

Pelican Landing RPD Area F1

Exhibit IV-H Deviations

Proposed Language, Condition 12 of Lee County Resolution Z-94-014:

Deviation (12) is approved for RPD Area F, [F1](#) and CPD Area B. These areas may be developed with a maximum building height exceeding 75 feet above minimum flood elevation only if in compliance with the following development regulations. All buildings 45 feet in height or less shall comply with normal setbacks required of conventional multi-family zoning districts. All buildings over 45 feet shall provide one foot of setback from the Pelican Landing perimeter property line for every foot of elevation. In recognition of the wetlands north of Coconut Road, the setback for structures in excess of 75 feet in CPD Area B and the RPD Area F that is adjacent to Coconut Road may be per LDC Section 34-2174.

The regulations set forth below in 12.a through 12.e apply to the development of buildings greater than 75 feet above minimum flood elevation:

a. Minimum Lot Area and Dimensions:

Lot Size	10,000 square feet
Lot Area per Unit	1,000 square feet
Width	100 feet
Depth	100 feet

b. Minimum Setbacks

Private Road	25 feet
Side Yard	25 feet
Rear Yard	25 feet
Waterbody	25 feet

- c. A minimum building separation of 125 feet shall be provided between those buildings above 75 feet.
- d. A maximum of 8 residential buildings and one hotel building with a height of greater than 75 feet, above minimum flood elevation may be permitted [south of Coconut Road and a maximum of 4 residential buildings with a height of greater than 75 feet, above minimum flood elevation may be permitted north of Coconut Road](#). Such buildings may be located within RPD Area F [and F1](#) (residential) and CPD Area B (Hotel).
- e. A minimum of 15% open space shall be provided for each multi-family building site that is or exceeds 75 feet in height.

Justification:

Deviation 12 states, "Deviation (12) is a request to deviate from the requirement limiting the height of buildings in the Residential Planned Development zoning category within the Outlying Suburban land use category of 45 feet, Zoning Ordinance Section 480.04.F.3.e. [LDC Section 34-935(f)(3)(e)], to allow 20 stories over parking. Deviation (12) is hereby APPROVED subject to condition 12." [There is no change proposed to the language of the Deviation itself.]

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Introduction and Background

Typically, when an applicant proposes amendments to existing property development regulations or conditions, as is occurring here, a deviation is not required. Because the City of Bonita Springs has indicated that the City will not find the application sufficient until a new deviation request and justification is submitted, the applicant is providing this analysis, without waiving its rights to object to this requirement; the applicant maintains that this effort is *not* required by the applicable regulations.

The subject property was annexed into the City of Bonita Springs on May 21, 2014. Because the Future Land Use and zoning designations on the property have not been changed by the City, in accordance with applicable Florida Statutes, this analysis is being undertaken using the applicable provisions of the Lee County Comprehensive Plan (Lee Plan) and the Lee County Land Development Code (LDC).

The applicant has submitted an amendment to the Pelican Landing RPD/CPD to include additional property in the RPD/CPD and to create a new sub-development area identified as 'F-1.' The applicant is proposing modifications which would, in the F-1 area, provide: 1.) a maximum of four residential buildings; 2.) with a height greater than 75 feet, above minimum flood elevation; 3.) and the buildings to be located north of Coconut Road. The additional fourth building in area F-1 would only be constructed if the number of residential buildings over 75 feet in the remainder of RPD Area F is seven. The applicant has the right to build eight buildings and is seeking to shift one of the already approved eight buildings from Area F to the new Area F-1.

The approved Pelican Landing RPD/CPD includes property development regulations for all the commercial and residential areas. RPD area F establishes a minimum lot size of 10,000 SF, with a minimum area per unit of 1,000 SF. A minimum building separation of 125' is required between all buildings that are greater than 75 feet in height. The proposed amendment would mean that development in RPD Area F-1 would be subject to the same property development regulations that already exist for RPD Area F.

Several parcels of land were added to the Pelican Landing DRI after the approval in 1994. The "Skeebe" parcel, "Johnson" parcel, and the "Kersey Smoot" parcels were added to the DRI subsequent to the original approval. All of the added parcels were located north of Coconut Road, and no dwelling units were added to the DRI as a result of the increase in land area. Future development of the property north of the Pelican Landing DRI was an unknown factor in 1994. Resolution Z-96-005 was adopted which approved six (6) 20-story buildings in a project known as West Bay Club. Furthermore, West Bay Club increased the number of dwelling units in the Outlying Suburban portion of their development via ADD2008-00076 from the original 1020 units to 1121.

