

Attachment H

RESOLUTION NUMBER Z-07-047

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

WHEREAS, Newport Bay Corporation, filed an application on behalf of the property owner, Richard W. Winesett, Trustee under Agreement dated February 6, 1992, to rezone 396.6± acres from Agricultural (AG-2) to Residential Planned Development (RPD), in reference to Monte Cristo; and,

WHEREAS, a public hearing was advertised and held on August 23, 2007, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2005-00071; and

WHEREAS, a second public hearing was advertised and held on November 19, 2007, 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 396.6± acres from AG-2 to RPD to permit a maximum of 724 dwelling units (single-family, multiple-family, townhouse, two-family attached, or duplex). The maximum height proposed is three (3) stories over parking (48 feet). No development blasting is proposed. The Applicant indicates any development will connect to public potable water and public sanitary sewer service. The property is located in the Suburban and Wetlands Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

1. The development of this project must be consistent with the 16-page Master Concept Plan (MCP) entitled "MONTE CRISTO MASTER CONCEPT PLAN," stamped "RECEIVED FEB 1 2008 COMMUNITY DEVELOPMENT," attached hereto as Exhibit C, except as modified by the conditions below.

This development must comply with all requirements of the LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

COPY

Maximum Number of Dwelling Units: 724 total.

Single-family maximum 130.

Multi-family/townhouse maximum 594.

2. **USES AND SITE DEVELOPMENT REGULATIONS**

The following limits apply to the project and uses:

a. **Schedule of Uses**

Accessory Uses and Structures

Administrative Offices

Clubs: Private - limited to the amenity facility*

Consumption on Premises, indoor only, see condition 9.

limited to the amenity facility.*

Dwelling Units, Single-Family, Multiple-family, Townhouse

Entrance Gates and Gatehouse

Essential services

Essential service facilities: Group I

Group II (limited to above ground water storage facilities)

Excavation, Water Retention - not to include the removal of excavated material from the site. No blasting.

Fences, walls

Fitness Center, limited to the amenity facility

Food and Beverage Service, limited - limited to the amenity facility

Home Occupation, no outside help

Model Home, Model Units, Model Display Groups, Model Display Center

(see condition 14)

Parking Lot, Accessory

Personal Services, Group I - limited to the amenity facility*

Real Estate Sales Office, See condition 14.

Recreation Facilities, personal and private including clubhouse.

Limited to the amenity facility*

Residential Accessory Uses

Restaurants, Group II and III - limited to the amenity facility*

Signs - in accordance with chapter 30

Specialty Retail Shops - Group I, II, and IV. - limited to the amenity facility*

Storage, indoor only - limited to the amenity facility.*

Commercial storage limited to residents' use only.

Temporary Uses, construction office, construction trailer, real estate sales office.

Tennis Pro Shop with accessory retail - limited to the amenity facility.*

*Amenity facility limited to 10,000 square feet of floor area and 10,000 square feet of pool and deck area.

Site Development Regulations

Development of this RPD will comply with the following Property Development Regulations:

Single-Family

Minimum Lot Area and Dimensions:

Area: 6,500 square feet

Width: 50 feet

Depth: 100 feet

Minimum Setbacks:

Street: 25 feet from public roads.

20 feet from internal streets and access drives

Side: 5 feet *

Rear: 20 feet

Water body: 25 feet

Preserve: 20 feet from Wetlands: 30 feet from Pine Flatwoods

Perimeter Setback: 25 feet

Accessory Use and Structure setbacks must comply with LDC §§ 34-1171, *et seq.* and 34-2194.

Maximum Lot Coverage: 45 percent

Minimum Building Separation: 10 feet

Maximum Building Height: 2-stories/35 feet

*If sidewalks, air conditioners, mechanical equipment, door stops, walls, or similar items are placed within the required 5-foot setback, prior to issuance of a certificate of occupancy on each lot, the engineer of record must certify that the drainage for each lot is built in compliance with the typical lot grading detail provided and approved at time of development order.

