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December 9, 2024

By Email Only

Mr. Chuck Varadin, Marion County Growth Services Director
Matthew Guy Minter, Marion County Attorney
2710 E. Silver Springs Blvd
Ocala, FL 34470

RE: Ag Lot Split

Dear Chuck and Guy:

This follows up on your lengthy (and detailed, thank you very much) email exchanges with Jon Harvey, Tim Brooker and Robbie Stroub of Tillman Engineering concerning a proposed Ag Lot Split under Section 2.16.1.b.(a) of the County LDC.

In anticipation that this letter may be distributed to others (and perhaps used at a DRC or County Commission meeting), I am including information that you already have so that this will be somewhat of a self-contained document. Specifically, I have attached the following:

- **Exhibit A** – The email that Tillman Engineering first sent to Chuck on October 16, 2024.
- **Exhibit B** – A two column table. In the left-hand column is the email that Chuck sent to Tillman Engineering on October 24, 2024, which included his and Guy’s comments. In the right-hand column are our responses to the County comments (to the extent a response is necessary).
- **Exhibit C** – A sketch of how we propose the Ag Lot Split.

In addition, I provide the following comments:

1. As you can see from **Exhibit B**, with one possible exception (concerning whether the private road needs to be owned by all lot owners or whether it may be owned by a homeowners association (“HOA”) of which the owners are members), we essentially agree with your interpretation. Concerning this latter issue:
 - 1.1. First, it is not clear that Guy disagrees with our contention in that he doesn’t address the HOA issue (perhaps because he did not realize HOAs could be used outside of the plat context; see discussion in paragraph 1.3).
 - 1.2. It is extremely common (in fact, I think it is the predominant pattern) for County-approved plats to provide that the roads within a subdivision are “private” roads or rights of way and are to be owned and maintained by the applicable HOA. Thus, the County certainly

recognizes and permits HOA-owned private roads in subdivisions, and there is no language in Section 2.16.1 that indicates they are not permitted in Ag Lot Splits. Rather, the same phrase – “private roads” – is used throughout the Code.

- 1.3. And there is no threat to the public welfare caused by permitting HOAs to own the private roads. Chapter 720, Florida Statutes (the law that primarily governs HOAs and has provisions for assessments of lots and foreclosure if the assessments are not paid), is not limited to platted communities.¹ Further, and perhaps most importantly, even if the HOA fails to operate properly, Section 2.16.1.B(8)(g) expressly requires that a County MSBU be established for the Ag Lot Split improvements.
 - 1.4. In fact, I think that, from the County’s perspective, it would be preferable for an HOA to own the roads in that it should be easier for the County to deal with one entity than, in our case, 19 separate owners.
 - 1.5. Finally, if the roads are owned by all the owners (presumably as tenants in common) and someone is injured on the road, all the owners would be subject to suit, regardless of whether they had anything to do with the injury.
2. The configuration on the sketch is the Ag Lot Split under Section 2.16.1.B(8) of the LDC that we propose to do after we do boundary adjustments pursuant to Section 2.16.1.B(3). As we indicate in **Exhibit B**, we believe (and I think you will agree) that the County has historically interpreted Section 2.16.1 so that, in Guy’s words, the topics are “independent of one another,” and we could follow a boundary adjustment with an Ag Lot Split.
 3. The Sketch includes a legend identifying the various parts.
 - 3.1. As you can see, there are 19 Lots which will be included in two phases: Phase I (bounded by pink dashes) and Phase II (bounded by green and pink dashes). I think these would be separate Ag Lot Splits under the LDC.
 - 3.2. An explanation is necessary as to why there are three private roads depicted on the Sketch: Tract A (highlighted in blue)², Tract B (highlighted in orange) and Tract C (highlighted in purple).
 - 3.2.1. Essentially, my client would build the Tract A road under all circumstances.
 - 3.2.2. Whether it would build Tract B or Tract C depends on the following:
 - a. As you can see from the aerial overlay components of the Sketch, proposed Lots 7A, 6A, 19B and 11B are part of an existing horse track operation. My client would like the flexibility to try to sell those lots together. If this happens, my client would also build the Tract C road.
 - b. On the other hand, if my client cannot sell most or all of those lots together, it would be in a situation where one or more of the northern lots (including Lot

¹ For example, the definition of “parcel” in Section 720.301 specifically includes unplatted lots and the definition of “community” (to be run by the HOA) contains no requirement that it be platted. In fact, I’m aware of at least one Ag Lot Split community – Gray Oaks – that has an HOA.

