

OFFICE OF THE HEARING EXAMINER
CITY OF CAPE CORAL

HEARING EXAMINER RECOMMENDATION
VAC HEX Recommendation 2-2025

Rendered March 4, 2025

DCD CASE #VAC24-000007

APPLICATION FOR: Vacation of a portion of Finisterre Lake right-of-way and all underlying easements and additional easements associated with the south property line

OWNER/APPLICANT: MRC Property Management LLC

APPLICANT'S REPRESENTATIVE: Steven LeBoeuf

LOCATION OF PROPERTY: 1130 SW 43rd Street, Cape Coral, FL
Lots 19-22, Block 3347, Unit 65
STRAP #: 10-45-23-C2-03347.0190

ZONING DISTRICT: Single Family Residential (R-1)

FUTURE LAND USE CLASSIFICATION: Single Family (SF)

HEARING DATE: March 4, 2025

SUMMARY OF REQUEST: The owner requests to vacate:

1. approximately 1001 square feet of Lskr lake right-of-way (ROW), and all underlying easements; and
2. approximately 888 square feet of platted easements associated with the south property line of Lots 19-22, Block 3347, Unit 65.

SUMMARY OF HEARING EXAMINER RECOMMENDATION

The Hearing Examiner recommends that City Council **approve** the application for the requested vacations, subject to Conditions One through Four.

NOTICE OF HEARING

Based on the testimony of Justin Heller at the Hearing, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of Article 3 (Development Review), Chapter 1, § 3.1.10 ("Public

Hearing Scheduling and Notice Requirements”) of the City of Cape Coral Land Development Code (“LDC”).

In addition, the Hearing Examiner finds that proper notice of this hearing was provided pursuant to applicable specific notice requirements for vacations, as set forth in Article 3 (Development Review), Chapter 4 (Specific Review Procedures – Quasi-Judicial Permits and Approvals), LDC §3.4.5.C.1-2.

I. **PARTICIPANTS IN HEARING**

CITY STAFF: Justin Heller, Senior Planner

CITY CLERK’S OFFICE: Sheri Rhine and Stacey Pasek

APPLICANT’S REPRESENTATIVE: Steven LeBoeuf

MEMBERS OF PUBLIC/TELEPHONE/EMAIL: none

II. **EXHIBITS**

APPLICANT’S AND CITY STAFF’S EXHIBITS: previously submitted.

III. **REVIEW OF LDC REQUIREMENTS**

Authority. The Hearing Examiner has the authority to recommend approval or denial of an application for a vacation of easements, pursuant to Article 2 (Decision Making and Administrative Bodies), Chapter 2 (Hearing Examiner), LDC §2.2.3B.4:

A Hearing Examiner shall hear and decide, or, when applicable, make recommendations, on the following....

.... 4. Applications for vacations”.

Entirety of the Record/Standard of Review of Evidence. The Hearing Examiner’s recommendation is based on whether the application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LDC, based upon the entirety of the record before the Hearing Examiner.

The decision or recommendation of the Hearing Examiner must be based upon competent substantial evidence in the record. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), §3.1.11E

Presumption of Relevance and Materiality. Matters related to an Application's consistency with the Comprehensive Plan, the City Code of Ordinances, or the LDC will be presumed to be relevant and material. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), §3.1.11F.4.

Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court. LDC Article 3 (Development Review), Chapter 1 (Development Review Procedures), Section 3.1.11 (Public Hearing Procedures), §3.1.11F.5.

LDC Standards. The Hearing Examiner reviewed the application in accordance with the standards for Vacations of Plats, Easements and Rights-of-way as set forth in LDC § 3.4.5 and specifically set forth in LDC § 3.4.5.A (General) and LDC § 3.4.5.B (Standards and Criteria) in addition to the general standards set forth elsewhere in the LDC and the City Comprehensive Plan.

TESTIMONY AT HEARING

Incorporation of Staff Report by Applicant's Representative

The Applicant's Representative incorporated the Staff Report ("Staff Input") into his presentation by reference.

Incorporation of Staff Report by Staff

Staff incorporated his Staff Report into his presentation by reference.

Hearing Examiner's Recommended Findings of Fact

All documentary and oral testimony referenced below, is accepted by the Hearing Examiner as recommended findings of fact, except as specifically noted otherwise.

