



DeBary Plantation Subdivision



DeBary Plantation Subdivision

- Carmen Rosamonda, City Manager
- Fishback Dominick Law Firm
 - Kurt Ardaman, City Attorney
 - City's Attorney for 25+ Years
 - DeBary, Winter Park, Winter Garden, Longwood & Belle Isle
 - J. Giffin Chumley, Esq.
 - Eric B. Jontz, Esq.



DeBary Plantation Subdivision

- Hickory Stick Drainage
 - Purpose of Community Meeting
 - Provide Information
- Future Outlook – DPCA’s Duties & Responsibilities
- Donald Smith Drainage Repair
- Questions

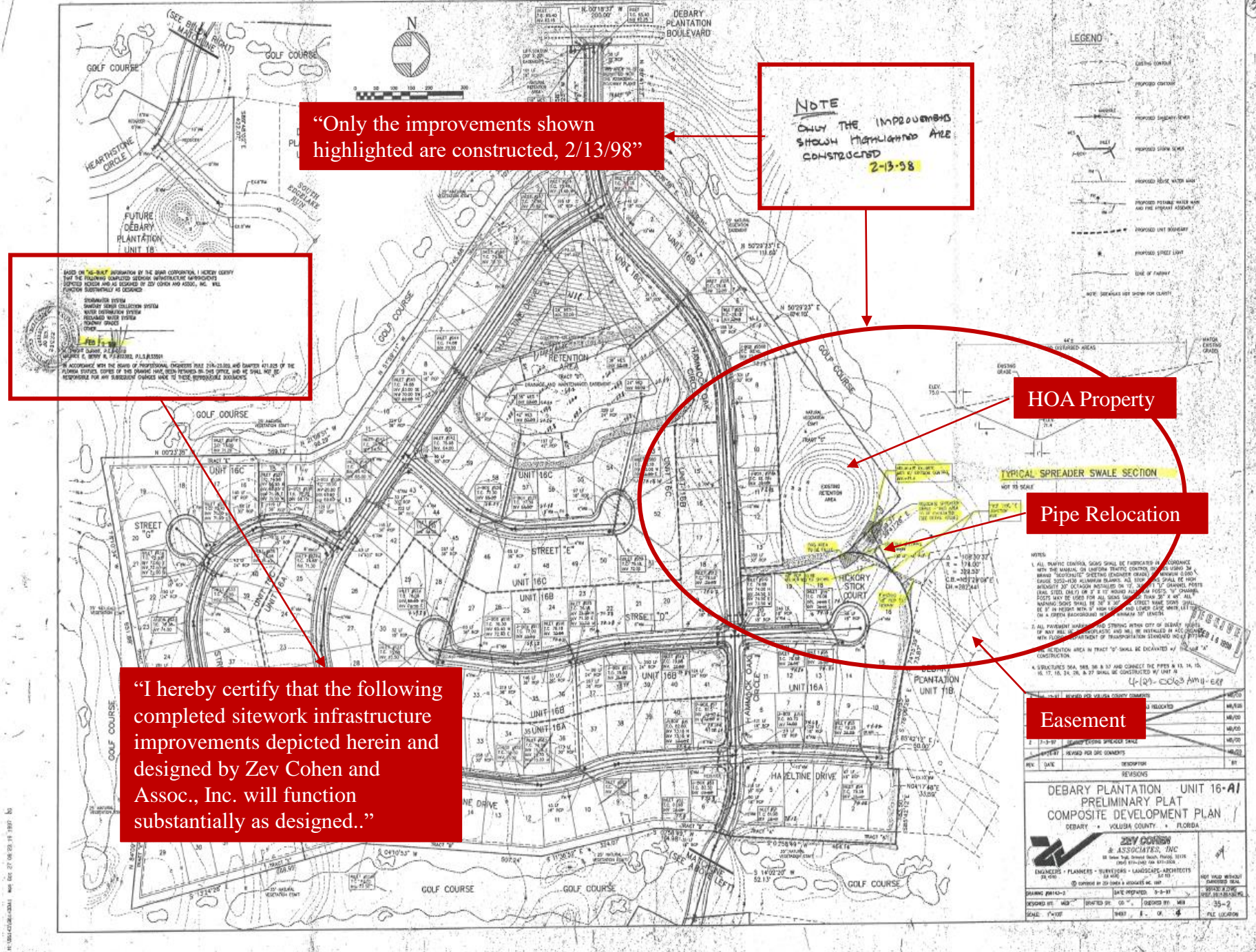


Aerial & Stormwater Maps





As-Built Drawings Certifying Construction Filed by Zev Cohen & Associates on 2/13/1998.



Pipe's New Location
As permitted by
SJRWMD

RELOCATE EX-MES
MES W/ EROSION CONTROL
INV. = 71.4

TYPICAL

NOT TO SCALE

Existing Pipe on
Private Property

RELOCATE SPREADER
SWALE - THIS AREA
TO BE EXCAVATED
(SEE DETAIL ABOVE)

FOOT TYPE "J"
JUNCTION
BOX

THIS AREA
TO BE FILLED

EXISTING HEADWALL
TO REMAIN
100 LF - 48" RCP

$\Delta = 108^{\circ}30'32"$
 $R = 174.00'$
 $L = 329.53'$
C.B. = N51°29'04" E
CH. = 282.44

48" RCP TO BE
RELOCATED AS SHOWN

HICKORY
STICK
COURT

EXISTING
48" RCP TO
REMAIN

Property Boundary

BOX #956A
T.C. 87.80
INV 73.00

11 73.42

10" WM

12

13

350 LF
30" RCP

INLET #S10
T.C. 79.88
INV 74.00 N
INV 74.50 S
INV 74.50 E
INV 73.50 W

20

45 LF
18" RCP

248 LF
18" RCP
4" RM

19

INLET #S9
T.C. 79.08
INV 74.05 E
INV 74.05 S

18

74.32

48 LF
18" RCP

16

4" WM

199.37'
39°41'26" W



DeBary Plantation Subdivision

Hickory Stick Drainage

- Private Property & Matter
 - **Developer/HOA** (successor)
 - Engineered & Permitted by SJRWMD to Relocate of Overflow Pipe
 - Developer hired Engineer as a Private Inspector (Agent)
 - Allowable under Section 553.791, F.S.
 - Liability/Responsibility Remains with Developer/HOA (successor)
 - Pipe was Never Relocated and Remains on Private Property
 - Property at 162 Hickory Stick was Filled by Developer
 - Area Filled has Eroded; Damaging Private Property; Home is at Risk
 - Erosion has Damaged Pipe Support, Broken Control Structure & End of Overflow Pipe
 - Obligation/Liability/Responsibility to Relocate Pipe Still Remains with Developer/HOA (Successor) (Master Covenants; Section 3.02(c), 15.01)