² Since Tract A is divided by Tract B, it may need to be separate Tracts but for purpose of this discussion, I am referring to all the delineated area as a single Tract.

6A) would have no or insufficient road frontage. In that scenario, my client would build the Tract B road.

3.2.3. Thus, we would certainly build Tract A and either Tract B or Tract C.

3.2.4. Further, if we built Tract C in hopes of selling the internal Lots together, and then could not do so, we would likely then build Tract B and propose to close Tract C. We believe that could be done in the Declaration that would govern the Tracts.

4. We believe that this configuration is consistent with Section 2.16.1 as interpreted by both of you (subject to the HOA issue discussed above) and would appreciate your reviewing it and getting back to us with any comments. We would then like to discuss with you what our next step could be so that we could “formalize” this arrangement before spending the additional money needed for engineering and surveying.

We look forward to hearing from you.

Sincerely,

GOODING & BATSEL, PLLC

/s/ Jimmy Gooding /s/

W. James Gooding III

WJG/ban

Attachments: as stated

cc: Client representatives and engineers (by email only with attachments)

P:\JG\DBT Ventures\Hwy 40 Property\Split\Letter to County re Lot Split Rev2.docx

**EXHIBIT A
TILLMAN ORIGINAL EMAIL**

Chuck,

Last week you had a conference zoom call with Tim, Robbie, Chris Howson, and myself concerning Ag Lot Splits. Below is a summary that we are seeking to do with our client. You indicated that you will verify with legal and confirm our ability to move forward. Thank you and looking forward to your response.

Our client is seeking to conduct three separate ag lot splits on three separate parcels. 20909-028-00 (A) consisting of 89.31 acres, 20909-031-00 (B) consisting of 83.44 acres, and 20909-029-00 (C) consisting of 244.23 acres. Resulting in a total of 416.98 acres. Each of these parcels are zoned A-1 with Rural Land Use. Currently under the platting process, a total of 41 ten acre tracts could be created, however by allowing the Ag Lot split option to proceed only 30 tracts total can be created. We recognize that boundary adjustments will need to be conducted in order to bring parcel A and B up to 100 acres in size. This will allow each parcel to create 10 tracts maximum.

In order to create the separate ag lot splits we need to know the County's stance on access issues. We recognize that the BCC has allowed Ag Lot Splits to continue so long as they conform to the criteria set forth in the Code, and no waivers are required. We would like the ability to apply one of three options without needing a waiver.

1. Easement access of 2640 feet can be added for a subsequent parcel/phase to end of each previous access easement from preceding parcels/phases, thus allowing enough distance over the 2640 to reach the southernmost parcel.
2. After creating a paved private road, which the Code specifically states EITHER OR for an easement or paved private road; can an easement not exceeding 2640' be utilized for a subsequent parcel/phase at the end of the paved road from a preceding phase?
3. Per Code a paved private road can be utilized without any restriction on length.

Please note that this is going to be a well done project. The goal is to create a high end product that accommodates patrons seeking to be close to WEC and involved in the horse industry. Also note, by allowing the Ag Lot Split we will be limited to 30 tracts maximum as opposed to platting which allows 41 tracts maximum. Each of them of course being minimum of ten acres in size. Furthermore, the time and cost involved plays a significant role. Ag Lot Split costs much less, and takes less time which was the intent to create the Ag Lot Split Process.

Please see attached map. The Teal color line represents approximately 2640' in distance. The dashed red lines represent the approximate enhancement to occur in order to bring parcels A & B to hundred acres minimum if desired.



