



MANATEE COUNTY
FLORIDA

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BOARD RECORDS

January 19, 2011

Lauralee Westine, Esq.
800 Tarpon Woods Blvd., Suite E-1
Palm Harbor, FL 34685
Sent via email: lauralee@westinelaw.com

Re: SP-09-03 – PALM AIRE CC @ SARASOTA/FL-5081 CELL TOWER

Dear Ms. Westine:

Enclosed are the Notice of Intent and Draft Final Order issued by Hearing Officer H. Hamilton Rice, Jr. on behalf of Manatee County for Special Permit No. SP-09-03, which was heard at the proceedings on December 15, 2010 and January 12, 2011.

Under the Manatee County Land Development Code, Section 505.4.3.2 regulations, the parties of record have five (5) days, excluding Saturday, Sunday, and County holidays in which to respond to the report and proposed conditions. Should you wish to file a response, it shall be filed with the Planning Director.

Within ten days, excluding Saturday, Sunday and County holidays, of the issuance of the Notice of Intent, after review of any responses to the proposed Final Order, the Hearing Officer shall either issue a Final Order or reopen the public hearing pursuant to Section 502.8.7.3 of the Land Development Code.

If you have any questions please call me at 748-4501x6878.

Sincerely,

Bobbi Roy
Planning Coordinator

Planning Department
Mailing Address: P. O. Box 1000 * Street Address: 1112 Manatee Avenue West, 4th Floor, Bradenton, FL 34206-1000
PHONE: 941.749.3070 * FAX: 941.749.3071
www.mymanatee.org

/br
Enclosure

cc: Hearing Officer H. Hamilton Rice, Jr.
Sarah Schenk/CAO
Bill Clague/CAO
Sharon Tarman, Planner
Bob Schmitt, AICP, Planning Services Manager
Lisa Werner
Bob O'Connell
Linda Semilof
Debra Chapman – via email
Esther Halt
Jim LaRue
Robert Bennett
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James Long
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Cynthia Kahn
Sheila Mentel
Clyde Lockie
Miranda Oswald
Harry Steltmann
Richard Matheson
Les Ruggiero
Peggy Dessaint
Board Records
Case File

FILED FOR RECORD
R. B. SHORE

**NOTICE OF INTENT TO DENY
SP-09-03**

2011 JAN 18 AM 11:30

PALM AIRE CC @ SARASOTA/FL-5081 CELL TOWER

CLERK OF THE CIRCUIT COURT

This Notice is to all parties of record for Special Permit Application No. SP-09-03, to deny an unmanned unoccupied 150' monopole-type Personal Wireless Service Facility (PWSF). It is the intent of the Hearing Officer to deny this application. The Findings of Fact, Conclusions of Law, and Conditions for Approval are contained in the attached draft Final Order.

Pursuant to Section 505.4.3 of the Manatee County Land Development Code which states in part, the following shall apply:

"After issuance of the NOTICE OF INTENT, parties of record shall have five (5) days, excluding Saturday, Sunday, and County holidays, in which to respond to the report and proposed conditions. Responses shall be filed with the Planning Director.

Within ten (10) days, excluding Saturday, Sunday, and County holidays, of the issuance of the NOTICE OF INTENT, after review of any responses to the Notice and proposed Final Order, the Hearing Officer shall:

1. Issue the Order denying the Special Permit; or
2. Reopen the public hearing pursuant to Section 502.6.6.6.

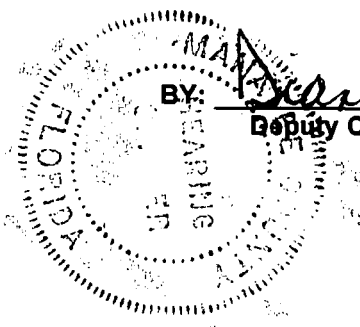
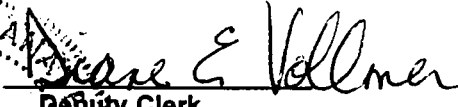
If, after reviewing the responses, the Hearing Officer determines that there is substantial new information which would materially affect the decision and which was not reasonably available at the time of the public hearing, he or she shall reopen the public hearing."

