. So these are the kind of the standard pot like those are standard policies for different construction on Sanibel, that, from our experience we've had the kind of the most successful.

Eric Pfeifer 1:46:42

Thank you. We're gonna turn it over to public comment now. Anybody on the left? Public comment in the center Mr. Shop?

Larry Schopp 1:46:59

Good morning, commissioners. Larry sharp for the record, president of committee of the islands. Before I give my comments, I just want to make a few comments about my background to establish that I I can, I'm in a position to provide competent substantial evidence, which is the standard for evidence in Florida. I'm a member of the New York bar retired. I have a master's degree in administrative and public law with coursework in urban planning. I have been the chairman of the Codie, land use policy committee for 20 years. And Chairman of the pine tree drive Association Architectural Review Committee for 25 years and reviewed with our members, many, many submissions for construction. I had I submitted comments in writing, which and I'm not going to reiterate them or read them. I will just try and hit the high points. My number one objection to the granting of the variance is that it is in fact self imposed. I think Mr. Chandler said that, yes, the applicant has the right to apply for a variance that's true, he has the right to apply for variance, it doesn't mean he is entitled to a variance. If if the hardship is self imposed, he's not entitled to a variance. And he bought these three lots with full knowledge that they were not developable. They were not buildable the previous variances as I understand it, or for three separate variances to build three separate residences, by by by buying this, these lots with the intention of building a single house on the combined lots. He not only did it knowing

full well that it was a gamble, but it it runs afoul of standard six, which has to do with adverse effects on the neighborhood because the neighborhood is a neighborhood of individual homes on individual lots and building an overly large house on three lots tends to interrupt the neighborhood scheme. And so in addition to being a self imposed hardship, by intending to build a single large home on the three lots, he runs afoul of standard six and in terms of standard seven extent of relief required. If the applicant had intended to build three homes on three lots, he would not run afoul of standard six and so therefore, I think that if anything as an investment he he could he could use the these three lots advantageously. By building three separate homes on them, but I now want to get to Section 8643, which is a separate objection that I have to, to this particular home in this neighborhood. Anybody who's driven or by written their bikes down would ring note road knows that it's pretty much a rural neighborhood. It's an eclectic neighborhood. The houses are built on single lots, some are ground level houses, others are taller pilings plus two storeys. Very much like the road where I live pine tree drive, it's a private shell road. very eclectic. We have some old Michigan, three bedroom, two bath homes on the ground, we have some newer homes on port pilings plus two stories. If this home were to be proposed, for construction on three lots on Pine Tree drive, I can almost guarantee it would be rejected, I would recommend against it. And of course, the final decision would be the decision of the other homeowners, it would simply be a standout. break the mold kind of structure and a neighborhood of one home on one lot, it would stand out like a sore thumb. And I think in the same way that if you were to take a, let's say, propose to build a Michigan, three bedroom, two bath on the ground house in the sanctuary, that would break the mold in the sanctuary, it simply wouldn't fit in the sanctuary would ring Merode is a rural, one of the few rural roads left on Sanibel. And it seems to me that some consideration should be given to maintaining that rural character and not place a truly grand country club style house in that neighborhood. Thank you.

Eric Pfeifer 1:52:06

Thank you. Any other public comment from the center section? Any public comment from the right. Okay, we're gonna bring it back here final comments by commissioners based on what we've heard. And we'll start down at this end. Good. No comments, Commissioner to Bruce.

Laura DeBruce 1:52:25

I feel that this is I very much appreciate Mr. Shops comment. But I think that in this case, where there's a question of will it fit won't fit in the neighborhood. What sways me is that it is lower level a lower level home that, as the architect pointed out, it's really almost akin to three small homes. And I do like Commissioner Pfeiffer's reminder that in fact, this is a good thing for density on the island, where instead of three separate dwellings, and three potential families or three rental homes, we have one house, and so that I find that all very persuasive. And I also do feel as if given that circular driveway seems to make the most sense with the plan. So I would add that in addition to the other conditions. And I would defer to Commissioner some Roski in terms of the need for an additional fencing off of some of the vegetation, I would be inclined to vote with you on that, should you feel after what you've heard that that would be necessary to protect the zone. But those are my feelings on that.

Eric Pfeifer 1:53:39

Thank you, Commissioner so murasky Well, I

Ty Symroski 1:53:42

I'm I'm not as in regarding the fencing, I think that they have given thought to it. And that usually I find convincing, it's usually when people don't give any thought to something that I feel we need to approach it, I would still encourage think it wouldn't be good to install what's able in the front, certainly over on the right hand side of the property, you could get some of that installed and maybe not affect the construction. So it's really I think it's important to have a construction management plan developed to minimize adverse impacts on the environment as well as on the neighbors. And part of that is because one of the findings that I find makes me kind of convinced is the extensive landscaping of native plants they're putting in and I noticed they're getting rid of those evil coconut trees. I think this this driveway configuration makes a lot of sense. I would move the one that's to the right hand further over. I do think it is important that they use This driveway. And this configuration and I only find it reasonable if they use it for the service vehicles that will be coming to this property, they're probably going to have pool people, air conditioning people, certainly this type of landscape, and it's going to have a lot of those landscape trucks. And I think to the extent that this driveway gives them a way to take that parked vehicles out of that very narrow road, so I think we want to go forward, go forward with that configuration, moved the right driveway a little bit further to the right. So it's a better I think that would be a mess, it really affects the plan. But make sure the service vehicle service vehicles are able to park in that area. I know a lot of service vehicles do not park in driveways, contrary to the city law, because they might have oil drips, and they don't want to have to go on to their driveways. Well, I think this is situation, we need to maintain the access of this road. So I find I agree, though, with Commissioner to Bruce, that bringing the heights down, really, I think helps significantly I'm they might be able to get three smaller houses. And but I think that bringing the height down, having this very angled front, so it's not a big monolithic front wall, like a lot of houses might have, I find that they have made a lot of adjustments to minimize the impacts.

Eric Pfeifer 1:56:58

Thank you, Commissioner Welch.

Lyman Welch 1:57:01

I appreciate the presentation and the comments from the public, as well, I I still have concerns with the size of this structure, two garages. And it it it just seems like it's It's massive. It's it's like compared to the other houses on the road. It it seems out of step with with the neighborhood. I wish we wish we had more analysis of that from the architect or we heard from the applicant and I appreciate the the reduction in height. But I just I'm just overly concerned with that. I think the other concerns I had with the native vegetation, I think have been or will be addressed the development permit. So I think that should be a stage to take care of protecting the Gumbo Limbo rows and the mangroves to protect them from development. And the driveway it sounds like we do have authority to to allow what they're proposing. I have a circular driveway at home. So I I recognize that's very helpful to get for access. And it's it's a narrow road. But you know, when it comes down to it just a massive structure this house, I just would think there's a way to have something smaller with just one garage or something that isn't quite so massive a structure. So that's my I still have that concern and I don't think it fits with the standard in the neighborhood.

Eric Pfeifer 1:58:56

Thank you turn it back over to staff one last time planner Chandler, any final comments?

Craig Chandler 1:59:03

Only one correction, the record public comment had mentioned, the prior variance is being considered for three separate the development of three separate lots. The variance in 2018 was for the development of one single family home on all three lots. So a total of one dwelling you could

Ty Symroski 1:59:25

question to staff what were those variances for and what was the general nature of the house being proposed?

Craig Chandler 1:59:36

Much larger in terms of development developed area and coverage much larger than what is being considered today. In terms of the precise variances proposed, I believe there was a baby zone setback encroachment involved with that as well as a front setback if I recall correctly. So I believe in total it was it was around the same number of variances requested with that

Ty Symroski 2:00:00

Time was the building taller than this one?

Craig Chandler 2:00:04

I don't know the answer to that.

Ty Symroski 2:00:06

Was it have a comparable floor area?

Craig Chandler 2:00:10

Larger significantly?

Ty Symroski 2:00:11

Thank you.

Laura DeBruce 2:00:16

If I may, I would just add that I do think that, that even though it raises some other questions, it's helpful to have that size analysis of the neighborhood, because for example, with wood Ring Road in particular, there are in fact, other houses that are, you know, quite large, I don't know their size. That's not, you know, my expertise. But you know, there was that one large modern house that you can see from tarpon Bay, and then there's the new structure on the corner of it. So it may have been helpful to allay some fears to sort of have given us an analysis of the neighborhood where we're not as familiar with that particular neighborhood. Certainly planning staff is after having done the extensive review.

Craig Chandler 2:01:04

Absolutely. No, I appreciate that feedback. And we'll try to figure out a way to incorporate it the next time we look at an 8643 questions.

Eric Pfeifer 2:01:13

And there are a lot of pictures of the other homes that are three storeys tall. Okay, at this time, you will entertain a motion with the understanding that the applicant aiming a wacky has asked to remove condition number Well, part of condition number one, which includes eliminating the multiple points of access.

Laura DeBruce 2:01:41

So I would make a motion that we approve, just grab those conditions that we approve the application. I do find that they've met the variance standards. I would take out condition one. And otherwise go forward with the with the motion.

Eric Pfeifer 2:02:13

Do we have a second?

Kenneth J Colter 2:02:16

I would second.

Eric Pfeifer 2:02:17

We have a motion and a second on the table. Is there any further discussion on the motion?

Ty Symroski 2:02:25

I think I'd like to offer an amendment on condition one. That to just that service vehicles will be required to use the driveway rather than park in the street. It would ring road. That's a reiteration of the law. But we've reiterated the law in seven other conditions.

Laura DeBruce 2:03:04

My only problem with that is that these are conditions that we're imposing on the owner of the lot and the applicant. And it's an impossible condition for us to ask them to comply with. Because they may not be there. It's impossible for any of us to control what service providers do or don't do. As you mentioned, it is part of the plan and the law. But I would just feel uncomfortable imposing that requirement upon the applicant over something as critical to them as having this lock developed.

Eric Pfeifer 2:03:41

Okay, we have a motion and a second on the table. Is there any further discussion?

John D. Agnew 2:03:46

Mr. Chair, I just have one brief clarification. I understood the the motion. Just want to clarify that it includes not only the approval of the application, but with it. In this case, we have a proposed planning commission resolution. And are we looking to approve that as well? Yes. Thank you.

Laura DeBruce 2:04:09

With that first condition removed.

John D. Agnew 2:04:12

Yes, ma'am. Thank you.

Lyman Welch 2:04:14

I have a question on removing the first condition. It was my understanding that that that revision was helping to meet the the coverage area after Hurricane end because some area was lost. So if we're taking out condition one, do we need a new condition to make sure that they're meeting the actual coverage area standard? Or is that? Is there somewhere else that that's accounted for because I'm not seeing where we're accounting for that last area that they need to comply with?

Eric Pfeifer 2:04:52

Well, they're not meeting the standard for covers. That's one of the variances

Lyman Welch 2:04:58

but I understand To add that, after Hurricane Ian, they lost some areas. So there was some coverage that they needed to make up and the applicant said that they could make it up somewhere in the development plan. But I don't know where that's coming from. And I'd like to see a condition are some requirements to make sure they actually do make that up somewhere.

Ty Symroski 2:05:21

Right. They said that they'd be need 38 feet, if I recall, to reduce their coverage by 38 feet. square feet.

Craig Chandler 2:05:32

If you don't mind Chair, I'll take a stab at this. So I think I understand what Commissioner Welsh is referring to. So in lieu of the proposed condition by staff, I think what would articulate what Commissioner Welsh is looking for, would be a specific approval have developed area and coverage. And I'm opening up the stormwater and site plan right now, to give you those figures, if they are to reflect the D one standards applied to the D one and Bay Beach portions of the property. Bear with me one second.

Eric Pfeifer 2:06:21

I think his question might be are the coverage calculations for impervious and developed area meeting, the survey done before the storm or the actual as survey that would exist today.

Craig Chandler 2:06:36

And so again, using the applicants methodology of using the D one standards as guidance, the revised survey and site plan, demonstrates a minor overage 38 square feet to specifically developed areas site calculation remains consistent. The plans remain consistent with the proposed impermeable coverage relative to D one standards. But it's a developed area standard where there is a minor discrepancy. So where the applicant is proposing 1105 subtract 38 from that the if you were to amend the standard to specify an allowable developed area maximum, that maximum would be 8067 square feet.

