

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20050767

1. ACTION REQUESTED/PURPOSE: Consider the recommendation of Special Magistrate, C. Laurence Keesey, issued in response to the Request for Relief filed on behalf of Avalon Communities, Inc., with regard to the Avalon Preserve Residential Planned Development approved by the Board on March 29, 2004.

2. WHAT ACTION ACCOMPLISHES: Allows the implementation of the Special Magistrate's recommendation as stated or as modified by the Board. In the alternative, if the Board rejects the recommendation, it allows the petitioner to pursue judicial relief.

3. MANAGEMENT RECOMMENDATION: Accept terms of Special Magistrate's Recommendation.

4. Departmental Category: PH #1

5. Meeting Date: 06-21-2005

6. Agenda:		7. Requirement/Purpose: (specify)	
<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	70.51(21)&(27)	
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance		
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code		
<input checked="" type="checkbox"/> Public-9:30 a.m. or as soon thereafter as may be heard	<input checked="" type="checkbox"/> Other		
<input type="checkbox"/> Walk-On	TIME: 45 Minutes		

8. Request Initiated:
Commissioner
 Department County Attorney/DCD
 Division Land Use
 By: *Donna Marie Collins*
Donna Marie Collins
Assistant County Attorney
Mary Gibbs, Director, DCD

9. Background:
The history of Avalon Preserve RPD is as follows:
 In August 2003, the petitioner sought to rezone 38.65± acres of land on Winkler Road from Agricultural (AG-2) to Residential Planned Development (RPD) in order to accommodate the development of a residential project with a density of 5.98 dwelling units per acre (Avalon Preserve RPD). The Lee County Department of Community Development recommended approval of the request with conditions. The Hearing Examiner also recommended approval of the request with conditions. On March 29, 2004, the Board of County Commissioners approved the request to rezone the property to Residential Planned Development, but limited the permissible density to 4.0 units per acre. The Board cited a desire to maintain consistency with its decision to limit density on the neighboring Prentiss Pointe RPD to 4.0 units per acre.
 Shortly thereafter, the petitioner sought relief under The Florida Land Use and Environmental Dispute Resolution Act (Section 70.51, F.S.). In accordance with the Act, the County and the petitioner selected a Special Magistrate. The petitioner, their counsel, and County staff met with the Special Magistrate in an effort to achieve a settlement proposal.
 The Special Magistrate attempted to resolve the conflict by encouraging the parties to identify under what circumstances staff could support an increase to the density approved by the Board of County Commissioners. The parties were not able to agree on settlement of the matter.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>Mon</i>					Analyst	Risk	Grants	Mgr.	
					<i>PKell</i>	<i>5/2/05</i>	<i>6/1/05</i>	<i>4/2/05</i>	

11. Commission Action:
 Approved
 Deferred
 Denied
 Other

CO. ATTY.
FORWARDED TO:
[Signature]

RECEIVED BY
COUNTY ADMIN: *[Signature]*
6-1-05
1-05
COUNTY ADMIN
FORWARDED TO: *[Signature]*
6/2/05
4:20

The Special Magistrate's Recommendation can be summarized as follows:

- A. The Board's approval of Avalon Preserve RPD at 4.0 dwelling units per acre was not unreasonable.
- B. The Board's assignment of 4.0 dwelling units per acre does not unfairly burden the petitioner's use of property.
- C. A maximum of 155 dwelling units is the number of dwelling units that should be expressly authorized by Resolution Z-03-065. This number results from a standard mathematical calculation of Avalon Preserve's units, based upon its acreage multiplied by the assigned density. This number of 155 units results from the application of the standard mathematical rules for "rounding" fractional numbers up or down.
- D. If the County intentionally limits Avalon Preserve to 154 residential units, that decision would constitute an unreasonable application and interpretation of the Board's decision, and would impose an unfair burden on the property.

Options:

At this juncture, Florida Statutes, Section 70.51 (21), requires the Board to:

1. Accept the Special Magistrate's recommendation;
2. Modify the recommendation by selecting an alternative; or
3. Reject the Special Magistrate's recommendation. (If the Board rejects the recommendation, it would maintain the density approved for the Avalon Preserve RPD at 4.0 units per acre.)

Failure by the Board to accept, modify, or reject the Special Magistrate's recommendation by July 7, 2005, will be deemed a rejection by operation of law, unless the petitioner agrees to extend the period beyond the statutory 45 days. The County must provide written notification of its final action on the recommendation to the Florida Department of Legal affairs within 15 days of the Board's decision.

If the County accepts or modifies the Special Magistrate's recommendation and the petitioner rejects the acceptance or modification, or if the County rejects the Special Magistrate's recommendation, the County must issue a written decision within 30 days that describes as specifically as possible the uses available to the subject real property in light of the rejection. The Board's decision describing the available uses constitutes the last prerequisite to judicial action. The matter will then be ripe or final for subsequent judicial proceedings, if the petitioner elects to file suit in a court of competent jurisdiction.

Staff Recommendation:

The Department of Community Development recommends that the Board accept the terms of the Special Magistrate's Recommendation.

On a procedural note, the County Attorney suggests that the Board allow 10-15 minutes for the petitioner to address the Board; 10-15 minutes for the County staff to address the Board; and limit public comment on the recommendation to 3 minutes or less per person.

Attachments:

1. Recommendation of the Special Magistrate dated May 24, 2005
2. Request for Relief filed by the Petitioner Avalon Communities, Inc.
3. Response to the Request for Relief prepared by the County Attorney's Office
4. BOCC Zoning Resolution dated March 29, 2004 (Z-03-065)
5. Hearing Examiner Recommendation dated February 24, 2004
6. Staff Report on the Avalon Preserve RPD dated January 15, 2004

ATTACHMENT 1

REPORT AND RECOMMENDATION
OF THE SPECIAL MAGISTRATE REGARDING
AVALON PRESERVE RPD

Matter: A Request For Relief Filed Pursuant to Sec. 70.51, (Fla. Stat. 2004),
The Florida Land Use and Environmental Dispute Resolution Act

Parties: Avalon Communities, Inc., Petitioner
Represented by Katherine R. English, Esq.
Pavese Law Firm
1833 Hendry Street
Fort Myers, FL 33901

Lee County, Florida, Respondent
Represented by Donna Marie Collins, Esq.
Lee County Attorney's Office
2115 Second Street
Fort Myers, FL. 33901

Lee Board's Initial Action: Rezoning Resolution Number Z-03-065
Case # DCI2003-00010
Approved January 28, 2004

C. Laurence Keeseey
Special Magistrate
18900 Bay Woods Lane
Fort Myers, Florida 33908
Phone: (239) 432-0099

REPORT AND RECOMMENDATION OF THE SPECIAL MAGISTRATE
RESPONDING TO THE REQUEST FOR RELIEF
FILED BY AVALON COMMUNITIES, INC.

Basis For the Special Magistrate Proceeding:

1. This proceeding was initiated by the Petitioners filing of a Request For Relief on April 29, 2004, with Respondent, Lee County Board of County Commissioners (Board), pursuant to Section 70.51, Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Act (Act). Section AC-2-16 of Lee County's Administrative Code provides procedural guidelines for special magistrate proceedings initiated in the County pursuant to the Act.

History Of The Proceeding:

2. The Petitioner, Avalon Communities, Inc., (hereinafter "Petitioner") during August, 2003, filed an application with Respondent, Lee County, Florida (hereinafter "County" or "Respondent") to rezone 38.65 acres of land on behalf of Petitioner, as the contract purchaser of the property, as well as for Kenneth A. Weiner, Trustee, and Wayne G. Russell, Trustee, then owners of the property. On August 11, 2004, Petitioner completed its purchase of the Property.
3. When the application was filed, the subject 38.65-acre parcel (hereinafter referred to as "Avalon Preserve" or "Property") was zoned "Agriculture" (AG-2). Petitioner sought Respondent's approval of the application to rezone the Property to Residential Planned Development (RPD) to accommodate a maximum of 231 residential units. Petitioner's plan for Avalon Preserve proposed 15 single family units, with the remaining 216 multi-family units in fifty-four buildings, containing four units each. The gross residential density of the proposed Avalon Preserve RPD was 5.98 units per acre.
4. The Lee County Department of Community Development Zoning Division's Staff issued its Revised Staff Report on or about January 15, 2004, recommending approval of the Avalon Preserve RPD, basically as requested in the application, with conditions accepted by Petitioner, to contain up to 231 single-family and multi-family dwelling units, an amenity center, preservation areas, and lakes.
5. Following a hearing before the Lee County Hearing Examiner on January 28, 2004, the Hearing Examiner issued his Recommendation to the Board supporting rezoning approval of Avalon Preserve RPD, with conditions, as had been generally recommended in the Revised Staff Report. The Hearing Examiner's recommendation for approval specifically referred to and incorporated an Avalon Preserve Master Plan for 231 units, as depicted on the Proposed Concept Plan stamped "Received by the Permit Counter on January 8, 2004."

6. The Board on March 29, 2004, approved Resolution Number Z-03-065, rezoning Avalon Preserve from "AG-2" to "RPD". However, Resolution Z-03-065 specifically approved a revised Master Plan and reduced the maximum number of Avalon Preserve's residential units¹ to "four units per acre, or a maximum of 154 units (15 single family, and 139 multi-family)." Also, Condition 1 in Section B. of the Resolution stated the following, in pertinent part:

The development of this project "must be consistent with the one page Master Concept Plan entitled "Avalon Preserve" stamped received April 28, 2004 Zoning Counter, plot dated Thursday, April 22, 2004 except as modified by the conditions below...."

A copy of the approved Master Plan was attached as Exhibit "C" to the rezoning Resolution.

7. The Board's reduction of the 231 residential units requested in Petitioner's rezoning application, which number had been recommended by both staff and the Hearing Examiner, to a maximum of 154 units (15 single family, 139 multi-family) approved in the Board's final resolution led Petitioner to file its Request For Relief, pursuant to Section 70.51, Florida Statutes, which initiated this proceeding. The Parties agreed to the appointment of the undersigned Special Magistrate.
8. Following discussions between attorneys for Petitioner and Respondent, a hearing was held before the Special Magistrate on April 5, 2004. At the conclusion of the hearing, the Parties were unable to agree on settlement of this matter, but did agree to submit written information and position statements to the Special Master for consideration prior to his submittal of a written Recommendation to the Board.
9. Requests to participate in the Avalon Preserve proceeding were received from Paul and Katherine Ireson, Jerry and Connie Paul, and Andrew Daltroff. The Special Master sent notices dated February 9, 2005, to these persons advising them that their requests were granted and advising them as to the date, time, and location of the hearing. None of these persons appeared at the hearing on April 5, 2005.

¹ The Resolution, in Condition 13, provided for a potential further reduction of Avalon Preserve's approved units, depending on conditions that might be contained in a future Environmental Resource Permit from the South Florida Water Management District. The Petitioner received the ERP from SFWMD on December 8, 2004. However, at the hearing held in this case on April 5, 2005, and in the parties' written submittals to the Special Magistrate, the potential further reduction of units was not mentioned. For purposes of discussion of the number of Avalon Preserve's residential units in this Recommendation only, Condition 13 is not considered to be material or relevant.

Subject Matter to be Addressed in The Special Magistrate's Recommendation:

10. Relief under the Florida Land Use and Environmental Dispute Resolution Act is available to a land owner who believes that a development order "is unreasonable or unfairly burdens the use of the owner's real property." In the absence of a settlement between the parties, the Act directs that :

"The special magistrate shall consider the facts and circumstances set forth in the request for relief and any responses and any other information produced at the hearing in order to determine whether the action by the governmental entity or entities is unreasonable or unfairly burdens the real property." Sec. 70.51(17)(b) F.S.

Therefore, the undersigned Special Magistrate has carefully considered all information, documents, and written statements submitted to him by the Petitioner and Respondent, as well as the testimony presented at the hearing held in this matter, in order to reach a conclusion as to whether the Board's action in approving Resolution Z-03-065 rezoning Avalon Preserve was unreasonable or unfairly burdens the Property.

11. The Petitioner's post-hearing position statement states that, "The only issue remaining is the density authorized by the zoning resolution." (Letter, pg. 3, dated April 20, 2005, from Petitioner's attorney to the Special Magistrate, hereinafter referred to as "Letter") The Respondent agrees that this is the remaining issue. Therefore, the ultimate question to be addressed in this Recommendation regarding the density of the Avalon Preserve RPD is whether the density selected by the Lee Board and applied to Avalon Preserve in Resolution Z-03-065 is unreasonable or unfairly burdens the property.

Description of the Property, its Land Use Designation Under the Lee Plan, and Description of Surrounding Land Uses and Densities:

12. The Property is located at 16100 Winkler Road, approximately 1500 feet south of the intersection of Winkler and Summerlin Roads, in unincorporated Lee County. As of the date of the rezoning application, the Property did not contain any structures but was heavily vegetated and used only in part for agricultural purposes, primarily beekeeping. The approved Avalon Preserve Master Plan requires approximately 5.9 acres of the site to be preserved and depicts 4.4 acres of lakes, along with 15 single-family lots and 35 buildings, with each building to contain 4 residential units.
13. The Lee County Comprehensive Plan (Lee Plan) designates the Avalon Preserve land as suitable for "Suburban" land uses. Table 1(a) of the Future Land Use Element contains the "standard or base density" for future land use categories in

the County. The standard, or base density stated in Table 1(a) for all land use categories is a "range" of allowed density, which for the Suburban land use category, is between one unit per gross acre, and a maximum of six units per gross acre.

14. Avalon Preserve is bordered on the north by a Florida Power and Light facility, and diagonally across Winkler Road by the Iona/McGregor Fire Station. There are several existing residential developments proximate to Avalon Preserve which are also located within the "Suburban" land use designation south of Summerlin Road. The residential developments within the Suburban land use category near the Avalon Preserve site, and their densities, are the following:

Rainbow Farms, 0.5 u/ac.
Winkler Village, 1.91 u/ac.
Stonebridge, 2.49 u/ac.
Crown Colony, 1.38 u/ac.
Prentiss Pointe, 4.0 u/ac.

None of the existing developments in this area have densities equal to or exceeding the density of 5.98 units/acre Petitioner requested for Avalon Preserve. The Prentiss Pointe development, which was rezoned by the Board at 4 units per acre approximately seven weeks before the Avalon Preserve RPD, had the highest approved density in the immediate area.

The Lee Board of Commissioners Decision on March 29, 2004:

15. A transcript was provided to the Special Magistrate of the Board's consideration of the Avalon Preserve rezoning during its meeting held on March 29, 2004. The transcript establishes that only one commissioner spoke about the Avalon Preserve rezoning, and his statements were directed at obtaining Board agreement or compromise on the proper density. The primary reason stated for the Board's decision to reduce Avalon Preserve's density was to be consistent with the Board's previous decision to reduce Prentiss Pointe's density to 4.0 units per acre. The Commissioner referred to Prentiss Pointe as "stipulated compromise of four units." (Transcript pg. 3.) Regarding Avalon Preserve, the same Commissioner said he would recommend only three units per acre, but to be consistent with Prentiss Pointe he moved approval at four units per acre. In supporting reduced density, the Commissioner also briefly mentioned "growth in this area", the need for "hurricane shelter space", approved road improvements, and a need for compatibility with the existing low density development along the Winkler Rd extension. (Transcript pgs. 10-11.) The Petitioner's attorney made a short presentation urging support of the staff and Hearing Examiner recommendations. Beyond the Petitioner's short presentation and the general comments by a single commissioner, no studies, reports, or other specific factual information was presented to or referred to by the Lee Board regarding the Avalon Preserve rezoning application.

16. During the Lee Board's consideration of Avalon Preserve, there was no discussion or mention of the actual number of residential units that would be authorized on the Property at the approved density selected by the Board. The only Commissioner who spoke about the project, and reasons the Board should agree on the density reduction, complimented the plan and design of Avalon Preserve by stating:

"I think that the master concept plan is actually very well designed, and I think the consulting team that the applicants hired is certainly first rate and very professional, and that's evidenced with how they designed the master concept plan, but I need to be consistent." (Transcript pg. 10)

Discussion of the Density Issue:

17. Petitioner contends that at the time of acquisition of the Property, Petitioner had a reasonable expectation, based upon the County staff and Hearing Examiner's reports and recommendations, issued in January and March 2004, respectively, that the proposed density of 5.98 u/ac, with 231 residential units for Avalon Preserve would be approved. (Letter, pg. 4) However, the reports and recommendations of staff and the Hearing Examiner are only recommendations. Petitioner has not argued that they are in any way binding upon the Board. It would not be prudent for any reasonable purchaser to consider such tentative or preliminary "approvals" to be a solid basis for buying land zoned "Agriculture" with the expectation of developing any specific number of residential units upon it. Furthermore, Petitioner's purchase of the Property was carried out on August 11, 2004, well after the Lee Board's March 29, 2004, rezoning action which approved the reduced density for Avalon Preserve RPD. Final acquisition of the land occurred following, and with Petitioner's full knowledge of, the Board's final zoning decision in March 2004.
18. Petitioner contends that it "reasonably expected to be able to rely on the Lee Plan designation of the property and the level of service for infrastructure set forth in the Lee Plan." (Letter, pg. 5.) Although stated in the absence of any supporting documentation, Petitioner's position is that the reduced density will cause "urban sprawl" and that the "infrastructure" improvements, (presumably referring to the Summerlin Road corridor) were constructed, or will be constructed, by the County for the density originally proposed. (Letter, pg. 5.)
19. It is difficult to understand how having excess road capacity, or any excess infrastructure capacity, is unreasonable or places an undue burden on a specific parcel of land. No claim is made that any "excess capacity" is permanent, and will not be utilized eventually. It may be generally true that low density development in outlying locations is one factor that may contribute to urban sprawl. However, the Lee Plan, as amended, has been reviewed by the Department of Community Affairs (DCA) and determined to be "in compliance" with Florida's Local Government

Comprehensive Planning Act (Ch. 163, Part II). Part of that agency's review of local plans, and amendments, specifically addresses whether the plan will encourage urban sprawl. Even assuming that Avalon Preserve, as approved, contributes to urban sprawl, that "fact" would potentially raise an issue reviewable pursuant the Ch. 163, Part II, F. S., as to the consistency of the development order with the Lee Plan, which is not the issue to be decided in this case; nor is it within the jurisdiction of the Special Magistrate. Here, the issue is limited to whether the assigned density is unreasonable or unfairly burdens the property, not whether it is consistent with the Lee Plan.

20. The Lee Plan designates the land in question as "Suburban". The adopted range of residential density for the Suburban category, which is from one to six units per acre, has been reviewed as part of the Lee Plan by the State's DCA and found to be "in compliance" with the Growth Management Act. Petitioner has not adequately explained why, with an adopted density range of one to six units per acre the Petitioner is entitled to approval of a density of 5.9 units per acre. Nor has there been adequate explanation of, or factual support for, Petitioner's contention that anything less than 231 units is unreasonable or constitutes an undue burden on the Property. Rightly or wrongly, the Lee Plan, as adopted, gives wide latitude to the Board in rezoning land designated Suburban. Granting zoning of 4 units to the acre, which is within the upper mid-range of the specified range of one to six units to the acre, can not be considered "unreasonable", but merely within the discretion granted to the Board under the Lee Plan.