It is important to note that when the Pelican Landing DRI was approved the property wrapped around an area generally known as the Weeks Fish Camp, which included an amalgamation of mobile home, single family and two family homes and zoning. The single-family residences and mobile homes have all been removed and the Fish Camp property has an approved comprehensive plan category that permits the development of one high rise structure which can be either residential or a hotel. Additionally, the Coconut Point Hyatt (south) has been approved for 20 stories and constructed with the primary building at 17 stories over parking. Other buildings in the Colony (south) and Pelican Landings (south and southeast), and West Bay (north) are comparable heights. Thus, the placement of

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taller structures on the subject property is in keeping with prior approvals not only of the subject property, but also of properties under separate ownership.

The Kersey Smoot property was originally approved for both residential and golf uses. When the DRI was originally approved, demand for golf-front homes was on the rise; currently however demand for golf has been steadily decreasing. The National Golf Foundation research indicates that there were 25.7 million total golfers in 2011, 25.3, in 2012, 24.7 in 2013 and 2014, and 24.1 in 2015. This means that there is reduced demand for the remaining undeveloped holes of golf, which impacts the overall economic viability of the development. The development of additional golf holes is not warranted given the declining demand, and construction of additional golf holes would create a financial burden on the developer and the eventual owners/members of the golf club inheriting those golf holes. The property owner is entitled to a reasonable economic use of the property, and can achieve that within the general development parameters of the entire project through the amendments being requested, including the creation of Area F-1 and the application of Condition 12/Deviation 12 to that Area. More specifically, approval of the deviation will allow the applicant to develop the subject property in a manner that is consistent with the general development plan and in a fashion that has proven to be economically beneficial throughout the history of the development.

The Pelican Landing community encompasses 2,749 acres in northwestern Bonita Springs. It is bordered on the south by Spring Creek, which the State of Florida designated an "Outstanding Florida Water," and on the west by Estero Bay, an aquatic preserve leading to the Gulf of Mexico. Careful planning and development of Pelican Landing has preserved the pristine natural beauty of this community. Winding roadways throughout the community are shadowed by live oaks, pines and other native trees and vegetation. Intimate neighborhoods have been created and are filled with wild palmettos, slash pines, and Florida's state tree, the sabal palm. Homeowners are encouraged to use existing vegetation in their landscape plans and to supplement with native plants as much as possible. The developer has worked with nature, to preserve open space, provide functional recreational amenities, and implement a design that blends with the natural setting. Pelican Landing goes to great lengths to preserve, protect and enhance the natural environment. Throughout the community, evidence of this commitment can be seen. Lush cypress hammocks, protected wildlife and preserved wetland areas are an integral part of the community's design. The development provides a mix of residential options, including multi-family units in taller buildings that overlook large areas of open space and preservation area. The purpose of these clustered units is to maximize the areas that can be used either for functional open space or preservation and restoration areas.

The transportation impacts for the proposed development will be reduced as a function of the approval. Originally, permitted trips amounted to 3,072, while the updated analysis for the request shows only 2,490 trips being generated. This is a 582-trip reduction, or a 19% drop in vehicles anticipated to be generated by the development. This means that the overall impacts on the traffic network of the proposed development modifications will be lower than that anticipated under the prior development scenario.

Analysis

The applicable standard for determining whether a Deviation may be granted is delineated in Section 34-145(4)a.2.c) of the Lee County Land Development Code which states, "1) Enhances the achievement

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of the objectives of the planned development; and 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.” Thus, to determine whether the Deviation in question may be granted, it must first be determined what the objectives of the planned development are, and then whether the Deviation enhances the achievement of those objectives. If so, then it must be determined whether the Deviation preserves and promotes the general intent of the Code in protecting the public health, safety and welfare.

Section 34-612 of the Lee County Land Development Code states, “There are two basic types of zoning districts provided for in this article: conventional zoning districts and planned development districts. The general purpose of both types of zoning districts is to implement the goals, objectives and policies of the Lee Plan, as well as to provide protection to the public health, safety and welfare through the regulation of land use.” The general purpose of a planned development is similar to the standards for the evaluation of deviation requests. The planned development has been determined to be consistent with the Lee Plan on many occasions through its various approvals by the Lee County Board of Commissioners. As part of the approval process, it has also been determined that the project protects the public health, safety and welfare.

Defining “public health, safety and welfare” has been the subject of quite many legal actions since the adoption of the United States Constitution. A definition can be found in Black’s Law Dictionary. The public interest means; “Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or the as the interests of the particular localities, which may be affected by the matters in question.”

From the perspective of a professional planner evaluating a rezoning request, there are several factors that are considered when evaluating public health, safety and welfare. These include population density in the vicinity of the subject property, the site and physical attributes of the land involved in the application, traffic and transportation issues that are created by the request, the fitness of the land for the permitted use, the character of neighborhoods in the community and proximate to the request, the existing uses and zoning of neighboring property, the effect of the permitted use on land in the surrounding area, any potential decrease in property values, and the gain to the public at large weighed against economic hardships imposed on individual property owners.