Multiple-Family

Minimum Lot Area and Dimensions:

Area: 22,500 square feet

Width: 150 feet

Depth: 150 feet

Minimum Setbacks:

Street: 25 feet from public roads.
20 feet from internal streets and access drives
Side: 10 feet
Rear: 20 feet
Water body: 25 feet

Preserve: 20 feet from Wetlands; 30 feet from Pine Flatwoods

Perimeter Setback: 25 feet

Accessory Use and Structure setbacks must comply with LDC §§ 34-1171, *et seq.* and 34-2194.

Maximum Lot Coverage: 60%

Minimum open space: 40%

Minimum Building Separation: 20 feet - See Deviation 4

Maximum Building Height: 4 stories/48 feet (See Deviations 6 & 7)

Townhouse

Minimum Lot Area and Dimensions:

Area: 3,750 square feet (per unit)
Width: 37.5 feet
Depth: 100 feet

Minimum Setbacks:

Street: 25 feet from public roads.
20 feet from internal streets and access drives
Side: 0/10 feet (lesser setback for interior units)
Rear: 20 feet
Water body: 25 feet

Preserve: 20 feet from Wetlands; 30 feet from Pine Flatwoods

Perimeter Setback: 25 feet

Accessory Use and Structure setbacks must comply with LDC §§ 34-1171, *et seq.* and 34-2194.

Maximum Lot Coverage: 60%

Minimum Open Space: 40%

Minimum Building Separation: 20 feet - See Deviation 4.

Maximum Building Height: 3 stories/45 feet

Recreation Area/Clubhouse/Amenity Area

Minimum Lot Area and Dimensions:

Area: 10,000 square feet

Width: 100 feet

Depth: 100 feet

Minimum Setbacks:

Street: 25 feet from public roads.

20 feet from internal streets and access drives

Side: 10 feet

Rear: 20 feet

Water body: 25 feet

Preserve: 20 feet from Wetlands: 30 feet from

Pine Flatwoods

Perimeter Setback: 25 feet

Accessory Use and Structure setbacks must comply with LDC §§ 34-1171, *et seq.* and 34-2194.

Maximum Lot Coverage: 60%

Minimum Open Space: 40%

Minimum Building Separation: 20 feet

Maximum Building Height: 3 stories/35 feet

Additional Limitations: Maximum 2.6-acre site; maximum 10,000 square foot building floor area and 10,000 square feet pool and deck area.

3. **NO BLASTING.**

Development blasting has not been requested as part of this planned development. No development blasting is permitted as part of this project unless approved at a subsequent public hearing as an amendment to the planned development.

4. **WATER AND SEWER**

Development of this project must connect to both public water and public sewer. At time of local development order, the Developer must also demonstrate there is adequate water and sewer capacity to handle the proposed level of development.

5. **TRAFFIC**

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

6. **LEE PLAN ALLOCATION**

Approval of this zoning request 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), as well as all other Lee Plan provisions.

7. **CONCURRENCY**

Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.

8. **AGRICULTURAL USES**

There are no agricultural uses on site, nor are there any agricultural exemptions. No agricultural uses are permitted on this site as part of this rezoning.

9. **CONSUMPTION ON PREMISES**

- A. Consumption on premises (indoor) is permitted only in conjunction with an amenity center.
- B. Outdoor consumption on premises may only be approved by Special Exception. A public hearing is required. The applicant must provide adequate detail of the outdoor seating area consistent with the requirements of the LDC.

10. **ACCESSORY USES**

Accessory uses must be located on the same tract, parcel or outparcel where a principal use is located. Accessory uses must be incidental and subordinate to the principal use of the tract, parcel or out parcel.

11. **BUFFERS**

- A. All required buffers must utilize 100 percent native vegetation.
- B. Buffering on Corkscrew Road must be a minimum 20-foot Type D buffer, per LDC § 33-351.

12. **WETLAND PERMITS**

All development on site must comply with all existing permits (as they may be amended) from the U.S. Army Corps of Engineers and the South Florida Water Management District.

13. **LAKE DEPTH** : Lake depth is limited to 20 feet maximum.