DeBary Plantation Subdivision

Hickory Stick Drainage

- **Public vs Private**

- City is Prohibited from Spending Public Money on Private Property
- State Constitution, Article 7, Section 10

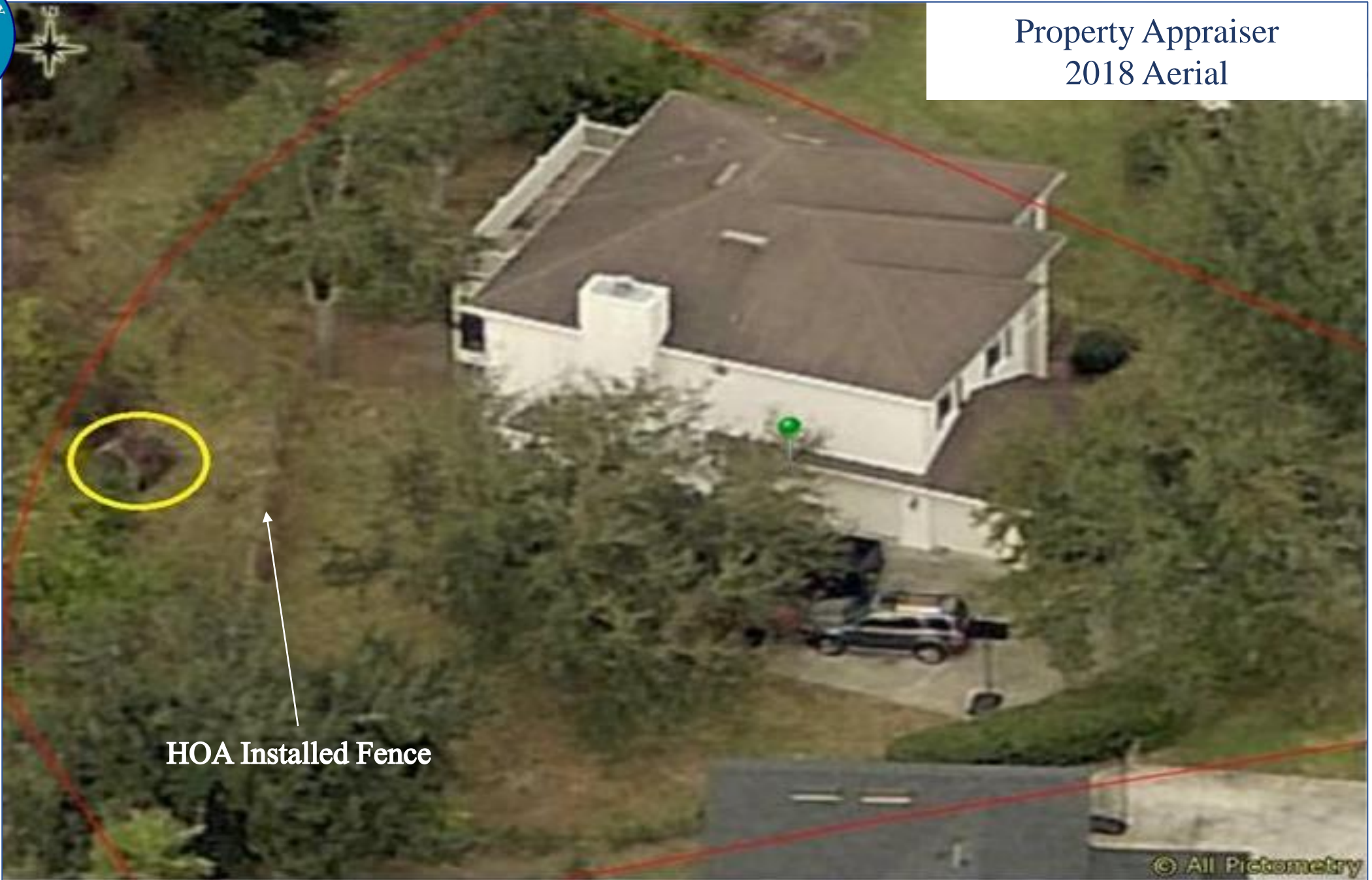
- SECTION 10. Pledging credit.—Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:
 - (a) the investment of **public trust funds**;
 - (b) the **investment of other public funds** in obligations of, or insured by, the United States.....
 - (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) **revenue bonds** to finance or refinance the cost of capital projects for airports or port facilities, or (2) **revenue bonds**.....
 - (d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of **electrical energy generating or transmission facilities** with any corporation, association, partnership or person.



DeBary Plantation Subdivision

Hickory Stick Drainage

- **Public vs Private**
 - City is Prohibited from Spending Public Money on Private Property
 - State Constitution, Article 7, Section 10
- **Accountability**
 - Florida Department of Financial Services
 - Annual Audit
 - Community
 - ~ 9300 Households
 - 23,000 Residents



Property Appraiser
2018 Aerial

HOA Installed Fence



Property Appraiser 2021 Aerial





Property Appraiser 2021 Aerial





DeBary Plantation Subdivision

Hickory Stick Drainage

Conclusion

- Responsibility of Relocate the Pipe Does Not Go Away
- SJRWMD Permit must be Re-Opened and Completed
- Developer/HOA (successor) has this Responsibility
- Private Matter Between HOA and Homeowner
- Pipe Remains on Private Property
- Issue is Between HOA & SJRWMD
 - Existing Engineering – Cost is \$200,000 - \$500,000
 - May Require Engineering meet Current Codes/Standards



DeBary Plantation Subdivision

Hickory Stick Drainage

Additional Considerations

Engineer



DeBary Plantation Subdivision

Hickory Stick Drainage

Section 553.791, F.S.

Chapter 553 BUILDING CONSTRUCTION STANDARDS
PART IV FLORIDA BUILDING CODE

553.791 Alternative plans review and inspection.—

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.



DeBary Plantation Subdivision

Hickory Stick Drainage

Section 553.791(4)(c), F.S. (Affidavit)

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

Zev Cohen & Associates, Inc.