Lyman Welch 2:07:38

So would it be fair to have a condition that sets that developed area standard in this approval? We had we had a motion a second. So I think we need someone to agree that that is acceptable to add?

Eric Pfeifer 2:07:59

I really don't understand your question.

Lyman Welch 2:08:04

As I understand it, they're 38 square feet over the guidelines for this type of ecological area for development. And staff had previously proposed reducing the driveway to to account for that. But since when the proposal on the table is to allow the driveway as plan, you're going to still be 38 square feet over the standard. And I'd like to stick to the standard. It's our standard, I don't see reason to deviate from that. The applicant said they could comply with it. So there's no hardship and compliance. So I don't

Craig Chandler 2:08:43

at all at this, I do think from a staff perspective, and in terms of, you know, future research on permanent history, it will be helpful, I think to have a specific developed area allowance in the resolution as well as the specific coverage allowance in the resolution. And so going back to condition one just one second. The condition would read essentially that the the approved site and stormwater plan, you know shall comply with a maximum developed area of 8067 square feet and the maximum impermeable coverage area of 6040 square feet. If it's taken up as a motion that I believe is how it would be articulated correctly.

Laura DeBruce 2:09:41

Yes. Could I amend my motion to include instead of taking out condition one to amend condition one to reflect the coverages that Craig has outlined for us

John D. Agnew 2:09:57

and to close the public hearing. And to close the

Eric Pfeifer 2:10:00

public. I would like to have Mr. Wacky come up and make sure she's okay with that. We're removing additional square feet now

Amy Nowacki 2:10:19

just to kind of go back, so we're looking at the D one is this case. Microphone. Oh, so the Bayfront area, up the parcel on the Bayfront side of the road. The ones the predominant. So that's the, the reason why staff and all of our discussions we came up on this. And if you look at the overall totals, right, the mangroves, 2000 square feet and 26,000 something and they that's all on the lady Finger Lakes site. So the where this came from, and this is what's been the case, the precedence and other properties is that we're only looking at the portion of the property we intend to build on, which is on the Bayfront side of the road. And in that case, d one is the predominant. So we're going by the D one coverage and developed area standards. And, yes, your application was actually a PC hearing was scheduled for the date of the storm. So we've been a long way. So yes, we came forward to this

hearing without redesigning plans for 38 square feet because we want to make sure things were approved before we went and made that effort. So

Eric Pfeifer 2:11:28

that'd be acceptable. Yes. Okay. Thank you. So we have an amended motion and a second. Is there any further discussion? Okay, okay. Can we call the vote please?

Kelly Scotty 2:11:54

Commissioner Coulter? Yes. Vice Chair Pfeiffer? Yes. Commissioner DeBRUCE? Yes. Commissioner murasky? Yes. Commissioner Welsh,

Lyman Welch 2:12:04

Welsh. No.

Eric Pfeifer 2:12:07

Okay, so the motion carries. And I unfortunately have to give this back to geographe.

Roger Grogman 2:12:14

Well, thank you. We're gonna move on to our second public hearing. And if I could ask at this time that director with Michael, if you could please read this into the record.

Paula McMichael 2:12:39

Public Hearing item 11. B is consideration of an application filed pursuant to land development code chapter 98. Historic Preservation Article Three administration Division Two certificate of appropriateness subdivision three demolition for the planning commission to provide a recommendation to city council. This will actually be an approval by planning commission. This does not need to go to city council for final approval regarding amending resolution 91 Dash 86 for the demolition or removal from the city Register of Historic Landmarks of the net home on the net homestead aka gray gables, located at 3405 West golf drive, tax parcel number 28 Dash 46 Dash 22 Dash T three dash 0000 7.0000 with the consideration of the recommendation from the stork Preservation Committee, the application is submitted by Robert H Jung and Florence Cowles Hamlet young the owners application numbers ca Dash 2022 Dash 92 planar Kimberleys will provide the staff report

Roger Grogman 2:13:45

thank you. City Secretary Could you please call the commissioners on site visit ex parte and any complex?

Kelly Scotty 2:14:09

Chair grobman

Roger Grogman 2:14:11

site visit no ex parte and no complex

Kelly Scotty 2:14:15

bias terrify for

Eric Pfeifer 2:14:16

site visit I do have an ex parte while I did my site visit the owner of the property was there and she was kind enough to give me a tour of the cemetery and I was able to peek inside the house so heard a little bit of the history of the house no conflict

Kelly Scotty 2:14:35

Commissioner diverse

Laura DeBruce 2:14:37

site visit and I also have ex parte when I was on the site visit I ran into a friend of mine Barbara blue Doran who's a neighbor and I spoke to her about the property no conflict.

Kelly Scotty 2:14:49

Commissioner Coulter

Kenneth J Colter 2:14:51

site visit no the owners but no conflict

John D. Agnew 2:14:57

any ex parte communication to Michigan Thank you

Kelly Scotty 2:15:08

commissioners from Roski

Ty Symroski 2:15:10

site visit ex parte my mother years ago before she passed away told me she went to school with the nuts and the nuts, sisters, worker teachers and no conflict.

John D. Agnew 2:15:25

For the record, Commissioner some Roski you did not actually have ex parte communications about this application wreck. Okay. Thank you.

Kelly Scotty 2:15:35

Commissioner Welch.

Lyman Welch 2:15:38

No site visit no ex parte no conflict.

Kelly Scotty 2:15:41

Thank you.

Roger Grogman 2:15:44

And city clerk Kelly, could you please swear in any members of the public or staff that will be providing testimony for this hearing?

Kelly Scotty 2:15:53

Others giving testimony please stand and raise your right hand. Do you swear that your testimony and evidence is the whole truth and nothing but the truth? Please answer into the microphone with your name involvement and confirming that you do so swear.

Florence Young 2:16:11

Florence young I do.

Kim Ruiz 2:16:16

Camrys with planning I do.

Bob Young 2:16:20

Bob young I do.

Roger Grogman 2:16:25

Thank you plenaries. Could you please take us through this journey?

Kim Ruiz 2:16:30

I will do so. I have just a very brief PowerPoint because photos weren't included in the report to the planning commission and the nut family has a significant history on the island and believe that they do deserve recognition of this history. They were some of the first homesteaders on the island. And because their family and the Youngs continued this they have an immense history both picture wise, oral history and written of their family. The house that we're talking about today was originally built closer to the beach and it was referred to as the gables was this photograph on the left hand side was taken in 1889. These are all pictures that were provided by by the the Youngs when they so kindly gave death Gleason the the chair of the committee, Historic Preservation Committee myself a tour of the house after the storm and share these photos with us. The right hand side it's a gables in 1920. It's the gables in 1960 picture and compared to Grey Gables in in 2022. This is post storm so you do see debris and such there. But I wanted to put this forward because in the 1990s, the young family relocated the historic structure closer to to West golf drive. And I think you can see in this picture that they did an exemplary job of emanating the historic structure because the majority of the House is now new construction and they had taken great care of that house over the last 30 plus years. We met with the Youngs on October 3 So it wasn't even a week after the hurricane. And there unfortunately, the storm did break windows and cause roof damage on the left hand side I'm not real good with with pointers, but on the left hand side picture the tallest Gable you can see that the the metal roof is totally gone as well as some of the underlying materials and forgive me can I don't know the terms for the materials that you would know. And also on the cable that comes off of that you can see that there was additional damage the rear side of the house that I was not able to capture in the pictures but you can see on the the west side that's the picture on the right that you can see the amount of roof damage there as well. And I guess the rear of the house I just couldn't get an angle that showed the roof damage but there was substantial roof damage on that area as well. And like I said that the Youngs

were kind enough to allow us entry into their home. You And, as we've seen on many properties on the island that once you have water intrusion there mold forms quickly. And you can see the, the amount of mold in the ceiling in the kitchen area and that area that comes in the living room. And it also, it already had some a bulk buckling to, to the wood floor in in the house. So I just wanted to share those with you because I don't want any perception that staff didn't take seriously the historic significance of this house, but also that we had taken the time along with the Chair of the Historic Preservation Committee to meet personally with the Youngs on the property post hurricane because as we unfortunately, you know, the hurricane has changed a lot of things on the island. And with that I will give a little bit of background is this is not some you don't you get certificates of appropriateness, and that you have seen for repairs to some of our historic landmarks. But a removal or demolition of a historic landmark is not very common. So it is new. For all of us. There is some newer history to concerns with historic structures that are privately owned and are used as a residence, it's come to our attention that it's difficult, if not impossible, in situations to obtain homeowners insurance, and properties that are in or privately owned, and are on the historic registry and are used as a residence before the storm. The youngs were discussing with staff how to how they could maintain this house as a structure that was historic significance to the island and to their family. And were seeking to be removed from the historic registry so that they were would be able to obtain homeowners insurance and maintain the house. Unfortunately, the hurricane incurred significant damage to the property. They have been continuing to try to determine what they can and can't do with the property. They are not taking this lightly. And one of my initial discussions with them after the hurricane they were hoping to have the ability to repair it but they don't know if that is the case or not. So we took it forward to the Historic Preservation Committee as a certificate of appropriateness under the demolition section of the land development code. Which, although the heading of the the section is demolition, the wording in that section is demolition or removal of a historic structure. And there are seven conditions of consideration when someone applies for it, the removal or demolition of a structure on the city's historic register. And before I state that, I do want to clarify too and reiterate it was in the report but the Sanibel plan in Section 3.2 point four under the historic preservation element does EPA statement regarding updating the historic registry periodically for additions and deletions from the register? So it was foreseen that there may be situations in which a structure needs to be removed from the historic registry. The criteria for issuance of a certificate of appropriateness includes seven criteria and those are on page. Three and four of the staff report included staff's findings, and then the historic preservation committee's findings on that. And also, in Attachment A were the Young's responses to those criteria. I don't want to read all of those into the record. You've read them I will answer questions on them. The Historic Preservation Committee voted three to two to amend the Historic Register to recommend that the planning commission amend the historic registration register of landmarks to include the nut family cemetery. And, and homesite excluding all structures. Staff, after the Historic Preservation Committee meeting, looked further into having homesites a register, and was concerned that it may result in some of the same issues with insurance, but also an attachment be the

2:25:55

is Historic Preservation Committee was asking that the property that the Youngs own right now be on the historic registry. And that is about approximately about a half acre of land that was once part of 160 acre homestead parcel. And that now, today that it's the lakes like miracles, development and some other developments. And if we were to place the whole original homestead on the registry, you would

be posing something over all of these owners and there was concern with the legalities of that is it staffs belief that that we can, in other means preserve this time period of homesteading, and the importance of that and how it led to these first families on the island really establishing the island and the history of community and community involvement on the island. So staffs recommendation to the planning commission is to issue a certificate of appropriateness that removes the nut homestead from the city's Register of Historic Landmarks, and would allow the demolition of the house but retains the nut family cemetery on the Historic Register. And the Youngs who are descendants of the the nut family did agree and wanted to have the sub family cemetery to be continued on the historic registry. I'm available for questions, if you have any and I know that Young's are here to if you want to hear from them.

Roger Grogman 2:27:48

I would ask that if the applicant has anything to add, before we go into questions, can you please add that now?

Bob Young 2:27:56

Well, Kim did such a good job had anything prepared for a retrospective but she's already covered that.

Eric Pfeifer 2:28:06

Can you name first please?

2:28:07

I'm sorry. Excuse me, my name is Bob young. The, in our opinion, the cemetery is unquestionably a historic site. There's no doubt about that, in our opinion. Anyway. Our problem developed in about a year ago when we received a communique from our insurance carrier that because the house was designated historic, notwithstanding the fact that it was built in 1991. That it was the fact that it was designated to start was going to cause us to lose our insurance. We tried diligently to find other sources. We were unsuccessful. We've been turned down by a number of people we will prepare to come down. I think it was on October the 14th when the Historic Preservation Committee was to meet course, terrible storm hit. We were down about two weeks later to survey the damage. And I think that Kim has Well, I know Kim has summarized our situation. adequately, I'm happy to answer any questions. I do. Want to thank Deborah and Kim for coming to the house when we were down here. This lady spent about an hour and a half at that house. And they had their own problems with damage and destruction and course cam with a lot of planning matters going on here at the city and we cannot thank them enough for the time and effort that they spent to be there with us. I know that this is a gnat on an elephant compared to everything that's going on on this island, but they were certainly great just with your time, and we deeply appreciate that. And I'd be delighted to answer any questions and whatever I mistake my wife will correct me. Who's sworn in?

