



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

239/533-8100

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County Hearing Examiner

October 8, 2008

Dear Applicants, Representatives, Hearing Participants,
and Other Interested Parties:

**RE: DCI2004-00036 PLANTATION DEVELOPMENT LTD, in reference to HARBOUR
POINTE**

APPROVED

Enclosed please find the above referenced Lee County Hearing Examiner Decision or
Recommendation.

Thank you for your interest and participation in the Hearing Examiner process.

Sincerely,

DIANA M. PARKER
CHIEF HEARING EXAMINER
LEE COUNTY, FLORIDA

Enclosure

SUMMARY OF HEARING EXAMINER RECOMMENDATION

*Rec'd Bruce
10/9/08*

**DCI2004-00036
HARBOUR POINTE (REMAND)**

I. APPLICATION

This matter came before the Lee County Hearing Examiner as a Remand of the 2005 application for the amendment of the South Seas Plantation Master Development Plan, to develop 24 dwelling units on the reconfigured "vested" Harbour Pointe development area, with a drawbridge providing access from Captiva Island, and to authorize mangrove wetland impacts, for the property located at the north end of Captiva Island, Lee County, Florida.

II. HEARING EXAMINER RECOMMENDATION (SYNOPSIS)

This was a request to allow the construction of 24 dwelling units in four 6-plex buildings on a 5.24-acre parcel at the north end of Bay Island. The subject property is part of the South Seas Plantation Resort, and Bay Island lies adjacent to the northeast side of Captiva Island, being separated by a narrow channel providing access between Bryant Bayou and Pine Island Sound. The requested development would result in the encroachment into 2.61 acres of mangrove wetlands, the removal of the shell road along the Sound that has historically provided access to the site, and the construction of a drawbridge over the Bryant Bayou channel for access.

The 2005 case was remanded to the Hearing Examiner to allow Applicant to obtain the South Florida Water Management District Environmental Resource Permit (ERP), before further action was to be taken. The ERP was issued in March 2008, approving the requested 2.61 acres of mangrove impacts, with specific on- and off-site mitigation, and the final two days of hearing were held in July and August 2008. Two issues arose in the final hearings - whether the request was consistent with the Lee Plan, more specifically whether the ERP met the County's requirements to avoid and minimize wetland impacts and protect Captiva mangroves to the greatest extent possible.

Based on the evidence and testimony contained in the five days of hearings (2005 and 2008), the undersigned Hearing Examiner found that the request, as conditioned in the full Recommendation, met the criteria for approval set out in LDC Section 34-145, and was consistent with the intent of the Lee Plan, the Land Development Code, and the 2002 Administrative Interpretation. She found that the 24 2,500-square-foot dwelling units, as conditioned, were consistent and compatible with other residential uses in the Resort, and that the development, as conditioned, would not adversely impact the adjacent mangrove wetlands, or other significant natural resources in and around Captiva Island.

For all the reasons and conclusions discussed more fully in her Recommendation, the undersigned Hearing Examiner recommended that the BOCC **APPROVE THE REQUEST, AS CONDITIONED IN THE FULL RECOMMENDATION.**

The full Recommendation was issued on the 8th day of October, 2008, and a complete copy forwarded to the offices of the Lee County Board of County Commissioners.

III. LOCATION OF COMPLETE RECOMMENDATION AND ATTACHMENTS

Copies of the Hearing Examiner's Recommendation, Official Transcripts or summaries, List of Exhibits, Public Participation, Staff Report, and Legal Description are available for review at www.lee-county.com/HearingExaminer/ (click on Search Document), the Development Services Division, and the Office of the Hearing Examiner. Copies may be obtained for the actual cost of duplication. The exhibits submitted during the hearing are available for review at the Office of the Hearing Examiner, and will be transmitted to the Board of County Commissioners prior to their hearing on this matter.

IV. HEARING BEFORE BOARD OF COUNTY COMMISSIONERS

The Board of County Commissioners (BOCC) will hold a hearing at which time they will consider the record made before the Hearing Examiner. Only participants who provided testimony or evidence on the record at the Hearing Examiner proceedings, or their representative, will be allowed to address the BOCC. The content of all statements by persons addressing the BOCC shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation. Any allegations of 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, could lead to a remand of the case to the Hearing Examiner to hear and consider the new evidence.

It is anticipated that this matter will be heard by the BOCC on **November 3, 2008**; however, the Department of Community Development/Development Services Division will send written notice to all participants of the actual date and time of this hearing before the BOCC.

V. 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]