

POLK COUNTY DEVELOPMENT REVIEW COMMITTEE STAFF REPORT

DRC Date:	January 5, 2023	Level of Review:	4
PC Date:	June 7, 2023	Type:	LDC Text Amendment
BoCC Date:	August 1, 2023	Case Numbers:	LDCT-2023-5
	October 3, 2023	Case Name:	5-Acre Rounding Error
Applicant:	Polk County	Case Planner:	Malissa Celestine, Planner II

Request:	This is a County-initiated, Land Development Code text amendment to modify Chapter 2, Section 205, Footnotes for Table 2.2, and Section 208.A, to address the calculation of density in rural and suburban development areas and minimum lot size. This is related to LDCPAL-2023-3, a Comprehensive Plan text amendment to modify policy 2.119-A3 subsection F, addressing the calculation of density in rural and suburban development areas; amending policy 2.120-A4 subsection A and, policy 2.121-A2 subsection A to address minimum lot size calculations.
Location:	Agricultural Residential Rural (A/RR) and Residential Suburban (RS) outside the Green Swamp Area of Critical State of Concern (ACSC).
Property Owner:	n/a
Parcel Size (Number):	n/a
Development Area:	Rural Development Area (RDA) Suburban Development Area (SDA)
Nearest Municipality:	n/a
DRC Recommendation:	Approval
Planning Commission Vote:	Pending Hearing

Summary of Analysis

This is a County-Initiated request for two (2) Level 4 Reviews:

- **LDCPAL-2023-3** Comprehensive Plan text amendment modifying policies in section 2.119, 2.120 and 2.121 to provide minimum flexibility in calculations of one dwelling unit per five acres (1 du/5 ac). This applies solely to Agricultural/ Residential Rural (A/RR) and Residential Suburban (RS) Future Land Use Designations outside the Green Swamp Area of Critical State Concern (ACSC).
- **LDCT-2023-5** Land Development Code (LDC) text amendment modifying Section 208 to address the calculation of density Agricultural/ Residential Rural (A/RR) and Residential Suburban (RS) Future Land Use Designations which are not clearly outlined in Chapter 2, Section 205, and Section 208.

The Land Ordinance of 1785 defined how ownership of vast land in the Northern territory would be legally transferred from the Federal Government to state and individual landowners. Thus, the foundation of land policies evolved and introduced the Rectangular Survey System. This was a surveying method intended for the simplicity of dividing land by creating sections of 640-acres. The idea was if a section was divided into halves and quarters, it would equate to a whole number of acres or in this case, five (5) acres. Prior to modern technology this method seemed most practical,

and surveyors used a compass and chain to determine section lines. For many years, legal descriptions were used to measure lots sizes with the end caveat being plus or minus a particular acreage or square footage. In more recent years cadastral maps showed the actual boundaries and the inaccuracies of original surveys.

The provisions of the Comprehensive Plan and Land Development Code require properties located in Agricultural/ Residential Rural (A/RR) and Residential Suburban (RS) designations to have a minimum of five (5) acres for development. The typical layout of a five (5) acre lot, is rectangular in shape with approximately 330 feet of road frontage and about 660 feet in depth. However, with development comes infrastructure, and with infrastructure comes roads and the necessity to dedicate land for said development. In some instances, this also results in a lot no longer meeting the minimum lot size required for development.

With the advancement of technology, staff realized a predated error existed. Thus, staff has determined that it would be in the best interest of the citizens within unincorporated Polk County to create a “fudge factor” to remedy the shortcomings in acreage caused by surveying inadequacies and land dedication. This adjustment does not negate other requirements for a lot to be developed. It simply gives flexibility for lots not meeting five (5) acres due to right of way dedication or inaccurate measurements but were otherwise created with the intent of being five (5) acres.

Staff Recommends approval of LDCPAL-2023-3 and LDCT-2023-5, finding both amendments are consistent with the Comprehensive Plan and Land Development Code, respectively.