IV. DISCUSSION

Site Information and Background of Application/Surrounding Area

The 20,000 sq. ft. site is improved with a single-family home. All properties within 500 feet share the property's Single Family (SF) Future Land Use

Classification and Single Family Residential (R-1) zoning. Staff testified that the subject site contains approximately 160 feet of frontage on Finisterre Lake, a saltwater platted lake with a width of approximately 745 feet.

The Application stated that a small strip of unexcavated lake ROW exists along the south property line and the seawall, and the owners wish to vacate the right-of-way to extend the property line to the edge of the seawall.

Applicant's Letter of Intent and Purpose of Application

Applicant's Letter of Intent, dated May 24, 2024, did not indicate a specific purpose for the application, other than to vacate the right-of-way at the rear of the property along the existing seawall. Applicant's Representative testified that the purpose of the request was to allow the Owner to have a larger construction area.

Analysis of Request in Application Pursuant to LDC Section 3.4.5.A

1. *Owner **has** color of title (LDC §3.4.5.A.1.a)*

The necessary documents are part of the Hearing record.

2. ***Letters of Approval** from Lee County Electric Cooperative, Inc. (LCEC, November 4, 2024), Lumen (May 19, 2024), and Comcast (May 7, 2024) were supplied by Applicant. (LDC §3.4.5.A.1.b-e)*

LCEC's letter of November 4, 2024, contained the proviso that if there were any substantial changes to the plans as submitted, LCEC reserves the right to further review and comment.

The Letter from Lumen stated that if Lumen's facilities were found and/or damaged within the proposed vacation area, the Applicant would be solely responsible for the cost of relocation or repair thereof.

These letters are part of the Hearing record.

3. *A copy of a recent boundary survey or survey sketch of the property prepared by a registered surveyor, **has been provided**, showing the area requested to be vacated and providing a complete legal description(s). It shows all pavement and all utility and drainage facilities in said area, including water, sewer, cable lines, utility poles, swales, ditches, manholes and catch basins.*

Separate drawings and legal descriptions are required for each vacation area when right-of-way and easement configurations differ. (LDC §3.4.5.A.2)

These documents are part of the Application.

Analysis of Request in Application Pursuant to LDC Section 3.4.5.B

1. *Are the plat, easements, or rights-of-way required by the City for any future transportation, access, water management or public utility purpose? (LDC §3.4.5.B.1)*

Staff testified that the lake ROW and underlying easements are small in area and isolated. Staff testified that, accordingly, the ROW and underlying easements would not provide a future transportation, public access, water management, or other foreseeable public benefit.

Staff further testified that the platted easements requested to be vacated would not be needed since the City would retain easements along the south property line of the expanded site to provide a continuous perimeter easement.

The Hearing Examiner recommends a finding that this standard **has been met** by Applicant.

2. *Are any required easements necessary to accommodate the vacation of any plat, easement or right-of-way? (LDC §3.4.5.B.2)*

Staff testified that, as a condition of approval, the City would retain easements sufficient for maintaining a continuous six-foot-wide public utility and drainage easement around the site.

The Applicant's Representative accepts this condition.

Accordingly, the Hearing Examiner recommends a finding that this standard **has been met** by Applicant.

3. *Are alternate routes required or available which do not cause adverse impacts to surrounding areas? (LDC §3.4.5.B.3)*

Staff testified that, as this vacation does not include a request to vacate either an alley or street ROW, this criterion would not be applicable.

Staff testified, however, that the requested vacations would not negatively affect the navigability or visibility of boaters using the Finisterre Lake.

Accordingly, the Hearing Examiner recommends a finding that this standard **has been met** by Applicant.

4. *Does the closure of a right-of-way negatively affect areas utilized for vehicles to turn around and exit an area? (LDC §3.4.5.B.4)*

The area proposed for vacation does not include an area for a land or water-based vehicle to turn around and exit. Therefore, this criterion is not applicable.

Accordingly, the Hearing Examiner recommends a finding that this standard **does not apply** to Applicant.

5. *Have local utility providers given consent to the vacation of the plat, easement(s), or right(s)-of-way? Note: The local utility providers may require additional easements or relocation of existing utilities facilities to complete the vacation (LDC §3.4.5.B.5)*

Applicant's compliance with this requirement is addressed above.

Accordingly, the Hearing Examiner recommends a finding that this standard **has been met** by Applicant.

Analysis of Request in Application Pursuant to LDC Section 3.4.5.C

1. *Is there any reasonably foreseeable public use for the vacated area? (LDC §3.4.5.C.3)*

For the reasons set forth above, the Hearing Examiner recommends a finding that there is **no reasonably foreseeable public use** for the vacated area.