Discussion of the Number of Units Authorized:

21. During the Lee County Commission's consideration of Avalon Preserve, there was no mention of the number of units that could be located on the site with the agreed upon density. The only Commissioner who spoke about the project complimented the design depicted on the master concept plan. The Petitioner's Master Concept Plan for Avalon Preserve, attached as Exhibit "C" to Resolution No. Z-03-065, depicts 155 residential units, consisting of 15 single-family lots and 35 buildings containing 4 dwelling units each, for a total of 140 multi-family units. The Resolution states that "the project must be consistent with the one-page Master Concept Plan", which is Exhibit "C".
22. Considering the Avalon Preserve acreage and the density of 4 units to the acre, the property can accommodate a maximum of 155 residential units. (4 units/acre X 38.65 acres = 154.6 units.) When the result of a mathematic calculation requires a whole number, the standard, and usually applied, principle of mathematics dictates that fractional numbers of point five (.5) or more are "rounded" up to the next whole number. Therefore, viewed only as a math calculation, Avalon Preserve is entitled to 155 units.

23. Lee County has no written ordinance or policy which requires fractional units to be rounded down to the next lower whole unit. Therefore, the County Code does not prevent assigning 155 units to Avalon Preserve RPD. The Petitioner paid for and has paid taxes on the fractional ".65" acre portion of Avalon Preserve's 38.65 acres, and should be entitled to the 155 units which result from application of density to his land, under generally accepted mathematical rules, unless there is a reason not to "round up" in this instance.
24. It would be inappropriate to allow another residential unit resulting from "rounding up" only when to do so would result in exceeding an adopted density standard mandated in an ordinance or specified in the Lee Plan. For example, in the Lee Plan the Suburban land use designation allows a maximum of 6 units per acre. The Avalon Preserve land at the maximum 6 units per acre could accommodate precisely 231.9 units (6 units/ac. X 38.65 ac. = 231.9 units). The application for Avalon Preserve correctly "rounded down" the number of requested units to 231, because to "round up" to 232 units would have exceeded the Lee Plan's stated maximum of 6 units per acre within the "Suburban" designation. A rezoning decision allowing 232 units would have been in violation of the Lee Plan. However, in the absence of an existing Land Development Code or Lee Plan standard which would be exceeded by doing so, a residential unit calculation should apply standard mathematical rules for "rounding" fractional numbers, up or down. In this instance, the compromise density of 4 units/acre for Avalon Preserve is well within the 1-6 unit range specified in the Lee Plan. Under these circumstances, and in the absence of any written policy to the contrary, the maximum units in Avalon Preserve should be 155.
25. The decision to approve Avalon Preserve at a density of 4 units/acre was essentially an "ad hoc" compromise reached by the Board, and the Board did not discuss any specific number of units. While the decision to select a density of 4 units can not be said to be unreasonable, or to constitute an unfair burden on the property, that decision must also be interpreted and applied to the plan for Avalon Preserve in a manner that is reasonable and fair, and consistent with Petitioner's legally protected property rights. The County staff should interpret and apply the Commissioners' selection of 4 units per acre in a manner that considers and respects the Petitioner's development plan for Avalon Preserve to the extent possible while carrying out the Board's intent.
26. The Master Concept Plan adopted with the Resolution depicts 155 units. The acreage of Avalon Preserve (38.65 ac.), multiplied by the density, supports 155 units, as "rounded up", in the absence of any written policy or ordinance requiring the number to be rounded down. Placing 155 units on the property is well within the Lee Plan's range of 1-6 units per acre, and this number is entirely consistent with the public purposes mentioned during discussion at the Board's meeting as reasons for the reduction of the much higher density recommended by County staff.

27. The specific wording of the written Resolution Z-03-65 was not mentioned during the Board's meeting on January 29, 2004. Presumably, the Resolution was prepared by staff and finalized at some time following the Commissioners' meeting. The written Resolution states that Avalon Preserve may contain "a maximum of 154 units." Given that the Commissioners did not discuss the number of units, and that the plan (Exhibit "C") depicts 155 units, and that 155 units is the whole number derived by multiplying the density times the acreage, it appears that the "154" unit number inserted in the Resolution was a mistake or scrivener's error. If so, the number should be corrected and changed to "155" when this Recommendation is considered by the Board.
28. If the stated maximum of 154 units was intentional, it would place a burden on the property and the Petitioner. If 154 units remains the maximum, it appears probable that the last of the 35 buildings depicted on the Avalon Preserve master plan would not be able to receive a building permit. A proposed final four-unit building which resulted in exceeding the 154 authorized units likely would not be allowed. Loss of the last 4-unit building would reduce the Petitioner's project by three more units, to 151 units. Alternatively, requiring only 154 units would cause an unreasonable expense, not to mention an architectural challenge, to design and build a single "odd" three-unit building, in a development consisting of four unit buildings. The monetary loss resulting from an inability to sell one unit would also represent a significant financial detriment to the developer of a project of this size. Under these circumstances, such results would not be reasonable.

Conclusions:

29. For the reasons stated above, the Lee Board of County Commissioner's development order containing its decision to approve Avalon Preserve with a density of four (4) units per acre was not unreasonable. This density was within the County's adopted range of one to six units per acre as the appropriate residential density for land within the Lee Plan's "Suburban" land use category, which applies to Avalon Preserve. Nor does the Board's assignment of this density unfairly burden the Petitioner's use of the property.
30. For the reasons stated above, a maximum of 155 units is the correct number of residential units which should have been stated in and authorized by Resolution Z-03-065 to be constructed in the Avalon Preserve RPD. One hundred fifty-five units is the number that results from a standard mathematic calculation of Avalon Preserve's units, based upon its acreage multiplied by the assigned density, and is the number of units depicted on the approved Master Concept Plan (Exhibit "C" to the Resolution). The Resolution, as currently drafted, states only a maximum of 154 units are approved. The current unit number is inconsistent with both the units depicted on the Master Concept Plan and a standard mathematical calculation of the whole number of units which should be allowed on Avalon Preserve's 38.65

acres of land. Presumably, the insertion of "154" units in the Resolution was an unintentional error. The error can and should be rectified.

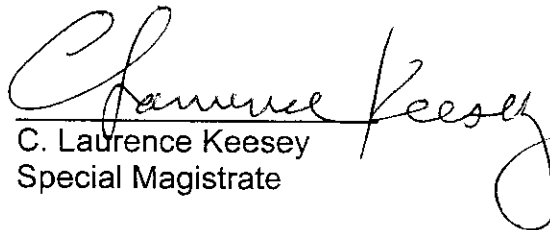
31. Alternatively, and for the reasons stated above, if the County intentionally limited Avalon Preserve to 154 residential units, that decision would constitute an unreasonable application and interpretation of the Board's decision and would impose an unfair burden on the property. The public purposes briefly mentioned by the Board on March 29, 2004 as reasons for rejecting the staff and Hearing Examiner's reports and recommendations, and for compromising on a reduced density of four units/ acre will not be compromised or affected by authorizing the 155th unit. But an arbitrary insistence on a one-unit reduction, or perhaps more, as described in paragraph 28, above, under the existing circumstances relating to Avalon Preserve is unreasonable and will place an unfair burden on the Property.

Recommendation:

The undersigned Special Magistrate recommends that the Lee County Board of County Commissioners review and reissue Resolution Z-03-065 rezoning the Avalon Preserve RPD with the following change: to authorize a maximum of 155 residential units, consisting of 15 single-family units and 140 multi-family units. No other change is recommended to the development order approving the Avalon Preserve RPD.

In the alternative, and only in the event that the Lee Board concludes that the currently approved maximum number of units should remain at 154 , the recommendation is made that the Resolution be amended only for the purpose of allowing Petitioner an alternative option of constructing a maximum of 154 units, consisting of 18 single-family units and 136 multi-family units (in 34 four-unit buildings).

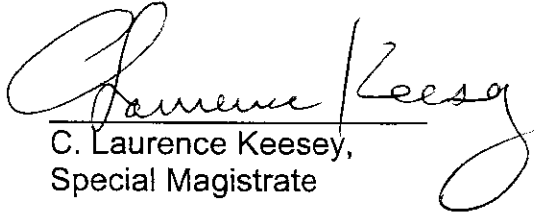
Respectfully submitted,


C. Laurence Keesey
Special Magistrate

CLK/amp

Certificate of Service

The undersigned attorney hereby certifies that a copy of the above Recommendation to the Lee Board of Commissioners has been served by U.S. Mail on May 24, 2005, to each of the following persons: Doug St. Cerny, Chairman, Lee Board of Commissioners; Katherine English, Esq., attorney for Petitioner; Donna Marie Collins, Esq., attorney for Respondent; The Florida Department of Legal Affairs, in Tallahassee, Florida; Paul and Kathryn Ireson; Jerry and Connie Paul; and Andrew Daltroff at their last known addresses.


C. Laurence Keeseey,
Special Magistrate

**LEE COUNTY
BOARD OF COUNTY COMMISSIONERS**

COMMISSIONER

AVALON COMMUNITIES, INC.

APR 28 2004

Petitioner,

JOHN ALBION

vs.

ZONING CASE NO.:DCI2003-00010

LEE COUNTY BOARD OF
COUNTY COMMISSIONERS,

Respondent.

2004 APR 29 AM 8:07
RECEIVED BY
LEE CO. ATTORNEY

**PETITION FOR RELIEF PURSUANT TO
SECTION 70.51, FLORIDA LAND USE AND
ENVIRONMENTAL DISPUTE RESOLUTION ACT**

Petitioner, AVALON COMMUNITIES, INC., files this petition against Respondent, LEE COUNTY BOARD OF COUNTY COMMISSIONERS, for relief pursuant to Section 70.51, Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Act, and as ground therefore would state as follows:

1. Avalon Communities, Inc., ("Avalon") is the contract purchaser of 38.65 acres of property located in unincorporated Lee County, described in Exhibit "A" attached herewith, and the applicant in Lee County Development Case Number DCI2003-00010 to rezone the subject property.

2. Lee County Board of County Commissioners is a political subdivision of the State of Florida and is the governmental entity charged with exercising governmental authority over zoning decisions in Lee County Florida.

JURISDICTION

3. Avalon has an equitable interest in the subject property pursuant to that certain sales contract with Kenneth A. Weiner, Trustee and Wayne G. Russell, Trustee who own the subject property.

4. On March 29, 2004, the Lee County Board of County Commissioners heard Avalon's application to rezone the property.

5. Avalon files this petition within 30 days of the rendition of the Board's decision on Avalon's application to rezone the property in accordance with requirements of Section 70.51, Florida Statutes.

6. Avalon believes that the Board's decision to limit density below that requested by Avalon in its application is unreasonable and unfairly burdens the use of the subject property.

OWNER'S PROPOSED USE OF THE PROPERTY

7. In Case Number DCI2003-00010, Avalon Communities requested that the subject property be rezoned from Agricultural (AG-2) to Residential Planned Development (RPD) to develop a maximum of 231 single family and multi-family residences along with lakes and an amenity center in accordance with a Master Concept Plan entitled "Winkler 38 RPD" stamped received January 8, 2004, plot dated January 8, 2004.

SUMMARY OF THE DEVELOPMENT ORDER

8. The Board approved rezoning the subject property from Agricultural (AG-2) to Residential Planned Development to develop a maximum of 154 single family and multi-family residential units along with lakes and amenity center. A copy of the record is attached herewith as Exhibit "B" since no resolution has yet been rendered by the Board.

BRIEF STATEMENT OF THE IMPACT OF DEVELOPMENT ORDER

9. Avalon sought property located in the Suburban land use category which authorizes a density up to 6 units per acre which would meet the Lee Plan requirements to promote contiguous and compact growth patterns by directing growth to areas where adequate public facilities exist and in areas where compact and contiguous growth patterns are created. Based on the location of the subject property, Avalon requested a density of 5.9 units per acre which staff and the Hearing Examiner determined to be in compliance with the Lee Plan, the Land Development Code and other applicable codes. The Hearing Examiner further determined that the request met all performance and location standards set forth in the Lee Plan and the Land Development Code. The Board's decision to reduce the permitted density from the 5.9 units per acre requested to four units per acre substantially affects Avalon's ability to develop a viable community.

REQUESTED RELIEF

10. Based on the foregoing, Avalon requests County forward this request for relief from the Board's decision to a special master who is mutually acceptable to the

County and Avalon for further proceedings in accordance with the requirements of Section 70.51.

Respectfully submitted,

PAVESE, HAVERFIELD, DALTON
HARRISON & JENSEN, L.L.P.
Post Office Drawer 1507
1833 Hendry Street
Fort Myers, FL 33902
(239) 336-6249

By: 
KATHERINE R. ENGLISH
Florida Bar #:0013625

CERTIFICATE OF SERVICE

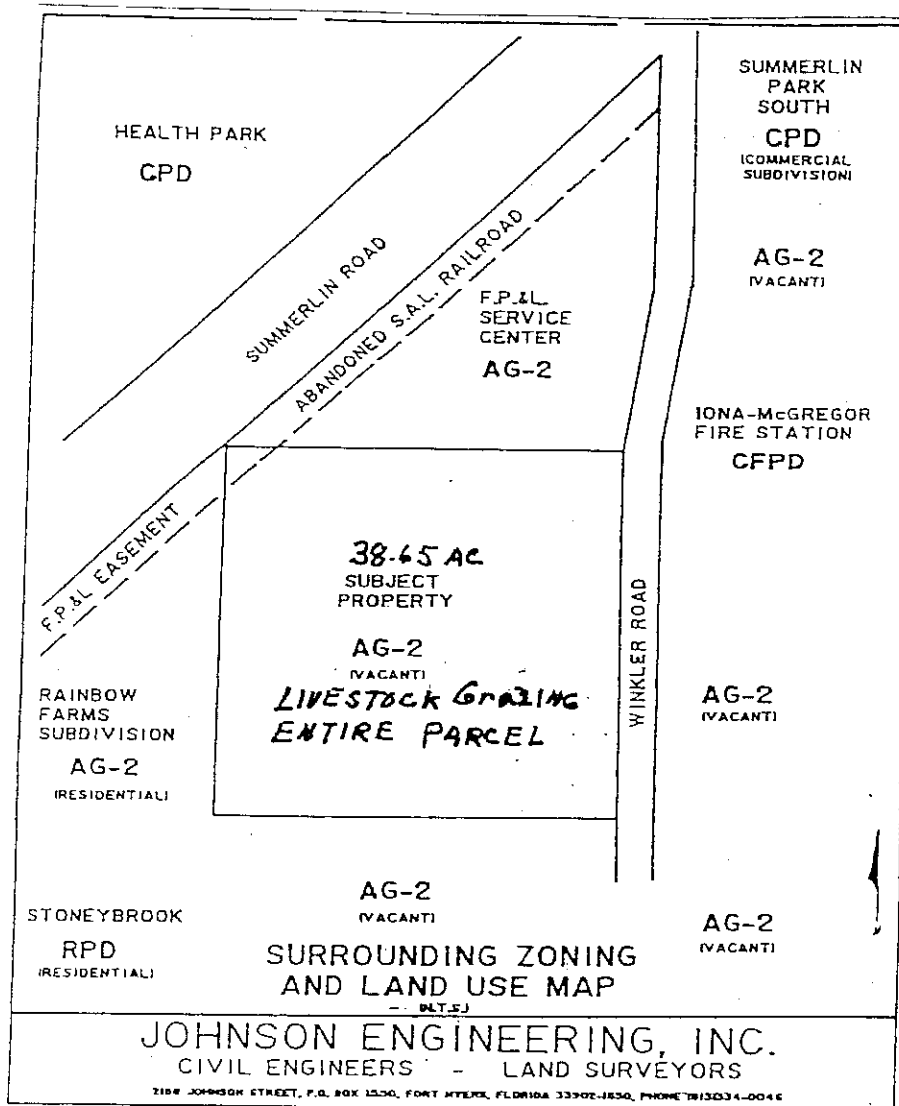
I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by regular U. S. Mail to Commissioner John Albion, Chair of the Lee County Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902-0398, Don Stillwell, County Administrator, P.O. Box 398, Fort Myers, FL 33902-0398, and James Yeager, Lee County Attorney, P.O. Box 398, Fort Myers, FL 33902-0398, this 28th day of April, 2004.

PAVESE, HAVERFIELD, DALTON
HARRISON & JENSEN, L.L.P.
Post Office Drawer 1507
1833 Hendry Street
Fort Myers, FL 33902
(239) 336-6249

By: 
KATHERINE R. ENGLISH
Florida Bar #:0013625

EXHIBIT "A"

Bona Fide Agricultural Uses
At Time of Zoning Application



DESCRIPTION SKETCH

LEGAL DESCRIPTION AS PER STARNES AND ASSOCIATES, INC.

FROM A 5" X 5" CONCRETE MONUMENT MARKING THE N.W. CORNER OF GOVERNMENT LOT 4, SECTION 3, T. 46 S., R. 24 E., LEE COUNTY FLORIDA, AND THE PRINCIPLE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL.

FROM SAID P.O.B. RUN S. 00°56'01"E. FOR 1320.204' TO THE S.W. CORNER OF SAID GOV'T LOT 4; THENCE RUN N. 88°53'56.4"E. ALONG THE SOUTH LINE OF SAID GOV'T LOT 4 FOR 1273.844' TO A POINT ON THE WEST R.O.W. LINE OF WINKLER ROAD EXTENSION. THENCE RUN N. 00°53'08.1"W. ALONG SAID R.O.W. LINE FOR 1199.897' TO A.P.C. OF A CURVE TO THE RIGHT HAVING AS IT'S ELEMENTS R. = 2914.93', DELTA = 02°23'52.45", A. = 121.994', CH. = 121.985', CH. BRG. = N. 00°18'48"E; THENCE RUN ALONG SAID CURVE FOR 121.994' TO THE INTERSECTION OF SAID CURVE AND THE N. LINE OF SAID GOV'T. LOT 4; THENCE RUN S. 88°49'32.05"W FOR 1277.522' TO THE P.O.B. SAID PARCEL CONTAINS: 38.650 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO: EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

NOTE: THE BEARINGS AS SHOWN HEREON ARE BASED ON THE BEARING USED ON THE R.O.W. MAPS OF S.R. # 869, SUMMERLIN ROAD.

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LEE COUNTY BOARD OF COUNTY COMMISSIONERS
PUBLIC HEARING

IN RE: AVALON COMMUNITIES, INC.

CASE NO.: DCI200300010

_____ /

* * *

TRANSCRIPT OF PROCEEDINGS

March 29, 2004

* * *

Transcript of hearing held before the Lee County Board of County Commissioners at 2120 Main Street, Fort Myers, Florida 33901, commencing at 9:30 a.m. the date above set forth.

* * *

ORIGINAL

EXHIBIT "B"

1 APPEARANCES:

2

3 On Behalf of the Applicant:

4

5 Pavese, Haverfield, Dalton, Harrison &
6 Jensen, L.L.P.
7 Katherine R. English, Esquire
8 1833 Hendry Street
9 Fort Myers, Florida 33901
10 (239) 336-6249

11

12 On Behalf of the County:

13

14 Chief Assistant County Attorney
15 Timothy Jones, Esquire
16 2115 Second Street; 6th Floor
17 Fort Myers, Florida 33901
18 (239) 335-2236

19

20

21

22 COMMISSIONERS:

23

24 John E. Albion, Chairman
25 Robert P. Janes
Andrew W. Coy
Doug S. Cerny
Ray Juda

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30 ALSO PRESENT:

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32 Chip Block, Community Development

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P R O C E E D I N G S

* * *

MR. BLOCK: For the record, Chip Block of Community Development. This case is Avalon Communities, Inc. This is seeking a residential planned development zoning district to develop 231 dwelling units on the subject property with a proposed maximum height of 35 feet. There will be no blasting activity within the project.

The site is a 38.65-acre property on the west side of Winkler just south of Summerlin, and the Staff has recommended approval with conditions. The hearing examiner also approved with conditions. We had five participants of record for this case.