Relevant Sections, Policies, and/or Regulations to Consider:

Policy 2.119-A3 subsection F: Residential Density Consumptions

Policy 2.120-A4 subsection A: Residential Suburban Development Criteria

Policy 2.121-A2 subsection A: Agriculture/Residential Rural Development Criteria

Chapter 2, Section 205, Footnotes for Table 2.2

Chapter 2, Section 208.A

Request and Legal Status

- **LDCPAL-2023-3** Comprehensive Plan text amendment to address and modify policy 2.119-A3 subsection F, policy 2.120-A4 subsection A and, policy 2.121-A2 subsection A to address minimum lot size calculations in Rural Development Areas (RDA) and Suburban Development Areas (SDA) outside the Green Swamp Area of Critical State of Concern (ACSC).
- **LDCT-2023-5** Land Development Code text amendment to modify the language in Chapter 2, Section 205, Footnotes for Table 2.2, and Section 208.A as it pertains to minimum lot size calculations in Rural Development Areas (RDA) and Suburban Development Areas (SDA) outside the Green Swamp Area of Critical State of Concern (ACSC).

Data and Analysis Summary

Staff surveyed the counties along the I-4 corridor, abutting counties, similar counties, and the two largest cities in Polk. This research revealed that each municipality had their own way to remedy lot size nonconformities through development orders, variances, administrative waivers, and determinations. See *Table 1*. Unincorporated Polk County is unique as it is the fourth largest county

within the state of Florida. It is also considered to be one of the fastest growing counties in Florida. With individuals looking for an escape of the hustle and bustle and incorporate the outdoors into daily living habits, land has become an even hotter commodity since the pandemic. That said, this amendment will provide minimum flexibility in calculations of one dwelling unit per five acres (1 du/5 ac) within the unincorporated areas of the County on Residential Suburban (RS) and Agricultural/Residential Rural (A/RR) Future Land Use Map designated lands, excluding the Green Swamp Area of Critical State Concern.

Findings of Fact

- *The request is a Land Development Code (LDC) text amendment to Chapter 2, Section 205, Footnotes for Table 2.2 and Chapter 2, Section 208.A to create flexibility in the calculation of density in rural and suburban development areas pertaining to minimum lot size calculations; related to LDCPAL-2023-3.*
- *This amendment only applies to properties located outside the Green Swamp Area of Critical State Concern (ACSC).*
- *LDC Chapter 2, Section 205, Table 2.2 and LDC Chapter 2, Section 208.A provides specific density and dimensional regulations for standard districts. These section in its entirety along with the recommended changes are listed in the attached ordinance.*
- *Policy 2.119-A3 subsection F, Density Computations states:*

“Polk County shall use gross densities when determining residential densities. Gross density is determined by dividing the total number of dwelling units on the site by the total area of the residential site, exclusive of water bodies. The area for computing gross density shall include all public and institutional land uses (e.g. internal streets, sewer plants, schools, parks, etc.) located within the site, as well as one-half of the right-of-way area for perimeter "local" streets, and one-fourth of the right-of-way area for perimeter local street intersections, for those areas not already owned by the public.”
- *Policy 2.120-A4 subsection A, Development Criteria states development within designated RS areas shall be limited to “residential development containing single-family dwelling units, duplex units, and family-care homes, at a density of up to, and including, one dwelling unit per five acres (1 DU/5 AC).”*
- *Section 2-1.81 (Non-Conforming Use Provisions) of Ordinance No. 70-3 states:*

“Within various districts established under this Development Regulation, there now exists certain lots and parcels of land; certain structures and types of structures; and, certain established uses of land and structures which would not, hereunder, be permitted to be established. It is the intent of the Development Regulation to provide for the continuation of such non-conforming situations.”
- *On February 15, 1983, the Board of County Commissioners adopted a new Zoning Ordinance and repealed Ordinance 70-03.*

- *Policy 2.121-A2 subsection A, Agriculture/Residential Rural Development Criteria states residential density equates to one dwelling unit per five acres (1 DU/5 AC).*
- *Chapter 7, Section 705.E right of way dedication is needed on substandard road at a width of 40 feet from the centerline of two (2) lane collector roads constructed with a Rural Section (no curb) and 30 feet from the centerline of two (2) lane collector roads constructed with a Village Section (depressed curb) and an Urban Section (curb and gutter).*
- *Planning staff has reviewed the land development requirements of 11 central Florida counties that bear commonalities with Polk and the two largest municipalities in the County. See Table 1 for details.*

Development Review Committee Recommendation: Based on the information provided and the analysis conducted within this staff report, the Development Review Committee finds that the proposed text change request is **CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan. Therefore, Staff recommends **APPROVAL of LDCT-2023-5.**

Analysis:

Currently, the Land Development Code does not go into detail regarding lot size nonconformities in the Agricultural/ Residential Rural and Residential Suburban land use districts. Both designations require a minimum of five (5) acres to be eligible for development. However, with the combination of inaccurate survey measurements and property owners dedicating land for infrastructure, research revealed that sections fell beneath the 640-acre threshold. This is outlined further in the history section that follows.