2. *Is the City retaining easement(s) for utilities or drainage in and upon the vacated area? LDC §3.4.5.C.3)*

This is addressed in the conditions set forth below.

Consistency with the Comprehensive Plan

Staff testified that the City lacks specific policies in the Comprehensive Plan for vacations involving residential-zoned lands.

However, staff further testified that the Application is consistent with the requirements of Table 1 appearing in Policy 1.15 of the Future Land Use Element which identifies the R-1 District as consistent with the Single Family (SF) FLUC.

Staff further testified that this Application is also consistent with Policy 1.15: *Single Family Residential: Sites of 10,000 square feet and greater, with densities not to exceed 4.4 units per acre.*

He testified it is consistent specifically with Policy 1.15.a, as the site is proposed to be expanded to ±20,000 square feet with one single-family home, if the City Council were to grant the ROW vacation, and this would not exceed the 4.4 units per acre requirement.

It is recommended that City Council find that granting the requested vacations, as conditioned below, **would be consistent** with the City Comprehensive Plan, Land Development Code, and all other applicable law.

V. RECOMMENDED CONDITIONS OF APPROVAL

The Hearing Examiner **recommends** that these conditions of approval be adopted as part of the City Council's approval of the request by Applicant's Representative:

1. Exhibit "A": The vacation of lake ROW and underlying easements shall be consistent with that shown in the sketch and accompanying legal description prepared by R. K. Burns Surveying Inc., dated October 30, 2024, entitled Exhibit "A" in this report.
2. Exhibit "B": The vacation of platted easements, shall be consistent with that shown in the sketch and accompanying legal description prepared by R. K. Burns Surveying Inc., dated October 30, 2024, entitled Exhibit "B" in this report.

3. Exhibit "C". The City shall retain a public utility and drainage easement with a minimum width of six feet around the perimeter of the expanded site as shown in the sketch and accompanying legal description prepared by R. K. Burns Surveying Inc., dated October 30, 2024, entitled Exhibit "C" in this report.
4. Recording of Resolution and Receipt of Recording Fees. The City shall record this resolution with the Office of the Lee County Clerk of Court following the receipt of the recording fees from the Applicant.

VI. **EXHIBITS**

The following Exhibits are attached hereto and incorporated by reference:

- Exhibit "A": as set forth above.
- Exhibit "B": as set forth above.
- Exhibit "C": as set forth above.

The Hearing Examiner herewith **RECOMMENDS APPROVAL** of the request for the above-referenced Vacation filed by Applicant, inclusive of Conditions 1 through 4 above.

This Recommendation takes effect on the date specified below.

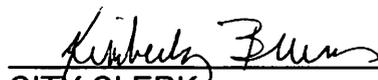
HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA



ANNE DALTON, ESQUIRE

March 4, 2025
DATE

ATTEST:



