



LAKE COUNTY FLORIDA

MEETING INFORMATION

Location & Time

Lake County Commission
Chambers
2nd Floor, County
Administration Building
315 West Main Street
Tavares, FL 32778-7800
1:00 p.m.

Board of Adjustment Members

Donald R. Schreiner,
Chairman (At-Large
Representative)

Catherine Hanson, Vice-
Chairman (At-Large
Representative)

Marie Wuenschel (District 1)

Vacant (District 2)

Phyllis Luck (District 3)

Lloyd M. Atkins, Jr.
(District 4)

Craig Covington (District 5)

BOARD OF ADJUSTMENT

AGENDA DECEMBER 12, 2013

The Board of Adjustment reviews applications that have been submitted for a variance to the Land Development Regulations; they approve or deny the applications based upon staff reports and evidence submitted during the hearing, taking into consideration the applicant's and other testimony in favor or against the request, in accordance with section 14.15.00 of the Land Development Regulations.

The Board of Adjustment meetings are held the second Thursday of each month.

Board of County Commissioners

| | |
|---------------------------|------------|
| Timothy I. Sullivan | District 1 |
| Sean Parks, Vice Chairman | District 2 |
| Jimmy Conner, Chairman | District 3 |
| Leslie Campione | District 4 |
| Welton G. Cadwell | District 5 |

County Staff

David Heath, County Manager
Melanie Marsh, Deputy County Attorney

Growth Management Department Staff

Amye King, AICP, Director, Department of Growth Management
Anita Greiner, Chief Planner, Division of Planning & Community Design
Jennifer Cotch, Senior Planner, Division of Planning & Community Design
Donna Bohrer, Public Hearing Coordinator, Division of Planning & Community Design

For any questions, comments, or concerns, please contact the Planning & Community Design Division at (352) 343-9641 or email zoning@lakecountyfl.gov.

All oral and written communication between Board Members and the Public concerning a case are prohibited by Florida Law unless made at the Public Hearing.

If any person decides to appeal any decision made by the Board, a record of the proceedings will be needed. For purposes of appeal, the record of proceedings should be a verbatim record of all proceedings which take place and should include the testimony and evidence upon which any appeal is to be based.

Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of Facilities and Capital Improvement at (352) 343-9760, 48 hours in advance of the scheduled meeting.

Board of Adjustment

DECEMBER 12, 2013

1:00 p.m.

- I. Call to Order
- II. Minutes Approval – November 14, 2013
- III. Public Comment
- IV. Public Hearings

REGULAR AGENDA

| CASE NO. | OWNER(S)/APPLICANT(S) NAME | AGENDA NO. |
|----------------------|-----------------------------------|-------------------|
| BOA # 18-13-4 | Kenneth J. McGrath | 1 |

REQUESTED ACTION: The owner is requesting a variance from Lake County Land Development Regulations, Section 3.02.06 Density, Impervious Surface, Floor Area, and Height Requirements to allow a pool and accessory structures that will exceed the maximum 30% impervious surface allowed in Rural Residential (R-1) zoning district.

- V. Close

**MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
November 14, 2013**

The Lake County Board of Adjustment met on November 14, 2013 in the Commission Chambers on the second floor of the County Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Donald Schreiner, Chairman
Catherine Hanson, Vice-Chairman
Craig Covington
Phyllis Luck
Marie Wuenschel

Board Members Absent:

Lloyd M. Atkins, Jr.

Staff Present:

Anita Greiner, Chief Planner, Planning & Community Design Division
Jennifer Cotch, Senior Planner, Planning & Community Design Division
Erin Hartigan, Assistant County Attorney
Donna R. Bohrer, Public Hearing Associate, Planning & Community Design Division

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed Proof of Publication for the case as shown on the screen. He added that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter to finalize their paperwork.

TABLE OF CONTENTS

| <u>CASE NO.</u> | <u>OWNER/ APPLICANT</u> | <u>AGENDA NO.</u> |
|--|---|--------------------------|
| <u>Consideration of Minutes</u> | October 10, 2013 | |
| <u>Opening Remarks</u> | | |
| <u>Consent Agenda:</u> | | |
| BOA # 17-13-5 | Sheila McDowell/Cuozzo Design Group, Inc. | 1 |
| <u>Regular Agenda:</u> | | |
| <u>Closing Remarks</u> | | |
| <u>Adjournment</u> | | |

Opening Remarks

Anta Greiner, Chief Planner, noted that members of the public wished to address the Board regarding the case currently on the consent agenda.