Within Polk County, there are approximately 418 sections falling under the previously mentioned threshold. Of that total, twenty-one percent (21%) are within unincorporated Polk County and roughly fifteen percent (15%) are within the Rural and Suburban land use designations. However, only about twelve percent (12%) are located outside the Green Swamp Area of Critical State of Concern. Therefore, the County would provide minimum relief to the twelve percent (12%) of sections falling beneath the 640-acre threshold. The new calculation for density does not negate other requirements outlined in the LDC such as road frontage, access, or setbacks for a parcel to be eligible for building permits. Therefore, this relief is expected to provide a few extra homes within the A/RR and RS areas of the county.

The proposed Land Development Code text amendment is consistent with the current policies but will be modified to address minimum flexibility in calculations of one dwelling unit per five acres (1 du/5 ac) by counting to the centerline of collector roads in the calculation of density for A/RR and RS properties located outside the Green Swamp Area of Critical State of Concern.

History

In 1785, a Land Ordinance was adopted by the United States Confederate Congress as a mechanism for selling, settling land, and determining how each territory would be governed. Within this ordinance was the foundation of land policies which birthed the Public Land Survey System, otherwise known as the Rectangular Survey System. According to further research, this surveying method was intended to plat or divide real property, and sections of 640 acres were created for the ease of dividing said sections into halves and quarters in hopes of maintaining a whole number of

acreages. For instance, a section halved seven (7) times in this manner would equate to five (5) acres which is 128th of a 640-acre section. See *Exhibit 1*. Prior to technology, this method seemed most practical as surveyors used a compass and chain to determine section lines.

When the State of Florida was surveyed, it was no different. For many years, legal descriptions were used to measure lots sizes with the end caveat being plus or minus a particular acreage or square footage. In more recent years cadastral maps showing the actual boundaries and ownership of parcels have been implemented. The digital age allows calculations to be more precise. As a result, many sections within Unincorporated Polk County fell under the 640 acres, hindering development specifically in rural and suburban areas when lots fell shy of a five (5) acre minimum.

In 1970, the first Zoning Ordinance 70-03 known as the “Protective Development Regulation” was adopted. This ordinance outlined and identified the purpose of residential districts. It also addressed Non-Conforming Use Provisions, but the ordinance was later repealed. Ordinance 71-01 was later adopted and Ordinance 71-03, subdivision regulations provided the requirements to define a buildable lot. However, Ordinance 80-24 addressed the purpose of Rural Conservation but did not appear to address density and lot sizes. Note, it was not until 1991 when the Comprehensive Plan was first adopted, followed by the effective date of the Land Development Code in 2000, when the former was clearly addressed.

When you consider the fact that the first official survey of Florida was conducted around 1824, it is possible that many sections were inaccurately measured, thus creating sections under 640-acres. In addition, Chapter 7, Section 705 of the LDC states that land adjacent to an existing County Road where the right-of-way is lacking, shall dedicate additional right-of way from the centerline of the existing County Road along the entire frontage of the proposed development. For Rural areas that means 40 feet from the centerline of two (2) lane collector roads. This amendment is intended to give flexibility for the miscalculations as the letter of the law states 4.999 is not five (5) acres. Thus, modifying the Land Development Code to include counting to the centerline of collector roads in the calculation of density for properties located in the A/RR and RS designations would create some relief by compensating for the dedication. One of the primary benefits of counting to the center line is not penalizing individuals for dedicating right-of-way on substandard roads.

Limits of the Proposed Ordinance

This amendment applies to provide minimum flexibility in calculations of one dwelling unit per five acres (1 du/5 ac) within the unincorporated areas of the County. This entails counting to the centerline of collector roads in the calculation of density in Residential Suburban (RS) and Agricultural/Residential Rural (A/RR) Future Land Use Map designated lands, excluding the Green Swamp Area of Critical State Concern.

This amendment is not applicable to the A/RRX designations in Green Swamp Area of Critical State Concern because lot size requirements are larger and often dependent on wetland calculations. Additionally, RSX is limited to the Polk Special Protection Area (SPA). In comparison to the A/RRX many of the lots located within the RSX are vested or meet land use standards for development. Should staff find a property that does not meet these two (2) qualifications, staff can conduct further research to expand the scope of this amendment.