**EXHIBIT B
COUNTY EMAIL AND DBT RESPONSE**

	COUNTY EMAIL	DBT RESPONSE
1.	<p>I know you need an answer quickly. So rather than interpreting and rewriting/simplifying Guy's comments, I'm copying Guy's comments & questions directly in italics below. But basically he is asking what gives each lot owner the right to use the paved private road? If they are not a joint owner of the road, then they need an easement, and then all of the requirements of (f) come into play. On that point, Guy's opinion would be that you can't stack 2,640 easement upon easement, upon easement, and I would agree. But, the easement requirements are not imposed on the "paved private road."</p>	<p>We agree and are using the private road alternative.</p>
2.	<p>Guy had some other questions and items to consider. If you have questions, please let me know.</p> <p>Guy's full comments are in <i>italics</i> below:</p>	<p>No response necessary ("NRN").</p>
3.	<p><i>As we have discussed previously, the "exception" from the Sec. 2.16.1 A. platting requirement, in Sec. B. ["Excepted Divisions of Land"] is open to more than one interpretation.</i></p>	<p>Agreed but believe that County has interpreted this Section consistently in a manner similar to this interpretation.</p>
4.	<p><i>For instance, are the topics covered in items (1) through (10) each independent of one another? For instance, (1) almost reads as if it applies to all "excepted divisions of land": "A parent tract may be subdivided one time into one additional tract . . ." If that applied to all exceptions, then the two DUNNE parcels, 20909-028-00, and 20909-031-00 have both apparently already been subdivided from a larger parent tract. The Property Appraiser indicates that 20909-028-00 was from parent tract 20909-027-00; and 20909-031-00 was from parent tract 20909-029-00, the WATCHING PARK FARM parcel.</i></p>	<p>County has interpreted the topics to be independent of each other. Specifically, the County has allowed people to first do boundary adjustments and then Ag Lot Splits.</p>
5.	<p><i>If each of the items under Sec. 2.16.1.B. are intended to be independent and mutually exclusive from one another, can you use more than one exception? For instance, Mr.</i></p>	<p>County has historically allowed this.</p>

	<i>Harvey indicates there would be a need for “boundary adjustments” for the two DUNNE parcels, to get them up to 100 acres each. But, the “boundary adjustments” are exception (3) under 2.16.1.B.</i>	
6.	<i>Under 2.16.1.B.(8) Agricultural Lot Splits outside the Urban Growth Boundary, under (f)7, it indicates that “Flag lots are prohibited.” It appears that 2 or 3 of the subject tracts might already be considered “flag lots,” as defined under the LDC.</i>	This prohibition should not be a problem. First, we are not creating flag lots with this division. Secondly, the flags are being converted to private roads, which are not considered to be prohibited flags.
7.	<i>Mr. Harvey indicates that his proposal will be “limited to 30 tracts” under Ag Lot Splits. Apparently, he is proposing boundary adjustments so you could get 10 – 10 acre tracts each from the two Dunne tracts, and then that leaves over 200 acres still in the WATCHING PARK FARM tract – so, are they then only going to carve out 10 lots out of that 200 acres, for an average of 20 acres each?</i>	See attached Sketch. As you can see, we are now proposing 19 lots.
8.	<i>To your primary question about ACCESS, 2.16.1.B. (e) refers to each lot fronting “on a paved private road” OR “an access easement.” Then (f) gives a lot of specific details if an easement is utilized. But, consider this: A lot may front on a “paved private road,” but unless the paved private road is a separate legal parcel with all of the lots that will use the private road having a joint ownership in the road, OR all of the lot owners have an easement to utilize the private road, . . . the fact that their lot “fronts on” a paved private road does not give the owner of that lot the right to use the paved private road.</i>	<p>We agree with Guy’s comment that if a lot owner has the right to use a paved private road by way of easement, it is in essence an easement and subject to the limits on length set forth in Section 2.16.1.b(e).</p> <p>We do not agree, however, that the only alternative is that the private road must be under “joint ownership” by the lot owners. Rather, we believe there is another alternative: the road could be owned by a homeowners’ association (“HOA”) of which all of the lot owners are members. The Declaration establishing the HOA would provide for its members to be able to use the road. See discussion in cover letter.</p>
9.	<i>When a lot abuts a PUBLIC ROAD, the lot owner had a right to access that PUBLIC ROAD. In the case of a lot that abuts a PRIVATE ROAD, unless the lot owner EITHER is a joint owner of that road, OR he has an easement to use the road, then he has no legal right to use it. My point is, even though paragraph (e) refers to the paved private road or access easement – the key legal QUESTION is what gives that lot owner the</i>	Agreed except that we believe that the HOA is an alternative to joint ownership with the Declaration establishing the lot owner’s right to use the road.