Minutes

MOTION by Phyllis Luck, SECONDED by Catherine Hanson to APPROVE the October 10, 2013 Board of Adjustment Public Hearing Minutes, as submitted.

FOR: Schreiner, Luck, Hanson, Wuenschel, Covington
ABSENT: Atkins
AGAINST: None
MOTION CARRIED: 5-0

Regular Agenda

BOA# 17-13-5

**OWNERS/APPLICANTS: Cuozzo Design Group/
Shelia McDowell, et al**

Chairman Schreiner noted the only issue within the jurisdiction of the Board of Adjustment was the applicant's request regarding tower setbacks. He said the Board cannot consider issues such as property values or those related to health.

Erin Hartigan, Assistant County Attorney, explained that the Federal Telecommunications Act of 1996 prohibits local governments from regulating the placement, construction or modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions. Any decisions based on those issues could be overturned.

Jennifer Cotch, Senior Planner, Planning and Community Design, explained the applicant is requesting a variance from the Land Development Regulations (LDRs) requiring communication towers be located in the center of the parent parcel. The applicant is proposing a 150 foot tall tower on Micro Racetrack Road in Fruitland Park. The LDRs require towers to be centered within the parent parcel, and located 400% of the tower height from any residence and at least 100 feet from property lines. The applicant is requesting that the tower be located further to the west than the east; allowing it to meet the LDRs regarding the distance from residences. Ms. Cotch further explained that the applicant will be required to obtain a Conditional Use Permit (CUP), should the variance be granted. Staff is recommending approval.

There were no questions for staff.

Don Cuzzo, Cuzzo Design Group, said there has been an increase in telecommunication usage. In order to successfully place a tower they must have a willing land owner, and favorable land use and zoning. He noted that Lake County's regulations were very stringent. He agreed that separation distance is the most important; he explained that they will protect as many as trees possible, and felt the variance will serve to protect the health and safety of the county.

Public Comment

Maxine Pew said she was very concerned about possible health impacts on her family members, and asked if there were any guarantees regarding possible future health issues.

Chairman Schreiner said he understood her concerns, but noted the Board could not consider that issue. He explained how staff reviews each application. In this case the Board can only consider whether or not the tower must be centered on the parent parcel.

Maurice Allen Sr. said he was a community member and concerned about the way they were notified, adding that the signs had been removed. He thought two properties had been combined to allow this tower.

Ms. Cotch explained that in addition to the legal ad in the local paper, everyone within 350 feet was notified by US mail, and signs were posted.

Phyllis Luck asked when the notices were mailed.

Ms. Cotch clarified that the application was received October 1, 2013, the notices were mailed 3 weeks ago and signs were posted on October 23, 2013. She noted that staff met all County notification requirements and explained that there are no procedures to check if signs are removed.

Chairman Schreiner explained to Mr. Allen, that the County had followed their regulations.

Abraham Allen Jr., said he was concerned about health issues. He noted that, in the past, federal rules have been slow to respond to health questions such as with tobacco. He said this issue has divided their neighborhood. He commented about who would benefit from this tower and said not everything should be about money. He felt the residents opinions should have been taken into consideration.

Orea Williams, a social worker with Cornerstone Hospice, presented a petition of local residents opposed to this request, as well as photographs proving the sign had been removed. She noted that there was no communication with residents prior to the meeting. She was concerned with unhealthy radiation from cell towers. She said they were not against someone's financial gain, but they wanted the tower located farther from residences.

Okcha Suji Kang said she owns land in the area on which she would like to build. She had just received notification on the day of the meeting. She said she was against the tower, was concerned about health issues and some of her land being taken for someone else's purpose.

There was discussion that her property is adjacent to the right-of-way.

Ms. Cotch explained that Emery Drive is an easement, which includes land from both the north and south. This easement has addresses attached to it, but it is not a County-maintained easement.

There was discussion relating to how construction will impact the already congested traffic level on Micro Race Track Road.

Cleo Stafford said he lives on Micro Racetrack Road. He discussed the concerns about health issues, and added that a microwave produces more radiation than residents will get from the tower.

Catherine Hanson addressed the application, the concerns over possible health issues and said the variance request does meet the intent of the Code.

MOTION by Craig Covington, SECONDED by Catherine Hanson, to APPROVE BOA# 17-13-5, Cuozzo Design Group/Shelia McDowell with conditions as set forth by staff.