14. **MODEL HOMES/UNITS AND REAL ESTATE SALES**

- A. The number of model homes or units will be limited to no more than 9 within the development, at any point in time.
- B. Model homes or units or real estate sales may be developed within properties identified as model homes, units, or the amenity area as shown generally on the approved MCP. Model homes or units must be shown on the development order plans.
- C. Real estate sales will be limited to the sale of lots or units within the development only.
- D. Models cannot be of the same floor plan and each must be a separate and different design.
- E. Model display centers or model display groups must be shown on the development order plans. Parking areas for these uses must be buffered with (100 percent native) single-row hedge and tree canopy for parking areas per the LDC.
- F. Hours of operation for both models and real estates sales are limited to Monday through Sunday, 8:00 a.m. to 9:00 p.m.

15. **LIGHTING CONDITION**

The developer and all future property owners must ensure that the environmental preserve areas are not directly or indirectly illuminated by lighting originating from the developed areas of the project.

16. **ENVIRONMENTAL SCIENCES CONDITIONS**

A. **OPEN SPACE**

Development Note 4(B) on page C-3 of the MCP must be revised as follows:
Indigenous Preserve / Enhancement = 231.17± acres.

Prior to local development order approval, the development order plans must delineate a minimum of 50 acres of open space within the multiple-family tracts in substantial compliance with the details provided on page C-3 of the MCP, and a minimum of 231.17± acres of preserve in substantial compliance with the MCP.

The 231.17-acre preserve area must be placed under a conservation easement dedicated to Lee County and other appropriate agencies to insure the protection of the native habitat. A draft conservation easement must be submitted for review and approval by Lee County Attorney's Office prior to issuance of a development order. A copy of the recorded conservation easement must be submitted to Lee County Development Review prior to the issuance of a Certificate of Compliance for any phase of the project.

Only hand removal of invasive exotic vegetation is allowed within the 231.17± acre preserve area, unless other means are approved by Lee County Division of Environmental Sciences staff through a field inspection and onsite meeting with the contractor who will be conducting the invasive exotic removal.

B. SPECIES MANAGEMENT PLANS

Prior to local development order approval, an indigenous preserve management plan must be submitted for the 231.17± acre preserve area that includes protected species management plans for American alligator, wood stork, wading birds, twisted air plant, Florida panther, and Florida black bear.

C. FLORIDA BLACK BEARS

Bear proof dumpsters must be utilized within the multiple-family tracts. Single-family residents must receive information on how to secure their trash receptacles in order to avoid attracting Florida black bear.

D. LIGHTING

All lighting must be directed away from any onsite and offsite preserves.

E. DRAINAGE

The conveyance ditch within the 50-foot wide drainage easement along the east property line and north of the preserve must be a grassed ditch not a hardened structure such as concrete, gravel or rip-rap. Prior to local development order approval, the development order plans must include the details of the conveyance ditch to ensure hardened structures are not utilized for the main channel of the ditch or side slopes except at outfall and infall locations when needed.

17. **PUBLIC WORKS CONDITION**

Prior to local development order approval, the location of any proposed dumpster facilities must be approved by the Lee County Department of Public Works.

SECTION C. DEVIATIONS:

1. Deviation (1) requests relief from the LDC § 10- 329(d)(1)a.3. requirement of a 50-foot setback from water retention or detention excavations to a private property line under separate ownership, to allow a 25-foot setback. This deviation is APPROVED, SUBJECT TO the following condition:

Appropriate protection for wayward vehicles must be provided at the time of local development order.