CITY CLERK

Exhibit "A"-Lake ROW and Underlying Easement Vacation

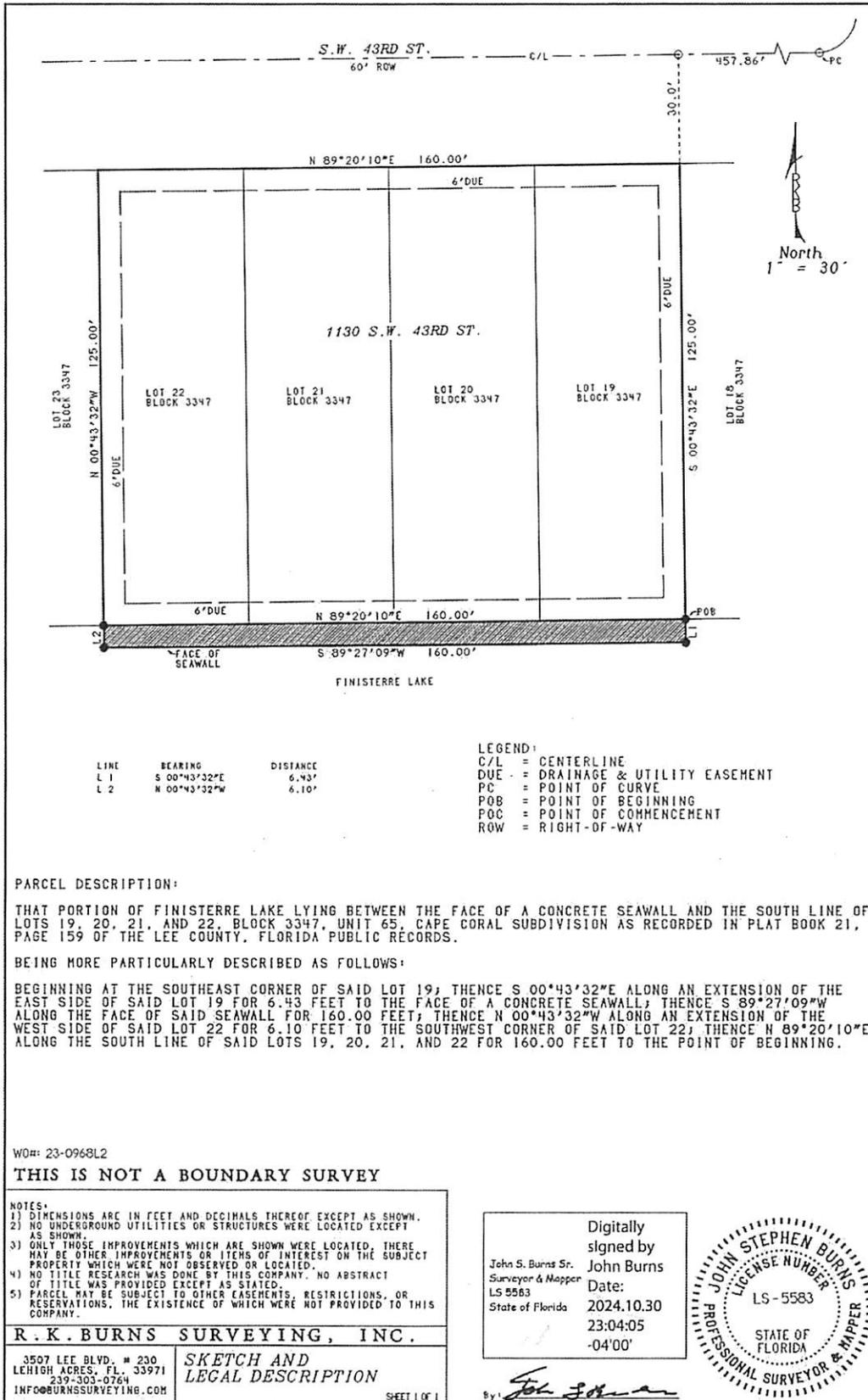
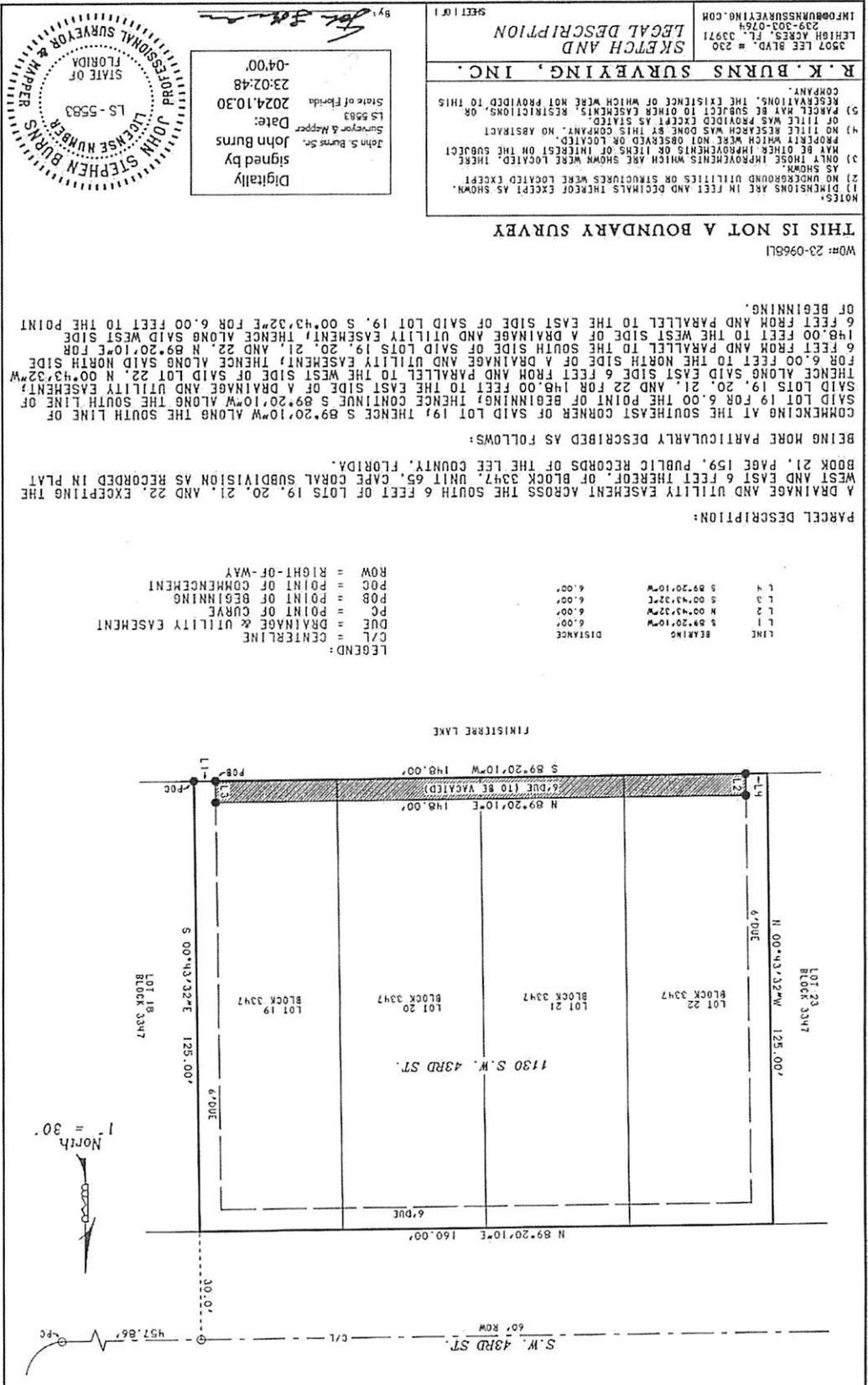


