Proposed opinion recommended by staff NOT APPROVED BY ETHICS COMMISSION. To be considered at public meeting (See attached notice.)

FILE 2789 — April 22, 2022

CONFLICT OF INTEREST

DEVELOPMENT COMPANY DONATING LAND TO FLORIDA'S TURNPIKE ENTERPRISE

To: Nicola Liquori, Executive Director (Florida's Turnpike Enterprise)

SUMMARY:

The Executive Director of Florida's Turnpike Enterprise will not have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, if a development company that employs her husband donates land to her agency for the construction an interchange on Florida's Turnpike, so long as she does not have employment or a contractual relationship with the development company or the investment group funding the development. Guidance is provided regarding the Executive Director's husband potentially joining the investment group. Referenced are CEO 79-16, CEO 82-13, CEO 92-43, CEO 99-13, CEO 04-17, CEO 05-14, CEO 08-12, CEO 10-9, CEO 11-5, CEO 12-2, CEO 14-4, CEO 15-11, and CEO 17-12.

QUESTION 1:

Will a prohibited conflict of interest exist for the Executive Director of Florida's Turnpike Enterprise if a property development company that employs her husband donates land to her agency for the construction of an interchange?

This question is answered in the negative.

In your letter of inquiry, you indicate that you serve as the Executive Director of Florida's Turnpike Enterprise (Enterprise). In your letter, you explain that, among your numerous responsibilities, you are tasked with the evaluation of new interchanges (access points) along the Florida's Turnpike Mainline. You also explain that your husband works for a real estate development company (Developer) that executed a purchase of land funded by an investment group that is organized as a limited liability company (the LLC). According to an article you attached to your letter, the land is known as Green Island Ranch and is approximately 6,000 acres; according to you, the land is adjacent to Florida's Turnpike Mainline in Osceola County.

You state that the construction of an interchange to Florida's Turnpike Mainline somewhere on Green Island Ranch is being contemplated and that you expect the Developer will likely discuss the matter with Osceola County and the Enterprise in the future. You explain that, for the interchange to occur, there would not be a sale of land to the Enterprise; instead, the Developer would donate the land to the Enterprise and would not provide any remuneration or services to the Enterprise. The Enterprise would then facilitate the construction of an interchange.

With that background, you ask whether you will have a conflict of interest if the Developer donates land to the Enterprise for the construction of an interchange.

Relevant to this inquiry, Section 112.313(7)(a), Florida Statutes, states:

> No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first clause of this statute prohibits a public officer or employee from having any employment or contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of this statute prohibits a public officer or employee from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties. Pursuant to Zerweck v. State Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982), the second clause is designed to prohibit a situation that creates a "temptation to dishonor" one's public responsibilities. The statute is entirely preventative and does not require an actual transgression to occur for a conflict of interest to be found. CEO 05-14.

We find that you will not have a conflict under the first clause of Section 112.313(7)(a) if the Developer donates land for the interchange to the Enterprise. Firstly, according to you, you currently do not have employment or a contractual relationship with the Developer or with the LLC. Secondly, the Commission has found that the donation of property to an agency does not constitute "doing business" for purposes of Section 112.313(7)(a). See CEO 82-13. For these two reasons, you will not have a conflict of interest under the first clause of Section 112.313(7)(a) if the Developer donates the land to the Enterprise. While your husband does have employment with the Developer, as we noted in CEO 12-2, "Section 112.313(7)(a) applies only to the official—not to his or her spouse." CEO 12-2 (citing CEO 92-43 and the opinions cited therein).

Additionally, because you do not have employment or a contractual relationship with the Developer or the LLC, the donation will not cause you to have a conflict of interest under the second clause of Section 112.313(7)(a), either.

For these reasons, if you do not hold employment or a contractual relationship with the LLC or the Developer, then you will not have a conflicting contractual relationship under Section 112.313(7)(a) should the Developer donate land to the Enterprise for the construction of an interchange.

Question 1 is answered accordingly.

QUESTION 2:

Will a prohibited conflict of interest exist for the Executive Director of Florida's Turnpike Enterprise if a property development company that employs her husband donates land to the agency for the construction of an interchange while the Executive Director is an investor in the subject property?