- City sent Letter on Behalf of DPCA on January 21, 2022.
- Zev Cohen's Response February 1, 2022
- Citing
 - Section 95.11(3)(c), F.S.
 - Allan & Conrad, Inc. vs. University of Central Florida 961 So. 2d 1083 (Fla 5th DCA 2007)
- Section 95.11(3)(c) is a *statute of repose*

“In any event, the action must be commenced within **10 years** after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, **whichever date is latest.**”

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WWW.FISHBACKLAW.COM

• FLORIDA BAR BOARD CERTIFIED IN CITY,
COUNTY AND LOCAL GOVERNMENT LAW

January 21, 2022

Via Certified, U.S. Mail

Tracking: 7005 2570 0002 0127 3816

Zev Cohen & Associates, Inc.
300 Interchange Boulevard
Suite C
Ormond Beach, FL 32174

Re: Improper certification pertaining to stormwater pipe located on or near 162 Hickory Stick Court, DeBary, FL 32713; Lot 17 of Unit 16A

Dear Sir/Madam:

This letter concerns a current hazardous condition involving the stormwater drainage system on or near the property of 162 Hickory Stick Court, DeBary, Florida 32713 (“162 Hickory Stick Court”) which abuts the DeBary Golf & Country Club. In the “as-built” certification to the St. Johns River Water Management District (“SJRWMD”) dated on or about February 16, 1998, for Permit # 4-127-0063M11-ERP/22697-11, **Zev Cohen & Associates, Inc.**, certified that a stormwater drainage system on or near 162 Hickory Stick Court was relocated as proposed to a different location. However, the certified relocation of the stormwater drainage system never occurred.



DeBary Plantation Subdivision

Hickory Stick Drainage

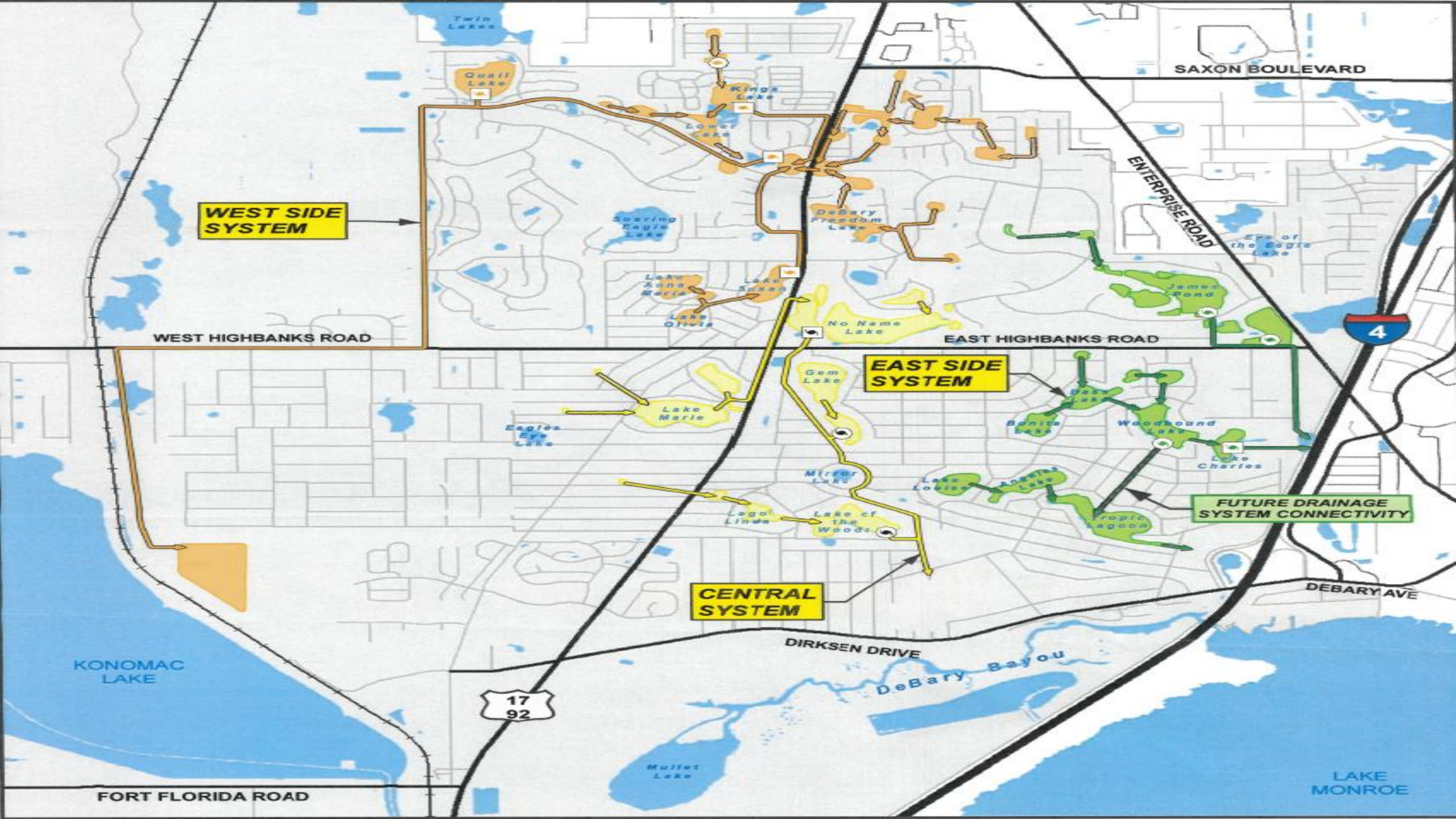
Additional Considerations
City Stormwater Program & Fees



DeBary Plantation Subdivision

Hickory Stick Drainage

- **Stormwater Program**
 - City Wide Publically Owned and City Maintained Systems
 - Fees are \$170 Public Streets/\$85 Private Streets
 - Public Money to be Spent on Public Systems
 - State Constitution, Article 7 Section 10
 - Assumption – All Stormwater Infrastructure is Owned and Maintained by the City.
 - Private Communities; Roads & SW
 - HOA Maintained; Roads are Public – SW are HOA
 - DeBary Plantation & Rivington