John D. Agnew 2:30:13

Mr. Mr. Chair? Mr. Chair, I just want to make one clarifying comment on the record but to be confirmed by Mr. Young, in my although what plan a rule is is has detailed really doesn't pertain anything to insurance since insurance was raised. Mr. Yun just stated that they weren't able to get any insurance.

But I believe more accurately stated, you were able you can you're able to get insurance, but it's at an extraordinary increased premium. At least that's what I understood from my prior,

2:30:51

we were turned down by innumerable insurance contracts. According to the agents, there was one insurance company that said that they would insure it for a year, we investigated the insurance and the ratings for what Yeah, that one, I was trying to find a diplomatic way to describe the company, the information indicated that their reputation was shaky. And the it seems, at least to us, because of the extensive research that was done to find insurers. If we could only find one, then if we lose them next year, then we're we're right back into the position that we're in. And again, it's simply because in our case of the historic designation, everybody's facing increased rates, that that's no reason for us to cry over spilt milk. Everybody's in that boat. But our greatest concern is we were turned down by some of the top companies in the in the country strictly for the historic designation reason.

Roger Grogman 2:32:14

Thank you, sir.

Bob Young 2:32:16

Thank you all.

Roger Grogman 2:32:19

Well, now have discussion by the by the commissioners, and I'll begin with the commissioner culture.

Kenneth J Colter 2:32:26

I have nothing to say. For sure.

Eric Pfeifer 2:32:30

I just want to ask attorney Agda, we can take the cemetery and the parcel out of the historic designation, I'm sorry, keep those in the historic designation, remove the house, the structure from the designation, and that's acceptable.

John D. Agnew 2:32:46

Just a bit a bit of clarification, because the I think there's there's been some confusion about the removal part. And within that particular section of the code, it does reference both demolition and removal. But the reference to removal doesn't pertain to kind of removal from the list, but rather removal of the property from from the site. So in this case, the proposal is to issue a certificate of appropriateness to allow for the demolition of the of the home, but yes to to then allow to still remain as part of the historic registry, the cemetery, and yes, that would be authorized. In that same vein, I think there are a couple of clarifications that should be made to the resolution that you're considering. One is there's an error in the title. It states on lines, four to six, or rather five to six, it says demolition for planning commission to provide a recommendation to city council regarding amending resolution. This is not a recommendation to city council, I believe as either director McMichael or planner rule is stated, this is actually your action, the Planning Commission's action to take and so instead of that language, what it should read is for the planning commission to issue a certificate of appropriateness for the

demolition or removal. And so that's one one suggested change. And in that same vein, in section two where it states application number ca 2022 Dash 92 is hereby approved. Also add the language and a certificate of appropriateness issued for the demolition of the nut home. I believe with those two changes, this is would be in proper form for consideration.

Roger Grogman 2:34:59

Thank you Your Commissioner debrief.

Laura DeBruce 2:35:04

So thank you to plan a RU is for a for her work on this. And to the young family, I would like to say I found it to be fascinating to learn about your relatives and how brave they were to come here back in the day and start establishing home on the island. And I am sorry for the problems you had prior to the storm. It sounds like it had been a difficult process for you. And I appreciate your graciousness today, as you present before us. As far as I'm concerned, it feels like it would be the right thing to do to have this issued. And that is the way that I plan to vote.

Roger Grogman 2:35:45

Commissioners maski.

Ty Symroski 2:35:47

Well, I will confess I'm a sentimentalist when it comes to historic preservation. With that said, I want to I can certainly appreciate their concerns. And I think if they have a big problem getting insurance, then we need to perhaps be addressing that for a lot of other historic structures. Because there may be other ways we could work with people Historic Preservation Committee, or somebody else could be start working to find out a way to address the insurance issue otherwise, and we might want to lurk, work with other communities that want to protect their history. Because this is a way because of insurance, we could be losing a lot of historic properties, understand this building has been significantly modified cetera, and thought, that's my comment, we need to be worried about this insurance issue. It's a much bigger issue than we're confronted with, in this case, on such a rebuilt, relocated house. As I look at the plan, I want to make it really clear, we're going to be approving the demolition, and we're removing the nuthouse from the list. And so as I look at the actual lists, we have a there's sort of contradictory information, I'm looking at the actual register of historic landmarks. And it just it says descript, under the heading of description, it just says not homestead for the Cooper homestead Bailey house. And then it gives the location address and strap numbers. So I don't think those strap numbers or that address is applying to the entire homestead of 160 acres, I think it's just applying to a much smaller piece of property. Is that what's happening when I look at those tax strapped numbers? Are they catching your acts? Like Murex?

2:37:59

No, no, that's what I was trying to explain. And if you Sorry, I didn't attach all of the resolutions. But the final resolution for the historic preservation, the City Council resolution actually referred to the house instead of the Homestead to be on the register. I don't know how that happened. And I don't know why it reads as homestead in the in the in the Sanibel plan. And you are correct. What the Sanibel plan lists as a further description does not include the entire 160 acre original homestead, which would have

been the historic homestead. So I think what we have is, is people sometimes referring to our house as homestead, and sometimes that house, I don't know, I just

Ty Symroski 2:38:51

think it applies as I look at what it says here in the Register of Historic Landmarks. I just see a description, not a designation, and it's described as the not homestead, but then we have the much more precise address. And

2:39:06

yes, and and what is proposed in staff's recommendation is to remove the house to house the homestead to just retain the cemetery, as on the historic registry.

Ty Symroski 2:39:22

So we have this map of historic sites and structures and that's where it actually calls it the nuthouse.

Kim Ruiz 2:39:31

Like I said, I don't know how the different terms and such.

Ty Symroski 2:39:37

So I mean, as I look at the map and the list, I see that it just applies to the nut house,

2:39:44

which is what we staff is recommending the house be removed from the historic registry and that the not family cemetery be put in place there and onto the registry, not anything with adding the historic homestead or anything like that. And if, if the planning commission so desires, Mrs. Young just said she, she has some further background.

Ty Symroski 2:40:17

Okay, well, I'd like to, maybe I'm getting into what should be relevant to the resolution. I think we, as I look at the map from the comprehensive plan, it says the nut house, and there's no mention of a cemetery. The cemetery comes in, when we look at the list of registered places that describes the whole homestead, which would presumably, include the cemetery. And who knows what else the homestead could have included, you know, old historic water pump or something like that. So I think we may need a where as where we can't, we're not in a meeting to add anything to the Historic Register. But I think we need to make sure that what we do is very clear that we're not adding something to the list, the cemetery, because if I look at this map, I don't see the cemetery on here, that gives me some concern. So I think we may need to have a where as in craft the resolution, that the current designation includes the house and the cemetery. And that as a result of this, the house has been removed and the cemetery is remaining, we have to make an an interpretation that the comprehensive plan this map includes the cemetery.

Roger Grogman 2:41:55

Counselor, Agnew, your comments?

John D. Agnew 2:41:57

Thank you, Mr. Chair. Yes. And looking at resolution number 91 Dash 86. It references a resolution placing both the home and family cemetery on the city register for historic landmarks. So I believe it is accurate to say that what we would be doing in this instance is allowing, you know, issuing the certificate of appropriateness to allow the nut home to be demolished. Which would remove it from the registry, but but maintain, as it says, but maintaining on the local register than not family cemetery and to make an appropriate update in that section three, below the, in the airforce. That's, that's the reference.

Ty Symroski 2:42:48

So I would think maybe in your second, whereas you might reference that the designation includes the house in the cemetery. And we're removing the house.

John D. Agnew 2:43:07

We can make that clarification, if that's something that's included in a motion supported by

Roger Grogman 2:43:14

if the motion is made, we'll include that the Commission any additional comments from what has been said so far?

Florence Young 2:43:25

Florence Young. In 1990, we own two and a half acres on the beach with a 1889 house in the center. And I got a letter from the city that our house was being considered for historic designation. Of course, we didn't want it because we had a shack in two and a half acres. And so I appeared at eight public meetings back then. And the way the reason it's called the homestead is they originally said they wanted the whole homestead on the registry, and that would be the two and a half acres. Well, that wasn't reasonable. So we came up with a plan to cut a small lot out of the road side of the property, we picked up that house. And I'll tell you how much it cost. And we built concrete pilings, steel reinforced and we put that house on it. And when we started working on the house, there was very little of it that could be saved. We wanted to recreate the house exactly as it was. And we wanted to have it by code because we wanted to be able to use it. We needed a certificate of occupancy. But what this homestead business was the original statement, they made the note homestead, and they really did loan out two and a half acres but we we appeal that and this is where we are now. We don't we don't know if we're gonna demolish it or not. But we can't do anything to it now put money into it if we can insure our investment, so we let it sit there and I thought if we can get off the registry, then we can make a decision how to move forward with the house and and we might not demolish it, but I had to get that in there as a possibility. Let's see. We'll we'll see. Thank you.

Roger Grogman 2:45:03

Thank you. Commissioner Walsh, your comments?

Lyman Welch 2:45:09

I was wondering, was there a written application for this request? Or was it done? Because I didn't see, usually we get an attachment with the application. And I think and I didn't see that

2:45:24

there was a practice in the past to give you the entire application with all of our different staff reports, our system now is electronic. And so it's submitted electronically. The key part of the application is attached as Attachment A, which is their their discussion of the responses to the certificate of appropriateness. So we don't attach every like we don't they used to attach the owner's authorization and the strap, you know, all of that and to try and to give you what is pertinent to your decision in the staff report.

Roger Grogman 2:46:16

Thank you, Commissioner Walsh.

Lyman Welch 2:46:20

I guess one other question, for first step they were taking recommendations from the Historical Preservation Committee. And their vote was three to two. And I was just wondering, what do you know what the reason for the two against votes was?

2:46:44

I don't remember the exact wording is that they the two of the members were a bit uncomfortable with removing properties from the historic preservation register. And we tried to reiterate that it was those seven conditions, the seven considerations that they were to be looking at and not other issues. It happens that you get votes and you don't always get clarification statements as to why someone voted the way they did.

Lyman Welch 2:47:19

Any additional questions? No, no, that's it for me. Thank you.

Ty Symroski 2:47:24

I think it would be good in the future, since we're supposed to have the consultation of the Historic Preservation Committee to at least have the minutes from that meeting, approving it. When it gets ready for emotional health, few more comments.

Roger Grogman 2:47:43

Any further discussion? Discussion? Commissioner culture,

Kenneth J Colter 2:47:46

Kim, if if the house is removed, demolished, whatever word you want to use, is there still the ability for the youngster to rebuild on that lot conforming to current land development code, and they're not going to be restricted from putting another house on there?

2:48:02

They would be able to have a dwelling unit on that property that meeting setbacks and

Kenneth J Colter 2:48:09

coverage. Thank you.

Roger Grogman 2:48:13

Additional discussion from the commissioners? Are we gonna have public? Yes. I'll go to public comment.

John D. Agnew 2:48:25

Mr. Chair, just one comment, if I may. I know there are a number of different tweaks that are wanted to this resolution. If the commission would be more comfortable, we could bring back a clean version. You could make whatever approvals you wish today and bring back a resolution at our next meeting, if that's your pleasure, or we can do them on the record as we have been just wanting to provide that as an option.

Eric Pfeifer 2:48:51

Your tweaks are the ones we really need. And I don't know if anybody wrote those down. So that would be helpful. Yes.

Roger Grogman 2:48:58

Any any public comment at this time regarding this discussion? Will there be no public comment back to the to the commissioners, commissioners Mirsky, you had pretty well captured the

Ty Symroski 2:49:15

a wood. I'm not going to vote approval for this because I'm such a settlement sentimentalist and I, up until a few years ago had the junonia My mother found while walking to school at this place. So but I do think and I really don't like this resolution, because it's given the approval of demolition, and they're not sure if they're going to dim fellowship but once it's removed from the list, they don't need our approval for a demolition. So I don't want to get out ahead of ourselves. I think under section four of the draft revenue Lucien on the top of page two, it should just removal of the house at 34 Oh, Five West golf derive from the Historic Register and leave it at that afterwards, then they, if they need to demolish, it's no different than any other request to demolish a house. And if it's or modify it any way they want, it's then just another old building on some property. And they just have to go through the normal building permit process to get the approval to demolish it. So I would rather not say we're approving the demolition, we're approving the removal of the house from the register.