MR. JUDAH: Additional staff recommendation in support of the application -- this property is not too far from the same property where we stipulated a compromise of four units. It just says that it's already in the system going through the decision. Staff's recommendation had already been made prior to that previous decision?

CHAIRMAN ALBION: I showed on the first document on the transcript Henry [inaudible] had testified for Avalon Communities, Inc., and then also Jerry Paul.

I just want to make sure that I'm procedurally

1 correct. One appears on page ten this first time and
2 the other one I'm not sure. I guess -- Kate, can you
3 clear this up?

4 MS. ENGLISH: For the record, Kate English for
5 the applicant. We had a December hearing which was
6 continued based on recommendations by staff to
7 address some of the concerns the staff raised in the
8 staff report.

9 However, we didn't have an opportunity to get
10 adequate notice sent out to people that may have been
11 interested. So, the hearing examiner opened the
12 hearing to take any public testimony from people who
13 may not be available on the continuation date.

14 So, that's why you would see public comment
15 actually prior to the time that we put on our
16 case-in-chief.

17 CHAIRMAN ALBION: That's not my question. My
18 question is would they not be considered participants
19 of record? I want to make sure. It's a procedural
20 question.

21 CITY ATTORNEY: Yes, sir. They should be on the
22 roster as participants of record if they appeared and
23 spoke.

24 CHAIRMAN ALBION: That's all I wanted to double
25 check on. Any questions of Chip?

1 (No response.)

2 CHAIRMAN ALBION: If not we'll go to the
3 applicant.

4 MS. ENGLISH: Good morning. Kate English
5 appearing on behalf of the applicant. As Chip ably
6 pointed out we have a recommendation from Staff for
7 approval and also from the hearing examiner for
8 approval.

9 Based on the concerns raised by Commissioner
10 Juda and his questions about the Prince Point case,
11 we have this morning Dan DeLisi to address the
12 planning issues, Ted Treesh to address the traffic
13 issues. We also have Carl Barraco here to address
14 engineering issues, and Ken Passirel (phonetic) is
15 here to address any other concerns the Board may
16 have.

17 Given some of the testimony which you heard --
18 or the lack thereof -- we felt it would be prudent
19 this morning to bring in people who could answer some
20 of the questions that may come up, and at this point
21 I'd like to call Dan DeLisi.

22 MR. JONES: Mr. Chairman?

23 CHAIRMAN ALBION: Yes, sir.

24 MR. JONES: As a point of procedure we typically
25 do not have -- you know, multiple people from the

1 consulting firms, etcetera, come up on these cases.
2 There's one representative for the developer who
3 typically explains the case, and unless the board has
4 questions we don't essentially have a repeat dog and
5 pony show, etcetera.

6 That's for the hearing examiner's hearing, and
7 there's one person today who typically gives the
8 developer's point of view.

9 MS. ENGLISH: We didn't intend to redo the dog
10 and pony show. However, there were some questions
11 that were raised regarding the appropriateness of
12 density and the level of density that could be
13 approved along the Summerlin corridor and
14 particularly raised issues in regard to consistency
15 of the comprehensive plan and issues of whether or
16 not traffic was adequately addressed as part of that
17 application.

18 In this instance unless the board specifically
19 asks questions about an issue I don't have any
20 intention of calling them. I wanted to let you know
21 that they were available. However, specifically the
22 Prince Point case did bring up issues relating to
23 consistency with density and also brought up the
24 issues with traffic.

25 The presentations will be brief. It's simply an

1 overview to address the questions -- about
2 Commissioner Juda's question about whether or not
3 Staff was aware of the Board's policy decision at
4 Prince Point.

5 CHAIRMAN ALBION: Well, this is a procedural
6 matter, and the Board is going to have to decide
7 whether we want to open it up that way or whether we
8 want to have the applicant's representative or
9 anybody be able to ask questions of the experts that
10 are here.

11 I do think it's best to have Kate give the
12 presentation, and if we have questions at the end
13 then Dan or Carl or somebody else can come up. I
14 think Kate needs to make a presentation. That's just
15 one person's opinion. If we have questions of Carl
16 or Dan later on we'll ask.

17 Unless anybody else has a different viewpoint.
18 Honestly I can't share the same one otherwise we'll
19 have other problems down the road. So, Kate, we have
20 abundant confidence in your ability to do so.

21 MS. ENGLISH: I appreciate that, Commissioner.
22 Essentially, what we have is, in essence, a
23 development which is about 1500 feet south of --
24 north of the Winkler-Summerlin intersection. It's
25 been found by your staff and by the hearing examiner

1 to be consistent with the Lee Plan and with the
2 density for suburban home uses.

3 It's been found to be compatible with the
4 adjacent land and conditions to assure that
5 compatibility. It doesn't burden the existing
6 infrastructure for that area, specifically along the
7 Summerlin corridor. It meets the performance and the
8 locational standards that are listed in the
9 comprehensive plan, and it will not adversely affect
10 the environmentally critical areas of usage.

11 Your staff was diligent in their pursuit of
12 conditions in regard to this application, and they
13 found that based on this -- we're proposing a mix of
14 single-family and multi-family residential uses --
15 they determined that it was appropriate to the
16 location, that the conditions, the concept plan, and
17 the applicable regulations in the L.L.C. sufficiently
18 safeguard the public interests in this instance, and
19 that the condition is a reasonable impact.

20 This is an in-fill project. It's appropriate in
21 this area that is a residential developing corridor.
22 It is close to the employment centers and that sort
23 of thing. I would point out particularly in regard
24 to Prince Point -- I would concur with your attorney,
25 Mr. Jones, that the precedent doesn't work the same

1 way as a zoning case does. Policy is not precedent.

2 What we're here for today is to present you the
3 information about this particular piece of property
4 and give you the information about it, and each case
5 is independent because each piece of property is
6 unique. We would like to reserve the opportunity to
7 rebut and to participate at any other hearings.

8 CHAIRMAN ALBION: Any questions of the
9 applicant?

10 (No response.)

11 CHAIRMAN ALBION: Okay. If not we'll go to the
12 participants of record. The first one I show is
13 Jane Ann Archer.

14 (No response.)

15 CHAIRMAN ALBION: The next is Connie Paul.

16 (No response.)

17 CHAIRMAN ALBION: Lee Ann Reeves.

18 (No response.)

19 CHAIRMAN ALBION: Ray Lee Russell.

20 (No response.)

21 CHAIRMAN ALBION: Thomas Simon.

22 (No response.)

23 CHAIRMAN ALBION: Henrietta Smith.

24 (No response.)

25 CHAIRMAN ALBION: Jerry Paul.

1 (No response.)

2 CHAIRMAN ALBION: Okay, there's no participants
3 of record, so there's nothing to rebut. Is there --

4 MR. JUDA: Mr. Chairman?

5 CHAIRMAN ALBION: Mr. Juda.

6 MR. JUDA: I think that the master concept plan
7 is actually very well designed, and I think the
8 consulting team that the applicants hired is
9 certainly first rate and very professional, and
10 that's evidenced with how they designed the master
11 concept plan, but I need to be consistent.

12 I've steadfast expressed my concern about the
13 way in which the density along the Winkler Extension
14 has evolved. Initially it was a very, very low
15 density of one to two units to the acre, most of it
16 less than three units to the acre. This is proposed
17 to be at the max of 5.9 -- six units to the acre max.

18 We all recognize what has had to be done in
19 terms of capital improvement projects with the
20 widening of Summerlin as well as the overpass at
21 Gladiolus and Summerlin just to the east of this
22 project and then also down to the other side at
23 Summerlin and San Carlos Boulevard.

24 We're getting a lot of growth in this area -- a
25 tremendous amount of growth occurring in this area --

1 and I would submit that we still to have struggle
2 with the 40,000 hurricane shelter space density that
3 we have in this county and the fact that this is just
4 going to further exacerbate what already is an
5 uncomfortable situation with the six lanes of
6 Summerlin in this particular area of the county.

7 I would submit that in terms of being able to
8 provide for some consistency and compatibility at the
9 very least I would recommend three units to the
10 acres, but my colleague Commissioner Coy -- the last
11 time the most recent project came forward to this
12 board -- suggested four.

13 You know, in the spirit of recognizing that you
14 can't get the whole loaf I certainly haven't gotten
15 any crumbs today, but that's okay. That's
16 regardless -- despite the point.

17 What really matters is that you have to handle
18 this case individually. But again it does, in order
19 to ensure consistency, need to address the amount of
20 density in the area, and I would submit that in order
21 to be consistent that the four units to the acre
22 would be something that would be much more compatible
23 with that Winkler Extension.

24 So, with that I would recommend to approve the
25 hearing examiner's recommendation with the four

1 units to the acre as opposed to the 5.9 units to the
2 acre.

3 COMMISSIONER COY: Second.

4 CHAIRMAN ALBION: Motion by Commissioner Juda,
5 second by Commissioner Coy. Further discussion?

6 (No response.)

7 COMMISSIONER COY: 5.9 acres is more intense.

8 CHAIRMAN ALBION: Any further discussion?

9 (No response.)

10 CHAIRMAN ALBION: Everyone seems to be
11 comfortable with that. The only question I want to
12 ask the applicant therefore is -- you know, since
13 we're going to make this type of change potentially
14 do you want to try to withdraw, Kate, or are you
15 satisfied if this goes forward because it might save
16 us a hearing down the road?

17 MS. ENGLISH: We understand the change.

18 CHAIRMAN ALBION: Okay. Thank you. Any further
19 discussion, any objection?

20 (No response.)

21 CHAIRMAN ALBION: Motion passes. Thank you.

22 * * *

23 (Thereupon, at 11:10 a.m., the hearing was
24 concluded.)

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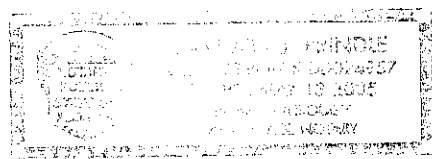
REPORTER'S CERTIFICATE

STATE OF FLORIDA)
)
COUNTY OF LEE)

I, Barbara J. Prindle, RPR, certify that I did stenographically report the foregoing hearing, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 7th day of April, 2004.



Barbara J. Prindle
Barbara J. Prindle, RPR

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 335-2236

Facsimile (239) 335-2118

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing Examiner

May 11, 2004


Katherine English, Esquire
Steven Hartsell, Esquire
Pavese Law Firm
P. O. Box 1507
Fort Myers, FL 33902

Re: Avalon Preserve RPD - Request for Relief
LU-04-04-2365.B.2.

Dear Kate and Steve:

Enclosed please find Lee County's response to the petitioner's Request for Relief in connection with the Avalon Preserve RPD. Kindly contact my office at your earliest convenience so that we may discuss the selection of a special master for this matter.

Kind regards,


Donna Marie Collins
Assistant County Attorney

DMC/amp

Enclosure: Lee County Response for Request for Relief pursuant to Florida Statutes,
Section 70.51, Avalon Preserve RPD

S:\LUDMC\70.51 Special Master\Avalon\Transmission of Response to Request for Relief.wpd

**LEE COUNTY RESPONSE TO
REQUEST FOR RELIEF
PURSUANT TO F.S. 70.51
(Avalon Preserve)**

The Board of County Commissioners granted the Avalon Preserve rezoning request to change the zoning designation on a 38-acre parcel from the Agricultural to the Residential Planned Development Zoning District. The applicant requested to develop the project at a density of 231 single-family and multi-family units. The Board approved the rezoning request at a maximum of 154 units. The Board rendered this decision based on the record before the Hearing Examiner and presentation of participants in the hearing before them.

When the Board examines a request to rezone property from one district to another, it must consider the impacts on the surrounding property. The Board must then determine whether the requested use will be compatible with the existing and planned development in the surrounding area. The subject property lies within an area designated as "Suburban" pursuant to the Lee County Comprehensive Plan Future Land Use Map. Although property located in the Suburban future land use category is well suited to accommodate densities at ranges of up to six dwelling units per acre, this property is unique in that it lies in an area south of Summerlin Boulevard, where the densities on surrounding properties are less than four dwelling units per acre.

The only means of access to the County road network is via a two-lane roadway with a dead-end known as Winkler Extension. The property is located south of Summerlin Boulevard. It is bounded on the north by an IDD canal and a Florida Power & Light facility, and on the east by Crown Colony, a residential community approved for development at 1.38 dwelling units per acre. It is bordered on the south by vacant agriculturally zoned property. The property is bordered on the west by the Rainbow Farms single-family development with a density of 0.5 dwelling units per acre. An examination of the approved and developed densities in the surrounding area confirms that the subject property is part of an enclave of low-density residential development south of Summerlin Boulevard.

Table 1(a) of the Lee Plan provides for a Standard or Base Density Range in the Suburban Land use category from a minimum of one to a maximum of six dwelling units per acre. Four dwelling units per acre is consistent with the density of surrounding residential development. It is also within the permissible range of residential density in the Suburban future land use category. Accordingly, the Board's approval of 154 dwelling units at four dwelling units per acre was not unreasonable, nor does it impose an unfair burden on the property.

If approved for the requested 231 units, the density of the 38±-acre parcel would be at the top of the density range for residential development in the Suburban future land use category. The Board concluded that residential development at the top of the permissible range was not compatible with the surrounding predominantly low-density residential development. The Board's concerns relating to density were legitimate and compelling given the property's location and unique character of the surrounding residential development.

The County is vested with discretion to approve less than the requested density. Density is determined on a case-by-case basis and one of the criteria considered is the nature of and density and intensity of existing, surrounding development. (See LDC Section 34-413.) Lee Plan Policy 2.2.2 provides that densities listed in the Future Land Use Map are not a guarantee that such densities are immediately appropriate. The map provides for the County's growth over a 26-year period.

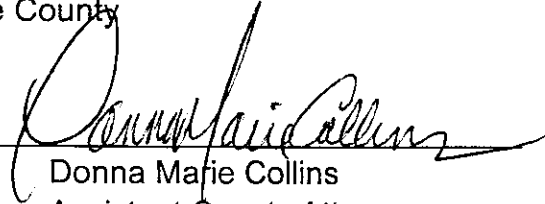
An examination of the record, as well as the existing conditions of the surrounding community, confirms that there was substantial competent evidence to support the density approved by the Board. It could be reasonably inferred that four dwelling units per acre was more consistent with the character of the surrounding community than the density requested by the applicant. The density of the existing and developing residential neighborhoods in the area constitutes relevant evidence and is adequate to support the conclusion that four dwelling units per acre was more appropriate and compatible than 5.9 units per acre. The Board had access to a record containing maps, reports, and other information that constitutes substantial competent evidence to support their decision. The Board ultimately concluded that the project should be approved for only 154 of the requested 231 units. The approved density of four units per acre is not unreasonable given the densities of the surrounding development approved and developing at no greater than 3.7 units per acre at the time this case was heard.

It is well settled that a local government has the discretion to decide that the maximum density is not appropriate on a given parcel provided the development that is approved is consistent with the Plan. The property owners are not presumptively entitled to the requested density simply because it is within the acceptable range permitted in the Suburban future land use category. Furthermore, they are not entitled to relief simply by proving consistency with the Lee Plan, particularly when the Board's action is also consistent with the Plan. The applicant's rezoning request to Residential Planned Development was approved at four units per acre, which is consistent with the Lee Plan. The approval of four dwelling units per acre does not substantially impair the use of the property because it is consistent with the general character of residential development

south of Summerlin Boulevard. In fact, even at four units per acre, the approved density exceeds the density approved for every residential development along the Winkler Extension, with the exception of the recently approved Prentiss Point project. The Board also decreased the requested density of the Prentiss Point project to four units per acre. The Avalon Preserve resolution is not unreasonable nor does it unfairly burden the property. Accordingly, the applicant is not entitled to relief under the Act.

Lee County

By



Donna Marie Collins
Assistant County Attorney

TABLE 1(a)
SUMMARY OF RESIDENTIAL DENSITIES¹

FUTURE LAND USE CATEGORY	STANDARD OR BASE DENSITY RANGE		BONUS DENSITY
	MINIMUM ² (Dwelling Units per Gross Acre)	MAXIMUM (Dwelling Units per Gross Acre)	MAXIMUM TOTAL DENSITY ³ (Dwelling Units per Gross Acre)
Intensive Development	8	14	22
Central Urban	4	10	15
Urban Community ^{4,5}	1	6	10
Suburban	1	6	No Bonus
Outlying Suburban ⁶	1	3	No Bonus
Rural ¹¹	No Minimum	1	No Bonus
Outer Islands	No Minimum	1	No Bonus
Rural Community Preserve ⁷	No Minimum	1	No Bonus
Open Lands ⁸	No Minimum	1 du/5 acres	No Bonus
Density Reduction/Groundwater	No Minimum	1 du/10 acres	No Bonus
Wetlands ⁹	No Minimum	1 du/20 acres	No Bonus
New Community	1	6	No Bonus
University Community ¹⁰	1	2.5	No Bonus

CLARIFICATIONS AND EXCEPTIONS

- ¹ See the glossary in Chapter XII for the full definition of "density."
- ² Adherence to minimum densities is not mandatory but is recommended to promote compact development.
- ³ These maximum densities may be permitted by transferring density from non-contiguous land through the provisions of the Housing Density Bonus Ordinance (No. 89-45, as amended or replaced) and the Transfer of Development Rights Ordinance (No. 86-18, as amended or replaced).
- ⁴ No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower.
- ⁵ In all cases on Gasparilla Island, the maximum density must not exceed 3 du/acre.
- ⁶ In the Outlying Suburban category north of the Caloosahatchee River and east of Interstate-75, north of Pondella Road and south of Pine Island Road (SR 78), and in the Buckingham area (see Goal 17), the maximum density is 2 du/acre.
- ⁷ Within the Buckingham area, new residential lots must have a minimum of 43,560 square feet.
- ⁸ The maximum density of 1 unit per 5 acres can only be approved through the planned development process (see Policy 1.4.4), except in the approximately 135 acres of land lying east of US41 and north of Alico Road in the northwest corner of Section 5, Township 46, Range 25. (Amended by Ordinance No. 99-15)
- ⁹ Higher densities may be allowed under the following circumstances:
- (a) If the dwelling units are relocated off-site through the provisions of the Transfer of Development Rights Ordinance (No. 86-18, as amended or replaced); or
 - (b) Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, Central Urban, or Urban Community at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed the maximum standard density plus one-half of the difference between the maximum total density and the maximum standard density; or
 - (c) Dwelling units may be relocated from freshwater wetlands to developable contiguous uplands designated Suburban or Outlying Suburban at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed eight (8) dwelling units per acre for lands designated Suburban and four (4) dwelling units per acre for lands designated Outlying Suburban, unless the Outlying Suburban lands are located in those areas described in Note 6 above, in which case the maximum upland density will be three (3) units per acre. (Amended by Ordinance No. 00-22)
- ¹⁰ Overall average density for the University Village sub-district must not exceed 2.5 du/acre. Clustered densities within the area may reach 15 du/acre to accommodate university housing.
- ¹¹ In the Rural category located in Section 24, Township 43 South, Range 23 East and south of Gator Slough, the maximum density is 1du/2.25 acres. (Added by Ordinance No. 02-02)

ATTACHMENT 4

RESOLUTION NUMBER Z-03-065

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Avalon Communities, Inc. filed an application on behalf of the property owners, Kenneth A. Weiner, Trustee and Wayne G. Russell, Trustee, to rezone 38.65± acres from Agricultural (AG-2) to Residential Planned Development (RPD), in reference to Avalon Preserve; and,

WHEREAS, a public hearing was advertised and held on January 28, 2004, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2003-00010; and