Exhibit "B" - Vacation of Platted Easements



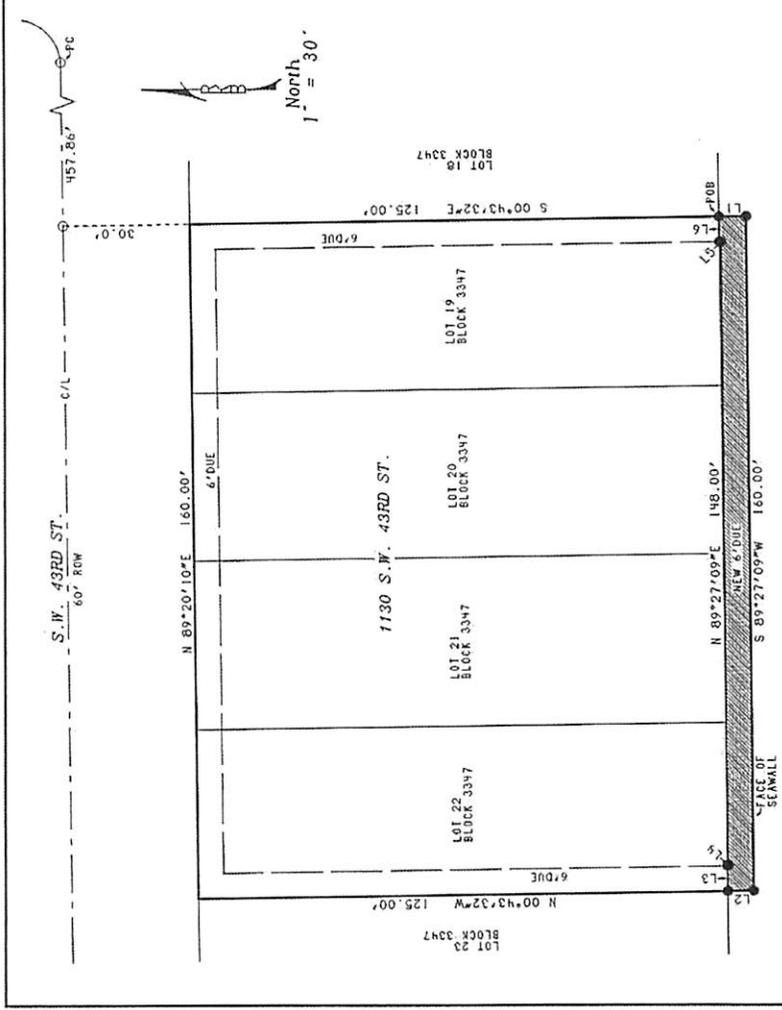
Digitally signed by John Burns
 Date: 2024.10.30
 State of Florida
 LS 5583
 Surveyor & Mapper