Laura DeBruce 2:50:32

Our I'm sorry, doesn't our approval now. Give them the OP bit. So that create a situation where they don't have to go back again, it feels like they have been through a lot of bureaucracy, and I would be very happy to approve it in this manner, so that they have a clear field ahead.

Ty Symroski 2:50:51

If we leave, I think they'll if we approve this resolution, they're still going to have to go to the building department to actually get a permit to demolish. If we remove the house from the historic district, they still go to the building department to get a building permit for Demolish. So I don't think we're adding anything, what we're really doing is we're if the way this is written to place would still be on the historic

district list. And that's I think the point of this is to remove the house from the historic designation, this language doesn't allow the removal doesn't remove it from the list, it just allows the demolition. It may be a fine point. I don't want to make it any further. But I think we should just remove the house, the proposal was to remove the house from the list. Let's do that. So,

John D. Agnew 2:51:57

Mr. Chair, if I may make a few different clarifying comments on those because I think there's some confusion about what has been requested and what you're able to do. The first is with respect to Section 98 112 application for demolition or removal of buildings. It's something that staff wrangled with a good bit with, with regard to removal. But the removal reference doesn't refer to removal from the registry, it refers to removal of the building from the site. So what was asked originally was a request, it made perfect sense, in the sense that we'd like to remove it from the registry, and then figure out what we're able to do with it, the code actually doesn't allow for that. It doesn't, there isn't something that talks about removal from the registry. When they're talking about demolition or removal, it's demolishing it on site or removing it to a different location. And so in this case, the the resolution that I read to you before the title, put on the registry, both the nut home and and the cemetery, what's requested is, and what we're able to grant is a certificate of appropriateness to demolish it. It could be to demolish it or to remove it to remove it to a different location. But I think the practical thing is, they've provided estimates in the neighborhood of a million dollars to fix it on site. And that's not something that's feasible. So if you wanted to issue a certificate of appropriateness to demolish or remove, you could but that's you're talking about the building, period, and then separate and apart you're looking to but maintain on the registry that the cemetery. So again, I think what Commissioner Bruce said is if we go ahead and issue the certificate of appropriateness, to allow for the demolition, demolition or removal, they can choose to move forward with a you know, to the building department for a permit to demolish it. Or if they want to figure out or someone else wants to figure out how to physically remove that building to a different location you could do that. Hopefully that's clarifies

Roger Grogman 2:54:24

vice Vice Chair.

Eric Pfeifer 2:54:27

I'd like to make a motion to approve resolution 23 days 003 with Attorney Ag News two changes and close the public hearing and not bring it back and make them make them wait two more weeks not bring it back. So I'd like to close the hearing with that motion.

Roger Grogman 2:54:43

Second for that. Good we have a motion and a second on the floor any public comment to the motion or second on the floor?

2:54:55

I want to be certain I hear what you're saying. We want the historic designation removed. If we don't get it removed, we want the demolition permit. And I want to make sure that we get the historic residence designation removed

Eric Pfeifer 2:55:09

today, this resolution with a motion.

Laura DeBruce 2:55:11

So I understand why you're confused because I am too. And attorney Agnew, it sounds like you just said we cannot remove the house from the Historic Register. Although the recommendation is that we should issue a certificate of appropriateness that does remove the homestead. And I imagine that means the house or could mean the house from the register of historic landmarks. So I think that I thought that was what we were doing was removing it from the register of historic landmarks.

Ty Symroski 2:55:42

That's what I thought, I'm worried that like, Okay, if we approve shouldn't just

Laura DeBruce 2:55:46

be a demolition or removal, we should just allow it to come off the historic registry, and then let the family decide what they want to do with their property. If we

Ty Symroski 2:55:55

issue the permit, issue, this resolution, and they repair the house, they find somebody to give them insurance than the house is still.

Eric Pfeifer 2:56:08

That's how I read this resolution.

Ty Symroski 2:56:11

And I don't I think what they want is to have a D list.

Eric Pfeifer 2:56:17

And it's just the way the code is written, though.

Ty Symroski 2:56:21

I know. So if we issue this and they don't demolish the house is still on the list. And they've got that insurance problem.

Paula McMichael 2:56:31

That is not our that was not our intention in bringing forward this resolution. So there is some confusion in the code about how you can D list a property and fix it is not clear the process that we ask them to go through as the certificate of appropriateness for demolition, that doesn't mean that they are required to demolish the property, that just gives them the option to do it. And as part of that certificate of appropriateness for demolition, we would be removing it from the historic registry because there is no longer under that certificate of appropriateness for demolition, there is no longer hidden, historic structure.

Laura DeBruce 2:57:08

But it should also be made clear that in the event, they choose not to demolish it, that it is still removed from the historic

Ty Symroski 2:57:16

registry. That's what they're asking for. Yeah. And that's, I think the list, so they can have insurance. So they can get insurance.

Kelly Scotty 2:57:25

Sorry, to interrupt, but do I need to swear Miss Miss Miss McMichael into? Okay.

John D. Agnew 2:57:32

And we we do understand the the request, I think the problem is there isn't a mechanism to address that specific request, I think what we would need to have is a change in the code for a a D listing process, if you will, that's not something that's envisioned by the code, there's not something that provides for it, it would seem that a certificate of appropriateness would be the appropriate avenue to travel, since that's all that's needed to demolish it. One would think you could go through the same thing. But but if you read 98 112, and elsewhere in that same subdivision there, there isn't anything that that allows just a D listing, if you will, so in conjunction with a certificate of appropriateness, to demolish, and if they followed suit in that way. You know, if a property is demolished, or rather, a home building is demolished, it necessarily follows that it's no longer the home that doesn't exist isn't on the registry anymore. May.

Laura DeBruce 2:58:53

If I may ask a question. May we, as the planning commission, make a ruling that that D lists the property from the historic registry? I mean, do we have that ability as planning? Where are we or do we have to do a recommendation to city council, that planning commission and historic registry and Historic Preservation Committee in the future would have the ability to D list a property? Because it does seem rather extreme that the only options we're going to give them is keep it on the historic registry, have it removed or demolish it where I think we all would prefer to simply have it delisted and then let them be able to determine what they can and can't do with it.

John D. Agnew 2:59:41

And I absolutely understand what you've articulated and I think you've articulated it. Well, what I don't have an appreciation for is when this was created was there in 10 years



EXHIBIT J



**CITY OF SANIBEL
PLANNING COMMISSION RESOLUTION 23-001**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANIBEL APPROVING A DEVELOPMENT PERMIT (APPLICATION NO. DP-2021-001803) AND MINOR SUBDIVISION (APPLICATION SPLT-2022-000074) FILED PURSUANT TO SECTIONS 82-421(8), 82-422, AND 114-106 OF THE LAND DEVELOPMENT CODE FOR PRELIMINARY PLAT, TO ALLOW A UNIFIED RESIDENTIAL HOUSING (CLUSTER HOUSING) DEVELOPMENT INCLUDING SIX PARCELS FOR SINGLE-FAMILY RESIDENTIAL USE AND ASSOCIATED IMPROVEMENTS, KNOWN AS “COASTAL CREEK” SUBDIVISION, ON PROPERTY OWNED BY BUCKINGHAM 225 DEVELOPMENT, INC. (DANIEL W. DODRILL), AND LOCATED AT 5301-5325 SANIBEL CAPTIVA ROAD, MORE FULLY DESCRIBED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sections 82-421(8) and 82-422 of the Land Development Code detail the application and notice requirements for development permit consideration by the Planning Commission; and Section 114-106 of the Land Development Code provides for requirements and procedures for preliminary plats; and

WHEREAS, Buckingham 225 Development, Inc. (Daniel W. Dodrill), owner of the property located at 5301-5325 Sanibel Captiva Road, has authorized Brian Smith, Ensite, Inc., to submit Development Application No. DP-2021-001803 and Major Subdivision Plat Application No. SPLT-2022-000074 to allow for a Unified Residential Housing (Cluster Housing) development including six parcels for single-family residential use and associated improvements, known as “Coastal Creek” subdivision; and

WHEREAS, the applicant has requested approval of Application Nos. DP-2021-001803 and SPLT-2022-000074 for the property located at 5301-5325 Sanibel Captiva Road; and

WHEREAS, a duly noticed public hearing of the applications was held before the Planning Commission on January 24, 2023; and

WHEREAS, extensive discussion occurred during the public hearing regarding the proposed development being on the site of a decommissioned wastewater treatment facility; and

WHEREAS, after providing the applicant, staff, and the public an opportunity to present testimony and evidence, and having reviewed the record, the Planning Commission finds by a 4-2 vote that the criteria for granting the applications have been met and that the application should therefore be approved.

NOW, THEREFORE, BE IT RESOLVED, THE PLANNING COMMISSION OF THE CITY OF SANIBEL finds that Development Permit Application No. DP-2021-001803 and Major Subdivision Plat Application No. SPLT-2022-000074 to allow for a Unified Residential Housing (Cluster Housing) development including six parcels for single-family residential use and associated improvements, known as “Coastal Creek” subdivision on property owned by Buckingham 225 Development, Inc. (Daniel W. Dodrill), and located at 5301-5325 Sanibel Captiva Road, and more fully identified as Tax Parcel No. 13-46-21-T2-00002.2000 and 13-46-21-T2-00002.4000 and described in Exhibit A, attached hereto, is approved.

Approval of this Development Permit Application is pursuant to the applications submitted (including attachments) and considered by the Planning Commission, and subject to the following condition(s) contained in the January 24, 2023, staff report:

1. A copy of the approved preliminary plat is attached to this resolution as Exhibit “A”.
2. Preliminary plat approval shall be effective and valid for a period of three years. The planning commission may, however, extend this effective period for an additional two years, provided that, at the time such extension is granted, the preliminary plat continues in compliance with all requirements of this Land Development Code and the Sanibel Plan. If all requirements for approval of a final

subdivision plat, and the recording of such plat, are not completed within the time period for which preliminary approval is valid and effective, such preliminary approval and all rights conferred thereby shall be terminated and expire.

3. Preliminary plat approval may be extended by city council for an additional period of time beyond the three-year effective time period and the two-year extension that may be approved by the planning commission due to the necessity of achieving compliance with federal, state or local regulations pertaining to endangered or protected species and respective habitat or due to other unforeseen environmental conditions.

4. The applicant shall submit for final approval, a final subdivision plat in accordance with the requirements of Land Development Code Section 114-89 – Final plat review and approval.

5. A copy of the approved Coastal Creek Site Development Plans is attached to this resolution as Exhibit “B”.

6. All future land use and development shall comply with Exhibit “A” and “B”, and all associated requirements of the Land Development Code including, but not limited to:

- a. Single-family residential and associated accessory uses
- b. Lot sizes
- c. Setbacks
- d. Limitations on vegetation removal and developed area
- e. Limitation on coverage with impermeable surfaces
- f. Minimum distance between buildings
- g. Environmental performance standards

7. The applicant shall execute, and record in the public records of Lee County, a declaration that the residential density allocation for the property has been fully utilized. If the development is to be phased and only a portion of the residential density allocated to the property is to be utilized, then the declaration shall reflect that portion so utilized. The declaration shall be prepared, executed and recorded in accordance with the formalities required under state law for the conveyance of real property, for which the developer shall be responsible. Completion permits shall not be issued for any dwelling units in the development and the subdivision shall not be final until such time as the developer shows compliance with this section.