WHEREAS, a second public hearing was advertised and held on March 29, 2004, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to rezone 38.65± acres from AG-2 to RPD, to allow a maximum of 231 single-family and multi-family residences along with lakes and an amenity center. Maximum height of buildings is to be 35 feet. On-site blasting is not being requested. The property is located in the Suburban Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, LIMITED TO four units per acre or a maximum of 154 units, the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. The development of this project must be consistent with the one (1) page Master Concept Plan entitled "Avalon Preserve," stamped received April 28, 2004 Zoning Counter, plot dated Thursday, April 22, 2004, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

COPY

2. The following limits apply to the project and uses:

a. Schedule of Uses

Residential:

Accessory Uses and Structures

Dwelling Unit:

 Single-family

 Multi-family

Entrance Gates and Gatehouses

Essential Services

Essential Services, Group I

Excavation - Water Retention

Fences, Walls

Home Occupation (per LDC §34-1771, *et seq.*)

Model Home, Unit, Display Center (consistent with Condition 3)

Parking Lot, Accessory

Recreational Facilities:

 Personal (per LDC §34-2)

 Private, on-site (per LDC §34-2)

Real Estate Sales Office (consistent with Condition 3)

Signs (per Chapter 30)

Temporary Uses (per LDC §34-3041):

 Contractor's Office and equipment Storage Shed

 Temporary Use of Mobile Home

 Temporary Telephone Distribution Equipment

Amenity:

Accessory Uses and Structures

Club, private (Maximum of 6,000 square feet)

Fences, Walls

Food and Beverage Service, limited

Parking Lot, accessory

Recreational Facilities: Private, on-site (per LDC §34-2)

Signs (per Chapter 30)

b. Site Development Regulations

Land Use	Min. Lot Area	Min. Lot Width	Min. Lot Depth	Max. Lot Coverage	Road Setback	Side Setback	Corner Setback	Rear Setback	Water body Setback	Min. Bldg. Separation	Max. Height
Single-family	6,600 sq. ft.	60'	110'	45%	15'	5'	5'	15**	25'	n/a	35' 2 stories
Multi-family	10,000 sq. ft., 3,000 per unit	75'	100'	45%	15***	7.5**	10'	25'	25'	15'	35' 2 stories
Pools, Decks, Screen Enclosures	n/a	n/a	n/a	n/a	15'	5'	5'	10'	25'	n/a	n/a
Club-house	n/a	n/a	n/a	45%	15'	10'	10'	20'	n/a	n/a	35' 2 stories

* 30-foot setback along northern boundary of subject property

**Distance from front of garage to edge of roadway (driveway) must be a minimum of 27 feet

- c. A total maximum of 124 dwelling units are approved (15 single family, and 109 multi-family), or a maximum of 154 units (15 single family, and 139 multi-family) in compliance with condition 13.
3. Model Homes, Model Units, Model Display Centers, and a Real Estate Sales Office are permitted uses but, must be approved administratively per LDC §34-380 prior to receiving and development orders for any buildings on site, and be consistent with the following conditions:
- a. A maximum of three (3) Model Homes are permitted.
 - b. A maximum of three (3) Model Units are permitted.
 - c. A maximum of one (1) Model Display Center is permitted.
 - d. A maximum of one (1) Real Estate Sales Office is permitted.
 - e. All Model Homes, Model Units, Model Display Centers, and the Real Estate Sales Office must be located as close to the main access onto Winkler Road as possible.
4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

5. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b).
6. Agricultural Uses: Existing bona fide agricultural uses on this site are allowed only in strict compliance with the following:
 - a) Bona fide agricultural uses that are in existence at the time this resolution is approved and as shown on **Exhibit D** attached hereto may continue until approval of a local development order for the area of the project containing those uses.
 - b) Additional clearing or grading of existing agricultural areas is prohibited. This prohibition is not intended to preclude County approved requests for the removal of invasive exotic vegetation.
 - c) The property owner must terminate the agricultural tax exemption for any portion of the property that receives a local development order. The exemption termination must be filed with the Property Appraiser's Office by December 31st of the calendar year in which the local development order is issued. A copy of the exemption termination must be provided to the Office of the County Attorney.
7. Prior to moving gopher tortoises and any commensal species to the indigenous preserve in the northeast corner of the property:
 - a. Any man-made debris and invasive exotic vegetation must be hand removed from the gopher tortoise preserve prior to moving tortoises into the preserve; and
 - b. A copy of a five or less gopher tortoise relocation permit from the Florida Fish and Wildlife Conservation Commission must be submitted to the Division of Environmental Sciences; and
 - c. A minor clearing Vegetation Removal Permit must be obtained prior to installing the gopher tortoise fence and moving gopher tortoises onsite.
8. Prior to the issuance of a Certificate of Compliance, a permanent gopher tortoise fence or double staggered hedge consisting of three-gallon container size native shrubs must be installed along the sides of the gopher tortoise preserve abutting roadways, lots and the amenity center. If a fence is installed, the fence must be buried to an 18-inch depth, and the above ground height must be a minimum of three (3) feet. If a fence is installed along any other portions of the preserve, then the fence must be designed to allow gopher tortoises to cross beneath the fence at existing grade. The permanent fence or hedge must be delineated on the landscape plans prior to development order approval.
9. A Type "C" buffer must be installed along the western boundary of the subject property from the northern extent of the proposed preserve in the southwest corner of the subject property to the northern boundary of the subject property. The wall for the Type "C" buffer will be replaced with a double staggered row of cocoplum planted four-foot on-center at a minimum height of 48 inches, and maintained at a minimum height of eight feet.

10. The proposed preserve in the southwest corner of the subject property must be a minimum of 25 feet wide.
11. Should any parking lots, drives, or roads be located within 125 feet of an existing residential subdivision or lot, the buffer required by LDC §10-416(d)(6) must be provided at time of Development Order approval.
12. No blasting is permitted on-site.
13. If an Environmental Resource Permit is obtained to impact upon the freshwater wetlands on-site, the total maximum number of units allowed to be developed may be recalculated based upon allowable density regulations (underlying land use) and the amount of freshwater wetlands the Environmental Resource Permit allows to be impacted. Under no circumstances will the maximum number of units to be developed on the subject site exceed 154.
14. No structures may be built within the I.D.D. canal easement on the subject property.

SECTION C. DEVIATIONS:

1. Deviation (1) - Withdrawn
2. Deviation (2) seeks relief from the LDC §34-935(e)(4) which requires minimum building separation to be one-half of the sum of their heights, or 20 feet, which ever is greater; to be reduced to a 15-foot minimum building separation. This deviation is APPROVED, SUBJECT TO the following condition:

No part of the structure can encroach into the 15-foot setback.
3. Deviation (3) seeks relief from the LDC §10-291(3), where additional accesses may be required by the Director; to allow one (1) entrance to the subject project from Winkler Road. This deviation is APPROVED, SUBJECT TO the following condition:

The stabilized emergency access as depicted on the submitted Master Concept Plan must be a minimum of 20 feet in width and nothing (i.e. structures, vegetation, or fences/walls) may be placed in the emergency access which would impede its use by any emergency vehicle or agency.
4. Deviation (4) - Withdrawn
5. Deviation (5) - Withdrawn

6. Deviation (6) seeks relief from the LDC §10-415 (b)(1)(a) which requires preservation; to allow for a combination of on-site preservation and native restoration/re-plantings. This deviation is APPROVED, SUBJECT TO the following condition:

Prior to local development order approval, the landscape plans must delineate 13.82 acres of common open space of which 6.91 acres must be indigenous preservation. The 6.91 acres of indigenous preservation must include a minimum 2.58-acre gopher tortoise preserve. The proposed 0.10, 0.34 and 0.07-acre preserves delineated on the Master Concept Plan must be field located to determine if the areas contain existing native vegetation. If these areas do not contain native vegetation then two native canopy trees (minimum 10-foot height and two-inch caliper) and native shrubs (minimum three-gallon container size) planted to provide 50 percent coverage at time of planting must be installed for each area needing replanting. Approximately 1.33 acres of wetland restoration / replanting may count toward the 6.91-acre preservation requirement. The wetland restoration plan must be included on the landscape plans and include at a minimum 257 ten-gallon native wetland trees, 580 three-gallon native wetland shrubs, and 6,437 one-gallon native herbaceous wetland plants installed in a random manner to mimic a natural system. A minimum of six species must be used from the Indigenous Restoration Wetland Planting List. The restoration/replanting areas must include a temporary irrigation system, and organic mulch to help establish the plantings. No cypress mulch may be used within the indigenous preserves or restoration areas.

7. Deviation (7) seeks relief from the LDC §34-2020(4)(k) which requires meeting halls to provide parking at a ratio of one space per 100 square feet; to allow for a ratio of one space per 250 square feet. This deviation is APPROVED.
8. Deviation (8) seeks relief from the LDC §34-2020(1)(c)(3) which requires driveway specifications to meet setback standards, to allow for guest parking spaces to be built as shown on the Master Concept Plan. This deviation is APPROVED.

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: Legal description of the property
- Exhibit B: Zoning Map (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan
- Exhibit D: Sketch & Affidavit regarding Bona Fide Agricultural Uses At Time of Zoning Application

The applicant has indicated that the STRAP number for the subject property is:
03-46-24-00-00001.0000

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and,
 - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and,
 - c. is compatible with existing or planned uses in the surrounding area; and,
 - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and,
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
 - a. the proposed use or mix of uses is appropriate at the subject location; and
 - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.
5. The approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Ray Judah, seconded by Commissioner Andrew W. Coy and, upon being put to a vote, the result was as follows:

Robert P. Janes	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 29th day of March 2004.

ATTEST:
CHARLIE GREEN, CLERK

BY: Cindy Morrison
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Chairman

Approved as to form by:

[Signature]
County Attorney's Office



RECEIVED
MINUTES OFFICE

2004 MAY 10 AM 9: 09

EXHIBIT "A"

DESCRIPTION (O.R. 2012/2422)

From a 5" X 5" concrete monument marking the N.W. corner of Government Lot 4, Section 3, T. 46 S., R. 24 E., Lee County, Fla., and the principle point of beginning of the following described parcel.

From said P.O.B. run S 00°56'01"E for 1320.204' to the S.W. corner of said Gov't. Lot 4; thence run N 88°53'56. 4"E along the south line of said Gov't. Lot 4 for 1273.844' to a point on the west R.O.W. line of Winkler Road Extension. Thence run N00°53'08. 1"W along said R.O.W. line for 1199.897' to a P.C. of a curve to the right, having as it's elements R. = 2914.93', Delta = 02°23'52. 45", A. = 121.994', Ch. = 121.985', Ch. Brg. = N00°18'48"E; thence run along said curve for 121.994' to the intersection of said curve and the N. line said Gov't. Lot 4; thence run S88°49'32. 05"W for 1277.522' to the P.O.B. Said parcel contains: 38.650 acres, more or less.

DCI 2003-00010
Applicant's Legal Checked
by LGM

Pg. 1 of 2

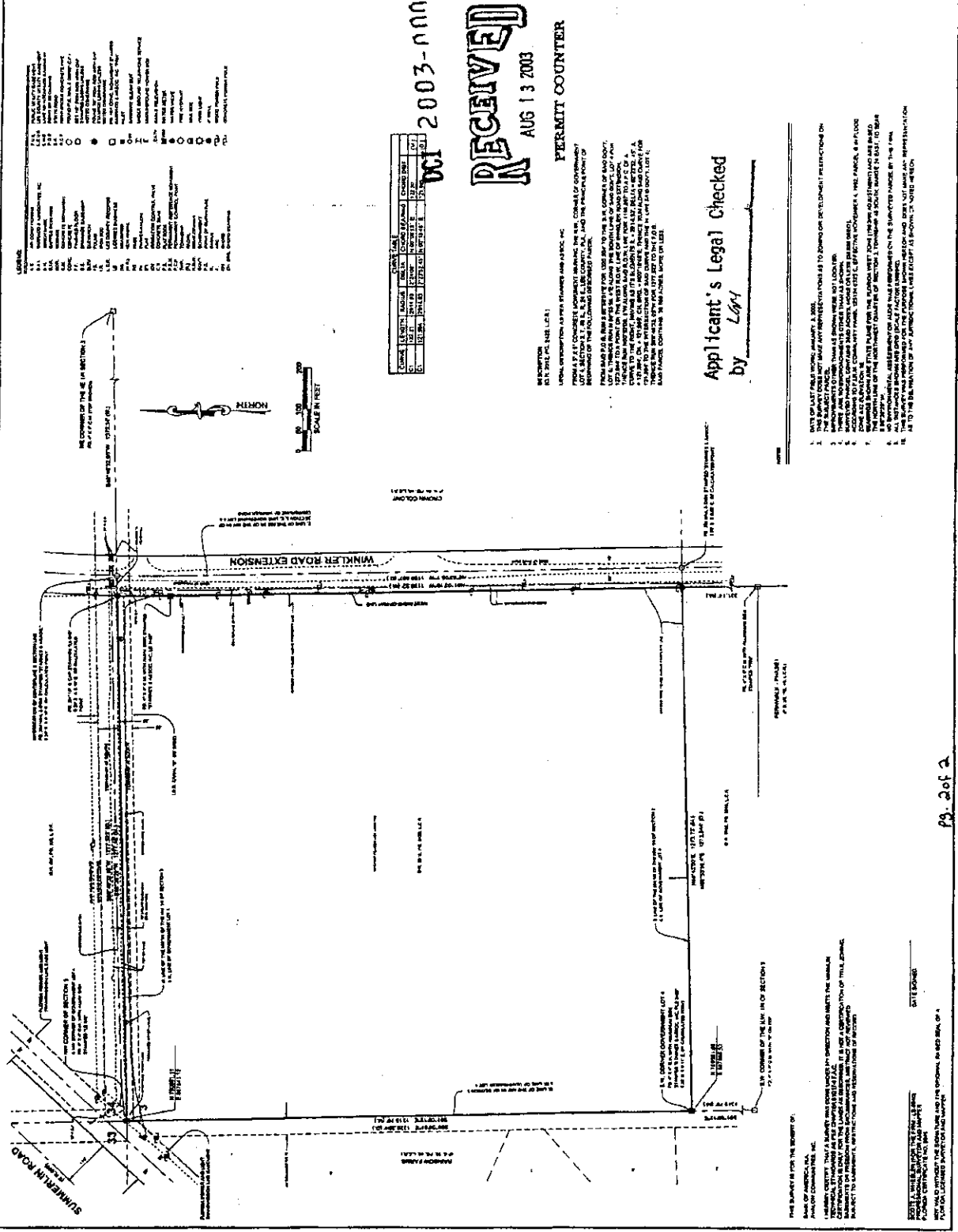
Barraco
and Associates, Inc.
Civil Engineers, Surveyors
Professional Engineers
Professional Land Surveyors
Professional Architects
Professional Planners
Professional Interior Designers
Professional Horticulturists
Professional Landscape Architects
Professional Urban Planners
Professional Environmental Planners
Professional Historic Preservationists
Professional Archaeologists
Professional Anthropologists
Professional Biologists
Professional Chemists
Professional Geologists
Professional Geographers
Professional Geophysicists
Professional Hydrologists
Professional Meteorologists
Professional Oceanographers
Professional Paleontologists
Professional Physicists
Professional Sociologists
Professional Toxicologists
Professional Zoologists

AGI
Architectural Engineering Inc.
1701 N. BANCHELLA DRIVE
FORT WORTH, TX 76108
PHONE: 817-461-3823
FACSIMILE: 817-461-1122
WWW.AGIFIRM.COM
PRINCIPAL: BARRY BARRACO

PARCEL IN



SECTION 1	SECTION 2	SECTION 3	SECTION 4	SECTION 5	SECTION 6	SECTION 7	SECTION 8	SECTION 9	SECTION 10	SECTION 11	SECTION 12	SECTION 13	SECTION 14	SECTION 15	SECTION 16	SECTION 17	SECTION 18	SECTION 19	SECTION 20



DCI 2003-00010

RECEIVED
AUG 13 2003
PERMIT COUNTER

DESCRIPTION
SITE 1111, P.L. 1111 (L.S.)
LEGAL DESCRIPTION: AS PER STRADDLES AND PLATS, INC.
FROM A 2.4 ACRES CONVEYANCE BEARING THE S.W. CORNER OF QUARTER 1
SECTION 10, T.10N., R.10E., S.10E. AND THE N.E. CORNER OF QUARTER 1
SECTION 11, T.10N., R.10E., S.10E. TO THE S.W. CORNER OF QUARTER 1
SECTION 10, T.10N., R.10E., S.10E.

APPLICANT'S LEGAL CHECKED
by Logy

1. THIS PLAN IS THE PROPERTY OF THE ENGINEER AND WILL BE RETURNED TO HIM UPON COMPLETION OF THE PROJECT.
2. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE PLAN.
3. THERE ARE NO ENCUMBRANCES OR OTHER MATTERS AFFECTING THE PROJECT.
4. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT PROPERTIES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
5. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT ROADS AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
6. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT UTILITIES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
7. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT ENVIRONMENT AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE PLAN.
8. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT HISTORIC RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
9. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT CULTURAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
10. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT ARCHAEOLOGICAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
11. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT GEOLOGICAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
12. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT HYDROLOGICAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
13. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT METEOROLOGICAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
14. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT CLIMATOLOGICAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
15. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT SOIL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
16. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT VEGETATION RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
17. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT WILDLIFE RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
18. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT CULTURAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
19. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT HISTORIC RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.
20. THE ENGINEER HAS CONDUCTED A VISUAL INSPECTION OF THE ADJACENT ARCHAEOLOGICAL RESOURCES AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE PLAN.

