

---

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Appeal of the Final Engineering Plan for Deer Lakes Subdivision

**DEPARTMENT:** Planning and Development

**DIVISION:** Administration - Planning and Development

**AUTHORIZED BY:** Dori DeBord

**CONTACT:** Dori DeBord

**EXT:** 7397

**MOTION/RECOMMENDATION:**

Authorize the following actions for the final engineering plan for the Deer Lakes Subdivision:

1. Allow for the restoration of the wetlands system through the removal of trash and debris as well as invasive species through a management plan;
2. Prohibit the excavation of the muck within Miranda Lake as all development activity within wetlands is prohibited by FLU Policy 12.9 within the Wekiva River Protection Area and this activity would require a dredge and fill permit;
3. Prohibit the encroachment of the pipe through the required buffer into the 100 Year Floodplain based on impacts to the wetlands and the requirements of the Comprehensive Plan.

District 5 Brenda Carey

Dori DeBord

---

**BACKGROUND:**

Section 20.12 of the Land Development Code provides for any person claiming to be aggrieved by a decision of the Planning and Development Director to file a written appeal within 30 days with the Planning Division and have the application reviewed by the Board of County Commissioners.

On July 23, 2009, Mr. Hugh Harling filed a letter regarding his concerns on outstanding items on a final engineering plan for Deer Lakes Subdivision with the Chairman, asking for an opportunity to present his concerns to the BCC for their consideration. In his letter, Mr. Harling contends that staff has been unwilling to accept his resolution to certain items during the review of the final engineering plan with regard to interpretations of the Land Development Code and the Comprehensive Plan.

In an effort to rectify the impasse, Development Review staff solicited the help of the County Engineer with regard to the outstanding stormwater issues. Mr. Harling met with Mr. Jerry McCollum, County Engineer and his staff on August 27, 2009 to discuss the stormwater issues and consider alternatives. No revised plans have been submitted showing these alternatives.

The letter from Mr. Harling and a response by the Planning and Development Director is attached. Staff would offer the following recommendations regarding these items:

Issue 1 - Wetlands Restoration

Staff response: Staff would support the removal of trash, exotic and invasive species and the restoration of the wetlands through a management plan. Staff would recommend against allowing a dredge and fill permit for the excavation of the muck since that this considered a development activity and is prohibited by the Comprehensive Plan Policy FLU 12.9.

## Issue 2 - Stormwater Easements vs. Tracts

Staff Response: Mr. Harling and Mr. McCollum met on August 27, 2009 to discuss the stormwater issues as they relate to this subdivision. The six points that were agreed on include:

1. Eliminate proposed under drain.
2. All swales will have depth of less than 2'.
3. Revise Plans to reflect 100-Year Flood Elev. (10.6 inches during storm event) is about El. 40.60
4. Provide overflow outside of the proposed subdivision (northeast of the property) at El. 43.00
5. All finish floor elevations will be 3'-4' above the overflow elevation.
6. Each homeowner will be responsible for the aesthetic maintenance within the rights-of-way and easements adjacent to their property. The Homeowner's Association will be responsible for all functional maintenance of the roadway and drainage systems.

By incorporating the changes into the redesign of the subdivision, the drainage system meets the definition of a swale system. Swales are permitted within private subdivisions as easements. The County will not assume any responsibility for the stormwater system or roadways within this subdivision. The Plan should reflect that all maintenance of these easements will be the responsibility of the homeowners and the Homeowner's Association.

## Issue 3 - Encroachment into Buffers

Staff Response:

Policy FLU 12.9 Wekiva River Protection Area Environmental Design Standards. Section A (2) states that:

"An upland buffer averaging fifty feet (50') but no less than twenty five feet (25') in width shall be maintained surrounding areas identified as containing flood plain and/or wetlands or properties which have been designated as preserve areas or conservation easements. Development activity, including the placing or depositing of fill, within wetlands and the one hundred (100) year floodplain (as adopted by FEMA) shall be prohibited."

Regardless of past practices, encroachment of any type of piping through the buffers into the 100 Year Floodplain and the wetlands is prohibited through the Comprehensive Plan. There is no procedure statutorily or through the County to allow for a variance to this Policy.