8. The applicant shall establish a legal entity (a property owner’s association) with responsibility for complying with the requirements of this development permit and maintaining the private road, drainage system, utilities, landscape buffers, and wetland preservation. Restrictive covenants for the subdivision are to include the following provisions

- a. A provision that requires compliance with the conditions of development permit DP-2021-1803;
- b. A provision that prohibits any dwelling unit in the subdivision from use as resort housing;
- c. A provision requiring the Association to maintain the private street, stormwater management system, utilities, landscape buffers, and wetland preservation as conditions of approval for the preliminary plat and construction plans. The Association shall have the authority to make assessments and enforce liens to cover the costs and assessments;
- d. A provision giving the City of Sanibel the right to enforce the Associations obligations to maintain the private street, the stormwater management system, utilities, landscape buffers, and wetland preservation required as conditions of approval for the preliminary plat and construction plans;
- e. A provision authorizing the City of Sanibel to make repairs and perform maintenance on required facilities, if not done by the Association, and giving the City the right to make assessments and enforce liens for costs of repairs and maintenance;
- f. A provision providing a notice to lot purchasers that the street within the subdivision is not a public street, is to be maintained by the owners at their expense and is intended to remain a private street in perpetuity;
- g. A provision that specifies as to each lot how many dwelling units are permitted thereon, including the amount of developed area and coverage assigned to each single-family lot;
- h. A provision requiring the applicant to provide each property purchase/owner with information about the common open space and preservation areas, including Tracts B, C, D-1 and D-2.
- i. A provision in the amendment section of the documents prohibiting amendments to the preceding provisions without the written jointer or consent of the City of Sanibel.

9. Preliminary plat approval shall not relieve the applicant from the requirement of obtaining permits

from and complying with lawful requirements imposed by the Florida Department of Environmental Protection, South Florida Water Management District, and any other applicable local, State and Federal law.

10. The applicant shall install all monuments as required by F.S. ch. 177 and construct all streets, street signs, drainage facilities, sewage treatment facilities and other improvements as are necessary to bring the proposed subdivision in full compliance with the following requirements of the Land Development Code.

a. All streets and other improvements in proposed subdivisions shall be constructed in accordance with all specifications as provided in this chapter and as may be adopted by the city council by resolution as "Subdivision Improvement Construction Requirements."

b. All necessary street signs shall be installed by the applicant in accordance with the prevailing scheme of identifying public and private streets in the city.

c. All necessary drainage facilities shall be constructed as required and approved by the city manager so as to meet the minimum requirements of this Land Development Code and as to accomplish the intent and purpose of this Land Development Code.

11. The applicant shall obtain formal approval of the proposed subdivision and street names from the City in accordance with Ordinance No. 86-27 and City Council Resolution No. 86-67 prior to final plat approval.

12. The applicant may not begin construction of required improvement until construction plans are approved by the City Manager and a construction bond with good and sufficient surety, an irrevocable letter of credit, or equivalent security is provided to the City in an amount equal to the cost of all required improvements, and in a form approved by the City Attorney, conditioned upon satisfactory completion of required improvements in accordance with the approved construction plans during the effective period of the preliminary plat approval.

13. No facility installed underground may be covered over until the facility has been inspected by the City Manager. Other periodic inspections may be required. Construction of required improvements shall not be complete unless and until all the improvements have been finally inspected and approved by the City Manager.

14. Prior to the commencement of development activity, the applicant shall obtain a vegetation permit to approve revisions of the vegetation plan.

15. The applicant shall submit a copy of the SFWMD preserve management plan annual monitoring reports to the City.

16. Landscaping on common element parcels shall be 100% native.

17. The use of fertilizer containing nitrogen and phosphorus is prohibited within the Coastal Creek subdivision.

18. The use of sod is prohibited within common area tracts, with the exception of the stormwater berms, and all new vegetation within tracts D-1 & D2 shall comply with Sec. 118-286 – Planting.

19. A native vegetation buffer shall be installed along the north property line, pursuant to LDC Chapter 122, Article II, Division 3 – Residential Development Along Arterial and Collector Roads; and along the western property line. A vegetation plan detailing the buffer shall be submitted to the City for review and approval.

20. Pursuant to Sec. 122-129(3) and Sec. 122-191, all City-listed and Florida Invasive Species Council (formerly FLEPPC) listed plant species shall be removed from the site and maintained free in perpetuity.

21. Property owners adjacent to preserves do not have riparian rights and are not entitled to views of the water bodies, trimming of vegetation in preserve areas is strictly prohibited; and the trimming of mangroves or other vegetation within Tracts D-1 and D-2 is strictly prohibited, except to access utilities.

22. The applicant shall comply with all provisions of Chapter 86 – Site Preparation, including but not limited to:

a. Development activities shall be designed to minimize the amount of fill used in preparation of the site. Soil and other materials shall not be temporarily nor permanently stored in locations which would result in the unnecessary destruction of vegetation. Excess soil, or other material, including dredged spoil, to be disposed of off-site, shall be deposited at specified locations in a manner causing minimal environmental damage.

b. Erosion and sediment control measures shall be coordinated with the sequence of grading, development, and construction operations; and shall be maintained for the duration of

construction until final landscaping has been installed.

c. Removal of vegetation shall be limited to the minimum necessary to carry out development activity, except as required by other provisions of the Land Development Code. The removal of vegetation, by any means other than the use of hand-held tools, shall not occur prior to issuance of a development permit.

d. Permanent vegetation shall be installed on the construction site as soon as utilities are in place and final grades are completed. This permanent vegetation must be cared for and maintained in a healthy condition.

e. All on-site facilities shall be properly maintained by the owner so that they do not become nuisances. Nuisance conditions shall include but not be limited to:

1. Improper storage resulting in uncontrolled runoff and overflow;
2. Stagnant water with concomitant algae growth, insect breeding and odors;
3. Discarded debris;
4. Unnecessary noise; and
5. Safety hazards created by the facility's operations.

f. The design, location and construction and the maintenance of all development shall be in a manner that minimizes environmental damage. The developer shall completely restore any environmentally sensitive area or wetland area damaged during construction. Complete restoration means that the damaged area shall, within two years, be operating as effectively as the natural system did before being destroyed or altered. In designing the site for its ultimate end use, the site shall be graded in such a manner, and development and use shall take place in such a manner, so that there are no point discharges into coastal waters resulting from stormwater runoff and/or from wastewater effluent.

23. Planning Commission recommends that "Tract C", as shown and described by Exhibit "A", approved as conservation use for the protection of wetlands, is designated for inclusion within the Environmentally Sensitive Lands Conservation District and map upon City Council consideration of an amendment to the Sanibel Plan.


EXPIRATION OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-424(f), when a development order is approved with conditions imposed thereon, such conditions shall be satisfied within the time limit specified in the development order issued by the Planning Commission. When such conditions specify requirements to be completed before a development permit is issued, and no particular time limit is specified for satisfaction of the conditions, such conditions must be satisfied within six months after issuance of the development order. Failure to satisfy a condition imposed upon the approval of a development permit, within the time limit specified therefor, or such extended time period as the Planning Commission may approve upon timely application of the permittee, shall cause the development order approving the development permit to be null and void and of no further force or effect.

RIGHT TO APPEAL PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-98. Appeals. The applicant is hereby advised that the following persons have the right to appeal a final decision of the Planning Commission adverse to their interests: 1) The applicant; 2) The owner of the property proposed for development; 3) The developer of the property proposed for development; 4) Any other person residing upon, or owning property within the City, or owning or operating a business within the City, who participated by written comment before or at the Planning Commission hearing or who participated in person or through an authorized agent at the Planning Commission hearing. The appeal shall be filed within 15 days after the date that the Planning Commission decision was filed. The appeal shall be filed with the City manager, and the filing fee shall be paid as a prerequisite to filing.


DISCLAIMER & PERMIT CONDITION (APPLICABLE ONLY IF FEDERAL OR STATE PERMITS ARE REQUIRED): Issuance of a development permit by the City does not create any right or presumptive entitlement to obtain an approval from a property owners' association or a permit from a State or Federal agency. If applicable, all other State or Federal permits must be obtained before commencement of the project.

PASSED IN OPEN AND REGULAR SESSION OF THE PLANNING COMMISSION OF THE CITY OF SANIBEL, FLORIDA, THIS 24TH DAY OF JANUARY 2023.

Attest:



Scotty Lynn Kelly, City Clerk



Roger Grogman, Chair

Approved as to form and legality:



John D. Agnew, City Attorney

Date filed with City Clerk: 2/6/23

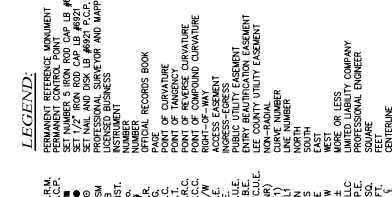
Vote of Commission Members:

Grogman	<u>Yea</u>
Pfeifer	<u>Yea</u>
DeBruce	<u>Yea</u>
Colter	<u>Yea</u>
Nichols	<u>Excused</u>
Welch	<u>Abstain</u>
Symroski	<u>Yea</u>

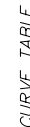
EXHIBIT A TO RESOLUTION

A SUBDIVISION LYING IN
SECTION 13, TOWNSHIP 46 SOUTH, RANGE 21 EAST,
CITY OF SANIBEL, LEE COUNTY, FLORIDA

INSTRUMENT NUMBER:



1. BEARINGS ARE BASED ON THE NORTH LINE OF SECTION 13-46-21, AS BEING S.89°33'20"E.
2. DIMENSIONS SHOWN HEREIN ARE IN FEET AND DECIMALS THEREOF.
3. ALL LOT LINES ARE RADIAL UNLESS INDICATED NON-RADIAL (N.R.).
4. THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA ON THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD INSURANCE RATE MAPS. FLOOD ZONE "VE", ELEVATION 11' AND 12'.

LINE TABLE

LINE	BEARING	DISTANCE
1	N 55° 45' 00" W	12.27
2	N 68° 50' 00" W	7.60
3	N 68° 50' 00" W	2.00
4	N 68° 50' 00" W	20.55
5	N 68° 50' 00" W	1.74
6	N 68° 50' 00" W	1.74
7	N 68° 50' 00" W	76.89
8	N 68° 50' 00" W	2.26
9	N 68° 50' 00" W	2.26
10	N 68° 50' 00" W	30.51
11	N 68° 50' 00" W	30.51
12	N 68° 50' 00" W	34.47
13	N 68° 50' 00" W	
14	N 68° 50' 00" W	
15	N 68° 50' 00" W	
16	N 68° 50' 00" W	
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19	N 68° 50' 00" W	
20	N 68° 50' 00" W	
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25	N 68° 50' 00" W	
26	N 68° 50' 00" W	
27	N 68° 50' 00" W	
28	N 68° 50' 00" W	
29	N 68° 50' 00" W	
30	N 68° 50' 00" W	
31	N 68° 50' 00" W	
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34	N 68° 50' 00" W	
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37	N 68° 50' 00" W	
38	N 68° 50' 00" W	
39	N 68° 50' 00" W	
40	N 68° 50' 00" W	
41	N 68° 50' 00" W	
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43	N 68° 50' 00" W	
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92	N 68° 50' 00" W	
93	N 68° 50' 00" W	
94	N 68° 50' 00" W	
95	N 68° 50' 00" W	
96	N 68° 50' 00" W	
97	N 68° 50' 00" W	
98	N 68° 50' 00" W	
99	N 68° 50' 00" W	
100	N 68° 50' 00" W	

TRACT "A": ROAD RIGHT-OF-WAY, PUBLIC UTILITY AND DRAINAGE EASEMENT TRACT
TRACT "B": ROADWAY BUFFER
TRACT "C": WETLAND
TRACT "D-1" AND "D-2": DRAINAGE AND OPEN SPACE