ZONING MAP

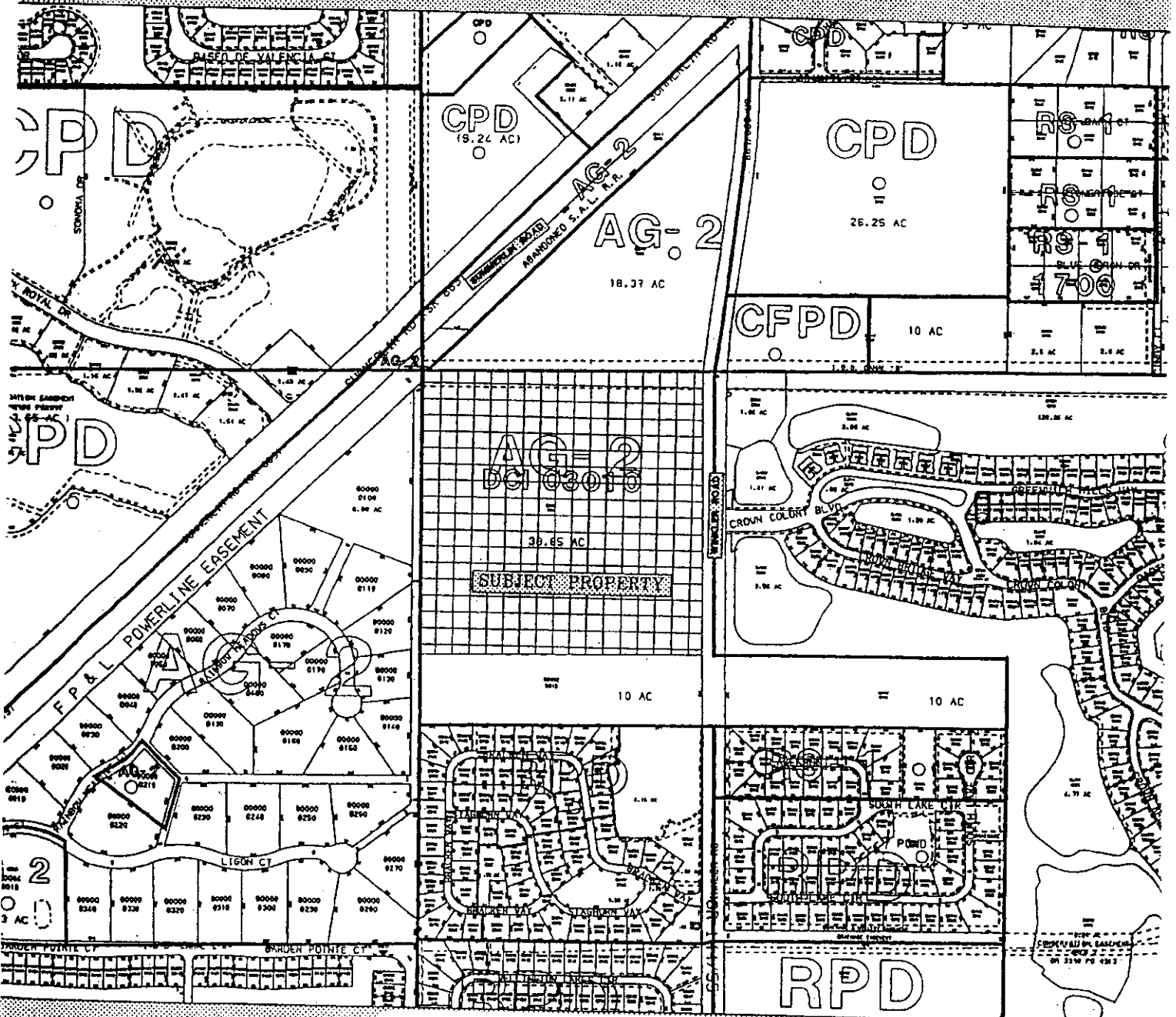
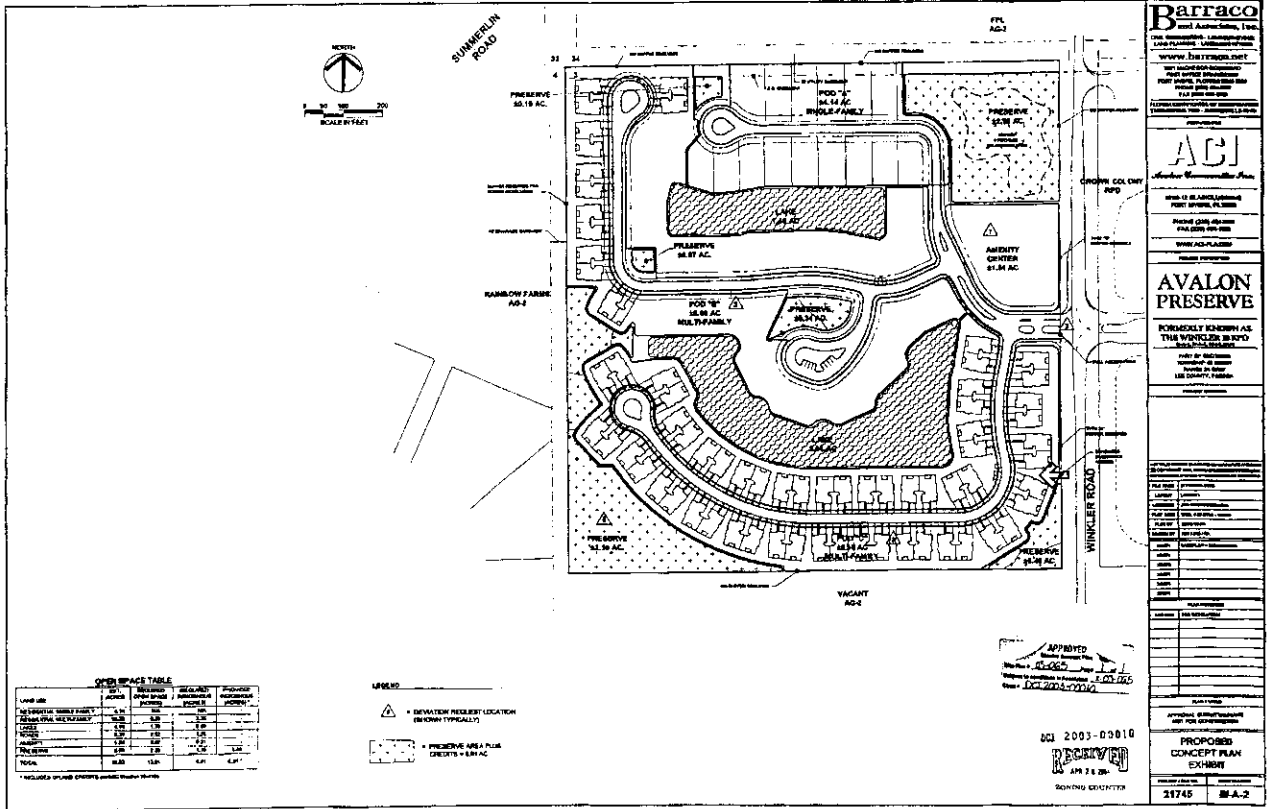


EXHIBIT "B"
(Zoning Map)



OPEN SPACE TABLE

LAND USE	AREA (AC)	PERCENT OPEN SPACE	PERCENT OPEN SPACE	PERCENT OPEN SPACE
RESIDENTIAL SINGLE-FAMILY	1.1	0.0	0.0	0.0
RESIDENTIAL MULTIFAMILY	1.0	0.0	0.0	0.0
OFFICE	1.0	0.0	0.0	0.0
RETAIL	1.0	0.0	0.0	0.0
INDUSTRIAL	1.0	0.0	0.0	0.0
PARKING	1.0	0.0	0.0	0.0
ROADS	1.0	0.0	0.0	0.0
UTILITIES	1.0	0.0	0.0	0.0
TOTAL	10.0	0.0	0.0	0.0

* INCLUDES UTILITIES OPENING PUBLIC UTILITY RIGHTS

- LEGEND**
- ▲ SEWATER RESIDENT LOCATION (SHOWN TYPICALLY)
 - PRESERVE AREA PLUS CREDITS = 8.81 AC

APPROVED
 [Signature]
 [Title]
 [Date]

2003-00010
REGENCY
 APR 28 2004
 BOONING CENTER

Barraco
 and Associates, Inc.
 10000 W. Sunset Blvd., Suite 1000
 Los Angeles, CA 90024
 (310) 206-1000

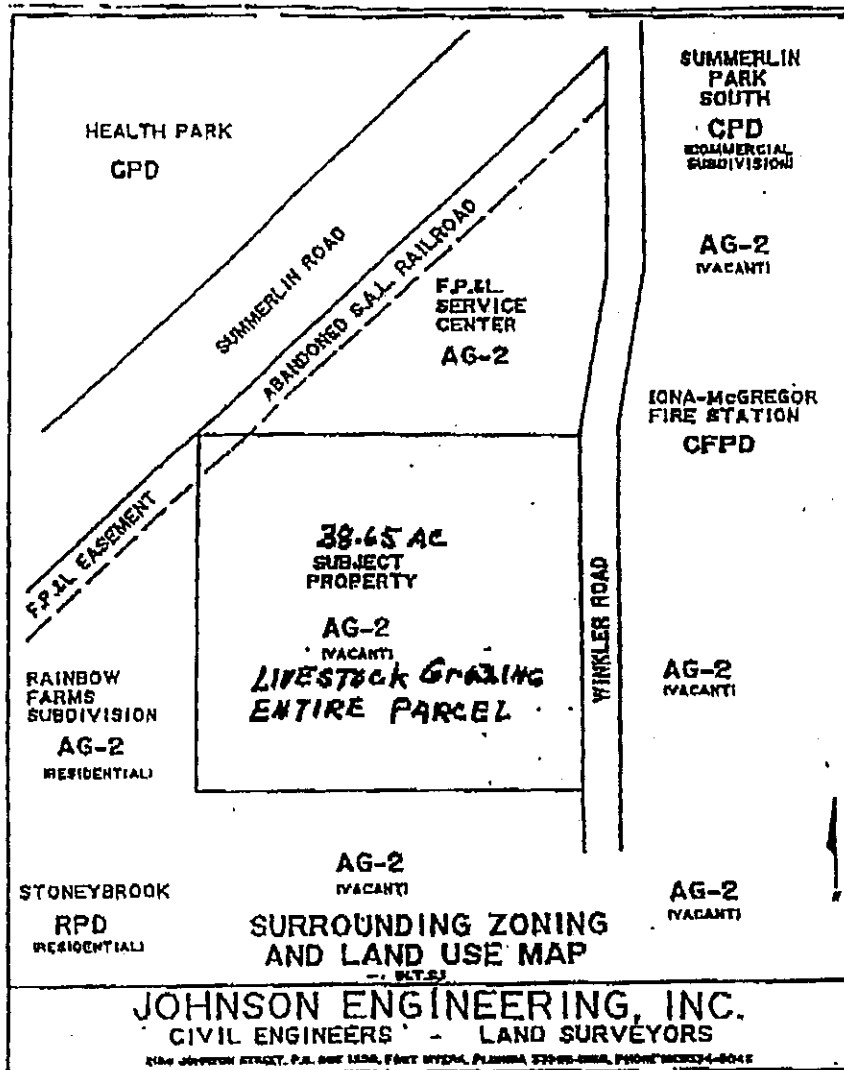
ACI
 Architects & Engineers
 10000 W. Sunset Blvd., Suite 1000
 Los Angeles, CA 90024
 (310) 206-1000

AVALON PRESERVE
 FORMERLY KNOWN AS
 THE WINKLER COLONY
 10000 W. Sunset Blvd., Suite 1000
 Los Angeles, CA 90024
 (310) 206-1000

PROPOSED CONCEPT PLAN EXHIBIT
 21745 BA-A-2

EXHIBIT "C"
 (Neater Concept Plan)

**Deemed Agricultural Uses
At Time of Zoning Application**



DESCRIPTION SKETCH

LEGAL DESCRIPTION AS PER STARNES AND ASSOCIATES, INC.

FROM A 5" X 5" CONCRETE MONUMENT MARKING THE N.W. CORNER OF GOVERNMENT LOT 4, SECTION 3, T. 46 S., R. 24 E., LEE COUNTY FLORIDA, AND THE PRINCIPLE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL.

FROM SAID P.O.B. RUN S. 00°56'01"E. FOR 1320.204' TO THE S.W. CORNER OF SAID GOV'T LOT 4; THENCE RUN N. 88°53'56.4"E. ALONG THE SOUTH LINE OF SAID GOV'T LOT 4 FOR 1273.844' TO A POINT OF THE WEST E.O.W. LINE OF WINKLER ROAD EXTENSION. THENCE RUN N. 00°53'08.1"W. ALONG SAID R.O.W. LINE FOR 1199.897' TO A P.C. OF A CURVE TO THE RIGHT HAVING AN IT'S ELEMENTS R. - 2914.93', DELTA - 02°23'52.45", A. - 121.994', CH. - 121.985', CH. BRG. - W. 00°18'48"E; THENCE RUN ALONG SAID CURVE FOR 121.994' TO THE INTERSECTION OF SAID CURVE AND THE N. LINE OF SAID GOV'T. LOT 4; THENCE RUN S. 88°49'32.05"W FOR 1277.922' TO THE P.O.B. SAID PARCEL CONTAINS: 38.650 ACRES, MORE OR LESS. SAID PARCEL IS SUBJECT TO: EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

NOTE: THE BEARINGS AS SHOWN HEREON ARE BASED ON THE BEARING USED ON THE R.O.W. MAPS OF S.R. # 669, SUMMERLIN ROAD.

STATE OF FLORIDA

COUNTY OF LEE

AFFIDAVIT

BEFORE ME, the undersigned notary public, personally appeared Wayne G. Russell, Trustee, who under oath, does say and depose as follows:

1. That Wayne G. Russell, Trustee, is the Contract Seller of the property shown in Exhibit "A" attached hereto and incorporated herein by reference.
2. That, based upon my personal knowledge as Contract Seller, the property shown on Exhibit "A", consisting of 38.65 acres, has been utilized and is currently being utilized as a bona fide good faith commercial agricultural use, specifically, as livestock grazing.

FURTHER AFFIANT SAYETH NOT.

Wayne G. Russell, Trustee
Wayne G. Russell, Trustee

SWORN TO and subscribed before me this 27th day of January, 2004, by Wayne G. Russell, Trustee, who is personally known to me.

My Commission Expires:

Deborah M. Camelo
Notary Public



Deborah M. Camelo
MY COMMISSION # DD041775 EXPIRES
August 11, 2005
BONDED THRU TROY FAIR INSURANCE, INC.

(Type/Print Name of Notary)

Commission No. _____

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2003-00010
APPLICANT: AVALON COMMUNITIES, INC., in reference to
AVALON PRESERVE
HEARING DATE: DECEMBER 3, 2003
CONTINUED HRG. DATE: JANUARY 28, 2004

I. APPLICATION:

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

Filed by AVALON COMMUNITIES, INC., 8750-12 Gladiolus Drive, Fort Myers, Florida 33908 (Applicant); KENNETH WEINER A. TR & RUSSELL WAYNE G. TR., 4291 Fulton Circle, Fort Myers, Florida 33905 (Owner); DANIEL DELISI, AICP, % BARRACO AND ASSOCIATES, 2271 McGregor Boulevard, Fort Myers, Florida 33902; and KATE ENGLISH, % PAVESE LAW FIRM, 1833 Hendry Street, Fort Myers, Florida 33902; and KEN PASSARELLA, % PASSARELLA AND ASSOCIATES, INC., 9110 College Pointe Court, Fort Myers, Florida 33919 (Agents).

Request is to rezone the subject 38.65-acre property from the Agricultural (AG-2) zoning district to the Residential Planned Development (RPD) zoning district to develop a maximum of 231 single-family and multi-family residences along with lakes and an amenity center. Maximum height of buildings is to be 35 feet. On-site blasting is not being requested.

The subject property is located at 16100 Winkler Road (1,500 feet from the intersection of Summerlin Road and Winkler Road), in Section 03, Township 46 South, Range 24 East, Lee County, Florida (District #5).

II. STAFF REPORT AND RECOMMENDATION: APPROVE WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Jeff Laurien. The Staff Report is incorporated herein by this reference.

III. RECOMMENDATION OF HEARING EXAMINER:

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners **APPROVE** the Applicant's request for a rezoning from AG-2 to RPD for the real estate described in Section IX. Legal Description WITH THE FOLLOWING CONDITIONS AND DEVIATIONS:

A. CONDITIONS:

1. The development of this project must be consistent with the one (1) page Master Concept Plan entitled "Winkler 38 RPD," stamped received January 8, 2004, plot dated Thursday, January 8, 2004, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Residential:

Accessory Uses and Structures

Dwelling Unit:

Single-family

Multi-family

Entrance Gates and Gatehouses

Essential Services

Essential Services, Group I

Excavation - Water Retention

Fences, Walls

Home Occupation

Model Home, Unit, Display Center (consistent with Condition 3)

Parking Lot, Accessory

Recreational Facilities:

Personal (per LDC Section 34-2)

Private, on-site (per LDC Section 34-2)

Real Estate Sales Office (consistent with Condition 3)

Signs (per Chapter 30)

Temporary Uses (Per LDC §34-3041):

Contractor's Office and equipment Storage Shed

Temporary Use of Mobile Home -

Temporary Telephone Distribution Equipment

Amenity:

Accessory Uses and Structures

Club, private (Maximum of 6,000 square feet)

Fences, Walls

Food and Beverage Service, limited

Parking Lot, accessory

Recreational Facilities: Private, on-site (per LDC Section 34-2)

Signs (per Chapter 30)

b. Site Development Regulations

Land Use	Min. Lot Area	Min. Lot Width	Min. Lot Depth	Max. Lot Coverage	Road Setback	Side Setback	Corner Setback	Rear Setback	Water body Setback	Min. Bldg. Separation	Max. Height
Single-family	6,600 sq. ft.	60'	110'	45%	15'	5'	5'	15**	25'	n/a	35' 2 stories
Multi-family	10,000 sq. ft., 3,000 per unit	75'	100'	45%	15***	7.5**	10'	25'	25'	15'	35' 2 stories
Pools, Decks, Screen Enclosures	n/a	n/a	n/a	n/a	15'	5'	5'	10'	25'	n/a	n/a
Club-house	n/a	n/a	n/a	45%	15'	10'	10'	20'	n/a	n/a	35' 2 stories

* 30-foot setback along northern boundary of subject property

**Distance from front of garage to edge of roadway (driveway) must be a minimum of 27 feet

- c. A total maximum of 185 dwelling units are approved (15 single family, and 170 multi-family), or a maximum of 231 units (15 single family, and 216 multi-family) in compliance with condition 18.

3. Model Homes, Model Units, Model Display Centers, and a Real Estate Sales Office are permitted uses but, must be approved administratively per LDC Section 34-380 prior to receiving and development orders for any buildings on site, and be consistent with the following conditions:

- a. A maximum of three (3) Model Homes are permitted.
- b. A maximum of three (3) Model Units are permitted.
- c. A maximum of one (1) Model Display Center is permitted.
- d. A maximum of one (1) Real Estate Sales Office is permitted.
- e. All Model Homes, Model Units, Model Display Centers, and the Real Estate Sales Office must be located as close to the main access onto Winkler Road as possible.

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

5. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b).

6. **Agricultural Uses:** Existing bona fide agricultural uses on this site are allowed only in strict compliance with the following:

a) Bona fide agricultural uses that are in existence at the time this resolution is approved and as shown on **Exhibit B** attached hereto may continue until approval of a local development order for the area of the project containing those uses.

Note: The referenced exhibit will consist of existing bona fide uses documented in a sworn affidavit from the property owner describing the type and intensity of bona fide agricultural uses in existence on the date of the zoning approval, i.e., livestock grazing or crop production. The applicant must include acreage figures for each use as part of the sworn affidavit. The affidavit must include an exhibit depicting the location of the uses on a copy of the boundary sketch. The exhibit should be entitled "Bona fide Agricultural Uses at time of Zoning Application."

b) Additional clearing or grading of existing agricultural areas is prohibited. This prohibition is not intended to preclude County approved requests for the removal of invasive exotic vegetation.

c) The property owner must terminate the agricultural tax exemption for any portion of the property that receives a local development order. The exemption termination must be filed with the Property Appraiser's Office by December 31st of the calendar year in which the local development order is issued. A copy of the exemption termination must be provided to the Office of the County Attorney.

7. Prior to moving gopher tortoises and any commensal species to the indigenous preserve in the northeast corner of the property:

a. Any man-made debris and invasive exotic vegetation must be hand removed from the gopher tortoise preserve prior to moving tortoises into the preserve; and

b. A copy of a five or less gopher tortoise relocation permit from the Florida Fish and Wildlife Conservation Commission must be submitted to the Division of Environmental Sciences; and

c. A minor clearing Vegetation Removal Permit must be obtained prior to installing the gopher tortoise fence and moving gopher tortoises onsite.

8. Prior to the issuance of a Certificate of Compliance, a permanent gopher tortoise fence or double staggered hedge consisting of three-gallon container size native shrubs must be installed along the sides of the gopher tortoise preserve abutting roadways, lots and the amenity center. If a fence is installed, the fence must be buried to an 18-inch depth, and the above ground height must be a minimum of three (3) feet. If a fence is installed along any other portions of the preserve, then the fence must be designed to allow gopher tortoises to cross beneath the fence at existing grade. The permanent fence or hedge must be delineated on the landscape plans prior to development order approval.