ISSUED ON BEHALF OF MANATEE COUNTY, this 12th day of January, 2011.

MANATEE COUNTY, FLORIDA


Manatee County Hearing Officer

**ATTEST: R. B. SHORE
Clerk of the Circuit Court**


BY: 
Deputy Clerk

**SPECIAL PERMIT NO. SP-09-03
PALM AIRE CC @ SARASOTA/FL-5081 CELL TOWER**

FINAL ORDER OF MANATEE COUNTY HEARING OFFICER H. HAMILTON RICE, JR. ON BEHALF OF MANATEE COUNTY DENYING A SPECIAL PERMIT NO. SP-09-03 TO ALLOW/DENY AN UNMANNED UNOCCUPIED 150' MONOPOLE-TYPE PERSONAL WIRELESS SERVICE FACILITY (PWSF) LOCATED AT 5625 WHITFIELD AVENUE, SARASOTA; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE (38.62 ± acres)

WHEREAS, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended; and

WHEREAS, pursuant to the Land Development Code, Manatee County Ordinance 90-01, as amended, the Hearing Officer has the authority to grant Variances; and

WHEREAS, Palm Aire Country Club at Sarasota (Vertex Development, LLC – Lease Holder) requested a Special Permit Variance to allow/deny an unmanned unoccupied 150' monopole-type Personal Wireless Service Facility (PWSF) in the RSF 4.5/WP-E/ST (Residential Single-Family 4.5 dwelling units per acre/Evers Watershed Protection/Special Treatment Overlay) zoning district; and

WHEREAS, on December 15, 2010 and January 12, 2011, the aforementioned Hearing Officer held public hearings to receive the staff, applicant, and public comment, and argument regarding the proposed Special Permit to allow/deny an unmanned unoccupied 150' monopole-type Personal Wireless Service Facility (PWSF).

NOW, THEREFORE, after consideration of the application for Special Permit 09-03 requested by Palm Aire Country Club at Sarasota (Vertex Development, LLC – Lease Holder) the Hearing Officer makes the following Findings of Fact and Conclusions of Law and issues the Final Order as follows:

Section 1. Findings of Fact. The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

- A. The site is in the RES-9 (Residential Single-Family – 9 dwelling units per acre) Future Land Use Category.

- B. The request is to permit a Special Permit to allow an unmanned unoccupied 150' monopole-type Personal Wireless Service Facility (PWSF) at 5625 Whitfield Avenue, Bradenton.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation and the staff report presented, and a review of the applicable provisions of the Manatee County Comprehensive Plan and Manatee County Land Development Code, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the Land Development Code.
- B. The applicant has the burden of proving entitlement to the Special Permit it seeks. Irvine v. Duval County Planning Commission, 495 So.2d 167 (Fla. 1986); Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).
- C. The proposed use is inconsistent with the Comprehensive Plan Policies 2.9.1 which creates and maintains strong communities and Policy 2.9.2 which requires adequate measures that are consistent with the community character of the immediate neighborhood of all proposed development for compatibility and appropriate timing.
- D. The applicant has met present requirements of the Manatee County Comprehensive Plan and present requirements for the issuance of a Special Permit pursuant to the Manatee County Land Development Code, Section 704.59.3.13.16.
- E. Adequate measures have been taken to provide ingress and egress to the proposed use in a manner that minimizes traffic congestion in the public streets.
- F. Adequate measures have been taken to ensure that the proposed use is consistent with the community character of the immediate neighborhood.
- G. There are no known archaeological, historical, or cultural resources on-site.
- H. Adequate provisions have been made for buffers, landscaping, public open space, and other improvements associated with the proposed use.
- I. The installation of the required screening and landscaped buffers will minimize the adverse effects of the proposed use on adjacent residential properties to the north, south, east and west.
- J. The applicant has not met its burden of proof by competent evidence and is not entitled to the Special Permit.