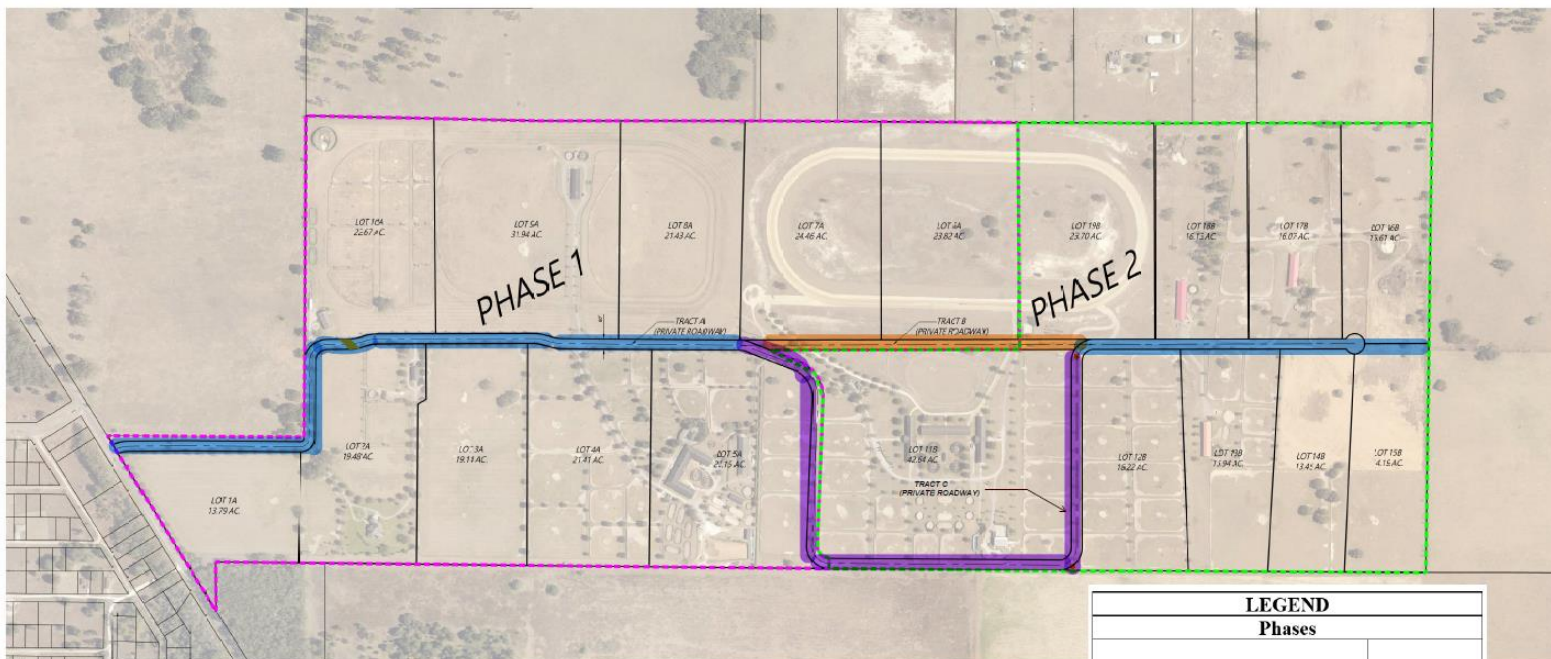
	<i>right to use the paved private road. If he is not a joint owner of the road, then he has to have an easement, and then all of the requirements of (f) come into play.</i>	
10.	<i>On that point, my opinion would be that you can't stack 2,640 easement upon easement, upon easement.</i>	NRN since we are not using easements.
11.	<i>But, the easement requirements are not imposed on the "paved private road." So, if everyone has an ownership interest in the paved private road, then the paved private road apparently does not have a maximum distance.</i>	Agreed with caveat that the HOA should also be able to own the private road.
12.	<i>If all of this seems to be somewhat tortured, I agree. If you have questions about this, I will attempt to answer.</i>	It is tortured because the Code is tortured.

EXHIBIT C SKETCH

MARION COUNTY AGRICULTURAL LOT SPLIT
SECTION 36, TOWNSHIP 15 SOUTH, RANGE 19 EAST AND
SECTION 1, TOWNSHIP 16 SOUTH, RANGE 19 EAST
MARION COUNTY, FLORIDA

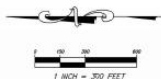
BCC EASEMENTS BOOK _____ PAGE _____

WATCHING PARK FARM



SITE DATA:
PARCEL NO: 20909-028-00
PARCEL NO: 20909-031-00
PARCEL NO: 20909-029-00

LEGEND	
Phases	
	Phase 1
	Phase 2
Private Roads	
	Tract A
	Tract B
	Tract C



REV/PC	DATE	DRAWN	REASON	CHK



LOCATED IN SECTIONS 36,
TOWNSHIP 15 SOUTH, RANGE 19 EAST
MARION COUNTY, FLORIDA

MARION COUNTY AGRICULTURAL LOT SPLIT
FOR
WATCHING PARK FARM

REV/PC	DATE	BY	APPROVED
N/A	N/A		
11/19/2024	N.A.	GR	

JOB NO:
241549P
SCALE:
1" = 300'

1
OF
1

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