Ms. Wunschel asked about the notification issue. Ms. Cotch said mailing addresses were taken from the property appraiser's website. Mr. Covington noted there would be no encroachment on anyone else's property. Ms. Luck asked questions about County notification and Ms. Greiner said the County notifies residents by mailing notification cards, posting signs and placing legal ads.

Ms. Cotch noted there would be no encroachment on adjacent properties. The tower will be about 165' from the north and south boundary. The closest the tower will be to the east property line is 178' and it will be 487' from the easement.

FOR: Schreiner, Luck, Hanson, Covington

ABSENT: Atkins

AGAINST: Wuenschel

MOTION CARRIED: 4-0

Ms. Greiner introduced new planner, Michelle Janiszewski.

Adjournment

There being no further business, the meeting was adjourned at 1:45 p.m.

Respectfully submitted,

Donna Bohrer
Public Hearing Associate

Donald Schreiner
Chairman

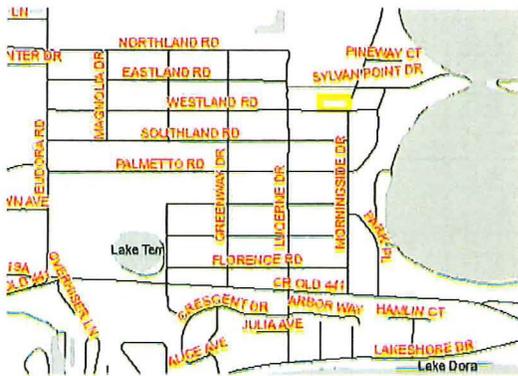


VARIANCE REQUEST
 Presented to the
BOARD OF ADJUSTMENT
 December 12, 2013

| | |
|--|-------------------------|
| CASE NO.: BOA# 18-13-4 | AGENDA ITEM #: 1 |
| OWNER & APPLICANT: Kenneth J. McGrath | |

REQUESTED ACTION: The owner is requesting a variance from Lake County Land Development Regulations, Section 3.02.06 Density, Impervious Surface, Floor Area, and Height Requirements to allow a pool and accessory structures that will exceed the maximum 30% impervious surface allowed in Rural Residential (R-1) zoning district.

GENERAL LOCATION: Mt Dora area – East on CR Old 441, then left on Morningside Drive (N), to site on left, #1755, AK# 1533678 (Sec. 25, Twp. 19, Rng. 26).



FUTURE LAND USE DESIGNATION: Urban Low Density

EXISTING ZONING: R-1 (Rural Residential)

| <u>Direction</u> | <u>Future Land Use</u> | <u>Zoning</u> | <u>Existing Use</u> |
|------------------|--|---|-----------------------------|
| North | Urban Low Density (4 du / net acre) | R-1 (Rural Residential District) (1 du / acre) | Single-family dwelling unit |
| South | Urban Low Density (4 du / net acre) | R-1 (Rural Residential District) (1 du / acre) | Single-family dwelling unit |
| East | Urban Low Density (4 du / net acre) | R-1 (Rural Residential District) (1 du / acre) | Single-family dwelling unit |
| West | Urban Low Density (4 du / net acre) | R-1 (Rural Residential District) (1 du / acre) | Single-family dwelling unit |
| Posted: | November 21, 2013; postcards mailed to adjacent property owners on November 20, 2013 | | |

14.15.02 Granting Variances and Appeals

Variances shall be granted when the person subject to the Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness.

For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For the purposes of this section "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation.

Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

ANALYSIS: The owner is requesting a variance to allow the construction of a pool and accessory structures that will increase the impervious surface ratio (ISR) over thirty percent. The Code (3.02.06 Density, Impervious Surface, Floor Area, and Height Requirements) limits the maximum ISR to 0.30 in the R-1 Zoning District.

The parcel is located in Sylvan Shores, a residential subdivision platted in 1926. All of the lots in the subdivision are developed with conventional single-family dwelling units. The owner's parcel is developed with a single-family dwelling unit, detached garage, and enclosed porch. A copy of the survey showing the location of all improvements is attached (Exhibit "A"). The total square footage of the property is 14250 square feet (0.33 acre). The total existing structures are 4874 square feet or 34% impervious surface ratio. With the proposed pool and pavement the total impervious surface would be 0.40 or forty percent.