Stormwater Projects

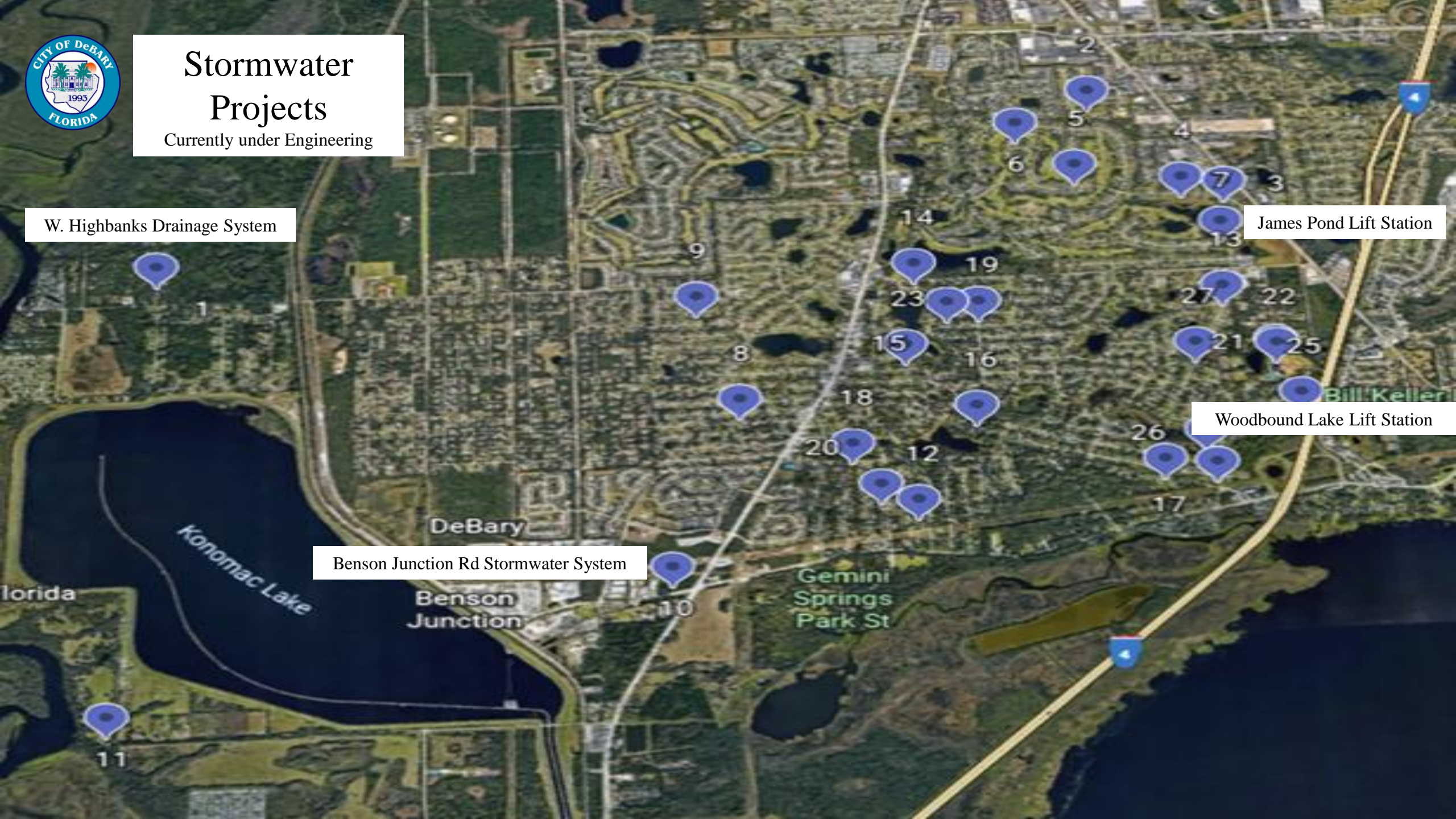
Currently under Engineering

W. Highbanks Drainage System

James Pond Lift Station

Woodbound Lake Lift Station

Benson Junction Rd Stormwater System





Spring Glen
Private Community inside Glen Abbey
Retention Pond Damage – Hurricane Ian



DeBary Plantation Subdivision

Hickory Stick Drainage

Additional Considerations

Covenants

Development Agreements

Easements



DeBary Plantation Subdivision

Hickory Stick Drainage

- **Covenants & Master Development Agreements**
 - Part of the Development Review and Approval Process
 - Customized for Each Development or Phase of Development on Numerous Factors
 - Developer's Vision, Engineering, Property Characteristics, etc.
 - Defines Public/Private Ownership & Maintenance of Infrastructure
 - Amenities, i.e., Trails, Parks, Conservation Areas, etc.
 - Proportionate Share – Transportation and Other Impacts
 - **For Example:**
 - Glen Abbey (1972)
 - Spring Glen, Fairway Villas & Glen Club are Totally Private
 - Remainder: Roads are Public, Drainage is Public Owned & Maintained
 - Riviera Bella, Traders Cove, are Totally Private



DeBary Plantation Subdivision

Hickory Stick Drainage

- **DeBary Plantation**
 - Private – Estates, Hampton Hills, Fairway Hills, Westridge, Lower Lake
 - Remainder: Roads are Public
 - Stormwater Infrastructure is Private Maintenance (HOA)
 - Master Covenants
 - Developers Agreements
 - Property Ownership
 - Easements



DeBary Plantation Subdivision

Hickory Stick Drainage

- **DeBary Plantation Declaration of Master Covenants, Conditions and Restrictions (Book 3417, Page 0702, Recorded 1/24/90)**

ARTICLE IX

FUNCTION OF MASTER ASSOCIATION

9.01 Common Area and Rights-of-Way. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management, maintenance and control of the Common Area and all access and drainage canals, easements, including retention areas, including off-site down stream drainage areas, recreation areas, landscaping, irrigation systems, lands covered by the Planned Unit Development and all city, county, district or municipal properties and rights of way (to the extent permitted by any governmental authority) which are located within or in a reasonable proximity to the Properties where deterioration of any of the described items would adversely affect the appearance of the Properties or the operation of systems appurtenant to DeBary Plantation, and shall keep them in good, functioning, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.



DeBary Plantation Subdivision

Hickory Stick Drainage

- DeBary Plantation Declaration of Master Covenants, Conditions and Restrictions (Book 3417, Page 0702, Recorded 1/24/90)

ARTICLE X MAINTENANCE

10.01 Association's Responsibility. The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, drainage canals, retention ponds, lakes and any improvements which may be situated upon such areas. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area which shall be maintained out of regular assessments for Common Expenses.