Section 3. Order. Based upon the foregoing, a Special Permit is hereby denied to Palm Aire County Club at Sarasota (Vertex Development, LLC – Lease Holder) and more particularly described in Exhibit "A" attached hereto and incorporated herein, for a Special Permit allow/deny an unmanned unoccupied 150' monopole-type Personal Wireless Service Facility (PWSF).

Section 4. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decisions shall in no manner affect the remaining portions or sections of the Special Permit which shall remain in full force and effect.

Section 5. Effective Date. The effective date of this Special Permit shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY this ____ day of _____, 2011..

MANATEE COUNTY, FLORIDA

BY: _____, as
Hearing Officer for Manatee County

ATTEST: R. B. Shore,
Clerk of the Circuit Court

BY: _____
Deputy Clerk

EXHIBIT "A"

(Starting on next page)



PROPERTY DESCRIPTIONS:

PARENT PARCEL
(OFFICIAL RECORD BOOK 1132, PAGE 3934)

MAINTENANCE AREA:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 34, TWP. 35S , RGE 18 E., THENCE S 89°37'09" W, ALONG THE SOUTH LINE OF SAID SECTION 34, 40.00 FT , THENCE N 00°22'51" W, PERPENDICULAR WITH SAID SOUTH SECTION LINE, 50.00 FT. TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND KNOWN AS THE "CHURCH PARCEL"; THENCE S 89°37'09" W, ALONG THE SOUTH LINE OF SAID "CHURCH PARCEL" AND THE WESTERLY EXTENSION THEREOF, ALSO BEING THE NORTHERLY LINE OF A 50 00 FT. MANATEE COUNTY R/W, FOR "UNIVERSITY PARKWAY" (COUNTY LINE ROAD), AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 6, PAGE 620, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, 1955 57 FT. TO THE INTERSECTION WITH THE EAST R/W LINE OF "WHITFIELD AVENUE", THENCE N 00°55'24" W, ALONG THE EAST R/W LINE OF SAID "WHITFIELD AVENUE", 3158 15 FT. FOR A POINT OF BEGINNING; THENCE CONTINUE N 00°55'24" W, ALONG SAID EAST R/W LINE, 360.00 FT , THENCE N 89°04'36" E, PERPENDICULAR WITH SAID EAST R/W 360.00 FT., THENCE S 22°25'31" E, 135 00 FT , THENCE S 71°40'47" E, 218 16 FT., THENCE S 18°19'23" W, 172 11 FT , THENCE S 89°04'36" W, PERPENDICULAR WITH SAID EAST R/W LINE OF "WHITFIELD AVENUE", 558 72 FT. TO THE POINT OF BEGINNING, BEING AND LYING IN SECTION 34, TWP. 35S., RGE. 18E., MANATEE COUNTY, FLORIDA

CONTAINING 4 15 ACRES MORE OR LESS.