The owner is proposing to construct an 840 square foot pool with concrete patio. The building would meet all setback requirements and would be located in the side/rear yard as required by the Code.

The parcels to the north, south, east and west are developed with single-family dwelling units. The subject parcel is zoned R-1 (Rural Residential District) and the Future Land Use is Urban Low Density. The Future Land Use and the zoning are in conflict, and will be addressed during the County-wide rezoning. The 2030 Comprehensive Plan Policy I-1.3.2 *Urban Low Density Future Land Use*, states the maximum ISR shall not exceed 0.60 or sixty percent. Under current regulations, the Sylvan Shores subdivision would not be allowed to develop under the R-1 Zoning District since the average lot size is approximately one-third of an acre. The more appropriate zoning classification based on the Future Land Use and the existing development would be Medium Residential District (R-3), which according to the Code (3.02.06) allows a maximum ISR of 0.35 or thirty-five percent. The parcel contains no flood zones or jurisdictional wetlands.

The Land Development Regulations have been updated since the applicants last permit application, which allowed up to 35% impervious surface. Under the previous LDR's, Chapter 3.02.06, lots that were non-conforming to the existing zoning classification could utilize the ISR category which was closest to the

actual area of the non-conforming lot. Since the applicants lot area was most consistent with the R-3 zoning, the applicant was allowed to obtain a maximum ISR of thirty-five percent (35%). The current LDR's do not have this provision.

The **intent of the Code** (3.02.06) is to protect the public health, safety and welfare by limiting the amount of impervious surface in order to reduce flooding and increase water quality. An impervious surface ratio is a measurement of the amount of the base site area that is covered by any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land. Impervious surfaces include, but are not limited to roofs and roads, sidewalks and parking lots paved with asphalt, concrete, compacted sand, limerock or clay. The impervious surface ratios (ISR) in Table 3.02.06 are applicable to both residential and nonresidential development.

The owner submitted the following reasons as proof of meeting the **intent of the Code**: *"Under reasonable requirements that exist under state guidelines."*

The owner submitted the following as proof that the application of the Land Development Regulation would create a **substantial hardship or would violate principles of fairness**: *"Cannot put a pool in without this revision. Also, it seems there are many homes on the same street that far exceed the R-1, 30% Impervious."*

14.15.00 Variances and Appeals.

14.15.01 Purpose of Variances. Strict application of uniformly applicable Land Development Regulations can lead to unreasonable, unfair, and unintended results in particular instances. The Board of County Commissioners finds that it is appropriate in such cases to adopt a procedure to provide relief to persons subject to the Land Development Regulations. The Board of Adjustment is authorized to grant variances to requirements of the Land Development Regulations consistent with the rules contained in these regulations. This Section does not authorize the Board of Adjustment to grant variances inconsistent with the Comprehensive Plan nor to grant a variance to permit uses not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the Land Development Regulations in the zoning district. In addition, the existence of nonconforming use of neighboring lands or un-permitted use of neighboring lands shall not be considered grounds for authorization of a variance.

14.15.02 Generally. Variances shall be granted when the person subject to a Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this Section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For purposes of this Section, "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation. Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as, contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

ENVIRONMENTAL ISSUE: N/A

FLOODPLAIN: N/A

JOINT PLANNING AGREEMENT: N/A

WEKIVA RIVER PROTECTION AREA: N/A

LAKE APOPKA BASIN: N/A

TRANSPORTATION IMPROVEMENTS: N/A

GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A

FINDINGS OF FACT: Staff has reviewed the application for this variance request and found:

1. The applicant was allowed to increase the impervious surface ratio to 35% under the previous Land Development Regulations (LDRs). The current LDR's limit lots to a maximum 30% ISR in the Rural Residential Zoning Classification.
2. The applicant is unable to meet the intent of the code which is to reduce flooding and increase water quality.

Staff finds that the applicant has not submitted proof of meeting the intent of the Code and has not shown proof of a substantial hardship or that that application of the Code would violate the principles of fairness. Based on the Findings of Fact and Analysis, Staff recommends **DENIAL** of the variance request.