DeBary Plantation Subdivision

Hickory Stick Drainage

- **Master Development Agreements (MDA)**

- Book 4295, Page 3888, Dated 3/12/85 (MSC – West Volusia Utilities)
- **Book 3186, Page 1770, Dated 8/29/88** (Resolution 88-90 - Request Change in Zoning)
- Book 3251, Page 0900, Dated 1/23/89 (Notice of R.E. Restrictions)
- **Book 3476, Page 1558, Dated 6/01/90** (Resolution 90-84)
- Book 3782, Page 2914, Dated 10/30/92 (Assignment of Rights to DeBary Estates)
- **Book 4184, Page 2843, Dated 3/3/97** (DeBary Estates Associates)

- **MDA's**

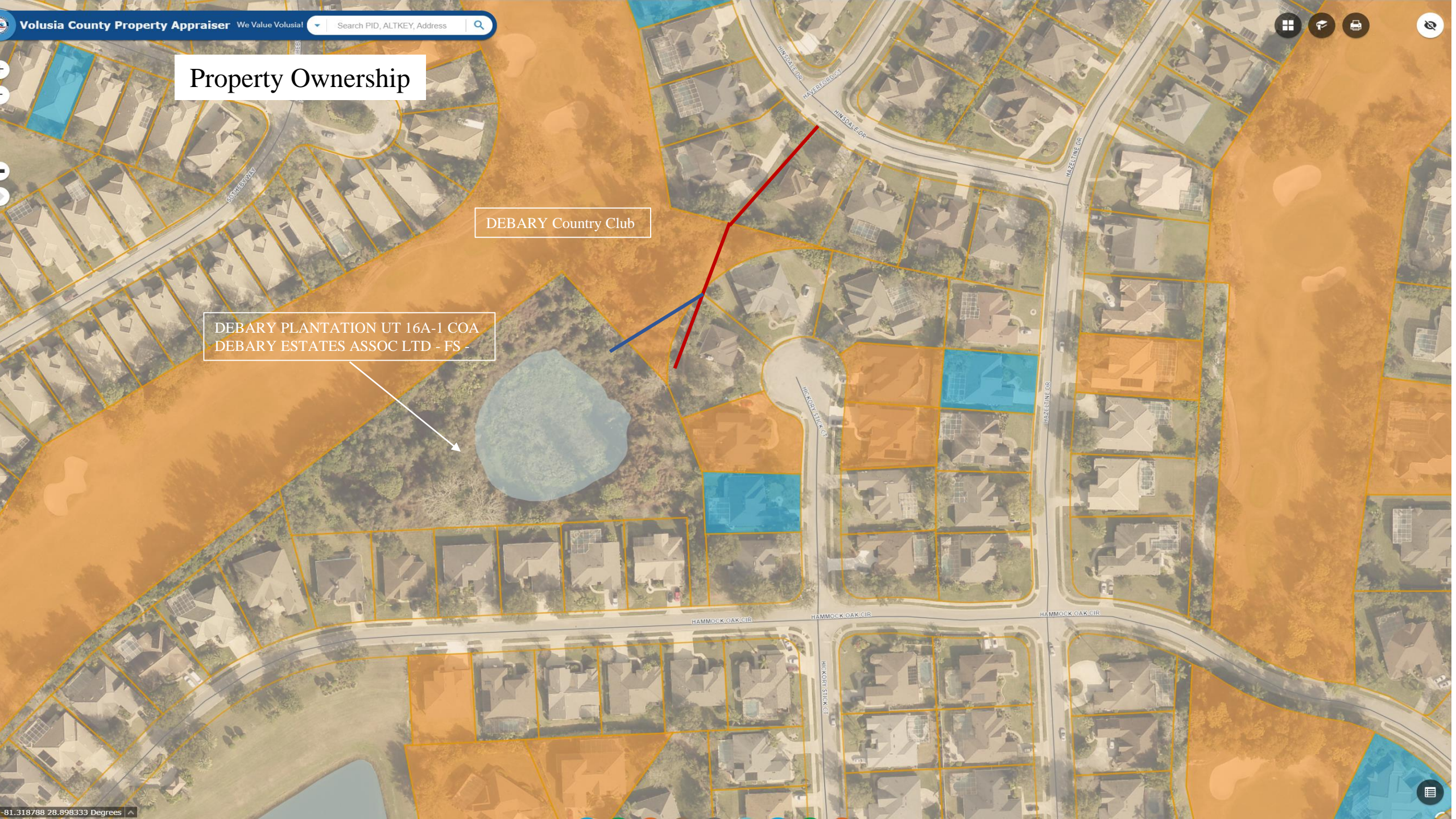
- **Silent on SW Repair & Maintenance**
- **Implied with Master Covenants**

Stormwater Drainage: Sufficient acreage within the site will be utilized for the establishment of detention/retention areas. The project will contain several large ponds and lakes, the approximate locations of which are set forth in Exhibit Et, attached hereto. In the residential and commercial areas, storm sewers will be constructed to collect and transport rainfall runoff to the ponds and lakes. Natural drainage ways and swales, supplemented by a series of culverts will perform this function within the open areas of the project. Any stormwater discharge into the ponds and lakes will be filtered in compliance with the requirements of Ordinance 88-3 and other applicable ordinances and regulations, and if applicable, the requirements of the St. Johns River Water Management District.