The requested construction of residential towers on a portion of the existing golf course continues to allow for additional open space within the community. The golf holes displaced in order to construct the new towers are not part of the required open space for the Pelican Landing project; the golf holes can be re-established on properties immediately north of the El Dorado Acres Subdivision on land originally planned for a golf course. The applicant has exceeded the required open space requirements of the Pelican Landing RPD/CPD and DRI. Open space areas set aside in the Pelican Landing project include the Eco Park and interface zone. Additionally, in support of the four new towers, the applicant has agreed to set aside a 100+/- acre parcel adjacent to Estero Bay in a conservation easement. Placing this parcel in a conservation easement will insure perpetual conservation of this land as an undeveloped parcel adjacent to Estero Bay. Although this 100+/- acre parcel has wetlands which somewhat limit development opportunities today, this land, if not placed in a protected conservation easement, could

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support some form of urban development. The only way to ensure the pristine nature of the site will remain is to place the property in a conservation easement.

City Staff has also recommended approval, with conditions, of Deviation 12. In prior decisions, the Lee County Hearing Examiner specifically found that the large amount of open space and indigenous vegetation preservation adequately protected the natural resources and other environmentally critical areas, as well as the listed flora and fauna. The Southwest Florida Regional Planning Council reviewed the requested modifications, including the provisions that permit the location of the proposed buildings on the subject parcel, and determined that the amendments do not produce significant regional impacts that would be inconsistent with the Comprehensive Plan of any local government in the region, and that no adverse effects on regional resources or facilities have been identified. The Council also indicated that no extra-jurisdictional impacts have been identified, and that the project is not regionally significant. The Florida Department of Transportation has reviewed the proposed amendments and determined that they, "...are not anticipated to adversely impact important State transportation resources or facilities." The Florida Department of Environmental Protection has indicated that there are no adverse impacts to important State resources subject to FDEP jurisdiction. The South Florida Water Management District has issued the necessary Environmental Resource Permits that would allow development of the subject property with the proposed taller structures.

Revising the previously approved condition 12 to allow residential towers within the Pelican Landing RPD/CPD north of Coconut Road represents a logical extension of the development pattern for the RPD/CPD. The proposed residential towers would be located in an area that is a greater distance from Estero Bay than not only other towers within Pelican Landing, but also those of our neighboring projects including Bonita Bay. A portion of the area being amended is within the Kersey Smoot RPD, which was not a part of the original Pelican Landing project. The Pelican Landing DRI is comprised of an assemblage of planned developments and properties that have been assembled and added to the project by the master developer, WCI Communities. Towers in this location could not have been contemplated by WCI when the original RPD/CPD was established because the Kersey Smoot RPD (Raptor Bay) was not owned by WCI at that time. The Hyatt Coconut Point Resort was identified as "hotel" on the RPD/CPD master plan, and that building too was at that time permitted to have 20 habitable floors. The applicant had successfully demonstrated that constructing towers exceeding 75' in height would be beneficial to the project and the public by permitting the clustering of these structures in a manner that preserved open space. The alternative scenario of constructing a line of 75' tall buildings along the mangrove fringe of Estero Bay was not acceptable to the Board of County Commissioners and the public.

The population density proximate to the proposed development is similar. A review of the development surrounding the subject property demonstrates that development in the area is at similar densities, and exhibits a variety of unit types, including units located in taller buildings. The physical attributes of the site consist of developed areas where the proposed buildings are to be located, and preservation and restoration areas as detailed in the request. There is nothing about the physical condition of the site that would preclude development from taking place or negatively impact the overall fitness of the site for location of the taller structures. Conclusions from the traffic analysis show that a general reduction in the previously approved traffic impacts are anticipated from the proposed development. The neighborhoods proximate to the proposed development are residential at similar densities, and there are a number of taller structures, with heights comparable to those being proposed, to the north, south,

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and southeast of the subject property. The parcel in question is part of the larger Pelican Landings DRI, and as such has comparable entitlements (zoning, etc.) as those properties proximate to the site. There is no suggestion that the placement of the taller structures will have a deleterious effect upon property values, and the history of the development, with the existing taller structures, suggests that property values will actually increase. The gain to the public at large will result from increased property tax revenues, direct economic impacts from the added wealth that will be provided as new residents move into the structures, the jobs created to build the development, and the secondary impacts from the wealth created by the project. Approval of the proposed deviation is consistent with protecting the public health, safety and welfare.

The deviation will also support the overall goals of the project. Creation of functional open space and preservation/restoration areas has been a hallmark of the Pelican Landings development, and the ability to cluster these units into a relatively small footprint is consistent with the ecological stewardship evidenced by the applicant. Further, the reduction in the total amount of golf course, in the face of declining interest in golf, further evidences the support of the developer for the longer-term well-being of the eventual residents and owners of the individual units.

Conclusion

The proposed deviation:

1. Enhances the achievement of the objectives of the planned development; and
2. Preserves and promotes the general intent of the Lee County Land Development Code to protect the public health, safety and welfare.