BOA# 18-13-4

4 of BOA# 18-13-4

Jennifer M. Cotch, Senior Planner, Planning & Community Design Division

Photo Evidence

Views of the site



Views of the postings



**Final Development Order
Kenneth J. McGrath
BOA # 18-13-24**

A VARIANCE OF THE LAKE COUNTY BOARD OF ADJUSTMENT AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Kenneth J. McGrath (the "Owner") requested a variance to allow accessory structures that will exceed the maximum impervious surface ratio (ISR) allowed in Rural Residential (R-1) zoning; and

WHEREAS, the subject property consists of 0.33 acres +/- and is generally located south of Mt Dora in Section 25, Township 19 South, Range 26 East, being composed of alternate key number 1533678 and is more particularly described as:

SYLVAN SHORES S 55FT OF LOT 20, N 40 FT OF LOT 21, BLK 15

AND, after giving Notice of Hearing on petition for a variance to the Lake County Land Development Regulations, including notice that said variance would be presented to the Board of Adjustment of Lake County, Florida, on December 12, 2013; and

WHEREAS, the Board of Adjustment reviewed said petition, staff report and any comments, favorable or unfavorable, from the public and surrounding property owners at a public hearing duly advertised; and

WHEREAS, on December 12, 2013, the Lake County Board of Adjustment approved the variance for the above property; and

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that the Land Development Regulations of Lake County, Florida, be altered and amended as they pertain to the above subject property, subject to the following terms:

Section 1. Terms: The County Manager or designee shall amend the Official Zoning Map to reflect the approval of BOA# 18-13-4 to allow an Impervious Surface Ratio (ISR) of .40 or forty percent.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Effective Date. This Ordinance shall become effective as provided by law.

ENACTED this 12th day of December, 2013.

EFFECTIVE December 12, 2013.

BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA

Donald Schreiner, Chairman

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this March 14, 2013 by DONALD SCHREINER, who is personally known to me.
(SEAL)

Signature of Acknowledger

Serial Number: _____

My Commission Expires: _____

ZUL11030312

MAY 27 2011

A Boundary Survey

Description

North 40 feet of Lot 21 and South 55 feet of Lot 20, Block 15, according to the Plat of Sylvan Shores, recorded in Plat Book 9, page 56, Public Records of Lake County, Florida.

Certified to:

KENNETH J. McGRATH
HOME SAVINGS OF AMERICA
POTTER, CLEMENT AND LOWRY
ATTORNEYS' TITLE INSURANCE FUND, INC.

Land Surveyor's Notes

- Bearing Basis is an assumed bearing of N 90°00'00" E along the centerline of Westland Road.
- Subject to easements and restrictions of Record.
- All of the above captioned property lies within F.I.R.M. Zone "C" according to F.I.R.M. panel No. 120421 0225 B.
- Any errors or omissions in this survey caused on the Description provided, Plat information, made to conform with the applicable requirements per Florida Building Code, and Undergound Structures, and Undergound compliance and shall be kept in force a certificate of title, zoning or freedom of encumbrances.
- Certification is limited only to the party or parties named hereon.
- Not valid without the signature and original raised seal of a Florida licensed surveyor and mapper.
- The scope of this survey does not address environmental matters, jurisdictional boundaries and hazardous waste concerns should any of the foregoing exist.
- Fences were located ONLY where dimensioned and may not run straight; ownership of fences, if any, unknown.
- Date of the field survey was 4-9-97, drawn by S.B.
- Type of Survey: Boundary Survey
- The address of this parcel is
- This is Drawing File: C:\SS15-20.DWG