Comparisons to other Jurisdictions:

Research revealed that of the 14 municipalities surveyed, 11 have a protocol in place to mitigate parcels of land not meeting the minimum lot size requirement for development. Of the 11

municipalities, the majority implemented flexibility caused by the dedication for public use, specifically rights-of-way to create roadways and other infrastructure. The few that were not include outright accounted for vested lots of records reduced in dimension. Table 1, to follow, illustrates the full outcome of said research.

Table 1

Jurisdiction <i>(code citation)</i>	Is there a process?	When is this process triggered?	How is it mitigated?
Alachua County <i>Sec. 408.16</i>	Yes	<ul style="list-style-type: none"> When the lot was made nonconforming by reason of the exercise of the power of eminent domain or through dedication of street right-of-way to the adjacent road system as requested by a governmental entity, and the remedies set forth in Subsection (a) of this Section cannot be exercised. 	<ul style="list-style-type: none"> A development order may be issued for development.
Brevard County <i>Sec. 62-1188</i>	Yes	<ul style="list-style-type: none"> When a lot which is smaller than the minimum size required by this article or the comprehensive plan, and who cannot prove nonconforming status. 	<ul style="list-style-type: none"> An application for a waiver of up to but not exceeding ten percent of the required lot size pursuant to section 62-1154.
Duval County <i>Sec. 656.225 & 227</i>	Yes	<ul style="list-style-type: none"> No lot existing or required on September 5, 1969, shall thereafter be reduced in dimension or area below the minimum requirements. Lot acquired for public use in any manner. i.e., Government takings. 	<ul style="list-style-type: none"> Variance Out right conforming
Hardee County <i>Sec. 2.08.00</i>	Yes	<ul style="list-style-type: none"> When a lot is reduced in dimension or total area by 20% or less by the voluntary dedication and acceptance of a portion of such lot for a public use. Non-Conforming lots of records reduced in size, width or depth. 	<ul style="list-style-type: none"> The lot shall be considered to contain the dimensions and area it contained prior to such dedication. A variance authorized by the Board of County Commissioners
Highlands County <i>Sec. 12.06.102</i>	N/A	<ul style="list-style-type: none"> Any legal lot of record which has been altered due to right-of-way (ROW) dedication to an official government entity. 	<ul style="list-style-type: none"> Outright considered a legal nonconforming lot, so long as the lot is not altered or subdivided further.
Hillsborough County <i>Sec. 6.01.03</i>	Yes	<ul style="list-style-type: none"> Roadways or rights-of-way provided by the owner or developer. 	<ul style="list-style-type: none"> The minimum lot size required by a parcel's zoning may be reduced by a maximum of two (2) percent.
Lake County <i>Sec. 1.08.04</i>	N/A	<ul style="list-style-type: none"> There shall be an exception to the density requirements for lots which were legally created by a deed dated and recorded in the Public Records of Lake County, 	

Table 1

Jurisdiction <i>(code citation)</i>	Is there a process?	When is this process triggered?	How is it mitigated?
		Florida on or before May 20, 1981	
Manatee County <i>Sec. 107.8 & 107.9</i>	N/A	<ul style="list-style-type: none"> A nonconformity created through the exercise of eminent domain powers. 	<ul style="list-style-type: none"> Nonconforming lots may be developed provided that the proposed development is a permitted use in the applicable district.
Orange County <i>Sec. 38-1401</i>	Yes	<ul style="list-style-type: none"> As a result of a governmental taking, either by negotiation or condemnation A lot or parcel has a frontage or lot area less than what is required by the zoning district in which it is located, but was a lot of record in Orange County, Florida, prior to October 7, 1957, 	<ul style="list-style-type: none"> Waivers or exception by the manager or designee of the department after meeting code to greatest extent. A principal or accessory use may be constructed.
Osceola County <i>Sec. 1.4.3 & 2.1.1</i>	Yes	<ul style="list-style-type: none"> Lots or parcels less than the minimum area and/or width. 	<ul style="list-style-type: none"> An administrative waiver may be granted for up to a fifteen (15) percent deviation from any performance criteria.
Seminole County <i>Sec. 30-27</i>	Yes	<ul style="list-style-type: none"> Deed or Tax bill containing erroneous information indicating that the lot or parcel constituted a conforming lot. Conforming lot that dedicated of a public right-of-way. 	<ul style="list-style-type: none"> The Planning and Development Director may administratively approve a waiver to the minimum lot size upto three (3) percent of the total size of a conforming lot for properties outside the Wekiva Protection Area
Volusia County <i>Sec. 72-206</i>	Yes	<ul style="list-style-type: none"> Lots that lawfully existed before this article was effective or amended and are substandard. 	<ul style="list-style-type: none"> A variance
City of Lakeland <i>Sec. 13.4.2.4</i>	Yes	<ul style="list-style-type: none"> Non-Conforming lots and parcels resulting from a lawful public taking. 	<ul style="list-style-type: none"> May be built upon when the lot dimensions following the taking are within ten percent (10%) of the minimum dimensional requirements specified by the zoning district in which they are located.
City of Winter Haven <i>Sec. 21-67 & 21-435</i>	Yes	<ul style="list-style-type: none"> A lot reduced in dimension or total area by the dedication and acceptance for a public use. 	<ul style="list-style-type: none"> Lots reduced by twenty (20) percent or less, shall be considered to contain the dimensions and area it contained prior to dedication.