Property Ownership

DEBARY Country Club

DEBARY PLANTATION UT 16A-1 COA
DEBARY ESTATES ASSOC LTD - FS -

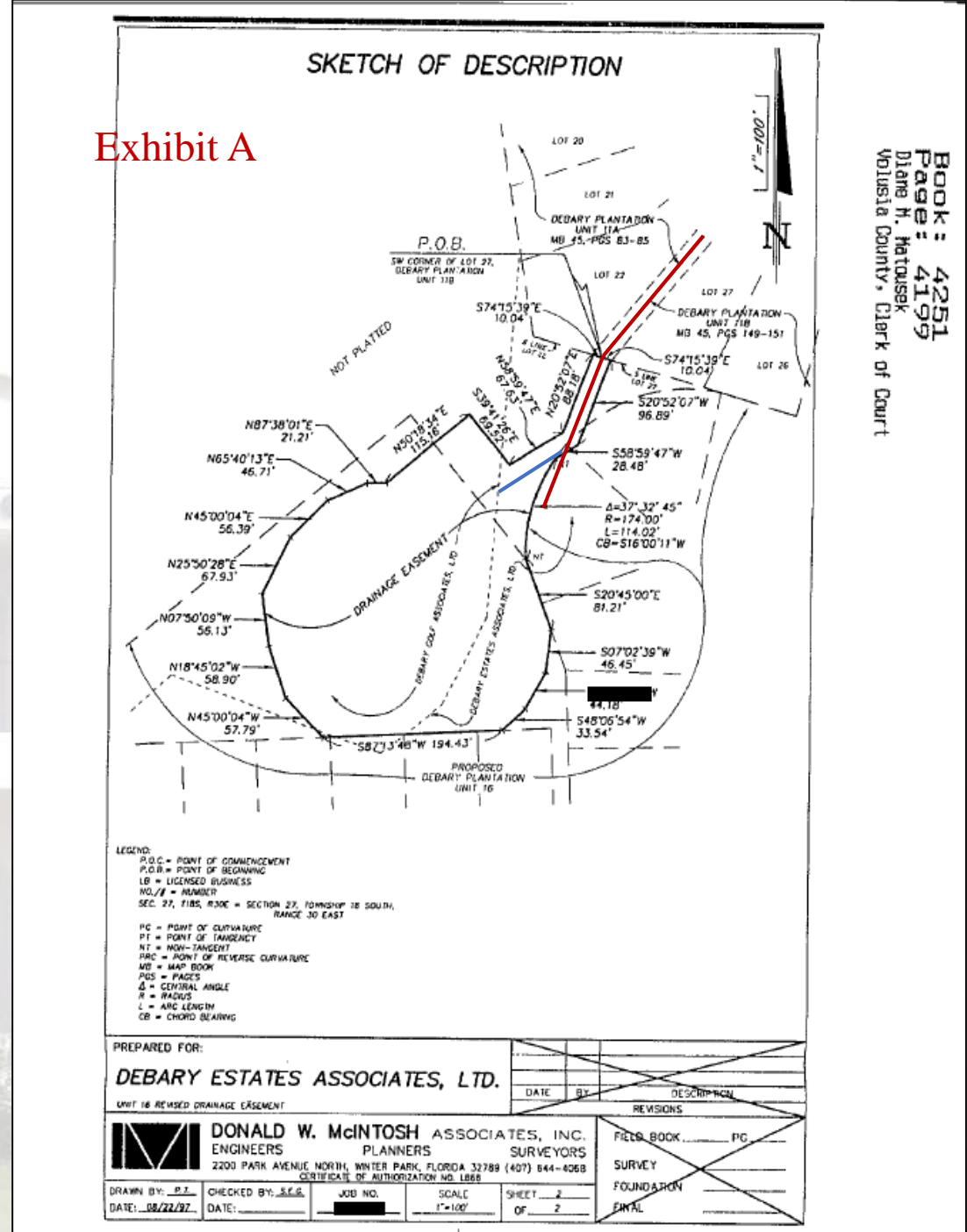




Easements

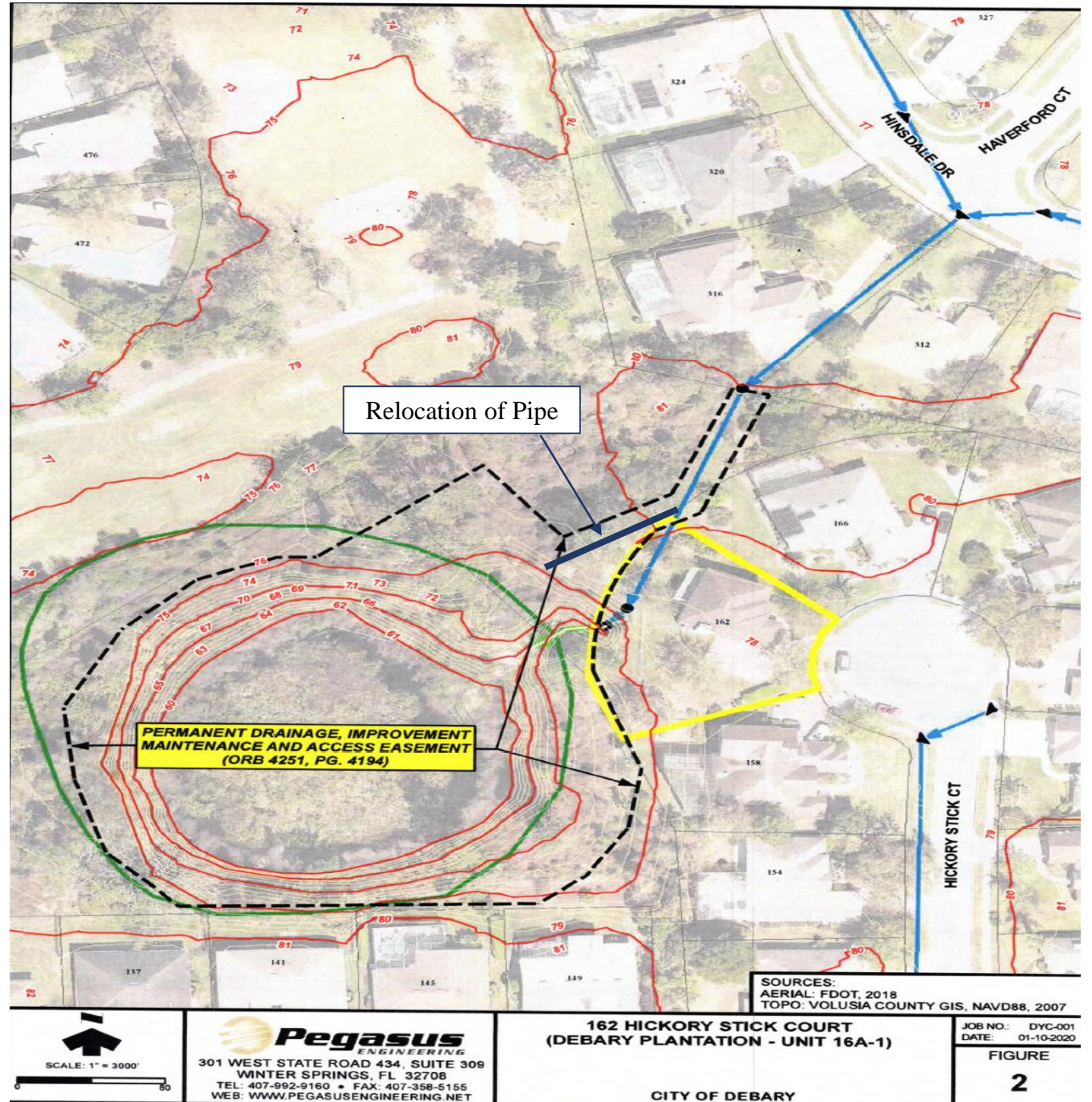
- DeBary Estates Associates, Ltd & DeBary Golf Associates, Ltd (Grantors)
- DeBary Plantation Community Assn., Inc. (Grantee)
 - Permanent Drainage, Improvement, Maintenance and Access Agreement
 - Book 4251, Page 4194, Dated 11/3/97
 - Engineer COC signed 2/13/98

“NOW, THEREFORE, the Grantor, inconsideration of the sum of Ten Dollars (\$10.00) paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby give and grant to the Grantee and its assigns, a permanent easement for drainage, improvement maintenance and access purposes as particularly noted in Exhibit A, attached hereto (Unit 16 – revised drainage easement) with full authority to enter upon and maintain as the Grantee as its assigns may deem necessary, drainage pipes, ditches, or related facilities over, under and upon the lands described in “Exhibit A” attached hereto.”