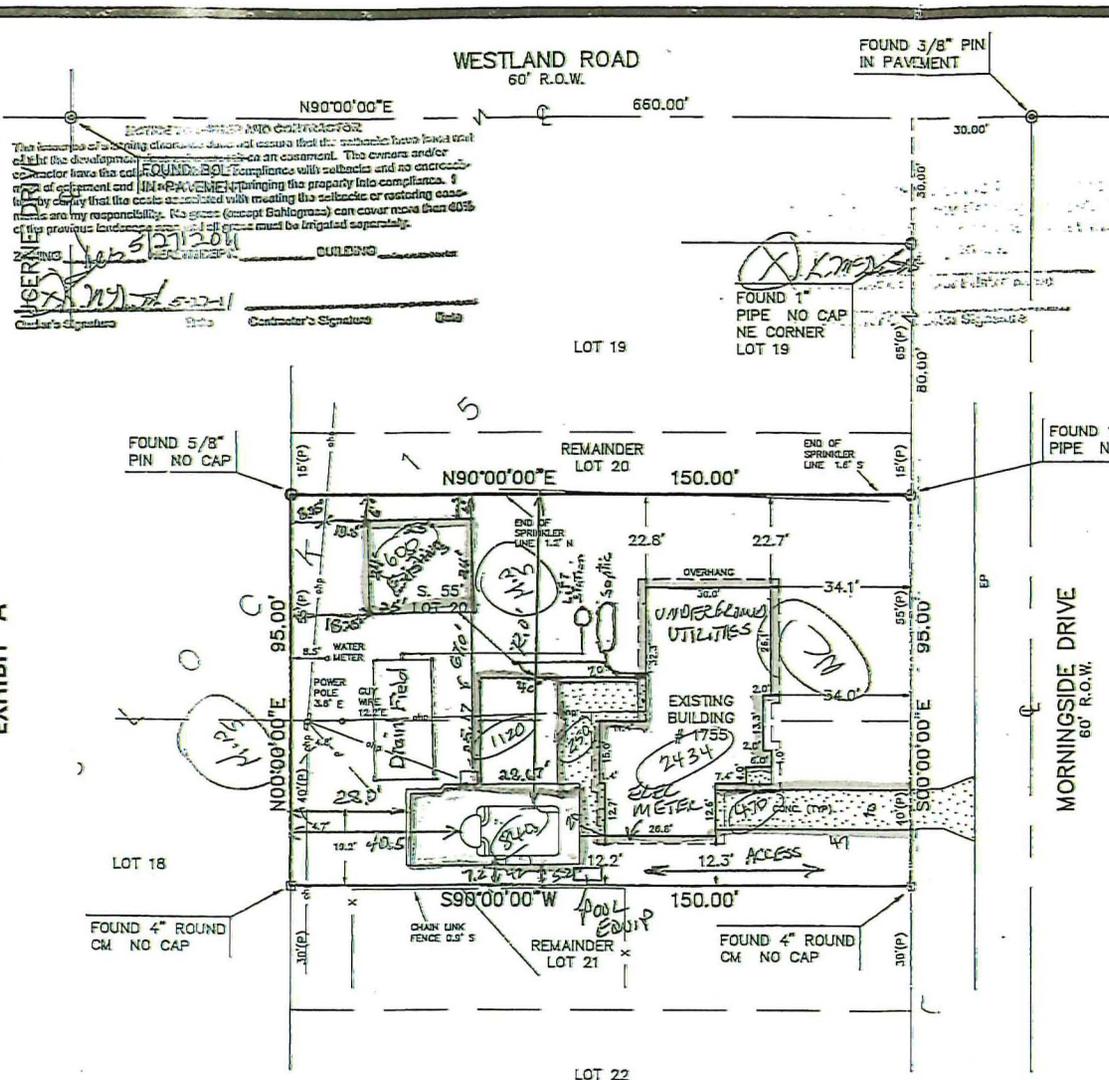
Land Surveyor's Certification

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

Stevenot Land Surveying, Inc.

Ronald R. Stevenot
Certificate #3351

32 West Dicie Drive
Eustis, Florida 32726
Telephone (352) 357-9922



Legend & Standard Abbreviations

- | | | | |
|--------|----------------|-----|--------------------------|
| CL | = Centerline | ohp | = Overhead Utility Lines |
| R.O.W. | = Right of Way | EP | = Edge of Pavement |

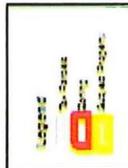
The purpose of a bearing certificate is to ensure that the electronic survey data is used to establish the development of a project on an easement. The owner and/or contractor have the responsibility of ensuring the property into compliance. It is the responsibility of the contractor to ensure that the property is in compliance with the applicable codes and regulations. No more than 60% of the previous land use area may be covered by the project. All areas must be irrigated separately.

DATE: May 31 2011
 USER: [Signature]
 CLIENT: [Signature]
 PROJECT: [Signature]

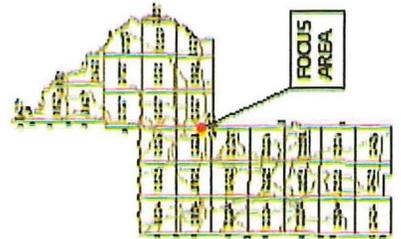
EXHIBIT "A"



LAKE COUNTY
 DEPARTMENT OF
 GROWTH MANAGEMENT
 Community Development Division



Case Location (S-T-R):
 25-19-26



Owner: Kenneth J. McGrath
 Applicant: Kenneth J. McGrath
 BOA# 18-13-4