**STAFF RECOMMENDATION:**

Staff recommends the following:

- The Board allow for the restoration of the wetlands system through the removal of trash and debris as well as invasive species through a management plan.
- The Board prohibit the excavation of the muck within Miranda Lake as all development activity within wetlands is prohibited by FLU Policy 12.9 within the Wekiva River Protection Area and this activity would require a dredge and fill permit; the Board prohibit the encroachment of the pipe through the required buffer into the 100 Year Floodplain based on impacts to the wetlands and the requirements of the Comprehensive Plan
- The Board prohibit the encroachment of the pipe through the required buffer into the 100 Year Floodplain based on impacts to the wetlands and the requirements of the Comprehensive Plan FLU 12.9.

**ATTACHMENTS:**

1. Deer Lakes Final Engineering Appeal to Chairman
2. Final Engineering Plan Appeal Letter
3. Pre-Development Plan for Deer Lakes
4. Wetlands Mitigation Plan for Deer Lakes
5. Site Plan for Deer Lakes
6. Master Drainage Plan for Deer Lakes
7. Grading Plan for Deer Lakes
8. Grading Plan 2 for Deer Lakes

**Additionally Reviewed By:**

County Attorney Review ( Robert McMillan )

**HARLING  
LOCKLIN  
& ASSOCIATES, INC.**

CONSULTING ENGINEERS • PLANNERS

cc: CM  
P&D  
Dev Rev

July 23, 2009

Mr. Bob Dallari, Chairman  
Seminole County Commission  
1101 East First St.  
Sanford, FL 32771

Re: Final Engineering Plan review for Deer Lakes, Project #07-05500015

Dear Chairman Dallari,

As you know, we represent the owners of the Deer Lakes project and have made several submittals to Seminole County Staff to obtain Final Engineering Approval. After repeated reviews by staff and consultants, we find there are several issues on which the staff has taken a position that unreasonably threatens the viability of this project. The preliminary subdivision plan for this project was approved by the Planning & Zoning Commission on June 6, 2007.

Unfortunately, the Seminole County Land Development Code does not provide an administrative process for disputing the comments that applicants receive from staff. Without resolution of the dispute over the staff comments, staff will not approve the Final Engineering Plans. In other words, we are in administrative limbo.

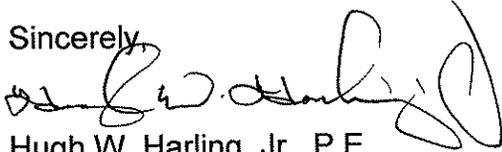
To resolve this impasse, we ask that the Board of Commissioners consider the disputed issues of interpretation presented by this project at the next available commission meeting and provide direction and guidance for the following issues:

- The owners are proposing to remove trash, construction debris, exotic-invasive species, and excessive muck from Miranda Lake, restoring the biological and hydrological function of the lake. Prior land management activities caused this naturally existing lake to be filled with man-made debris and organic material. See the included photos for examples of the quality of the lake. The Comprehensive Plan prohibits "impacts" to wetlands within the Wekiva River Protection Area (WRPA), but the staff is taking the position that "any restoration of Miranda Lake is prohibited by the Comprehensive Plan" including the removal of exotic species. Only the removal of the man-made debris would be allowed.
- The county's discretionary stormwater standards require "retention/detention ponds" to be set aside in separate tracts, rather than protected by drainage and access easements. Due to the groundwater-recharge requirements within the WRPA, the owners are proposing a stormwater management system that is a

- swale system with retention/detention characteristics, and that runs along the front of lots. Staff, however, is calling the system a pond because of the retention/detention characteristics and mandating the system be set aside as a separate tract. Written staff comments have repeatedly stated that if the stormwater system is in separate tracts, "this will result in lots that do not meet the one-acre net buildable requirement" of the Comprehensive Plan. Staff have been willing to depart from the stormwater standards in the past, but is unwilling to do so now, despite the lack of engineering or maintenance reasons to insist these systems be set aside in a separate tract. The owner is willing to grant drainage and access easements over these areas so they can be adequately maintained.
- The comprehensive plan requires an upland buffer to protect wetlands and floodplains. The land development code goes farther and requires this buffer to "remain undisturbed by development." To meet the groundwater-discharge and stormwater treatment requirements for the WRPA, the owners propose placing part of the stormwater management system next to the floodplain within the buffer area. Staff insists that the upland buffer "must be undisturbed." However, this area has already been disturbed by the activities of prior owners, and the stormwater management activities proposed by the new owner would increase the protection of the wetlands and floodplains.
- A majority of the staff comments that remain to be resolved involve details of the engineered design of the stormwater system. In the past, the County has paid for a third party to review engineering submittals. Because we must obtain a stormwater permit from the St. Johns River Water Management District anyway, the owner suggests deferring to the District's approval of a final engineering design for stormwater.