Topographical Map and Survey of Easement





Problem Resolution Efforts

- **Various Efforts & Positioning since 2018**
- **City issued 90-day Cure Letter dated February 12, 2021**
 - **Pipe was Never Relocated**
- **Per HOA request, at City Expense, held Mediation on 8/26/2021**
 - **Both Sides Presented in Morning**
 - **HOA – No Show After Lunch**
 - **Same Information as Being Presented Today**

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* FLORIDA BAR BOARD CERTIFIED IN CITY,
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February 12, 2021

Via U.S. Mail and Email: Pmilberg@milbergkleinlaw.com

Paul J. Milberg, Esq.
Milberg Klein, P.L.
5550 Glades Road, Suite 500
Boca Raton, Florida 33431

Re: Drainage pipe located at 162 Hickory Stick Court, DeBary, FL 32713

Dear Mr. Milberg:

This letter is in response to your letter dated September 14, 2020.

We represent the City of DeBary (the "City") in this matter. We disagree with your assertion that the broken pipe is located on property belonging to DeBary Golf and Country Club. The broken pipe is located on the premises of 162 Hickory Stick Court, DeBary, FL 32713 ("162 Hickory Stick Court") a property subject to the Declarations and Covenants of the DeBary Plantation Community Association, Inc. ("DeBary Plantation"). A review of the relevant documents is in order.

A) DeBary Plantation is responsible for the drainage pipe located on the premises 162 Hickory Stick Court



Problem Resolution Efforts

- Due to No Response or Action, City issued a 90-day Cure Letter on 10/8/21

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October 8, 2021

*Via Email: Pmilberg@milbergkleinlaw.com and
Certified U.S. Mail - Tracking: 7005 2570 0002 0126 8225*

Paul J. Milberg, Esq.
Milberg Klein, P.L.
5550 Glades Road, Suite 500
Boca Raton, Florida 33431

Re: Hazard at 162 Hickory Stick Court, DeBary, FL 32713

Dear Sir/Madam:

This letter concerns the current hazardous condition involving the stormwater drainage system on the property of 162 Hickory Stick Court, DeBary, FL 32713 abutting the DeBary Golf & Country Club within the easement referenced below. The hazard is a public safety hazard and must be rectified by **DeBary Plantation Community Association, Inc.** to conform to the "as built" certification in the St. Johns River Water Management District Permit # 4-127-0063M11-ERP/22697-11.

Under the *Permanent Drainage, Improvement, Maintenance and Access Easement* recorded November 13, 1997, at Volusia O.R. Book 4251, Page 4194, **DeBary Plantation Community Association, Inc.** is responsible for drainage, improvement maintenance, and access



Problem Resolution Efforts

- Due to No Response or Action, City issued a 60-day Cure Letter on 4/20/22

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• FLORIDA BAR BOARD CERTIFIED IN CITY,
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April 20, 2022

*Via Email: Pmilberg@milbergkleinlaw.com and
Certified U.S. Mail – Tracking: 7005 2570 0002 0126 6283*

Paul J. Milberg, Esq.
Milberg Klein, P.L.
5550 Glades Road, Suite 500
Boca Raton, Florida 33431

Re: Continuing hazard at 162 Hickory Stick Court, DeBary, FL 32713

Dear Mr. Milberg:

This letter follows the City of DeBary's ("City") earlier letter dated October 8, 2021, regarding the current and continuing hazard involving the stormwater drainage system on 162 Hickory Stick Court, DeBary, FL 32713 abutting the DeBary Golf & Country Club within the area encompassed by the *Permanent Drainage, Improvement, Maintenance and Access Easement* recorded at Volusia O.R. Book 4251, Page 4194 ("Easement"). Enclosed for your reference is a copy of the October 8, 2021 letter ("2021 Letter").

As stated in the City's 2021 Letter, **DeBary Plantation Community Association, Inc.** is responsible for drainage, improvement maintenance, and access for drainage pipes, ditches, and related facilities over, under, and upon the land within the Easement. For more specifics, please



Problem Resolution Efforts

- Due to No Response or Action, City issued a Code Enforcement Letter citing HOA for broken drainage pipe, 8/15/22.



NOTICE OF VIOLATION

08/15/2022

*Via Email: Pmilberg@mklawpl.com and
Certified U.S. Mail – Tracking: 70220410000333889574*
DeBary Plantation Community Association, Inc.
c/o Paul J. Milberg, Esq.
Milberg Klein, P.L.
5550 Glades Road, Suite 500
Boca Raton, Florida 33431

PROPERTY LOCATION: DeBary Plantation Unit 16A, properties located at 162 Hickory Stick Court, DeBary, Florida 32713 and DeBary Golf and Country Club owned property.

LEGAL DESCRIPTION: See Exhibit 1 (Book # 4251, Page 4198, Official Records of Volusia County, Florida)

Notice of Violation

Re: Code Enforcement Action Pertaining to the Continuing Hazard at the property locations described above on and adjacent to the drainage easement owned by DeBary Plantation Community Association, Inc. as referenced in the legal description above.

Dear Mr. Milberg:

This letter is to notify you that I performed an inspection of the above referenced property on 8/11/2022. During that inspection, I have observed violation(s) of the following code provisions on property noted above, owned or otherwise controlled by the DeBary Plantation Community Association, Inc. ("Association").