TRACT/LOT AREAS		CALCULATED AREAS FOR CITY OF SANBOL COUNTY		exhibits Bates #221	
PARCEL	OVERALL AREA	MAX PERMITTED AREA	MAX PERMITTED AREA	MAX PERMITTED AREA	MAX PERMITTED AREA
LOT 1	4999.12	4999.12	2955		
LOT 2	4998.97	4998.97	2956		
LOT 3	4999.03	4999.03	2955		
LOT 4	4999.63	4999.63	2955		
LOT 5	4999.83	4999.83	2955		
LOT 6	4999.97	4999.97	2955		
LOT 7	4999.83	4999.83	2955		
LOT 8	4999.97	4999.97	2955		
LOT 9	4999.83	4999.83	2955		
LOT 10	4999.97	4999.97	2955		
LOT 11	4999.83	4999.83	2955		
LOT 12	4999.97	4999.97	2955		
LOT 13	4999.83	4999.83	2955		
LOT 14	4999.97	4999.97	2955		
LOT 15	4999.83	4999.83	2955		
LOT 16	4999.97	4999.97	2955		
LOT 17	4999.83	4999.83	2955		
LOT 18	4999.97	4999.97	2955		
LOT 19	4999.83	4999.83	2955		
LOT 20	4999.97	4999.97	2955		
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LOT 26	4999.97	4999.97	2955		
LOT 27	4999.83	4999.83	2955		
LOT 28	4999.97	4999.97	2955		
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LOT 41	4999.83	4999.83	2955		
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LOT 45	4999.83	4999.83	2955		
LOT 46	4999.97	4999.97	2955		
LOT 47	4999.83	4999.83	2955		
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LOT 50	4999.97	4999.97	2955		
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LOT 58	4999.97	4999.97	2955		
LOT 59	4999.83	4999.83	2955		
LOT 60	4999.97	4999.97	2955		
LOT 61	4999.83	4999.83	2955		
LOT 62	4999.97	4999.97	2955		
LOT 63	4999.83	4999.83	2955		

EXHIBIT B TO RESOLUTION



ensite
2401 FIRST STREET, SUITE 201
FORT MYERS, FLORIDA 33901
PH: (239) 726-0034
EB-20544 CA-LC26000374

CLIENT NAME AND ADDRESS
Buckingham 225 Development, Inc.
5961 Northland Rd., #1
Fort Myers, FL 33905

PROJECT NAME AND LOCATION
COASTAL CREEK
SANIBEL, FLORIDA

COASTAL CREEK

MAJOR SUBDIVISION AND SITE DEVELOPMENT PLANS

PART OF SECTION 13, TOWNSHIP 46 SOUTH, RANGE 21 EAST
SANIBEL, FLORIDA

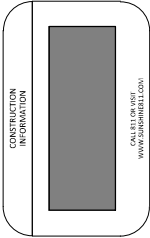
PREPARED FOR: Buckingham 225 Development, Inc.

PARCEL ZONING
D-2 RESIDENTIAL DISTRICT

PARCEL STRAP NUMBERS
13-46-21-17-00002-2000
13-46-21-17-00002-4000

PARCEL BOUNDARY
±3.36 ACRES

FLOOD ZONE DESIGNATION
ZONE VE: ELEV. 11 N.A.V.D.

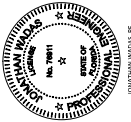


VICINITY MAP
N.T.S.



PLAN INDEX

SHEET NO.	DESCRIPTION
C-01	COVER SHEET, VICINITY MAP & INDEX
C-02	GENERAL NOTES
C-03	AERIAL MAP
C-04	SOILS & EXISTING CONDITIONS MAP
C-05	EROSION & SEDIMENT CONTROL PLAN
C-06	SITE PLAN
C-07	PAVING, GRADING & DRAINAGE PLAN
C-08	TYPICAL SECTIONS
C-09	PAVING, GRADING & DRAINAGE DETAILS
C-10	UTILITY PLAN
C-11	UTILITY DETAILS
LA-01	EXISTING LANDSCAPE & DEMOLITION
LA-02	LANDSCAPE PLAN
LA-03	EXISTING VEGETATION
LA-04	LANDSCAPE DETAILS



NO.	REVISION	DATE	FOR SERVICE AND CITY COMMENTS
1	2-18-20		

UNLESS OTHERWISE NOTED

PREVIOUSLY SUBMITTED EXHIBITS

DATE	NO.	SCALE
2-18-20	1	1/4" = 1'-0"
2-18-20	2	1/4" = 1'-0"
2-18-20	3	1/4" = 1'-0"
2-18-20	4	1/4" = 1'-0"
2-18-20	5	1/4" = 1'-0"
2-18-20	6	1/4" = 1'-0"
2-18-20	7	1/4" = 1'-0"
2-18-20	8	1/4" = 1'-0"
2-18-20	9	1/4" = 1'-0"
2-18-20	10	1/4" = 1'-0"
2-18-20	11	1/4" = 1'-0"
2-18-20	12	1/4" = 1'-0"
2-18-20	13	1/4" = 1'-0"
2-18-20	14	1/4" = 1'-0"
2-18-20	15	1/4" = 1'-0"
2-18-20	16	1/4" = 1'-0"
2-18-20	17	1/4" = 1'-0"
2-18-20	18	1/4" = 1'-0"
2-18-20	19	1/4" = 1'-0"
2-18-20	20	1/4" = 1'-0"
2-18-20	21	1/4" = 1'-0"
2-18-20	22	1/4" = 1'-0"
2-18-20	23	1/4" = 1'-0"
2-18-20	24	1/4" = 1'-0"
2-18-20	25	1/4" = 1'-0"
2-18-20	26	1/4" = 1'-0"
2-18-20	27	1/4" = 1'-0"
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2-18-20	29	1/4" = 1'-0"
2-18-20	30	1/4" = 1'-0"
2-18-20	31	1/4" = 1'-0"
2-18-20	32	1/4" = 1'-0"
2-18-20	33	1/4" = 1'-0"
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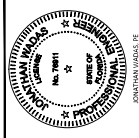




CLIENT NAME AND ADDRESS

Buckingham 225 Development, Inc.,
5961 Northland Rd., #1
Fort Myers, FL 33905

COASTAL CREEK
SANIBEL, FLORIDA

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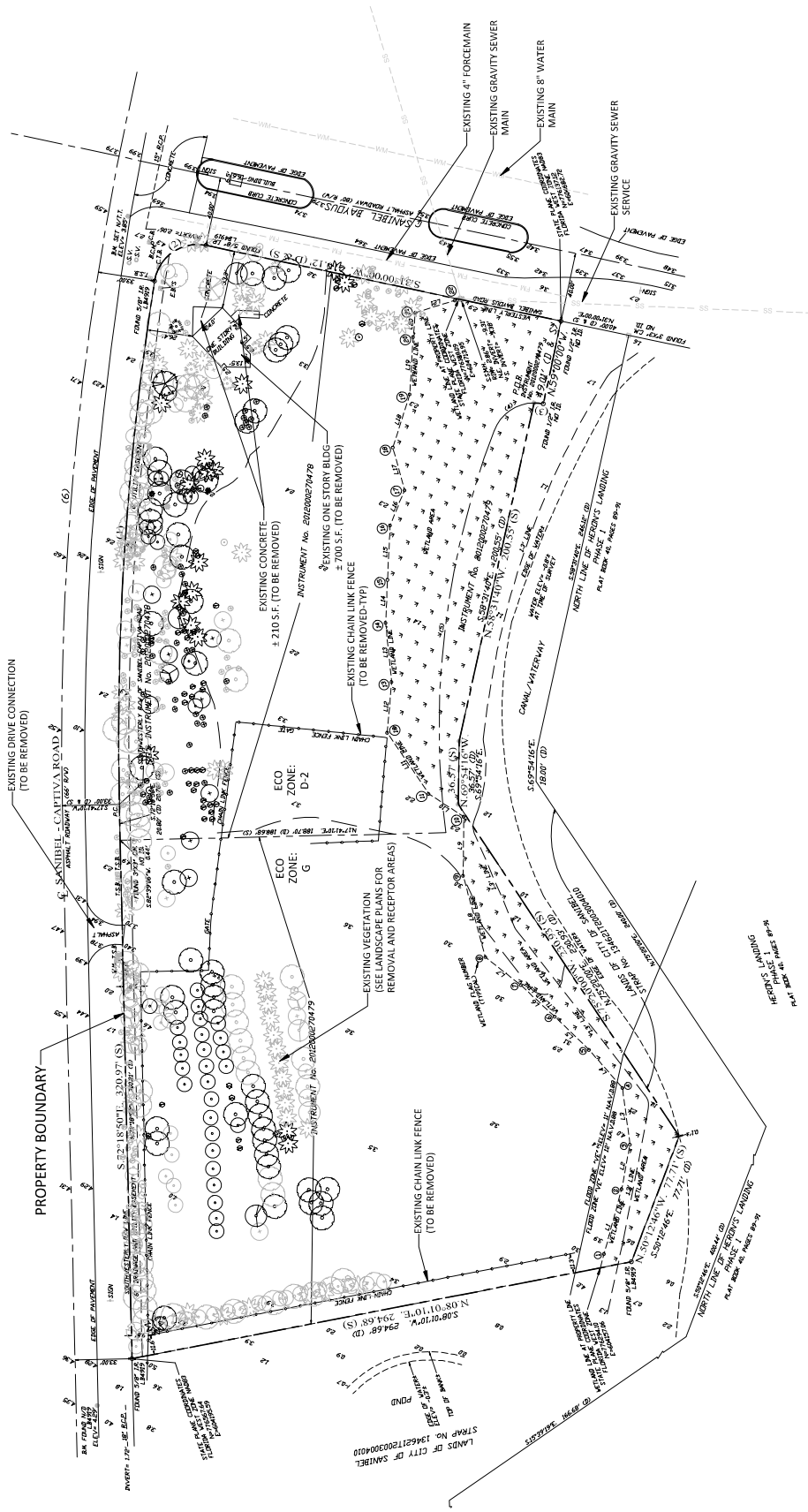
SOILS & EXISTING
CONDITIONS MAP

SHEET TITLE

its Dates #226

C-04

SHEET NUMBER



[illegible]

LDC 126-454
G - ECO ZONE:
 TOTAL AREA =
 MAX COVERAGE =
 95,576 S.F.
 35% UP TO 10,000 S.F.

S.F. IMPERVIOUS AREA	13,487 S.F.
PROPOSED ASPHALT ROADWAY =	597 S.F.
PROPOSED ASPHALT ROADWAY =	8,540 S.F.
PROPOSED BUILDING =	3,272 S.F.
PROPOSED POOL / DECK =	25,896 S.F.
TOTAL IMPERVIOUS AREA =	25,896 S.F.
PROPOSED PERVIOUS BRICK DRIVES =	2,930 S.F.
IMPERVIOUS COVERAGE CALCULATIONS:	
PROPOSED =	25,896 S.F.

LDC 126-394
D-2 - ECO ZONE:
TOTAL AREA = 50,663 S.F.
MAX COVERAGE = 25% = 12,665 S.F.

INTERPUIVUS AREA	
PROPOSED ASPHALT ROADWAY =	1,432 S.F.
PROPOSED ASPHALT DRIVEWAY =	330 S.F.
PROPOSED BUILDING =	4,270 S.F.
PROPOSED POOL / DECK =	1,666 S.F.
TOTAL IMPERVIOUS AREA =	7,667 S.F.
PROPOSED PERVIOUS BRICK DRIVES =	1,138 S.F.
IMPERVIOUS COVERAGE CALCULATIONS:	
PROPOSED =	7,667 S.F.

PROPOSED = 7,657 S.F.

1. ALL SIGHTING AND PAVEMENT MARKINGS SHALL BE INSTALLED IN ACCORDANCE WITH TDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION), TDOT ROADWAY AND TRAFFIC DESIGN STANDARDS (LATEST EDITION), THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (LATEST EDITION), AND THE MANUAL ON UNIFORM TRANSPORTATION REQUIREMENTS.
2. MAINTAIN EXISTING PAVEMENT MARKINGS AT EXISTING ROADS.
3. MAINTENANCE OF TRAFFIC SHALL BE IN ACCORDANCE WITH THE TDOT ROADWAY AND TRAFFIC DESIGN STANDARDS (LATEST EDITION).
4. CONTRACTOR SHALL SET ROADWAY GROUND MOUNT SIGN AT PROPER DEFLECTION ANGLE TO THE ROADWAY IN ACCORDANCE WITH TDOT INK A NUMBER 7392.

SEE TPO INDEX NUMBERS 12346 AND 12352 FOR ADDITIONAL DETAILS.



IT IS THE INTENT OF THE OWNER, Buckingham 225 Development, Inc., OR ITS SUCCESSORS, TO OWN AND MAINTAIN COMMON AREAS ON THE SUBJECT PROPERTY, INCLUDING BUT NOT LIMITED TO STORM WATER FACILITIES, PRIVATE UTILITIES, LANDSCAPING, NATURAL AREAS/RECEPTOR AREAS, WETLANDS, UPLAND BUFFER, IRRIGATION, EXOTIC CONTROL, ETC.