We continue to be committed to reaching a resolution on these issues but are faced with intractable positions taken by staff that prevent reasonable and equitable solutions. We ask to present our concerns to the Board and obtain whatever relief the Board sees fit to grant. We thank you in advance for your time and assistance in this matter.

Sincerely,



Hugh W. Harling, Jr., P.E.  
President

Cc: Commissioner Michael McLean  
Commissioner Dick Van Der Weide  
Commissioner Carlton Henley  
Commissioner Brenda Carey  
Alaqua Investments, Inc.  
Sarah Doar

# Miranda Lake



Miranda Lake





ADMINISTRATION

September 14, 2009

Mr. Hugh Harling, PE  
Harling Locklin & Associates, Inc.  
850 Courtland Street  
Orlando, Florida 32804

Subject: Deer Lakes Final Master Plan Appeal

Dear Mr. Harling:

I received a copy of your letter to Chairman Dallari regarding the Final Engineering Plan for Deer Lakes Subdivision. I understand that you would like to go to the Board to seek resolution of four issues as stated within your letter.

I would like to take this opportunity to respond to your statements in the letter regarding each of your issues.

Issue 1 – Wetlands Restoration

Staff has taken a conservative approach regarding the interpretation of Policy FLU 12.9 Wekiva River Protection Area Environmental Design Standards. Section A (2) states that:

“An upland buffer averaging fifty feet (50') but no less than twenty five feet (25') in width shall be maintained surrounding areas identified as containing flood plain and/or wetlands or properties which have been designated as preserve areas or conservation easements. Development activity, including the placing or depositing of fill, within wetlands and the one hundred (100) year floodplain (as adopted by FEMA) shall be prohibited.”

I would agree with you that removal of invasive and exotic species should be permitted around Lake Miranda. This is in keeping with the desire to introduce native species into wetlands to promote the health and development of these environmental communities. Based on the nature of exotic and invasive species, we would like to see a management plan for the removal and replanting of this wetland system.

The other component of this issue is the removal of excessive muck. Muck removal would require a dredge and fill permit through Development Review and is considered a development activity in the Land Development Code. This activity is prohibited through FLU Policy 12.9.

## Issue 2 –Easements vs. Tracts

Since this issue has been outstanding since the development of the final engineering plan, Development Review staff requested a review by County Engineering of the entire stormwater system. I understand that you met with Jerry McCollum, the County Engineer and his staff about the data and plan and there has been some agreement of changes to the plan. No revised plans have been submitted for review with these changes, but Mr. McCollum briefed me on the design elements that were agreed upon for the next submittal. These are the six points that I understand are proposed by you for the revision of the Plan.

1. Eliminate proposed under drain.
2. All swales will have depth of less than 2'.
3. Revise Plans to reflect 100-Year Flood Elev. (10.6 inches during storm event) is about El. 40.60
4. Provide overflow outside of the proposed subdivision (northeast of the property) at El. 43.00
5. All finish floor elevations will be 3'-4' above the overflow elevation.
6. Each homeowner will be responsible for the aesthetic maintenance within the rights-of-way and easements adjacent to their property. The Homeowner's Association will be responsible for all functional maintenance of the roadway and drainage systems.

By incorporating the first five changes to the final engineering plan, the Plan would be substantially redesigned as a swale system under the County's Land Development Code. Swale systems are permitted as easements within subdivisions. Just as a note, the County will not assume any responsibility for the stormwater system or roadways within this subdivision. The Plan should reflect that all maintenance of these easements will be the responsibility of the homeowners and the Homeowner's Association.

## Issue 3 – Encroachment into Buffers

Regardless of past practices on any property, the Comprehensive Plan as referenced in FLU Policy 12.9, requires that there be an undisturbed buffer around the 100 Year Floodplain and the wetlands. The current plan incorporates a pipe through the buffer and the floodplain to drain into Lake Miranda. Since there is no procedure either statutorily or in the County to provide a variance to the Comprehensive Plan, staff cannot support this piping since it impacts both the buffer and the 100 year floodplain.