2. Deviation (2) seeks relief from the LDC § 34-2020(1)c.4.(c) requirement of 1.75 parking spaces per two bedroom multiple-family unit, to require 1.50 spaces and retain the option of installing the additional 0.25 spaces per unit in the future, if necessary, based on residents' needs. This deviation is APPROVED.
3. Deviation (3) seeks relief from the LDC § 10-291(3) requirement that two or more means of ingress and egress for residential projects with an area of five or more acres, to allow one main entry/exit. This deviation is APPROVED, SUBJECT TO the following conditions:
 1. The local development order must depict a 70-foot-wide divided entrance on Corkscrew Road that must include a 14-foot-wide median with two 11-foot-wide lanes on both sides of the median for ingress and egress in accordance with the approved MCP.
 2. The installation of any access gates must comply with all applicable regulations pertaining to emergency equipment that are in effect at the time of installation.
 3. Prior to issuance of a development order, the developer must provide written documentation from the Estero Fire District indicating these access points are acceptable and provide adequate access for emergency vehicles.
4. Deviation (4) seeks relief from the LDC § 34-935(e)(4) requirement that the minimum separation of buildings, be one-half the sum of their heights, or 20 feet, whichever is greater, to allow a 20-foot minimum building separation. This deviation is APPROVED.
5. Deviation (5) seeks relief from the LDC §10-41(d)(6) requirement that roads, drives, or parking areas located less than 125 feet from existing residential subdivision, provide a solid wall or combination berrn and solid wall not less than eight feet in height and constructed not less than 25 feet from the abutting property and

landscaped (between the wall and the abutting property) with a minimum of five trees and 18 shrubs per 100 linear feet, to allow for a 15-foot-wide landscaping strip, no wall, a hedge (double staggered row installed at 36 inches high and maintained at 60 inches high), and five trees per 100 linear feet. This deviation is APPROVED.

6. Deviation (6) seeks relief from the LDC § 34-935(f)(3)e. requirement which allows a building to be as tall as 45 feet above minimum flood elevation with no more than three habitable stories, to allow a 48-foot height and three habitable stories over parking. This deviation is APPROVED, SUBJECT TO the conditions in Deviation 7.
7. Deviation (7) seeks relief from the LDC § 33-229 requirement of a maximum building height of three stories or 45 feet, whichever is less in height, to allow a maximum building height of 48 feet and three stories over parking. This deviation is APPROVED, SUBJECT TO the following conditions:
 - 1) Approval is limited to the multiple-family structures; and
 - 2) Development of the multiple-family structures must be generally consistent with the elevations provided in attached Exhibit D.
8. Deviation (8) seeks relief from the LDC § 34-2020(1)c.2. requirement which allows a multiple-family building with a private attached garage and private driveway, to allow stacking of vehicles in the driveway to allow multiple-family buildings with private detached garages and private driveways to stack vehicles. This deviation is APPROVED.
9. Deviation (9) seeks relief from the LDC §§ 34-2011(a) and 34-2011(c)(2) requirement which prohibits parking for residential dwelling units to back out into right-of-way, to allow back-out parking into access ways. This deviation is APPROVED.
10. Deviation (10) seeks relief from the LDC § 10-261(a) requirement which addresses refuse and solid waste disposal facilities for multiple-family developments, the provision of container spaces and on-site placement of garbage receptacles and recycling collection containers and requires on-site areas for solid waste collection and disposal facilities in conjunction with multiple-family developments, to permit individual curbside pick-up of solid waste in lieu of providing dumpsters as required by the LDC (limited to the 4-unit multiple-family buildings located northwest of the proposed single-family area and contiguous to lake # 4.) This deviation is APPROVED, SUBJECT TO the following conditions:
 1. The developer must provide individual waste container pads a minimum of 71.5 square feet (5.5 feet x 13 feet) for each four unit driveway and individual waste container pads a minimum of 35.75 square feet (5.5 feet x 6.5 feet) for each 2-unit driveway.

2. Each pad must be located no further than six feet from the curb. To screen the pad site, the developer must provide a 3-foot-wide single row hedge to be planted at three feet on-center and to be maintained at a height of three feet on the three sides of the pad that are not adjacent to the right of way.

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: Left & Right Elevations

The Applicant has indicated that the STRAP numbers for the subject property are: 30-46-26-00-00001.2000, 31-46-26-00-00001.2000 and 19-46-26-00-0001.0010.

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.

Commissioner Hall made a motion to adopt the foregoing resolution, seconded by Commissioner Judah. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 19th day of November, 2007.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Marcia Wilson
Deputy Clerk

BY: Ray Judah
Ray Judah
Chair



Approved as to form by:

Robert Spickerman
Robert Spickerman
County Attorney's Office

RECEIVED
MINUTES OFFICE
mw
2008 FEB 13 AM 10: 03