R.K. BURNS SURVEYING, INC.
 LEGAL AND SKETCH AND
 3507 LEE BLVD, # 230
 LEHIGH ACRES, FL 33971
 239-303-0764
 INFO@BURNSSURVEYING.COM

SHEET 1 OF 1

THIS IS NOT A BOUNDARY SURVEY
 W0#: 23-0968LL

Exhibit "C"- Public Utility and Drainage Easements to be Retained by the City



LEGEND:
 C/L = CENTERLINE & UTILITY EASEMENT
 DUE = DRAINAGE & UTILITY EASEMENT
 PC = POINT OF CURVE
 POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 ROW = RIGHT-OF-WAY

LINE	BEARING	DISTANCE
L 1	S 00°43'32"E	6.43'
L 2	N 00°43'32"W	6.10'
L 3	N 89°20'10"E	6.00'
L 4	S 00°43'32"E	0.11'
L 5	N 00°43'32"E	0.78'
L 6	N 89°20'10"E	6.00'

PARCEL DESCRIPTION:

A NEW 6 FOOT DRAINAGE AND UTILITY EASEMENT,
 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 19, BLOCK 3347, UNIT 65, CAPE CORAL SUBDIVISION AS RECORDED IN PLAT BOOK 21, PAGE 159 OF THE LEE COUNTY, FLORIDA PUBLIC RECORDS, THENCE S 00°43'32"E ALONG AN EXTENSION OF THE EAST SIDE OF SAID LOT 19 FOR 6.43 FEET TO THE FACE OF THE CONCRETE SEAWALL, THENCE S 89°20'10"E ALONG THE FACE OF SAID SEAWALL 3347 FOR 6.10 FEET TO THE SOUTHWEST CORNER AND EXTENSION OF THE WEST SIDE OF SAID LOT 22, ALONG THE SOUTH LINE OF SAID LOT 22 FOR 6.00 FEET, THENCE S 00°43'32"E FOR 0.11 FEET, THENCE N 00°43'32"E FOR 0.78 FEET, THENCE N 89°27'09"E FOR 148.00 FEET, THENCE N 00°43'32"W FOR 0.41 FEET TO A POINT ON THE SOUTH SIDE OF SAID LOT 19, THENCE N 89°20'10"E ALONG SAID SOUTH SIDE FOR 6.00 FEET TO THE POINT OF BEGINNING.

WD#: 23-0968L3

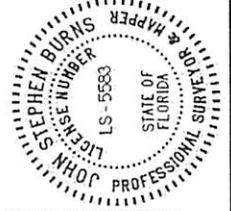
THIS IS NOT A BOUNDARY SURVEY

- NOTES:
 1) DIMENSIONS ARE IN FEET AND DECIMALS THEREOF EXCEPT AS SHOWN.
 2) NO UNDERGROUND UTILITIES OR STRUCTURES WERE LOCATED EXCEPT AS SHOWN.
 3) ONLY THOSE IMPROVEMENTS WHICH ARE SHOWN WERE LOCATED. THERE MAY BE OTHER IMPROVEMENTS OR ITEMS OF INTEREST ON THE SUBJECT PROPERTY WHICH WERE NOT OBSERVED OR LOCATED.
 4) THE EXISTENCE OF ANY EASEMENTS, RIGHTS, OR INTERESTS IN THE TITLE WAS PROVIDED EXCEPT AS STATED.
 5) PARCEL MAY BE SUBJECT TO OTHER EASEMENTS, RESTRICTIONS, OR ENCUMBRANCES, THE EXISTENCE OF WHICH WERE NOT PROVIDED TO THIS COMPANY.

R. K. BURNS SURVEYING, INC.
 3507 LEE BLVD., # 330
 LENOIR, NC 27561-3971
 252-303-0764
 INFO@BURNSURVEYING.COM

Digitally signed by
 John S. Burns Sr.
 Surveyor & Mapper
 LS 5583
 State of Florida
 Date: 2024.10.30
 23:05:27
 -04'00"

By: *John S. Burns Sr.*



SHEET 1 OF 1