## Issue 4 – Stormwater Permitting

You have requested that St. Johns River Water Management District (SJRWMD) issue the permit for stormwater on this subdivision. I discussed this request with both Mr.

McCollum and Mr. Lee Shaffer, Acting Development Review Manager. SJRWMD's role is primarily to look at water quality concerns. Under the Land Development Code, the County has the obligation for any project to look at both water quality and water quantity. Allowing SJRWMD to enter into the development process is not appropriate for the overall review and maintenance of the County's stormwater system or in this case a private stormwater system.

In summary, I feel that there are two outstanding issues once the changes that were agreed upon with Mr. McCollum are made. These are the excavation of muck within the wetlands and the stormwater pipe through the 50' buffer into the 100 Year floodplain.

At your request, I have scheduled your appeal for September 22, 2009 at 9:30 a.m. Should you have any questions regarding this matter, please contact me at (407) 665-7397.

Sincerely,



Dori DeBord, AICP  
Planning and Development Director

Cc: Board of County Commissioners  
Cindy Coto, County Manager  
Joe Forte, Deputy County Manager  
Robert McMillan, County Attorney  
Jerry McCollum, PE, County Engineer  
Lee Shaffer, PE, Acting Development Review Manager



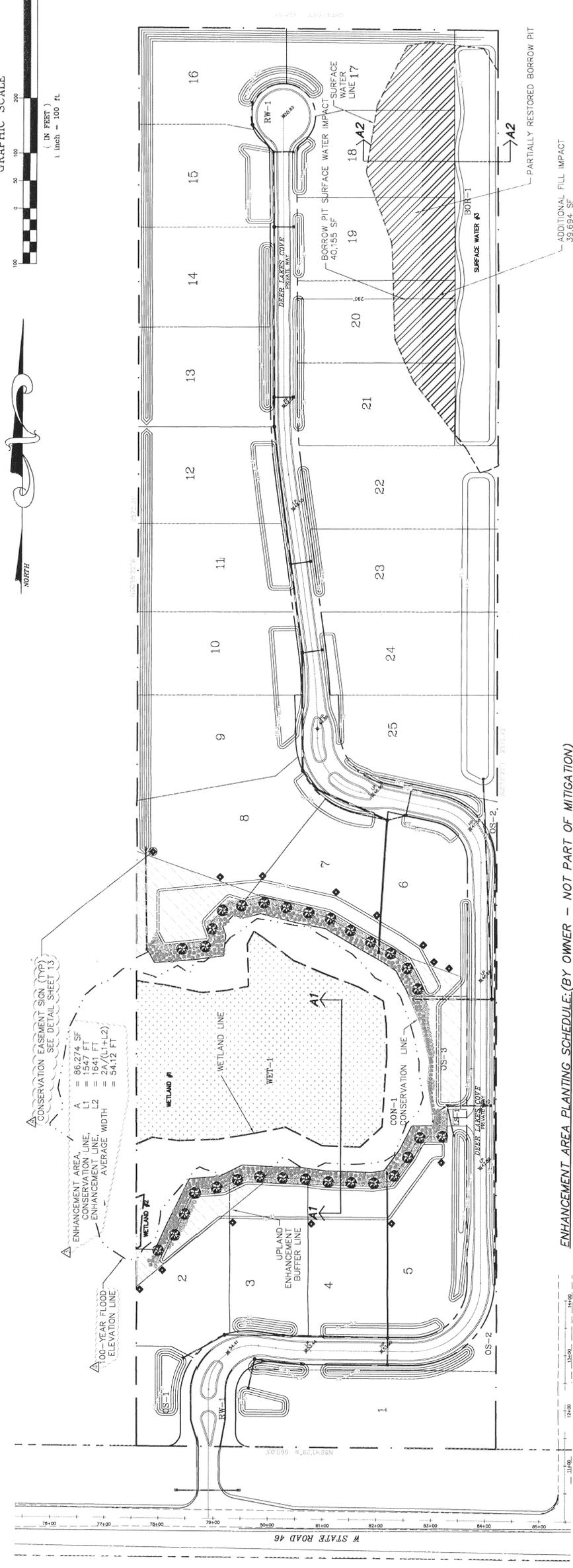
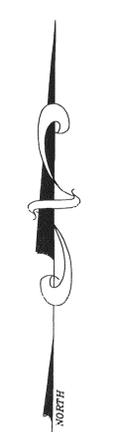
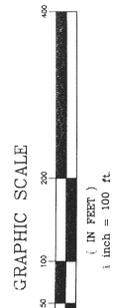
Revised By	THA
Date	11/17/08
Comments	PER SEMCO (2/2/09) AND SEMINOLE COUNTY (2/2/09)
Date	11/17/08
Comments	PER COUNTY COMMENTS (11/28/08)
Date	10/17/08
Comments	CHANGES PER CLIENT
Date	6/17/08
Comments	COMMENTS PER SEM. CO. (5/2/08) & SEMINOLE COUNTY (5/7/08)
Date	6/17/08
Comments	Revisions