9. A Type "C" buffer must be installed along the western boundary of the subject property from the northern extent of the proposed preserve in the southwest corner of the subject property to the northern boundary of the subject property. The wall for the Type "C" buffer will be replaced with a double staggered row of cocoplum planted four-foot on-center at a minimum height of 48 inches, and maintained at a minimum height of eight feet.

10. The proposed preserve in the southwest corner-of the subject property must be a minimum of 25 feet wide.

11. Should any parking lots, drives, or roads be located within 125 feet of an existing residential subdivision or lot, the buffer required by LDC Section 10-416(d)(6) must be provided at time of Development Order approval.

12. No blasting is permitted on-site.

13. Deleted

14. Deleted

15. Deleted

16. Deleted

17. Deleted

18. If an Environmental Resource Permit is obtained to impact upon the freshwater wetlands on-site, the total maximum number of units allowed to be developed may be recalculated based upon allowable density regulations (underlying land use) and the amount of freshwater wetlands the Environmental Resource Permit allows to be impacted. Under no circumstances will the maximum number of units to be developed on the subject site exceed 231.

19. No structures may be built within the I.D.D. canal easement on the subject property.

B. DEVIATIONS:

Deviation 1 - Withdrawn

Deviation 2 requests relief from LDC Section 34-935(e)(4) which requires minimum building separation to be one-half of the sum of their heights, or 20 feet, which ever is greater; to be reduced to a 15-foot minimum building separation. The Hearing Examiner recommends **APPROVAL** of this deviation with the following condition:

No part of the structure can encroach into the 15-foot setback.

Deviation 3 requests relief from LDC Section 10-291(3), where additional accesses may be required by the Director; to allow one (1) entrance to the subject project from Winkler Road. The Hearing Examiner recommends **APPROVAL** of this deviation with the following condition:

The stabilized emergency access as depicted on the submitted Master Concept Plan must be a minimum of 20 feet in width and nothing (i.e. structures, vegetation, or fences/walls) may be placed in the emergency access which would impede its use by any emergency vehicle or agency.

Deviation 4 - Withdrawn

Deviation 5 - Withdrawn

Deviation 6 requests relief from LDC Section 10-415 (b)(1)(a) which requires preservation; to allow for a combination of on-site preservation and native restoration/re-plantings. The Hearing Examiner recommends **APPROVAL** of this deviation with the following condition:

Prior to local development order approval, the landscape plans must delineate 13.82 acres of common open space of which 6.91 acres must be indigenous preservation. The 6.91 acres of indigenous preservation must include a minimum 2.58-acre gopher tortoise preserve. The proposed 0.10, 0.34 and 0.07-acre preserves delineated on the Master Concept Plan must be field located to determine if the areas contain existing native vegetation. If these areas do not contain native vegetation then two native canopy trees (minimum 10-foot height and two-inch caliper) and native shrubs (minimum three-gallon container size) planted to provide 50 percent coverage at time of planting must be installed for each area needing replanting. Approximately 1.33 acres of wetland restoration / replanting may count toward the 6.91-acre preservation requirement. The wetland restoration plan must be included on the landscape plans and include at a minimum 257 ten-gallon native wetland trees, 580 three-gallon native wetland shrubs, and 6,437 one-gallon native herbaceous wetland plants installed in a random manner to mimic a natural system. A minimum of six species must be used from the Indigenous Restoration Wetland Planting List. The restoration/replanting areas must include a temporary irrigation system, and organic mulch to help establish the plantings. No cypress mulch may be used within the indigenous preserves or restoration areas.

Deviation 7 requests relief from LDC Section 34-2020(4)(k) which requires meeting halls to provide parking at a ratio of one space per 100 square feet; to allow for a ratio of one space per 250 square feet. The Hearing Examiner recommends **APPROVAL** of this deviation.

Deviation 8 requests relief from LDC Section 34-2020(c)(3) which requires driveway specifications to meet setback standards, to allow for guest parking spaces to be built as shown on the Master Concept Plan. The Hearing Examiner recommends **APPROVAL** of this deviation.

IV. HEARING EXAMINER DISCUSSION:

The Applicant, Avalon Communities, Inc., in reference to Avalon Properties RPD, is requesting a rezoning from the Agricultural (AG-2) zoning district to the Residential Planned Development (RPD) zoning district for a 38.65-acre parcel located at 16100 Winkler Road, Lee County, Florida. This site that is located 1,500 feet from the intersection of Summerlin Road and Winkler Road, is in the southwestern quadrant of the intersection.

If approved, the Applicant intends to develop the site with a maximum of 231 single-family and multiple-family residential units that will be located around lakes and preserve areas on the site. It will also contain an amenity center. The majority of subject property and all of the surrounding sites are located in the Suburban land use category. A portion of the site (10.35 acres) is located in the Wetlands land use category. The property to the north is separated from the Avalon site by an IDD canal. Further to the north is a Florida Power and Light facility (zoned AG-2). To the east (across Winkler Road) is the Crown Colony RPD (a mixed single-family, duplex, townhouse, and multi-family residential community). To the south is a vacant AG-2 parcel (that may eventually contain a Multi-family development). Finally, to the west is the AG-2 zoned Rainbow Farms single-family residential community.

The property is currently vacant of any buildings and is being used for agricultural purposes (bee hives).

The Master Concept Plan for this proposed project depicts 15 single-family, and 216 multiple-family residential units, two man-made lakes, an amenity center, and five preserve areas that are scattered throughout the site. The preserve areas are a total of 6.91 acres. There will be a single gated access to and from the site from Winkler Avenue located directly across from the existing entrance into Crown Colony. This development has approximately 1,200 feet of frontage along Winkler Road.

As noted, the site contains approximately 10.35 acres of wetlands (of which approximately 50 percent is invaded by exotic vegetation). Wetlands density is limited to one dwelling unit per 20 acres. The Applicant wishes to impact 7.7 acres of freshwater wetlands, and to preserve the remaining 2.65 acres. The impact to the freshwater wetlands will require the Applicant to obtain an Environmental Resources Permit from the South Florida Water Management District. Until, and unless the Applicant obtains this permit, it will be limited to a maximum of 185 dwelling units.¹ If all 7.7 acres of freshwater wetlands are allowed to be impacted by the Water Management District, the Applicant can then have up to the 231 dwelling units that have been requested. If fewer acres are allowed to be mitigated, the number of dwelling units will be reduced proportionately (i.e., reduced by six units for each acre that is not allowed to be mitigated). Based on the maximum number of dwelling units that have been requested (i.e., 231), the gross density of the project will be 5.98 dwelling units per acre (a hair under the maximum of 6.0 dwelling units to the acre).

The density of this project is somewhat higher than the density of the surrounding properties, but the separation, buffering, and setbacks that are being recommended for approval of the rezoning request will more than offset the impacts that might be expected to occur for a project of this size.

¹ The maximum number of dwelling units allowed without the permit is calculated as follows: 38.35 total acres (-) 10.35 acres of wetlands (+) 2.65 acres of wetland to be preserved (x) 6.0 dwelling units per acre (the maximum allowed in the Suburban land use category) = 185.7 (rounded down to 185).

Thus, the Applicant will have to install a Type "C" buffer along the western boundary of the subject property from the northern extent of the proposed preserve that is located in the southwest corner of the property to its northern boundary. Instead of the wall that is customarily found in a Type "C" buffer, there will be a staggered row of cocoplum planted four-foot-on-center at a minimum height of 48 inches, and maintained at a minimum height of eight feet. Furthermore, the preserve that is planned for the southwest corner of the property must be a minimum of 25 feet wide. Finally, as noted, the Crown Colony RPD located to the east is across Winkler Road; this will provide a wide separation between the proposed Avalon project and Crown Colony.

No blasting will be permitted for development of this project, and agricultural uses must cease upon the issuance of a development order for the area covered by the order.

The Applicant has asked to be allowed to have Model Homes, Model Units, Model Display Centers, and a Real Estate Sales Office on the project. Under the proposed conditions, they will be limited to three each of the Model Homes and Model Units, one Model Display center, and one Real Estate Office. All of them must be located as close to the main access onto Winkler Road as possible.

There are also detailed Conditions (#'s 7 and 8) to address Gopher tortoise protection. The gopher tortoises that have to be located will be done so in the preserve area located in the northeast corner of the site, where most of them are currently located.

Of the eight deviations that were originally requested, only five remain. The first deviation (#2) will allow building separations to be 15 feet rather than the 20 feet called for in the Land Development Code (LCD). The Staff has opined that this will utilize the site more efficiently so long as no part of any of the structures encroach into the fifteen foot setbacks.

Approval of Deviation 3 allows the Applicant to have a single access to the project. This is acceptable to the Staff because the Applicant will provide a stabilized emergency access from Winkler Road that may be used if the primary access becomes impaired.

Deviation 6 will allow the Applicant to combine on-site preservation and native restoration plantings so long as they delineate 13.82 acres of common open space on the project, of which 6.91 acres must be indigenous preservation. Furthermore, of this 6.91 acre indigenous preserve, a minimum of 2.58 acres must be set aside for gopher tortoise preserve. The conditions for approval of this Deviation also go into considerable detail with respect to the types and sizes of trees and plants that must go into the preserve areas.

Deviation 7 will allow the Applicant to provide one parking space for each 250 square feet of the onsite meeting hall (recreation facility, club house), rather than one space for each 100 square feet. This Deviation is reasonable considering the fact that the facility will only be used by the residents and their guests, who are for the most part within walking distance of the facility.

The final deviation, #8, will allow reduced setbacks (as shown on the Master Concept Plan) for guest parking only. Since this will not pose any increased safety hazard, in the opinion of the Development Services Division of the Department of Community Development, it has been recommended for approval.

Therefore, based upon the foregoing, it is found that the requested rezoning as conditioned, is consistent with the Lee Plan and the Land Development Code, and is compatible with the surrounding uses. It is recommended that the Lee County Board of County Commissioners approve the rezoning as conditioned.

V. FINDINGS AND CONCLUSIONS:

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

- A. That the Applicant has proved entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and any other applicable code or regulation.
- B. That the request will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.
- C. That the request is consistent with the densities, intensities and general uses set forth in the Lee Plan.
- D. That the request is compatible with existing or planned uses in the surrounding area.
- E. That approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development.
- F. That, where applicable, the request will not adversely affect environmentally critical areas and natural resources.
- G. That the proposed use or mix of uses is appropriate at the subject location.
- H. That the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest.
- I. That the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
- J. That the requested deviations enhance the achievement of the objectives of the planned development.
- K. That the requested deviations preserve and promote the general intent of Chapter 34, Land Development Code, to protect the public health, safety and welfare.
- L. That, where the change proposed is within a future urban area category, urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

VI. LIST OF EXHIBITS:

Master Concept Plan, prepared by Barraco and Associates, Inc., dated August 12, 2003, date stamped "Received August 13, 2003 Permit Counter"

Proposed Concept Plan Exhibit, prepared by Barraco and Associates, Inc., dated January 8, 2004, date stamped "Received January 8, 2004 Permit Counter"

Aerial photograph [color]

STAFF'S EXHIBITS

- 1 Letter from Katherine R. English with four attachments

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

APPLICANT'S EXHIBITS

- 1 Avalon Preserve Future Land Use Map [board]
- 2 Aerial Photograph of Avalon Preserve, dated January 26, 2004

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

VII. PRESENTATION SUMMARY:

SEE OFFICIAL COURT REPORTER TRANSCRIPTS

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Carl A. Barraco, Barraco & Associates, Inc., P O Drawer 2800, Ft. Myers, Florida 33902-2800
2. Kenneth C. Passarella, Passarella & Associates, Inc. 9110 College Pointe Court, Ft. Myers, Florida 33901
3. Ted Treesh, Metro Transportation Group, 12651 McGregor Boulevard, Ste. 4-403, Ft. Myers, Florida 33919

ADDITIONAL COUNTY STAFF:

1. Joan Henry, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902-0398

PUBLIC PARTICIPATION:

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

For:

1. Wayne G. Russell, 4291 Fulton Circle, Ft. Myers, Florida 33905

Against:

1. Janeanne Archibale, 8621 Belle Meade Drive, Ft. Myers, Florida 33908
2. Connie Paul, 16425 Rainbow Meadows Court, Ft. Myers, Florida 33908
3. Lea Ann Reeves, 8591 Belle Meade Drive, Ft. Myers, Florida 33908
4. Thomas Simon, 8551 Belle Meade Drive, Ft. Myers, Florida 33908

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

For: NONE

Against:

1. Brandon & Patricia Buckner, 16418 Rainbow Meadows Court, Ft. Myers, Florida 33908
2. Andy Doltrof, 16404 Rainbow Meadows Court, Ft. Myers, Florida 33908
3. Kathryn Ireson, 16402 Rainbows Meadows Court, Ft. Myers, Florida 33908
4. Nick Ireson, 16402 Rainbow Meadows Court, Ft. Myers, Florida 33908
5. Paul Ireson, 16402 Rainbow Meadows Court, Ft. Myers, Florida 33908
6. Rick & Jill Nixon, 16411 Rainbow Meadows Court, Ft. Myers, Florida 33908
7. Jerry R. and Connie Paul, 16425 Rainbow Meadows Court, Ft. Myers, Florida 33908
8. Kevin and Terry Walsh, 16394 Rainbow Meadows Court, Ft. Myers, Florida 33908
9. Rick Wynns, Ligon Court, 3696 Liberty Square, Ft. Myers, Florida 33908
10. Roy & Joanie Youngquist, 16408 Rainbow Meadows Court, Ft. Myers, Florida 33908

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the Hearing Examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the Hearing Examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

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

XI. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. This recommendation is made this 25th day of February, 2004. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

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

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

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

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

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



SALVATORE TERRITO
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

EXHIBIT "A"

DESCRIPTION (O.R. 2012/2422)

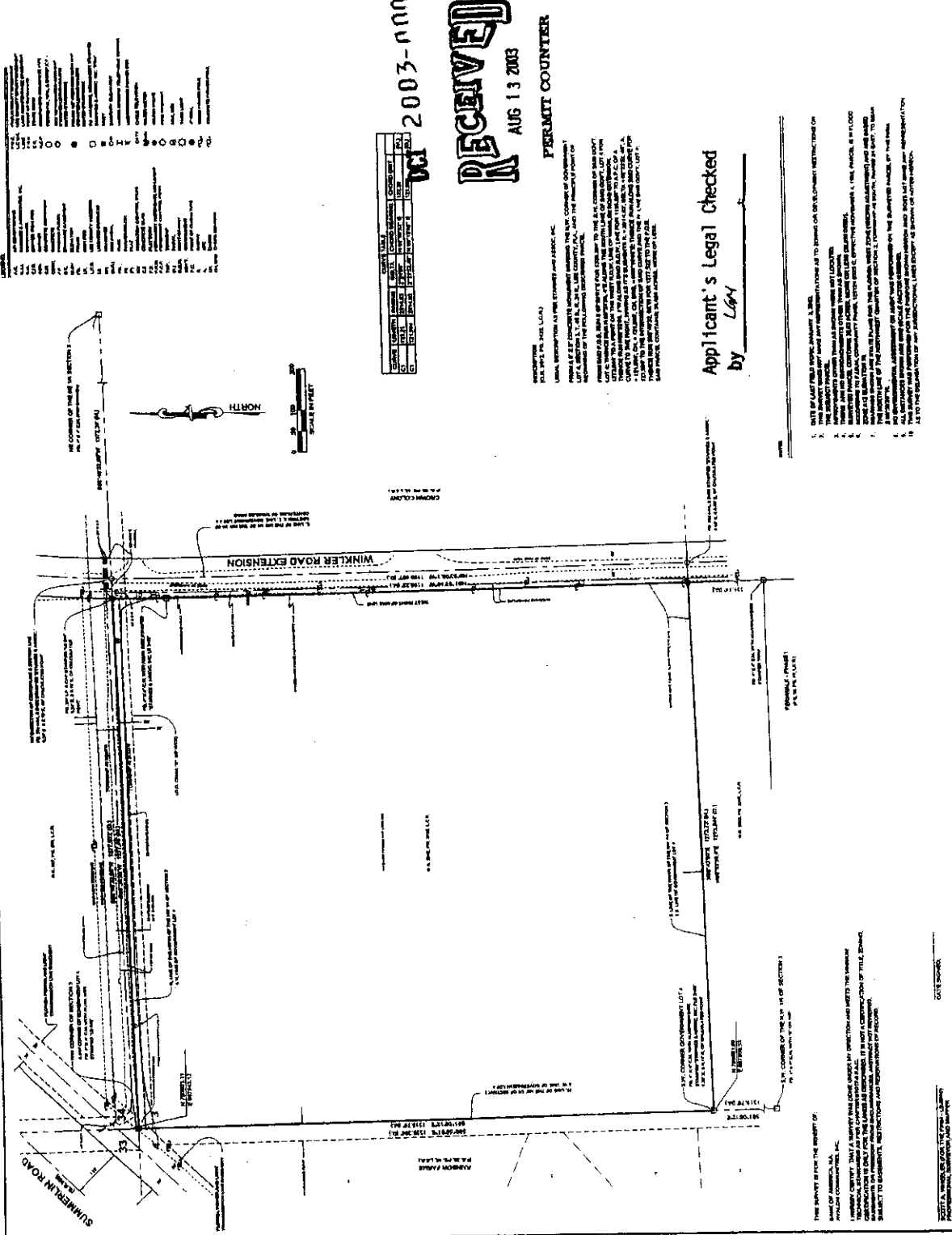
From a 5" X 5" concrete monument marking the N.W. corner of Government Lot 4, Section 3, T. 46 S., R. 24 E., Lee County, Fla., and the principle point of beginning of the following described parcel.

From said P.O.B. run S 00°56'01"E for 1320.204' to the S.W. corner of said Gov't. Lot 4; thence run N 88°53'56. 4"E along the south line of said Gov't. Lot 4 for 1273.844' to a point on the west R.O.W. line of Winkler Road Extension. Thence run N00°53'08. 1"W along said R.O.W. line for 1199.897' to a P.C. of a curve to the right, having as it's elements R. = 2914.93', Delta = 02°23'52. 45", A. = 121.994', Ch. = 121.985', Ch. Brg. = N00°18'48"E; thence run along said curve for 121.994' to the intersection of said curve and the N. line said Gov't. Lot 4; thence run S88°49'32. 05"W for 1277.522' to the P.O.B. Said parcel contains: 38.650 acres, more or less.