This question is answered in the affirmative.

Although you currently are not an investor in the LLC that is funding the development of Green Island Ranch, you contemplate in your inquiry that you might have the opportunity in the future to become an investor in the LLC. As noted above, the Developer may eventually donate land to the Enterprise for the construction of an interchange and you, as Executive Director of the Enterprise, are responsible for approving new interchanges to Florida's Turnpike Mainline.

We have found in the past that those who own stock in a business entity have a contractual relationship with that business entity. See CEO 79-16, CEO 99-13, and CEO 11-5. If you, as the Executive Director of the Enterprise, become an investor in the LLC, then you will be considered to have a contractual relationship with the LLC.

We have found prohibited conflicts of interest to exist under the second clause of Section 112.313(7)(a) when a public officer or employee has employment or a contractual relationship with a business entity and the exercise of their official judgment could affect the business entity. In CEO 04-17, Question 3, we found that a school teacher would have a prohibited conflict of interest under this provision if he privately tutored his own students for compensation outside of school. In CEO 14-4, where a former FDOT employee had a pension fund with a former employer and the pension fund was at least partially invested in the former employer's own stock, we found that the FDOT employee would have a prohibited conflict of interest under the second clause of Section 112.313(7)(a) if he participated in the selection process for an engineering consulting firm and if the former employer was an applicant for the contract. There, we reasoned that the employee would be tempted to dishonor his public responsibilities because he stood to gain from FDOT awarding the contract to his former employer.

In your situation, you will have a contractual relationship with an entity (the LLC) and your investment in that entity could potentially benefit from the execution of your public responsibility as Executive Director to favorably evaluate a new interchange to Florida's Turnpike Mainline on the Green Island Ranch land donated by the Developer and funded by the LLC. As was the case in CEO 14-4, the potential benefit to your investment could tempt you to dishonor your public responsibilities or otherwise affect your objectivity in the evaluation of a proposed interchange on the donated land. For that reason, we find that you will have a prohibited conflict of interest under the second clause of Section 112.313(7)(a) if you invest in the LLC and the Developer donates land to the Enterprise to construct an interchange.

Question 2 is answered accordingly.

QUESTION 3:

Will a prohibited conflict of interest exist for the Executive Director of Florida's Turnpike Enterprise if a property development company donates land to the agency for the construction of an interchange and the Executive Director's husband becomes an equity partner in the development company or an investor in the subject property?

This question is answered as follows.

You relate that, currently, your husband is an employee of the Developer and not an equity partner. Also, at present, you state that he is not an investor in the LLC. You note, however, that he may soon become an equity partner in the Developer and may be presented with an opportunity to invest in the LLC.

If your husband becomes an equity partner in the Developer or if he invests in the LLC, that will not change the above analysis for Section 112.313(7)(a). The prohibitions of Section 112.313(7)(a) pertain to conflicting employment or contractual relationships that a public officer or public employee may have, but it does not apply to those relationships maintained by one's spouse. See CEO 12-2 and CEO 15-11.

However, a discussion of Section 112.313(3), Florida Statutes, is warranted by this question. Section 112.313(3) states in the relevant part:

> No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or

> employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.

Section 112.313(3) is a statutory provision with two separate prohibitions. The first prohibition concerns a public officer or employee who is purchasing, renting, or leasing realty, goods, or services for his or her own agency from a business entity of which he or she, or his or her spouse or child, is an officer, partner, director, proprietor, or the owner of a greater-than-five-percent interest in the business entity. The second prohibition concerns a public officer or employee who is essentially acting on behalf of a business entity to sell, rent, or lease realty, goods, or services to his or her own agency or any agency of his or her political subdivision. In CEO 17-12, Question 1, we found that a donation of land to an agency would not constitute purchasing/selling, renting, or leasing under Section 112.313(3) and, thusly, the donation would not create a prohibited conflict of interest under either of the statute's prohibitions.

We find that your husband's elevation to an equity partner of the Developer will not create a prohibited conflict for you under Section 112.313(3) because that prohibition is not applicable when the transaction between the business entity and the agency is a donation, as is the case here.