CITE data (CITE) Arxiv: Sep 01 2022 - 1:44pm

G = +2.19 ACRES (66%) OF SITE
D-2 = +1.16 ACRES (34%) OF SITE

	MIN. REQUIRED
D-2-ECOZONE	75'
FRONT (SAMBELL CAPTIVA RD-CENTERLINE)	10'
FRONT (PRIVATE ROAD)	10'
SIDE (FROM STRUCTURES-NOT INTERNAL ON LOTS)	10'
OPEN WATER OR 1.3' NAVD	20'
PERIMETER	20'
D-2-ECOZONE	75'
FRONT (SAMBELL CAPTIVA RD-CENTERLINE)	10'
FRONT (PRIVATE ROAD)	10'
SIDE (FROM STRUCTURES-NOT INTERNAL ON LOTS)	10'
OPEN WATER OR 1.3' NAVD	20'

ON-SITE	EXISTING	PERCENT %	PROPOSED	PERCENT %
LAND USE TABLE:	0.00 AC	0.00%	0.00 AC	0.00%
PAVEMENT (ASPHALT)	0.00 AC	0.00%	0.02 AC	1%
PERVIOUS PAVERS	0.00 AC	0%	0.11 AC	4%
GRAVEL	0.00 AC	0%	0.34 AC	10%
OPEN SPACE	0.00 AC	0%	0.34 AC	10%
WATER	0.00 AC	0%	0.55 AC	17%
WETLAND	0.00 AC	0%	0.55 AC	17%
OPEN LAND	0.33 AC	16%	0.54 AC	16%
WATER BUFFER	0.00 AC	0%	0.35 AC	10%
TOTAL	3.36 AC	100%	3.36 AC	100%

PAVEMENT	PROPOSED	PERCENT %
	0.01 AC.	100%
TOTAL	0.01 AC.	100%

45' HEIGHT LIMITATION IN BOTH THE G AND D-2 ECOLOGICAL ZONES

	ALT A	ALT B
BUILDING	3,000 S.F.	2,200 S.F.
POOL AREA	1,000 S.F.	1,000 S.F.
PERVIOUS PAVERS (DRIVE)	800 S.F.	800 S.F.
PERVIOUS AREA	200 S.F.	1,000 S.F.
	5,000 S.F. TOTAL	5,000 S.F. TOTAL

Legend:

- ASPHALT
- CRUSHED SHELL ROAD
- WETLAND AREA
- UPLAND BUFFER
- DRY DETENTION / NATURAL AREA / RECEPTION AREA
- ECOLOGICAL ZONE LINE

PARCEL	OVERALL AREA	MAX. PERMITTED DEVELOPMENT	MAX. PERMITTED IMPROVABLE AREA
LOT 1	4999.12	4999.12	2955
LOT 2	4998.97	4998.97	2955
LOT 3	4998.70	4998.70	2955
LOT 4	4999.63	4999.63	2955
LOT 5	4999.63	4999.63	2955
LOT 6	4999.97	4999.97	2955
SUBTOTAL	29998.22	29998.22	17730

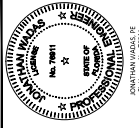
C-06

doi:10.1017/S0022292412001609

ensite
2401 FIRST STREET, SUITE 201
FORT MYERS, FLORIDA 33901
PH: (239) 226-0024
FB-26544 CA-1 C76000374

Buckingham 225 Development, Inc.
5961 Northland Rd., #1
Fort Myers, FL 33905
CLIENT NAME AND ADDRESS

COASTAL CREEK
SANIBEL, FLORIDA



JONATHAN VIADAS, PE
FL License No. 76911

[illegible]

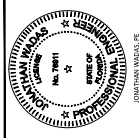
Previously submitted exhibits Bates #228



CLIENT NAME AND ADDRESS

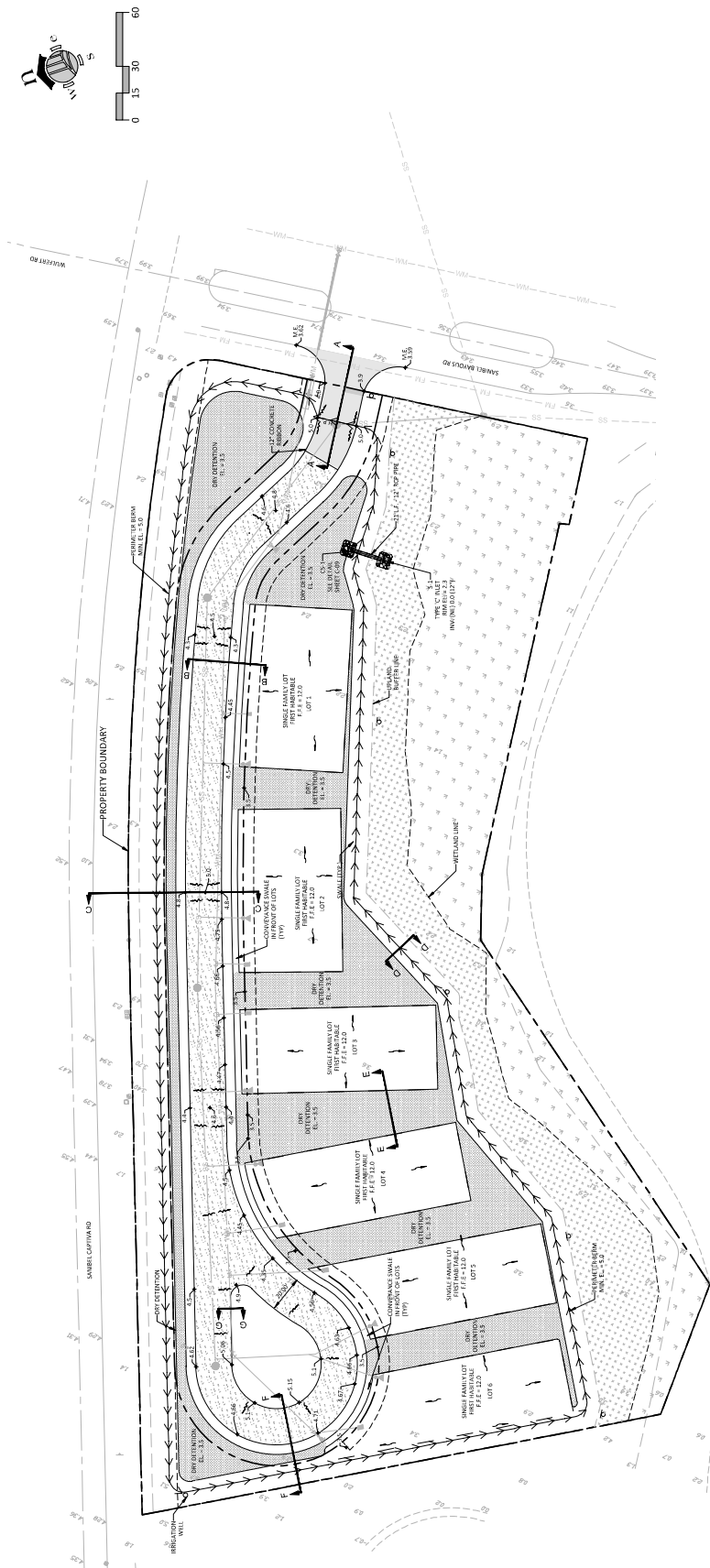
Buckingham 225 Development, Inc.,
5961 Northland Rd., #1
Fort Myers, FL 33905

COASTAL CREEK
SANIBEL, FLORIDA

[illegible]

PAVING, GRADING &
DRAINAGE PLAN
SHEET TITLE

#229
C-07
SHEET NUMBER



PAVING, GRADING AND DRAINAGE NOTES:

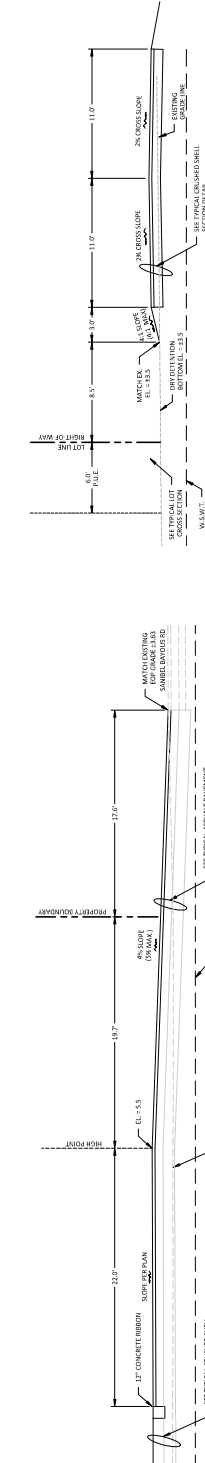
- [illegible]

SWM DESIGN TABLE / SUMMARY:

BASIN:	-2.06' KICKS
WET SEASON WATER TABLE ELEV.:	-1.3' NAVD
WATER QUALITY VOLUME REQUIRED:	-0.20 AC FT
WATER QUALITY VOLUME PROVIDED:	-0.72 AC FT
5 YEAR, 24 HOUR PEAK STAGE	-4.19' NAVD
25 YEAR, 72 HOUR PEAK STAGE	-4.55' NAVD
100 YEAR, 71 HOUR 28RD DISCHARGE	-5.61' NAVD
PEAK DISCHARGE (POST CONTROLLED BY THE 3" DIA. ORIFICE (MIN. SIZE):	
THE MAX FLOW 0.35 CFS	
MINIMUM ROAD CROWN ELEV.	-4.5' NAVD
MINIMUM BURN ELEV.	-5.0' NAVD
MINIMUM FINISHED FLOOR ELEV.	-12.0' NAVD (FIRST HABITABLE FLOOR)

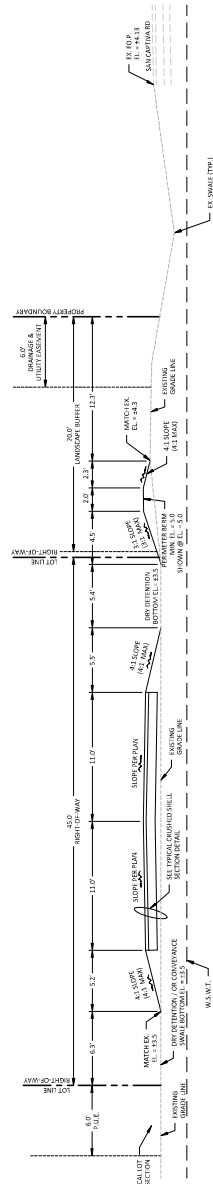
LEGEND

-

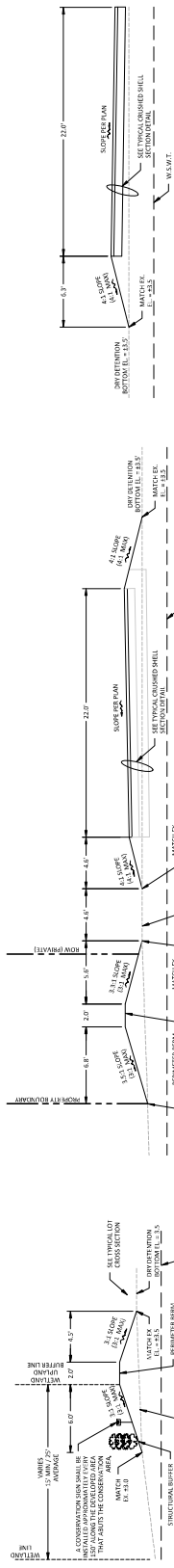


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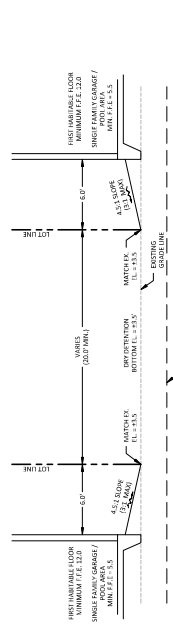
A-A



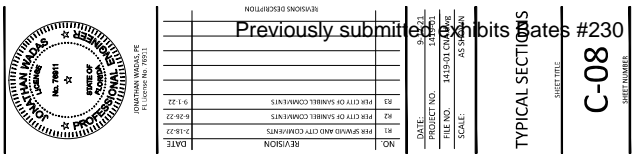
C-C
N.T.S.