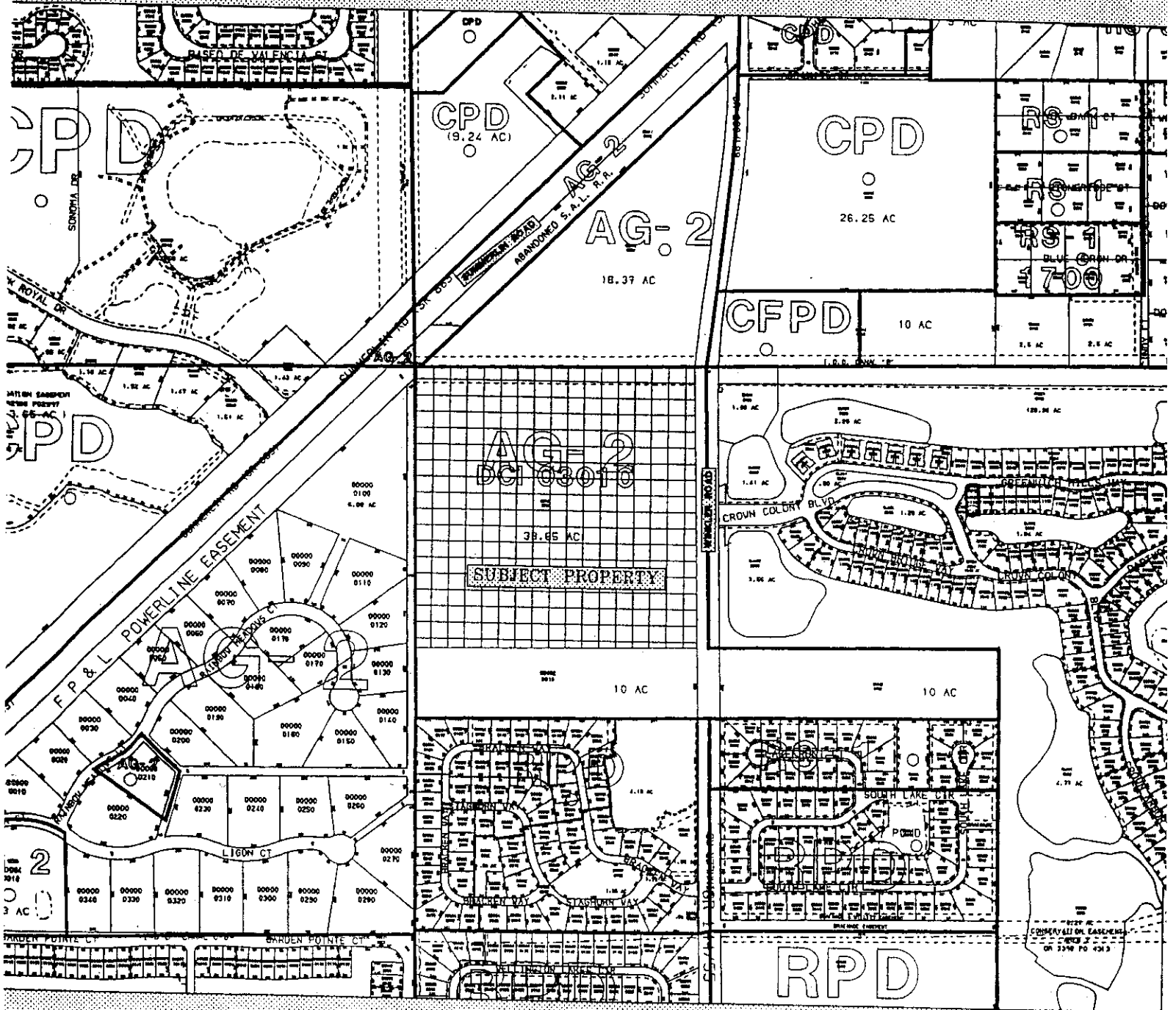
DCI 2003-00010
Applicant's Legal Checked
by LGM

pg. 1 of 2

Post Office Drawer 2800 • Fort Myers, FL 33902
Phone (239) 461-3170 • Fax (239) 461-3169



ZONING MAP



A

ATTACHMENT 6

LEE COUNTY, FLORIDA
ZONING DIVISION
REVISED STAFF REPORT

TYPE OF CASE: PLANNED DEVELOPMENT/DCI

CASE NUMBER: DCI2003-00010

HEARING EXAMINER DATE: Original HEX date: DECEMBER 3, 2003
Continued HEX date: JANUARY 28, 2004

I. APPLICATION SUMMARY:

- A. Applicant: Avalon Communities, Inc. in ref. to Avalon Preserve RPD
- B. Request: Request is to rezone the subject 38.65+/- acre property from Agricultural (AG-2) to Residential Planned Development (RPD) to develop a maximum of 231 single-family and multi-family residences along with lakes and an amenity center. Maximum height of buildings is to be 35'. Blasting on-site is no longer being requested.
- C. Location: The subject property is located at 16100 Winkler Rd. (1,500 feet from the intersection of Summerlin and Winkler, southwest quadrant), in S03-T46S-R24E, Lee County, FL. (District #5)
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property:

The subject property is currently zoned Agricultural (AG-2), is vacant and is located within the Suburban land use category.

E. Surrounding Land Use:

<u>Existing Zoning & Land Use</u>	<u>Future Land Use Map</u>
North: Across IDD canal, AG-2 zoned Florida Power and Light facility	Suburban
East: Across Winkler Road, "Crown Colony RPD" with single-family, duplex, townhouse, and multi-family dwellings	Suburban
South: Vacant AG-2 zoned property (has been in for an informal proposing Multi-family development)	Suburban
West: AG-2 Zoned "Rainbow Farms" single-family residential development	Suburban

F. Size of Property: 38.65± acres

II. RECOMMENDATION:

Staff recommends **APPROVAL** of the Applicant's request for rezoning from AG-2 to RPD with the following conditions and deviations:

A. Conditions

1. The development of this project must be consistent with the one (1) page Master Concept Plan entitled "Winkler 38 RPD," stamped received ~~Aug 13 2003~~ JAN 08 2004, plot dated ~~Tue. 8-12-2003~~ Thu. 1-8-2004, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses (Please also see Attachment 'B' for separate copy)

Residential:

Accessory Uses and Structures

Dwelling Unit:

Single-family

Multi-family

Entrance Gates and Gatehouses

Essential Services

Essential Services, Group I

Excavation - Water Retention

Fences, Walls

Home Occupation

Model Home, Unit, Display Center (consistent with Condition 3)

Parking Lot, Accessory

Recreational Facilities:

Personal (per LDC Section 34-2)

Private, on-site (per LDC Section 34-2)

Real Estate Sales Office (consistent with Condition 3)

Signs (per Chapter 30)

Temporary Uses (Per LDC §34-3041):

Contractor's Office and equipment Storage Shed

Temporary Use of Mobile Home

Temporary Telephone Distribution Equipment

Amenity:

Accessory Uses and Structures

Club, private (Maximum of 6,000 square feet)

Fences, Walls

Food and Beverage Service, limited

Parking Lot, accessory
 Recreational Facilities: Private, on-site (per LDC Section 34-2)
 Signs (per Chapter 30)

- b. Site Development Regulations (Please also see Attachment 'C' for separate copy)

Land Use	Min. Lot Area	Min. Lot Width	Min. Lot Depth	Max. Lot Coverage	Road Set-back	Side Set-back	Corner Set-back	Rear Set-back	Water body Set-back	Min. Bldg. Separation	Max. Height
Single-family	6,600 sq. ft.	60'	110'	45%	15'	5'	5'	15**	25'	n/a	35' 2 stories
Multi-family	10,000 sq. ft., 3,000 per unit	75'	100'	45%	15***	7.5**	10'	25'	25'	15'	35' 2 stories
Pools, Decks, Screen Enclosures	n/a	n/a	n/a	n/a	15'	5'	5'	10'	25'	n/a	n/a
Club-house	n/a	n/a	n/a	45%	15'	10'	10'	20'	n/a	n/a	35' 2 stories

* 50' from western boundary of subject property.

**25' from western boundary of subject property.

* 30 foot Setback along northern boundary of subject property

**Distance from front of garage to edge of roadway (driveway) must be a minimum of 27 feet

- c. A total maximum of 185 dwelling units are approved (15 single family, and 170 multi-family), or a maximum of 231 units (15 single family, and 216 multi-family) in compliance with condition 18.
3. Model Homes, Model Units, Model Display Centers, and a Real Estate Sales Office are permitted uses but, must be approved administratively per LDC Section 34-380 prior to receiving and development orders for any buildings on site, and be consistent with the following conditions:
- A maximum of three (3) Model Homes are permitted.
 - A maximum of three (3) Model Units are permitted.
 - A maximum of one (1) Model Display Center is permitted.
 - A maximum of one (1) Real Estate Sales Office is permitted.

- e. All Model Homes, Model Units, Model Display Centers, and the Real Estate Sales Office must be located as close to the main access onto Winkler Road as possible.
4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
5. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b).
6. Agriculture is not a permitted use in the approved Schedule of Uses for this property. All existing agricultural uses must cease upon approval of the requested rezoning.
7. Prior to moving gopher tortoises and any commensal species to the indigenous preserve in the northeast corner of the property:
 1. Any man-made debris and invasive exotic vegetation must be hand removed from the gopher tortoise preserve prior to moving tortoises into the preserve; and
 2. A copy of a five or less gopher tortoise relocation permit from the Florida Fish and Wildlife Conservation Commission must be submitted to the Division of Environmental Sciences; and
 3. A minor clearing Vegetation Removal Permit must be obtained prior to installing the gopher tortoise fence and moving gopher tortoises onsite.
8. Prior to the issuance of a Certificate of Compliance, a permanent gopher tortoise fence or double staggered hedge consisting of 3-gallon container size native shrubs must be installed along the sides of the gopher tortoise preserve abutting roadways, lots and the amenity center. If a fence is installed, the fence must be buried to an 18-inch depth, and the above ground height must be a minimum of 3-feet. If a fence is installed along any other portions of the preserve, then the fence must be designed to allow gopher tortoises to cross beneath the fence at existing grade. The permanent fence or hedge must be delineated on the landscape plans prior to development order approval.
9. A type 'C' buffer must be installed along the western boundary of the subject property from the northern extent of the proposed preserve in the southwest corner of the subject property to the northern boundary of the subject property. The wall for the type 'C' buffer will be replaced with a double staggered row of cocoplum planted four-foot-on-center at a minimum height of 48 inches, and maintained at a minimum height of 8 feet.
10. The proposed preserve in the southwest corner of the subject property must be a minimum of twenty five feet (25') wide.

11. Should any parking lots, drives, or roads be located within 125 feet of an existing residential subdivision or lot, the buffer required by LDC Section 10-416(d)(6) must be provided at time of Development Order approval.
12. No blasting is permitted on-site.
13. ~~A twenty-five foot (25') wide type 'C' buffer must be placed along the western boundary of the subject property from the northern extent of the proposed preserve in the southwest corner of the subject property to the northern boundary of the subject property.~~
14. ~~The preserve in the southwest portion of the subject property must be a minimum of twenty-five feet (25') in width.~~
15. ~~Multi-family buildings must be setback a minimum of thirty-five feet (35') from the western boundary of the subject property.~~
16. ~~All accessory uses such as pools, and decks must be setback a minimum of twenty-five feet (25') from the western boundary of the subject property.~~
17. ~~A maximum density of three (3.0) dwelling units per acre is permitted in pod 'B' adjacent to the western boundary of the subject site, and west of the proposed roadway.~~
18. If an Environmental Resource Permit is obtained to impact upon the freshwater wetlands on-site, the total maximum number of units allowed to be developed may be recalculated based upon allowable density regulations (underlying land use) and the amount of freshwater wetlands the Environmental Resource Permit allows to be impacted. Under no circumstances will the maximum number of units to be developed on the subject site exceed two hundred thirty-one (231).
19. No structures may be built within the I.D.D. canal easement on the subject property.

B. Deviations

Deviation 1 has been withdrawn.

Deviation 2 requests relief from LDC Section 34-935(e)(4) which requires minimum building separation to be one-half of the sum of their heights, or 20 feet, whichever is greater, to be reduced to a 15 foot minimum building separation. Staff recommends APPROVAL of this deviation per memorandum from Development Services (see attachment 'F') with the following condition:

No part of the structure can encroach into the 15 foot setback.

The intent of this LDC Section is to protect the health, safety and welfare of people. This deviation, as conditioned will enhance the proposed project and will not adversely

impact the health, safety, and welfare of people. Thus, as conditioned, this deviation will meet the intent of LDC Section 34-935(4).

Deviation 3 requests relief from LDC Section 10-291(3), where additional accesses may be required by the Director, to allow one (1) entrance to the subject project from Winkler Road. Staff recommends APPROVAL of this deviation with the following condition:

The stabilized emergency access as depicted on the submitted Master Concept Plan must be a minimum of twenty feet (20') in width and nothing (i.e. structures, vegetation, or fences/walls) may be placed in the emergency access which would impede its use by any emergency vehicle or agency.

With the provision of this emergency access, the intent of a second access to protect the health, safety, and welfare of the citizens of Lee County will be met (see attachment 'F').

Deviation 4 has been withdrawn.

Deviation 5 has been withdrawn.

Deviation 6 requests relief from LDC Section 10-415 (b)(1)(a) which requires preservation; to allow for a combination of on-site preservation and native restoration/re-plantings. Staff recommends APPROVAL of this deviation, with the following condition from Environmental Sciences (see attachment 'G'):

Prior to local development order approval, the landscape plans must delineate 13.82 acres of common open space of which 6.91 acres must be indigenous preservation. The 6.91 acres of indigenous preservation must include a minimum 2.58 acre gopher tortoise preserve. The proposed 0.10, 0.34 and 0.07 acre preserves delineated on the Master Concept Plan must be field located to determine if the areas contain existing native vegetation. If these areas do not contain native vegetation then two native canopy trees (minimum 10-foot height and 2-inch caliper) and native shrubs (minimum 3-gallon container size) planted to provide 50% coverage at time of planting must be installed for each area needing replanting. Approximately 1.33 acres of wetland restoration / replanting may count toward the 6.91 acre preservation requirement. The wetland restoration plan must be included on the landscape plans and include at a minimum 257 ten gallon native wetland trees, 580 three gallon native wetland shrubs, and 6,437 one gallon native herbaceous wetland plants installed in a random manner to mimic a natural system. A minimum of six species must be used from the Indigenous Restoration Wetland Planting List (Attachment-1). The restoration/replanting area(s) must include a temporary irrigation system, and organic mulch to help establish the plantings. No cypress mulch may be used within the indigenous preserves or restoration areas.

As conditioned, the wetland restorations will provide a variety of habitat on-site in combination with the proposed preservation of uplands trees and gopher tortoise habitat.

Deviation 7 requests relief from LDC Section 34-2020(4)(k) which requires meeting halls to provide parking at a ratio of 1 space per 100 square feet; to allow for a ratio of 1 space per 250 square feet. Staff recommends APPROVAL of this deviation.

Since the use of the meeting hall (recreational facility, club house) will be only for those residents of Avalon Preserve and their guests, and those residences are within walking distance, many people will be reasonably expected to walk to the facility. Thus, the intent of providing enough parking to accommodate the users of the facility will be accomplished.

Deviation 8 requests relief from LDC Section 34-2020(c)(3) which requires driveway specifications to meet setback standards, to allow for guest parking spaces to be built as shown on the Master Concept Plan. Staff recommends APPROVAL of this deviation.

This deviation, for the guest parking only, will not pose an increased safety hazard (see attachment 'F'). Thus, the intent of this regulation is met.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of planned development rezonings, staff makes the following findings and conclusions:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested zoning, as conditioned:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas or natural resources.
3. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services, as defined in the Lee Plan, are available and adequate to serve the proposed land use.
5. The proposed mix of uses is appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.

7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
8. The deviations recommended for approval, as conditioned:
 - a) enhance the objectives of the planned development; and
 - b) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

III. BACKGROUND INFORMATION AND ANALYSIS:

Introduction/Synopsis

This is a request to rezone approximately 38.65 acres from Agricultural (AG-2) to Residential Planned Development (RPD), to permit a total of 231 single-family, and multi-family units (15 single-family, 216 multi-family), an amenity center, two (2) lakes, a preserve (five (5) separate areas), model homes, model units, model display centers, and a real estate sales office.

The subject property is located on the west side of Winkler Road, directly south of the Florida Power and Light (FPL) Facility, approximately 1,500 feet south of the intersection of Winkler and Summerlin Road.

The property has approximately 1,200 lineal feet of frontage on Winkler Road, and is comprised of one (1) parcel. The property is covered with vegetation, is vacant of any buildings, and has been used for agricultural purposes (bee hives). The applicant is aware that all agricultural uses must cease upon any approval of this rezone. Portions of the property are freshwater wetlands (10.35 acres) and 7.7 acres are proposed to be impacted. This issue is expanded upon later in the staff report.

Blasting is no longer proposed on-site to excavate the proposed lakes. ~~This issue is elaborated upon later in the staff report.~~

Master Concept Plan

The proposed Master Concept Plan (MCP) is a one (1) page document entitled "Winkler 38 RPD," stamped received ~~August 13, 2003~~ January 8, 2004. The applicant has requested approval of 231 units (15 single-family, 216 multi-family). Two man-made lakes, an amenity center, and five (5) preserve areas totaling 6.91 acres are included on the site. The development is to be gated with a single access onto Winkler Road directly across from the existing northern Crown Colony entrance.

Lee Plan Considerations

The majority of the subject property is located within the Suburban land use category with a portion of the property within the wetlands land use category (10.35 acres).

POLICY 1.1.5: The Suburban areas are or will be predominantly residential areas that are either on the fringe of the Central Urban or Urban Community areas or in areas where it is

appropriate to protect existing or emerging residential neighborhoods. These areas provide housing near the more urban areas but do not provide the full mix of land uses typical of urban areas. The standard residential densities are the same as the Urban Community category. Higher densities, commercial development greater than neighborhood centers, and industrial land uses are not permitted. Bonus densities are not allowed.

The request is for residential dwelling units. Thus, the requested use is consistent with this Policy.

POLICY 1.5.1: *Permitted land uses in Wetlands consist of very low density residential uses and recreational uses that will not adversely affect the ecological functions of the wetlands. All development in Wetlands must be consistent with Goal 84 of this plan. The maximum density is one dwelling unit per twenty acres (1du/20 acres) except as otherwise provided in Table 1(a) and Chapter XIII of this plan.*

There are 10.35 acres of Wetlands on the subject property. Wetlands density is limited to a maximum of 1 dwelling unit per 20 acres. The submitted application is proposing to impact upon 7.7 acres of freshwater wetlands and preserve 2.65 acres of freshwater wetlands.

With regard to the 7.7 acres of freshwater wetlands to be impacted, Table 1(a) (wetlands note 9) of the Lee Plan does not apply. However, an Environmental Resource Permit must be obtained from South Florida Water Management District to impact upon these wetlands as proposed. Without this impact on the wetlands, and the appropriate permit, but, allowing the transfer of dwelling units from the 2.65 acres of wetlands to be preserved (per discussion below), the maximum number of dwelling units allowable on the subject property given its Suburban land use classification would be 185 (38.85 acres total - 10.35 total acres of wetlands + 2.65 acres of wetlands to be preserved) $\times 6.0$ units per acre (maximum suburban density) = 185.7 (185 rounded down). At this time, this permit has not been obtained. If the appropriate permit is obtained, the impacted wetlands would be treated as uplands and be eligible for a maximum of 6 dwelling units per acre per the Suburban land use category. This would allow a maximum of 231 units on the subject property including the transfer of density of units from the freshwater wetlands (see discussion below) to be preserved (38.65 acres of "uplands" (assuming the permit allows all 7.7 acres of freshwater wetlands to be impacted) $\times 6.0$ dwelling units per acre of uplands = 231.9 dwelling units rounded down to 231). Thus, without an Environmental Resource Permit to impact upon the 7.7 acres of freshwater wetlands at this time, only 185 of the proposed 231 units currently comply with this policy. However, staff believes that this policy will be complied with by recommending a condition which allows additional units to be approved (above and beyond 185 units) based on allowable density calculations (underlying land use) completed with regard to any Environmental Resource Permit being obtained to a total maximum of 231 units. This means that if an Environmental Resource Permit is obtained allowing the impacting of any of the freshwater wetlands, the number of additional units above and beyond 185 allowed will be the number of acres of freshwater wetlands permitted to be impacted upon multiplied by six dwelling units per acre to allow up to a maximum of 231 units on the subject property. However, until such time as this permit is obtained and submitted to staff, staff can only recommend approval of a total of 185 dwelling units.