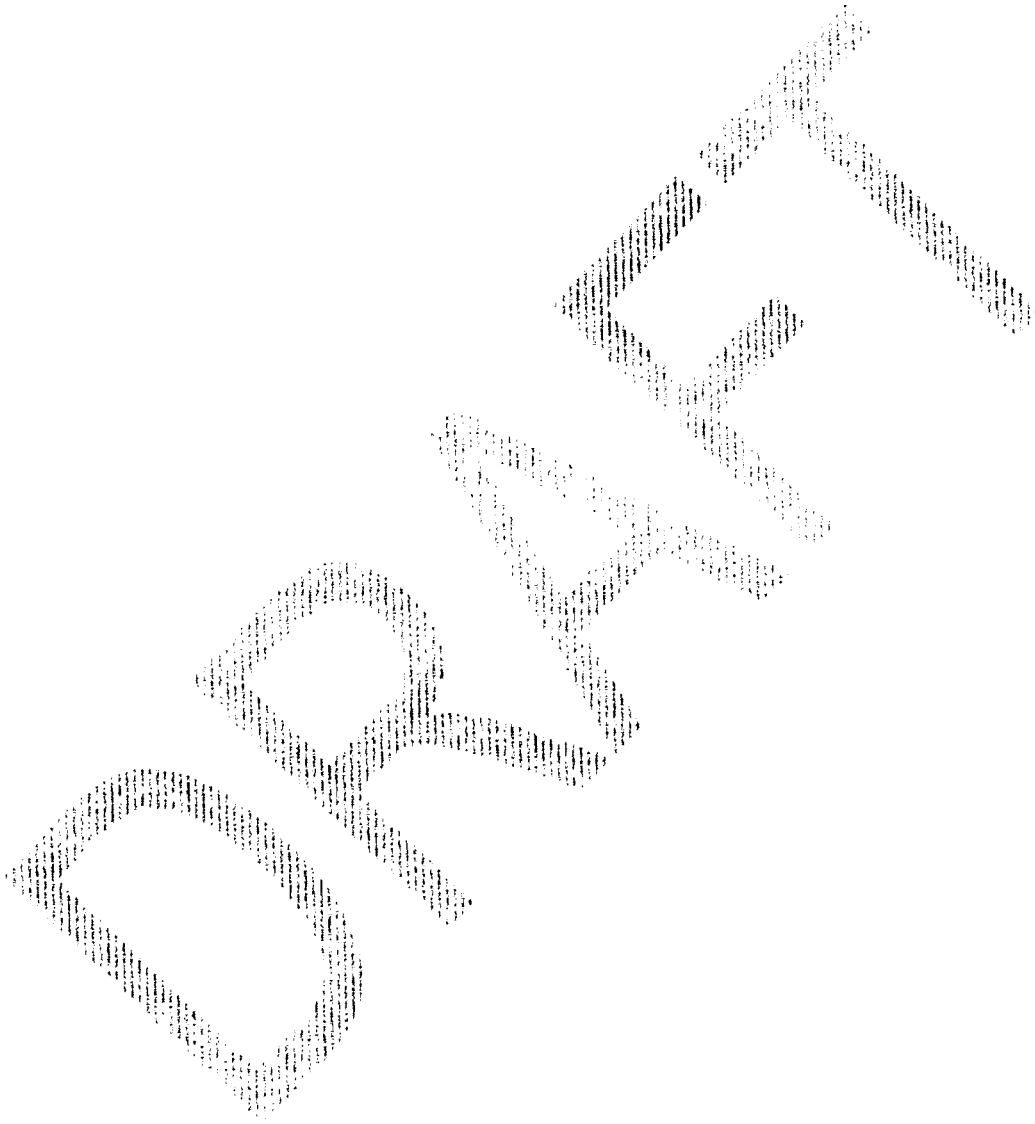
SUBJECT TO A FLORIDA POWER AND LIGHT COMPANY EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 1021, PAGE 2283, AFORESAID PUBLIC RECORDS.

FURTHER SUBJECT TO A 50 FT. X 50 FT LIFT STATION EASEMENT AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1128, PAGE 3520 PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, IN THE NORTHWEST CORNER THEREOF

AND

PALM-AIRE GOLF COURSE PARCEL 8

COMMENCE AT THE CENTERLINE INTERSECTION OF "WHITFIELD AVENUE" AND "COUNTRY CLUB WAY", SAID POINT BEING MORE FULLY DESCRIBED AS A NAIL IN DISC STAMPED "PCP 858", LYING N 00°55'24" W, 5725.78 FT ALONG THE CENTERLINE OF SAID "WITFIELD AVENUE", FROM ITS INTERSECTION WITH THE SOUTH LINE OF SECTION 34, TWP. 35 S , RGE. 18 E., THENCE RUN N 89°05'54" W. ALONG SAID CENTERLINE OF "COUNTRY CLUB WAY", 60.00 FT , TO THE INTERSECT ION WITH THE NORTHERLY EXTENSION OF THE EAST R/W OF SAID "WHITFIELD AVENUE", THENCE S 00°55'24" E, ALONG SAID NORTHERLY EXTENSION, 30 00 FT. TO THE INTERSECTION OF THE SOUTH R/W OF SAID "COUNTRY CLUB WAY" AND THE EAST R/W OF SAID "WHITFIELD AVENUE", FOR A POINT OF BEGINNING; THENCE CONTINUE S 00°55'24" E, ALONG SAID EAST R/W, 2128 18 FT., TO THE NORTH LINE OF A PARCEL OF LAND KNOWN AS THE "MAINTENANCE AREA"; THENCE RUN ALONG THE NORTH AND EAST LINES OF SAID "MAINTENANCE AREA", THE FOLLOWING CALLS: N 89°04'36" E, 360.00 FT., THENCE S 22°25'31" E , 135.00 FT., THENCE S 71°40'47" E, 218.16 FT.; THENCE S 18°19'23" W, 172 11 FT., TO THE NORTHEAST CORNER OF A PARCEL OF LAND KNOWN AS "DEVELOPMENT AREA NO. 2"