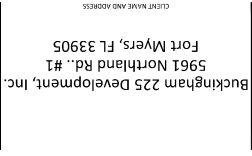

$$\frac{D-D}{MFC}$$

F-F



0.1 to 1.3
TYPICAL LOT CROSS SECTION
E-F





PAVING, GRADING &
DRAINAGE DETAILS

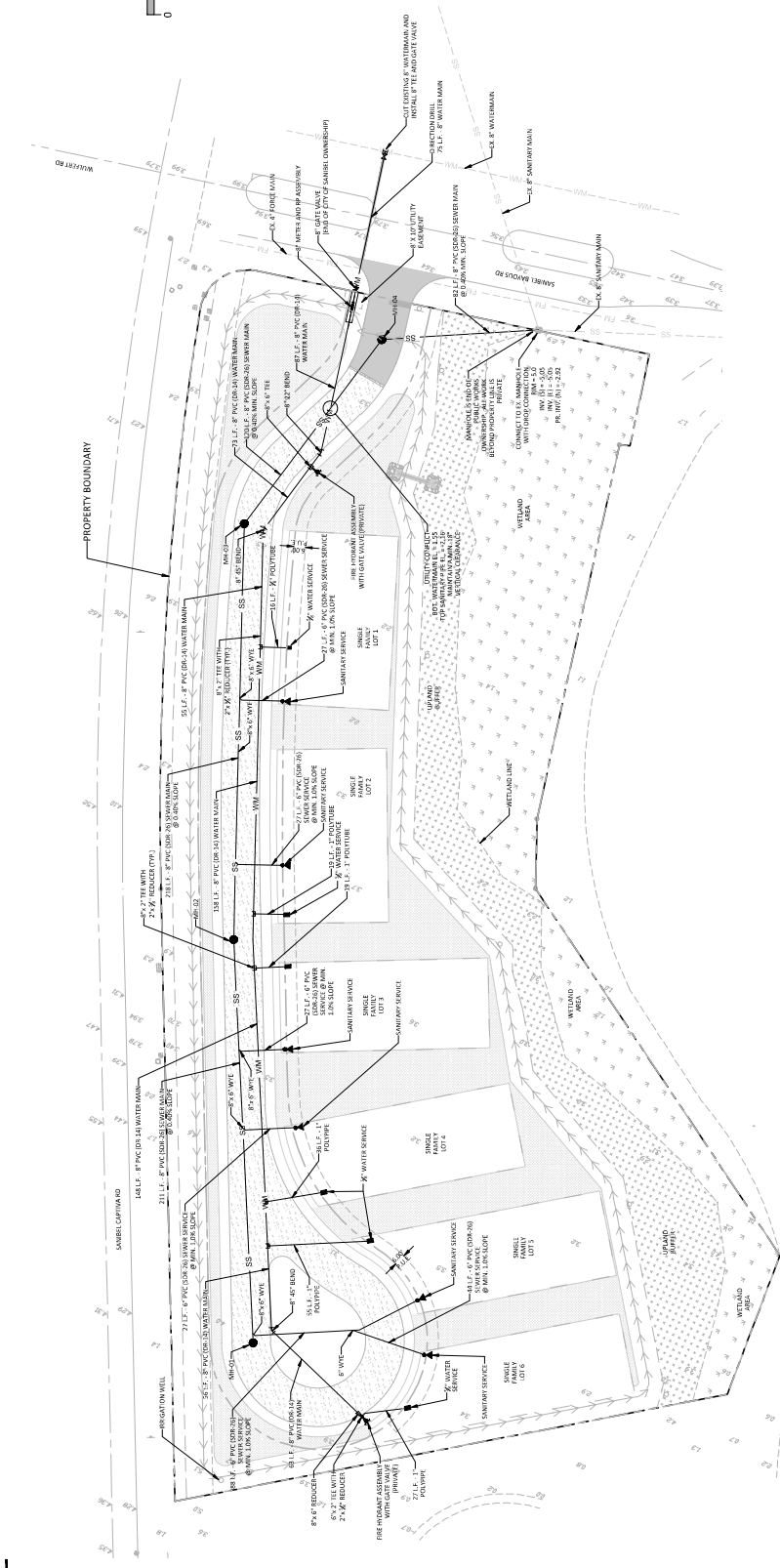
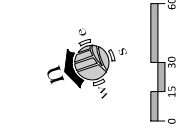
SHEET TITLE

C-09

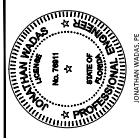
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SHEET NUMBER





PROJECT NAME AND LOCATION
COASTAL CREEK
SANIBEL, FLORIDA



REVISION		DESCRIPTION
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STRUCTURE SCHEDULE:

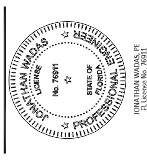
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SEWER MAIN	14" DIA.
WATER SERVICE	14" DIA.
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WATER MAIN	14" DIA.
SEWER MAIN	14" DIA.
WATER SERVICE	14" DIA.
SEWER SERVICE	14" DIA.

LEGEND

ASPHALT	UPLAND BUFFER
CRUSHED SHELL	DRY DETENTION
WETLAND AREA	

NOTES:

- ALL EXISTING UNDERGROUND UTILITIES ARE SHOWN IN APPROXIMATE LOCATIONS. CONTRACTOR SHALL VERIFY ALL LOCATIONS PRIOR TO CONSTRUCTION AND NOTIFY ENGINEER OF ANY DISCREPANCIES.
- A SEPARATE RIGHT OF WAY USE PERMIT WILL BE REQUIRED FOR ALL UTILITY WORK WITHIN THE PUBLIC RIGHT OF WAY. SPECIFIC SPECIFICATIONS ON CONDITIONS WILL BE PROVIDED AT THE TIME OF PERMIT APPLICATION.

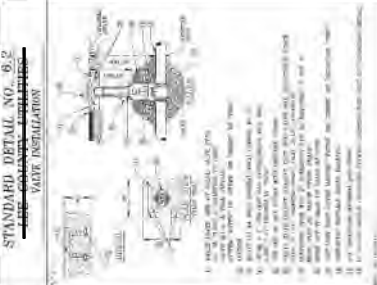


REVISIONS (DESCRPTION)	
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UTILITY DETAIL SHEET #233
C-11
DATE: 12/11/2019
SCALE: AS SHOWN

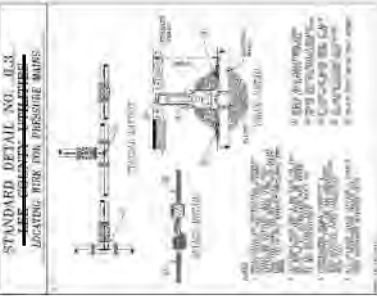
STANDARD DETAIL NO. 0.2

VAULT INSULATION



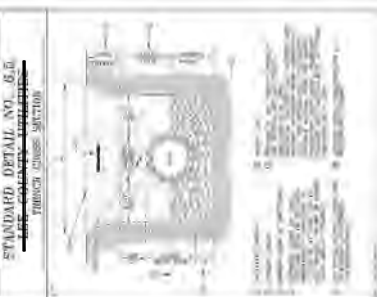
STANDARD DETAIL NO. 0.3

LOCATING RIGID FOR PRESSURE MAINS



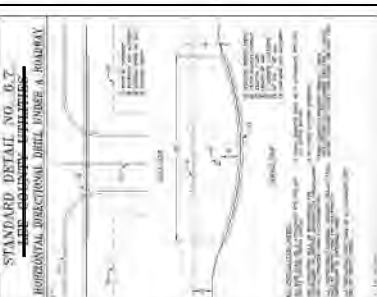
STANDARD DETAIL NO. 0.4

TRUNC CONCRETE SECTION



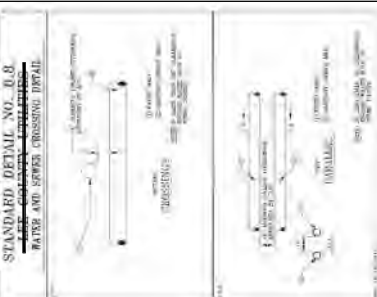
STANDARD DETAIL NO. 0.7

HORIZONTAL DIAPHRAGM SHELL UNDER A ROADWAY



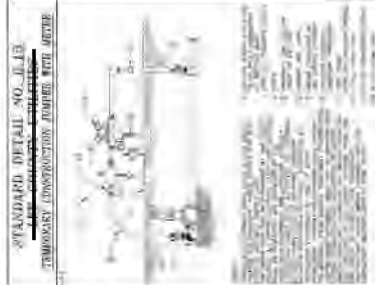
STANDARD DETAIL NO. 0.8

WATER AND EFFLUENT TUNNELING DETAIL



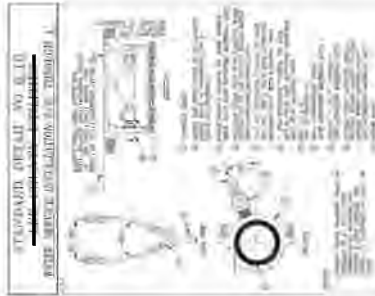
STANDARD DETAIL NO. 0.10

PIPE BEVEL DETAIL THROUGH A




STANDARD DETAIL NO. 0.204

IT OF LARGER INTERIOR




STANDARD DETAIL NO. 0.304

AND CROSS CONNECTION CONTROL ASSEMBLY



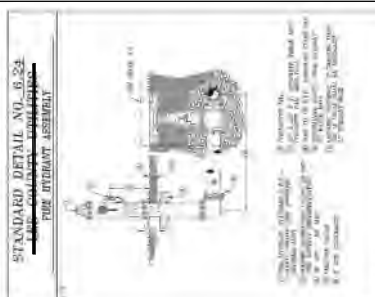
STANDARD DETAIL NO. 0.308

STANDARD STEEP SLOPE LATERALS



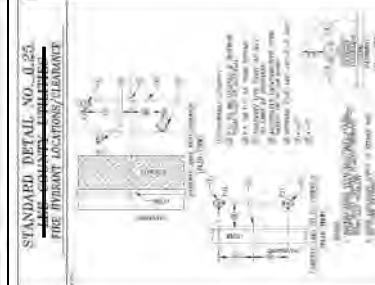
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STANDARD SLOPE SLOPE LATERALS



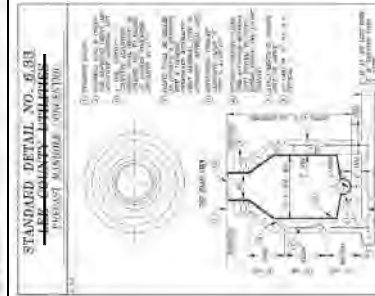
STANDARD DETAIL NO. 0.25

FIRE HYDRANT LOCATIONS/CLIMATE



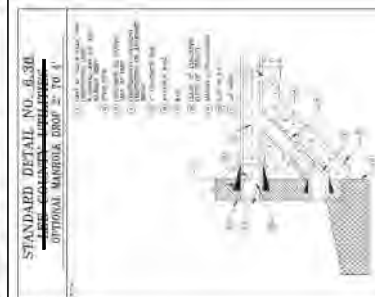
STANDARD DETAIL NO. 0.30

OPTIONAL MANHOLE DRAIN 2 TO 4



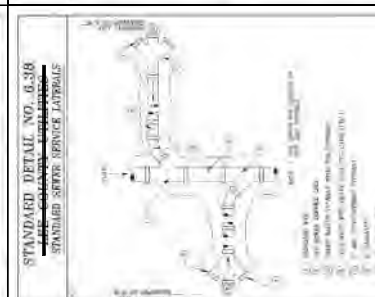
STANDARD DETAIL NO. 0.303

STANDARD MANHOLE CONNECTION



STANDARD DETAIL NO. 0.308

STANDARD STEEP SLOPE LATERALS



STANDARD DETAIL NO. 0.309

STANDARD SLOPE SLOPE LATERALS