Unincorporated Polk County will join other municipalities that address an error in minimum lot sizes. However, the 5-acre Rounding Error will solely focus on parcels of land located in the A/RR and RS designations outside the Green Swamp Area of Critical State Concern. This amendment is in efforts to not penalize property owners for dedicating land for the benefit of citizens developing within the County.

Consistency with the Comprehensive Plan and Land Development Code

Many policies within the Comprehensive Plan are reviewed for consistency with an application. The most relevant policies for the proposed request are included in this section. The policy is first stated and then an analysis of how the request is provided to state that it may or may not be consistent with the Comprehensive Plan. How the request is **consistent** with the Comprehensive Plan is listed below:

Table 2: Consistency with the Comprehensive Plan

Policy	Consistency
Policy 2.119-A3: Development Criteria- f. DENSITY COMPUTATIONS: Polk County shall use gross densities when determining residential densities. Gross density is determined by dividing the total number of dwelling units on the site by the total area of the residential site, exclusive of water bodies. The area for computing gross density shall include all public and institutional land uses (e.g. internal streets, sewer plants, schools, parks, etc.) located within the site, as well as one-half of the right-of-way area for perimeter "local" streets, and one-fourth of the right-of-way area for perimeter local street intersections, for those areas not already owned by the public.	This policy will only be modified to include one unit per five-acre (1du/ 5ac) in the Rural Development Area (RDA) and Suburban Development Area (SDA); and density may also be measured to the centerline of collector roads outside of the Green Swamp Area of Critical State of Concern.
Policy 2.120-A4 Residential Suburban Development Criteria- Development within designated RS areas shall be limited to: Residential development containing single-family dwelling units, duplex units, and family-care homes, at a density of up to, and including, one dwelling unit per five acres (1 DU/5 AC).	These policies will only be modified to recognize that density may be adjusted based on the actual size of the section. A property may be considered five acres if it is one one-hundred and twenty-eighth (1/128) the section size for sections less than six hundred forty acres (640 acres). This includes counting to the centerline of local and collector roads.
Policy 2.121-A2 Agriculture/Rural Residential Development Criteria- Development within designated A/RR areas shall conform to: a. Residential density of one dwelling unit per five acres (1 DU/5 AC).	
Chapter 2, Table 2.2 Footnotes Residential density is the average number of dwelling units per acre of land. Gross density is calculated by dividing the total number of dwelling units on a site by the gross site area, exclusive of existing water bodies and limited transfer of density out of wetlands per Section 620 The area for computing gross density shall include all public and institutional land areas (e.g. internal streets, sewer plants, schools, and parks) located within a site, as well as one-half of the right-of-way area for perimeter local streets, and one-fourth of the right-of-way area for perimeter local street intersections.	These sections will be modified to address lot size nonconformities in the in the Rural Development Area (RDA) and Suburban Development Area (SDA). One unit per five-acre (1du/ 5ac) density may also be measured to the centerline of collector roads outside of the Green Swamp Area of Critical State of Concern. Additionally, density may be adjusted based on the actual size of the section. A property may be considered five acres if it is one one-hundred and twenty-eighth (1/128) the section size for sections less than six hundred forty acres (640 acres).
Chapter 2, Section 208.A Density and Dimensional Regulations for Standard Districts Density and dimensional regulations for the standard land	

use districts are prescribed in Table 2.2.	
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Comments from Other Agencies: None

Exhibits:

Exhibit 1 - Example of how acreage is depicted.