THENCE RUN ALONG THE EAST AND SOUTH LINES OF SAID "DEVELOPMENT AREA NO. 9", THE FOLLOWING CALLS: THENCE CONTINUE S 18°19'23" W, 345.00 FT.; THENCE S 00°55'24" E, 405 FT., THENCE S 89°04'36" W, 445 00 FT., TO THE INTERSECTION WITH THE EAST R/W OF SAID "WHITFIELD AVENUE"; THENCE S 00°55'24" E, ALONG SAID EAST R/W, 250.00 FT , TO THE INTERSECTION WITH THE NORTHWEST CORNER OF "DEVELOPMENT AREA NO 10", AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1084, PAGE 522, AFORESAID PUB RECORDS, THENCE RUN ALONG THE NORTH LINE OF SAID "DEVELOPMENT AREA NO 10", TH FOLLOWING CALLS. N 89°04'36" E, 115.00 FT., THENCE S 40°55'24" E, 280.00 FT.; THENCE S 67°25'24" E, 250 05 FT , THENCE S 86°37'51" E, 507 98 FT., THENCE N 89°37'09" E, 330.00 FT TO THE INTERSECTION WITH THE WEST R/W OF A 50 FT. PUBLIC ROAD AS DESCRIBED AND RECORDED ON OFFICIAL RECORDS BOOK 1083, PAGES 3577 THRU 3579, AFORESAID PUBLIC RECORDS, THENCE N 00°22'51" W, ALONG SAID R/W, 100 00 FT. TO A POINT ON THE SOUTHERLY LINE OF "DEVELOPMENT AREA NO 16", AS DESCRIBED AND RECORDED I N OFFICIAL RECORDS BOOK 1111, PAGE 3656, AFORESAID PUBLIC RECORDS; THENCE RUN ALONG THE SOUTERLY AND WESTERLY LINES OF SAID "DEVELOPMENT AREA NO 16", THE FOLLOWING CALLS: CONTINUE N 00°22'51" W, 59 90 FT.; THENCE N 79°52'51" W, 795.54 FT ; THENCE N 00°07'09" E, 228.00 FT ; THENCE N 39°37'09" E, 300 00 FT ; THENCE N 16°22'51" W, 264.00 FT ; THENCE N 13°37'09" E, 399.90 FT.; THENCE S 70°40'16" E, 168.82 FT. TO THE INTERSECTION WITH THE SOUTHWESTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF "BROADMOOR PINES" SUBDIVISION, AS RECORDED I N PLAT BOOK 21, PAGES 151 THRU 153, AFORESAID PUBLIC RECORDS, THENCE N 46°22'54" E, ALONG SAID SOUTHEASTERLY LINE A ITS SOUTHWESTERLY EXTENSION, 205 00 FT TO THE MOST SOUTHERLY CORNER OF SAID "BROADMOOR PINES" SUBDIVISION; THENCE RUN ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID "BROADMOOR PINES" SUBDIVISION, THE FOLLOWING CALLS: N 30°00'00" W, 50 00 FT ; THENCE N 66°24'35" W, 177 45 FT ; THENCE N 43°09'09" W, 219.32 FT.; THENCE N 69°40'37" W, 575 85 FT ; THENCE N 16°41'57" W, 104.40 FT ; THENCE N 08°23'00" E, 480 13 FT , THENCE N 00°00'00" E, 655.00 FT., THENCE N 06°38'05" E, 445 07 FT TO THE INTERSECTION WITH THE SOUTHERLY R/W LINE OF SAID "COUNTRY CLUB WAY", SAID POINT BEING ON THE ARC OF A CURVE WHOSE RADIUS POINT LIES S 49°55'07" W, 475.21 FT ; THENCE RUN NORTHWESTERLY ALONG SAID R/W LINE AND THE ARC OF SAID CURVE THROUGH A CENTR ANGLE OF 50°49'08", A DISTANCE OF 421.49 FT , TO THE POINT OF BEGINNING, BEING AND LYING IN SECTION 27 AND 34 TWP 35 S , RGE. 18 E , MANATEE COUNTY, FLORIDA.