With regard to the 2.65 acres of freshwater wetlands to be preserved, Table 1 (a), Note 9 (c) of the Lee Plan states:

Dwelling units may be relocated from freshwater wetlands to developable contiguous uplands designated Suburban or Outlying Suburban at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed eight (8) dwelling units per acre for lands designated Suburban...

Based on note 9(c) above, density from the freshwater wetlands to be preserved can be transferred to the Suburban uplands to a maximum density of 8 dwelling units per acre for the existing suburban uplands of 28.30 acres (plus the 7.7 acres of freshwater wetlands to be impacted, if the Environmental Resource Permit is obtained). This would allow a maximum of 288 dwelling units (28.30 acres of existing suburban developable contiguous uplands + 7.7 acres of freshwater wetlands to be impacted and receive uplands density upon obtaining the necessary permit x 8.0 permitted dwelling units per acre = 288). Thus, a total of 288 dwelling units would be the maximum permissible on the subject site, if the amount of freshwater wetlands being preserved would constitute the transfer of density to this amount. However, since only 2.65 acres of freshwater wetlands is being preserved, only 15 dwelling units (2.65 x 6.0 maximum dwelling units per acre based on adjacent suburban land use = 15.9 (15 rounded down)) can be transferred from the wetlands. This constitutes a total of 231 dwelling units being permitted on the subject property, assuming the required permit to impact upon the 7.7 acres of freshwater wetlands is obtained (28.3 acres of existing uplands + 7.7 acres of wetlands to be impacted, receiving uplands density upon obtaining the necessary permit + 2.65 acres of wetlands to be preserved, from which uplands density can be transferred x 6.0 dwelling units per acre based on the maximum density allowed per the underlying Suburban land use).

Therefore, staff can only recommend approval of a maximum of 185 dwelling units until such time as the Environmental Resource Permit is obtained. Please see conditions 2c, and 18 above.

OBJECTIVE 2.1: DEVELOPMENT LOCATION: *Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.*

The subject property is located in an area along Winkler Road that has emerged as a residential corridor. There are existing residential and commercial subdivisions in the immediate area. The subject property is also in close proximity to employment and shopping centers. Given the level of development immediately surrounding the subject property, staff believes that this application promotes a contiguous and compact growth pattern consistent with Objective 2.1 of the Lee Plan.

OBJECTIVE 2.2: DEVELOPMENT TIMING: *Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. Development orders and permits (as defined in F.S. 163.3164(7)) shall be granted only when consistent with the provisions of Sections 163.3202(2)(g) and 163.3180, Florida Statutes and the county's Concurrency Management Ordinance.*

The subject property is located within the water and sewer franchise area for Lee County Utilities. There is a 10-inch sewer line and 12-inch water line located along Winkler Road that is available to serve the project.

The subject property is located on Winkler Road, a major collector roadway, and is located approximately 1,500 feet south of Summerlin Road, an arterial roadway. Based on Lee County Department of Transportation (see attachment 'H'), the Level of Service (LOS) on Winkler Road prior to the completion of this project is "C". After completion of this project, the LOS will drop to "D". A LOS of "D" is acceptable.

Thus, this application is consistent with this objective.

POLICY 5.1.5: *Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in Chapter 10 of the Land Development Code are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The Land Development Code will continue to require appropriate buffers for new developments.*

The subject development is proposing a gross density (density across entire project site including Suburban and wetlands classified land) of 5.98 dwelling units per acre.

The subject property is surrounded by existing developments on three sides. To the north, across an I.D.D. canal is an existing Florida Power and Light transmission facility. To the east, across Winkler Road is the Crown Colony Residential Planned Development which has a gross density of 1.38 dwelling units per acre. To the south is a vacant agricultural zoned property (property has been in for an informal meeting with staff proposing a multi-family development). To the west is the agricultural zoned "Rainbow Farms" residential development which is mostly developed and when completely developed will have a gross density of 0.41 dwelling units per acre. Being a residential development, the subject application is compatible with the existing FP&L use (transmission facility) to the north which is separated from the subject property by an I.D.D. canal. With the property being separated from the Crown Colony RPD by Winkler Road, a preserve, and a required 15' wide type "D" buffer on the subject property along the road, this application is compatible with the Crown Colony development. Since the property to the south is a vacant agricultural property, no buffer is required. However, the proposed residential development should not have any detrimental impact upon it. In fact, the subject development will provide a "step down" effect from the FP&L use to the north to the subject multi-family and single-family development to the property to the south.

Staff has some concerns regarding compatibility of the subject proposal as submitted with the low density (0.41 dwelling units per acre) single-family residential development to the west. However, as conditioned (additional buffering in this area), staff feels this application is compatible with the single-family homes to the west.

However, the application is proposing to locate multi-family units adjacent to an existing single-family development ("Rainbow Farms" to the west) with a gross density of 0.41 dwelling units per acre. This is considerably less than the proposed gross density of 5.98 units per acre on the subject property. In addition, without any proposed development regulations to limit the actual density on the subject property in the area closest to the property to the west, it is possible that a much higher "local" density on the subject property in this area could be developed (i.e. 6-10+ dwelling units per acre). In addition, the proposed type 'B' buffer along the north portion of the western boundary, and a preserve which may not be opaque along the southern portion of the western boundary, along with a minimum 25-foot rear setback for the proposed multi-family units does not adequately address the adverse impacts of a potentially massive multi-family building this close to the very low density single-family development to the west. Thus, with the proposed gross density, the potential for higher "local" density closer to the single-family development to the west, and a massive multi-family building in close proximity to the very low density single-family development to the west, staff finds the proposal incompatible with the single-family development to the west.

However, with the inclusion of a twenty-five foot (25') wide type 'C' buffer along the western boundary of the subject property from the northern extent of the proposed preserve in the southwest corner of the subject property to the northern boundary of the subject property; a minimum width of twenty five feet (25') for the proposed preserve in the southwest corner of the subject property; a minimum thirty-five foot (35') setback for multi-family buildings from the western boundary of the subject property; a minimum twenty-five foot (25') setback for accessory uses such as pools, and decks from the western boundary of the subject boundary; and a maximum density of 3.0 dwelling units per acre in pod 'B' adjacent to the western boundary of the subject site, and west of the proposed roadway, staff believes any potential adverse impacts to the single-family development to the west will be adequately mitigated. Thus, staff recommends these as conditions (please see conditions above, and notes on Land Development Regulations.)

Also, without the location of parking lots, drives, and all potential roads within the multi-family pods being delineated on the submitted Master Concept Plan, it is impossible to determine if these uses will be within 125 feet of an existing residential subdivision or lot. If any of the uses are within 125 feet of an existing residential subdivision or lot, a buffer per LDC Section 10-416(d)(6) would be required. Thus, staff recommends the following condition:

Should any parking lots, drives, or roads be located within 125 feet of an existing residential subdivision or lot, the buffer required by LDC Section 10-416(d)(6) must be provided at time of Development Order approval. This condition will ensure that any of these uses within 125 feet of an existing residential subdivision or lot will be compatible with that existing residential subdivision or lot.

Thus, as conditioned, this application is consistent with this policy.

Neighborhood Compatibility

Please refer to discussion above under Policy 5.1.5.

Environmental Issues

The staff report received from Environmental Services (see attachment 'G') addressed several issues including, vegetation; protected species; gopher tortoise management; open space; and indigenous preservation. To adequately address these issues, Environmental Sciences recommended the following conditions:

Prior to moving gopher tortoises and any commensal species to the indigenous preserve in the northeast corner of the property:

- a. Any man-made debris and invasive exotic vegetation must be hand removed from the gopher tortoise preserve prior to moving tortoises into the preserve; and
- b. A copy of a five or less gopher tortoise relocation permit from the Florida Fish and Wildlife Conservation Commission must be submitted to the Division of Environmental Sciences; and
- c. A minor clearing Vegetation Removal Permit must be obtained prior to installing the gopher tortoise fence and moving gopher tortoises onsite.

Prior to the issuance of a Certificate of Compliance, a permanent gopher tortoise fence or double staggered hedge consisting of 3-gallon container size native shrubs must be installed along the sides of the gopher tortoise preserve abutting roadways, lots and the amenity center. If a fence is installed, the fence must be buried to an 18-inch depth, and the above ground height must be a minimum of 3-feet. If a fence is installed along any other portions of the preserve, then the fence must be designed to allow gopher tortoises to cross beneath the fence at existing grade. The permanent fence or hedge must be delineated on the landscape plans prior to development order approval.

Lee County Department of Transportation (LCDOT):

The LCDOT comments (see attachment 'J') request that a minimum of 20 linear feet of the IDD canal along the northern boundary of the subject site remain clear to allow maintenance of the canal.

Staff has recommended that no structures be built within any area of the IDD canal easement (see condition 19 above) which should accommodate this request.

Blasting

Blasting is no longer proposed on the subject site, and as such, this staff report is conditioned to not permit blasting.

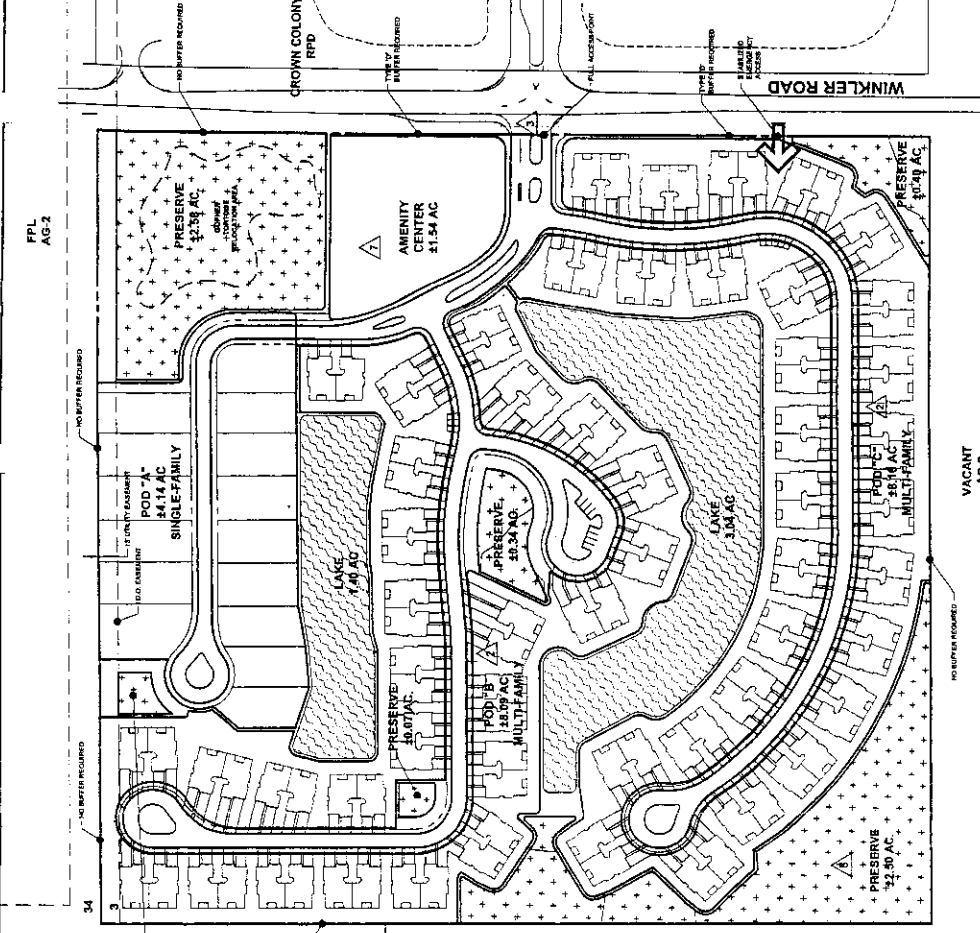
~~Blasting is proposed on-site to excavate the proposed lakes. At this time Ordinance No. 03-47 (See attachment 'I'), adopted on July 1, 2003, has instituted a moratorium on blasting for a period of 180 days from the date of adoption on certain properties including the subject property. This moratorium was instituted in the area to review the issue of blasting and determine a solution to address concerns relevant to such blasting. Until a solution is determined, staff cannot recommend approval of any request for blasting regardless of any conditions offered by the applicant, since the repercussions of any such approval will not be~~

~~known without the knowledge of the final solution to the issue. Thus, staff recommends denial of this request. In addition, with a moratorium in place, a request for blasting should not even be heard since it cannot be approved. Should the applicant wish to wait until the moratorium is over, the issue of blasting can be reviewed.~~

IV. ATTACHMENTS:

- A. Map of surrounding zoning (see previous staff report)
- B. Schedule of Uses (see previous staff report)
- C. Development Parameters (see previous staff report)
- D. Master Concept Plan (reduced) (revised)
- E. Aerial Photograph (see previous staff report)
- F. Development Services Staff Report (revised)
- G. Environmental Sciences Staff Report (see previous staff report)
- H. Development Services Traffic Staff Report (see previous staff report)
- I. ~~Ordinance No. 03-17 (Blasting Moratorium)~~
- J. Lee County Department of Transportation Memorandum

cc: Applicant
County Attorney
Zoning/DCI File

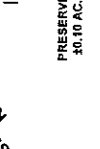


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PERMIT CENTER



SCHEDULE OF DEVIATIONS

- Deviation from LDC Section 34.932 (4) which requires minimum lot width for residential lots to be a minimum of 30 feet and a maximum of 20 feet, shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (5) to allow for (1) one entrance driveway and (2) one entrance driveway.
- Deviation from LDC Section 34.932 (6) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (7) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (8) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (9) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (10) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (11) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (12) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.
- Deviation from LDC Section 34.932 (13) which requires a minimum lot area for residential lots to be a minimum of 10,000 sq. ft. and a maximum of 20,000 sq. ft. shall be as shown on the site plan.

SITE DEVELOPMENT NOTES

- This is a request for a rezoning from AG-1 to AG-2. The land use is currently AG-1 and is being rezoned to AG-2. The rezoning is being requested because the site is located within the AG-2 zoning district and the rezoning is necessary to allow for the proposed development. The rezoning is being requested because the site is located within the AG-2 zoning district and the rezoning is necessary to allow for the proposed development.
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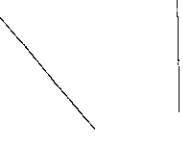
SURROUNDING ZONING AND LAND USES

ZONING: EXISTING LAND USES:

NORTH: AG-2 (FRL, I.D. CANAL)
NORTH-EAST: AG-2 (CROWN COLONY RESIDENTIAL)
EAST: AG-2 (RAINBOW FARMS RESIDENTIAL)
WEST: AG-2 (RAINBOW FARMS RESIDENTIAL)

PROJECT SUMMARY

Project Size: 28.03 AC
Required Open Space: 11.01 AC
Minimum Required Indigenous Vegetation: 9.91 AC



OPEN SPACE TABLE

LAND USE	EST. ACRES (ACRES)	REQUIRED (ACRES)	PROVIDED (ACRES)
RESIDENTIAL SINGLE-FAMILY	4.14	NA	NA
RESIDENTIAL MULTIFAMILY	18.25	5.90	3.25
AMENITY	6.51	2.19	0.29
PRESERVE	1.54	0.82	0.31
TOTAL	30.44	11.01	6.91

LAND USE AND DEVELOPMENT PROGRAM SUMMARY

LAND USE	PROMITTED USES	DEVELOPMENT PROGRAM	NOTES
PARCEL 4.14	RESIDENTIAL SINGLE-FAMILY	15 UNITS	
POD 'A'	RESIDENTIAL SINGLE-FAMILY	104 UNITS	
POD 'B'	RESIDENTIAL MULTIFAMILY	112 UNITS	
POD 'C'	MULTIFAMILY	NOT APPLICABLE	
AMENITY	RECREATIONAL USES AS SPECIFIED IN THE LIST OF PERMITTED USES		THE PROPOSED RECREATIONAL USES ARE INTENDED FOR THE RECREATION AND OREST OF THE AVALON COMMUNITIES. TYPICAL USES INCLUDING TENNIS COURTS, POOL, ITABLES AND PARKING ARE CONTAINED.
ROAD LINES	ALL OPEN SPACE USES	NOT APPLICABLE	INCLUDES BUFFERS, COMMON AREAS, BASEMENTS, AND OPEN SPACE WITHIN RESIDENTIAL POOLS.
COMMON AREAS	ALL OPEN SPACE USES	NOT APPLICABLE	
			* ALL HOODS/VISIBILITY AREAS ON SITE, THEREFORE THE DEVELOPMENT PROGRAM SUMMARY WILL PROVIDE A MINIMUM OF 10% OPEN SPACE ON THIS PARCEL SECTION IN AG-2.

PROPERTY DEVELOPMENT REGULATIONS TABLE

LAND USE	MIN. LOT AREA (SQ. FT.)	MIN. LOT WIDTH	MIN. LOT DEPTH	MIN. LOT COVERAGE	MAX. BLDG. HEIGHT (FT.)	MAX. BLDG. AREA (SQ. FT.)	MIN. FRONT SETBACK (FT.)	MIN. REAR SETBACK (FT.)	MIN. SIDE YARD SETBACK (FT.)	MIN. CORNER SETBACK (FT.)	MIN. PARKING (PER 100 SF)	MIN. OPEN SPACE (PER 100 SF)
CONSISTENT WITH SINGLE-FAMILY	6,000	60'	110'	45%	10'	NA	10'	20'	10'	10'	15	15
MULTI-FAMILY	NA	NA	NA	NA	NA	NA	10'	20'	10'	10'	15	15
ACCESSORY STRUCTURES (RESIDENTIAL)	NA	NA	NA	NA	NA	NA	10'	20'	10'	10'	15	15
POOL DECKS, PATIOS, TERRACES	NA	NA	NA	NA	NA	NA	10'	20'	10'	10'	15	15
AMENITY	NA	NA	NA	NA	NA	NA	10'	20'	10'	10'	15	15
CLUBHOUSE	NA	NA	NA	NA	NA	NA	10'	20'	10'	10'	15	15

ATTACHMENT D (REVISED)

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION

DATE: January 14, 2004

TO: Jeff Laurien

Senior Planner

FROM: Don Blackburn

Development Review Manager

RE: AVALON PRESERVE
DCI2003-00010
Substantive Comments

I have reviewed the above reference project and offer no objection to the proposed zoning.

With regards to Deviation number three; Development review staff can support the request. The important factor to consider is to have a secondary access in case the primary access becomes blocked. The applicant has provided a secondary emergency access which will be adequate.

With regard to Deviation number 8; Development review staff can support the request. The project is made up of multifamily buildings with multiply driveways on low speed roads. The inclusion of the few guest parking spaces, that will back out onto the road is not seen as an increased safety hazzard. In accordance with LDC34-2020.3, traffic calming devices will be required as part of the Development Order review process.

ATTACHMENT F (REVISED)

[Originator/Typist]

C:\Documents and Settings\laurieje\Local Settings\Temp\Avalon Preserve.wpd



Memo

To: Jeff Laurien, Senior Planner

From: Michael Tisch, Engineer *MT*

Date: January 13, 2004

Re: **Avalon Preserve**
DCI2003-00010 - Substantive Comments

LCDOT staff has reviewed the Application for Public Hearing for this case. The request is to change from AG-2 to RPD. We have the following comments on the rezoning:

Review of the Master Concept Plan (MCP) shows a I.D.D. canal easement along the north portion of the property. The LCDOT Maintenance & Operations Department requests that this area (at least 20 LF) remain clear of obstructions to allow for maintenance of the canal.

MPT/mpt

ATTACHMENT J