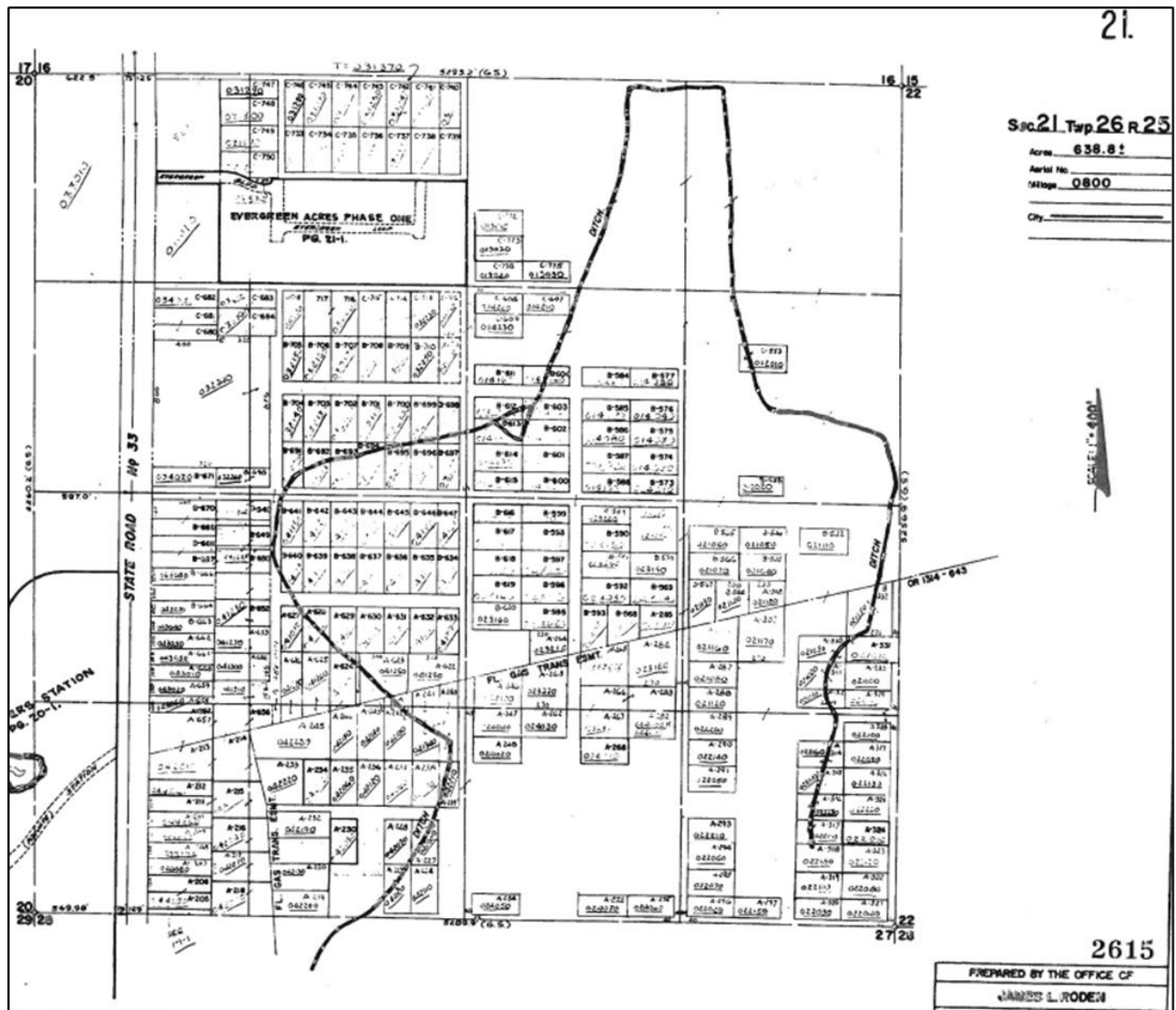
Exhibit 2- Example of STR Under 640 Acres

Under separate attachment-

- Draft Ordinances with Proposed Text

Section = 640 acres

160 acres			5 acres
		10 acres	
	40 acres		



Example of STR Under 640 Acres