DeBary Plantation Subdivision

Hickory Stick Drainage

- **Problem Resolution Efforts**
 - **HOA Board, Wilkes and City Attorney & Manager meet on 10/26/22**
 - **HOA verbally accepts Responsibility**
 - **Wants City's Assistance in Doing Work, Warn About 30-40% Premium**
 - **HOA to Prepare Agreement for City Managing and Construct Project**
 - **City Extends Code Hearing to January 12, 2023**
 - **HOA Attorney submits Agreement on January 5, 2023**
 - **Meeting Held January 10, 2022**
 - **HOA Perspective Changed in Submitted Agreement, Not Acceptable**
 - **Advise on City Special Assessment vs HOA Assessment**
 - **City Extends Code Enforcement Hearing to 2/9/23**
 - **HOA calls an Emergency Meeting on 1/14/23**



DeBary Plantation Subdivision

Hickory Stick Drainage

Problem Resolution Efforts

- HOA Board Conducts Two Meetings with Residents
 - Established a SWMC
 - Board Requests 90-day Extension
 - City grants 90-day Extension – May 11, 2023
 - Monthly Meetings



DeBary Plantation Subdivision

Hickory Stick Drainage

Problem Resolution Efforts

- Construction Management
- Construction Work
 - Request for Proposal; State Statute
 - Non-Negotiable Bids, Bonding, Insurance
 - City Pricing is 30-40% more than Private Industry
- HOA has Ability to Hire Contractors
 - Private Industry is Much Less



DeBary Plantation Subdivision

Hickory Stick Drainage

Problem Resolution Efforts

- **Special Assessment**
 - Borrowing Money
 - City must conduct RFP – Costs City 30-40% more
 - Charter – Maximum of 7 years
 - HOA has Ability to Borrow Funds with Longer Terms
 - Special Assessment
 - City - Special Tax Assessment – Annual Property Tax Bill
 - Limited – Direct Physical Benefit
 - HOA has Broader Scope to Special Assess Homeowners
 - Declaration of Master Covenants Requirement (Section 10.01)



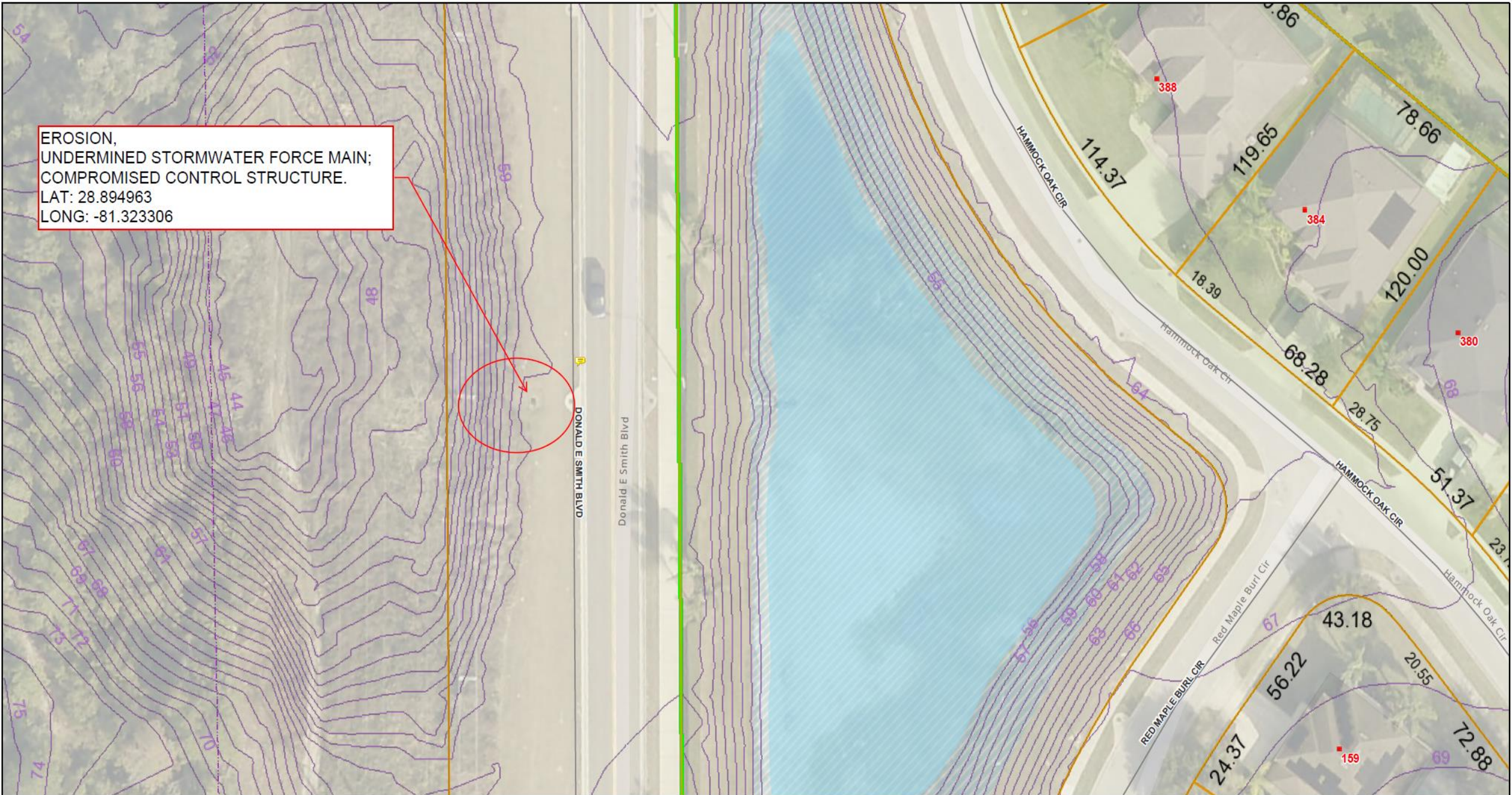
DeBary Plantation Subdivision

Hickory Stick Drainage

Donald Smith Emergency
Drainage Repair

Volusia County Property Appraiser

EROSION,
UNDERMINED STORMWATER FORCE MAIN;
COMPROMISED CONTROL STRUCTURE.
LAT: 28.894963
LONG: -81.323306



EROSION,
UNDERMINED STORMWATER
FORCE MAIN;
COMPROMISED CONTROL
STRUCTURE.
LAT: 28.894963
LONG: -81.323306



DeBary Plantation Subdivision
Donald Smith Drainage Repair

36" Pipeline



Sep 29, 2022 11:37:23 AM
100 Red Maple Burl Circle
DeBary
Volusia County
Florida

DeBary Plantation Subdivision

Donald Smith Drainage Repair

- Hurricane Season Begins June 1, 2023
- Overflow Structure is DPCA's Responsibility, Part of DGCC system
 - (Master Covenants - Responsible for Damage & Repairs)
- **Public Purpose – Damage Threatens Western Emergency Pumping System**
- Emergency Nature of Project - City will Pay for Improvement, Not Bill DPCA
- Not Related to Hickory Stick





DeBary Plantation Subdivision

Hickory Stick Drainage

Questions???

Email: [DGCC @Debary.org](mailto:DGCC@Debary.org)

Website: DeBary.org (Orange Bar on Top)