CONTAINING 34.47 ACRES MORE OR LESS

SUBJECT TO A MANATEE COUNTY DRAINAGE EASEMENT AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 1083, PAGES 3575 & 3576, AFORESAID PUBLIC RECORDS

FURTHER SUBJECT TO A FLORIDA POWER AND LIGHT COMPANY EASEMENT AS DESCRIBED AND RECORDED I N OFFICIAL RECORDS BOOK 1021, PAGE 2283, AFORESAID PUBLIC RECORDS.

FURTHER SUBJECT TO A SANITARY SEWER FORCE MAIN EASEMENT (PROPOSED), RUNNING FROM A PUMPING STATION LOCATED IN DEVELOPMENT AREA NO.16, OUT TO THE EAST R/W OF "WHITFIELD AVENUE".



PROPERTY DESCRIPTIONS (CONTINUED):

TOWER PARCEL
(PREPARED BY THIS OFFICE)

THAT PART OF THE PALM-AIRE COUNTRY CLUB MAINTENANCE AREA AS PER DESCRIPTION RECORDED IN OFFICIAL RECORD BOOK 1132, PAGE 3967 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 34 TOWNSHIP 35 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA, THENCE SOUTH 89°37'09" WEST ALONG THE SOUTH LINE OF SAID SECTION 34 FOR 40 00 FEET; THENCE NORTH 00°22'51" WEST FOR 50.00 FEET TO AN INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF UNIVERSITY PARKWAY/COUNTY LINE ROAD (A 50 FOOT WIDE RIGHT OF WAY), AS PER DESCRIPTION RECORDED IN OFFICIAL RECORD BOOK 6, PAGE 620, OF THE PUBLIC RECORDS OF SAID MANATEE COUNTY, THENCE SOUTH 89°37'09" WEST ALONG SAID NORTH RIGHT OF WAY LINE FOR 1955 57 FEET TO AN INTERSECTION WITH THE EAST RIGHT OF WAY LINE OF WHITFIELD AVENUE (A 120 FOOT WIDE RIGHT OF WAY), THENCE NORTH 00°55'24" WEST ALONG SAID EAST RIGHT OF WAY LINE FOR 3158 15 FEET TO THE SOUTHWEST CORNER OF THE PALM-AIRE COUNTRY CLUB MAINTENANCE AREA AS PER THE AFORESAID DESCRIPTION RECORDED IN OFFICIAL RECORD BOOK 1132, PAGE 3967 OF THE PUBLIC RECORDS OF SAID MANATEE COUNTY, THENCE CONTINUE NORTH 00°55'24" WEST ALONG SAID EAST RIGHT OF WAY LINE AND ALONG THE WEST LINE OF SAID PALM-AIRE COUNTRY CLUB MAINTENANCE AREA FOR 279.85 FEET, THENCE NORTH 89°04'36" EAST FOR 211 41 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, THENCE NORTH 00°55'40" WEST FOR 60 00 FEET; THENCE NORTH 89°04'20" EAST FOR 80.00 FEET; THENCE SOUTH 00°55'40" EAST FOR 60 00 FEET; THENCE SOUTH 89°04'20" WEST FOR 80 00 FEET TO THE AFORESAID POINT OF BEGINNING

SAID PARCEL OF LAND CONTAINING 4,800 SQUARE FEET, MORE OR LESS