Consulting Engineers-Planners  
 E.B. # 2910  
 Phone: 407-629-1061  
 Fax: 407-629-2855  
 Email: [info@haringlocklin.com](mailto:info@haringlocklin.com)  
 850 Courtland Street Orlando, Florida 32804  
**HARLING LOCKLIN & ASSOCIATES, INC.**

**WETLAND MITIGATION PLAN**  
 CONSTRUCTION PLANS  
**DEER LAKES**  
 SEMINOLE COUNTY, FLORIDA  
 SHEET 22, TWSHP 19 S, RNC 29 E

Drawn by:	TKR
Designed by:	EMH
Planned by:	MS/MS
Project:	High W. Harling, P.L.L.C. No. 1129
Job Number:	0618
Scale:	1" = 100'
Date:	APRIL, 2009

Sheet **3A** of **17**



ENHANCEMENT AREA PLANTING SCHEDULE (BY OWNER - NOT PART OF MITIGATION)

WETLAND #	WETLAND #2	SURFACE WATER #3 (BORROW PIT)	WETLAND #1 (MIRANDA LAKE)	TOTAL AREA	IMPACT AREA
972 SF	138,973 SF	40,155 SF	135,963 SF	3.12 AC	---
3.02 AC	3.19 AC	0.92 AC	---	---	---

**LEGEND**

- BOUNDARY LINE
- RIGHT OF WAY LINE
- CURB AND GUTTER
- WETLAND LINE
- SURFACE WATER LINE
- UPLAND BUFFER AREA
- WETLANDS
- SURFACE WATER IMPACTS
- MUCK PROBE LOCATION
- CONSERVATION SIGN

PROPERTY APPRAISER ID NUMBER 22-19-29-300-0040-0000 and 22-19-29-300-005A-0000  
**SEMINOLE COUNTY**  
 APPROVED FOR CONSTRUCTION

THIS APPROVAL IS SUBJECT TO SPECIFIC CONFORMANCE TO THE SEMINOLE COUNTY LAND DEVELOPMENT CODE AND ANY SPECIAL REQUIREMENTS OF THE BOARD OF COUNTY COMMISSIONERS. IT SHALL BE THE RESPONSIBILITY OF THE DEVELOPER TO CORRECT ANY DEFICIENCIES. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPLICABLE CODE REQUIREMENTS. ADMINISTRATIVE ACCEPTANCE OF THE DEVELOPER'S PLANS DOES NOT CONSTITUTE A WAIVER OF ANY CODE REQUIREMENTS NOR DOES IT RELIEVE THE DEVELOPER OF RESPONSIBILITY TO MEET THOSE REQUIREMENTS. THIS SPECIFIC APPROVAL IS VALID FOR A PERIOD OF ONE YEAR FROM THE DATE BELOW.

APPROVED \_\_\_\_\_  
 SEMINOLE COUNTY DEVELOPMENT REVIEW DEPARTMENT  
 DATE \_\_\_\_\_

**CONSERVATION SECTION 'A1-A1'**  
 HORIZONTAL SCALE: 1"=40'  
 VERTICAL SCALE: 1"=4'

**SURFACE WATER SECTION 'A2-A2'**  
 HORIZONTAL SCALE: 1"=40'  
 VERTICAL SCALE: 1"=4'

NOTE: ELEVATIONS VARY.