Although you will not incur a prohibited conflict of interest under either Section 112.313(3) or Section 112.313(7)(a) if your husband becomes an equity partner in the Developer or an investor in the LLC, we caution you that his status as an equity partner in the Developer or as an investor in the LLC could be rife with ethically complex scenarios for you, and may make your ethical obligations and stewardship of the public trust even more complicated to manage.

We draw particular attention to the prohibitions in Article II, Section 8(g)(2), Florida Constitution,[1] and Section 112.313(6), Florida Statutes,[2] which essentially operate to prohibit you from misusing or abusing your public position or the resources of your position to benefit yourself or your husband, among others. If your husband becomes an equity partner in the Developer or joins the investment group of the LLC, we caution that you must ensure that every official decision that you make as Executive Director related to Green Island Ranch is firmly rooted in a valid public purpose and is consistent with the proper performance of your public duties.

Section 112.313(8), Florida Statutes,[3] will operate to prohibit you from sharing any nonpublic information you obtain by means of your public position that relates to Green Island Ranch with your husband, the LLC, the Developer, or anyone else, if it might benefit you or any other person or business entity.

Section 112.313(2), Florida Statutes,[4] will operate to prohibit you from soliciting or accepting anything of value based on an understanding that your official action or judgment will be influenced.

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[1] Article II, Section 8(g)(2), Florida Constitution, states:

> A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

[2] Section 112.313(6), Florida Statutes, states in the relevant part:

> No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

[3] Section 112.313(8), Florida Statutes, states:

> A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

[4] Section 112.313(2), Florida Statutes, states:

Further, Section 112.313(4), Florida Statutes,[5] will operate to prohibit you or your husband from accepting anything of value where you know or should know that it is being given in an effort to influence you. See generally CEO 10-9. If, for example, the equity partnership in the Developer or the investment opportunity in the LLC were offered to your husband to influence your official decision making, or if either opportunity were offered to him at less than "arm's length," then Section 112.313(4) would operate to prohibit his acceptance. See CEO 08-12, Question 2.

Question 3 is answered accordingly.

JG/sjz/ks

cc: Nicola Liquori

No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

[5] Section 112.313(4), Florida Statutes, states:

No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

(Emphasis added.)

February 15, 2022

FLORIDA
COMMISSION ON ETHICS
FEB 18 2022
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ORIGINAL

The Florida Commission on Ethics
Attn: Kerrie Stillman, Executive Director
P.O. Drawer 15709
Tallahassee, FL 32317-5709
VIA FACSIMILE 850.488.3077, hard copy to follow

Dear Ms. Stillman:

The purpose of this letter is to request an informal opinion with respect to the ethics laws enumerated in 112, F.S as it pertains to the information provided.

I am the Executive Director and Chief Executive Officer at Florida's Turnpike Enterprise ("the Enterprise"). The Enterprise is a part of the Florida Department of Transportation, an executive agency of the State. I file a Form 1 "Statement of Financial Interests" each year as part of my role. My responsibilities are enumerated in 338, F.S. and, from time to time, involve the evaluation of new access points (interchanges) along the Florida Turnpike Mainline.

My husband works for a real estate development company ("Developer") that has recently purchased land adjacent to the Turnpike mainline in Osceola County for purposes of mixed-use development consistent with the Osceola County Conceptual Master Plan. The real estate is owned by a limited liability company and will be developed by the Developer as part of an investment. The attached article provides some helpful background about the land purchase and purpose. As noted in the article, an interchange with the Turnpike Mainline is contemplated and will be discussed with the Enterprise and the County in the future. There would be no purchase or sale of property between the Developer and the Enterprise, although there could be a donation of property. The donation of real estate for purposes of building an interchange is not unusual and would be memorialized in an executed agreement. In addition, there would be no services provided by the Developer to the Enterprise.

My husband is an employee of the Developer, but it is possible that he could have an equity interest in the firm in the near future. In addition, my husband and I have an opportunity to invest in the limited liability company, and thus would have a financial interest in the project.

My questions for the Commission are as follows:

1) Does a conflict of interest arise from the negotiation of an interchange between the Developer and the Enterprise because of my role with the Enterprise and my husband's position with the Developer? (Note: The Enterprise does not have a Board nor does it have any voting actions. Any agreement between the Developer and the Enterprise would be consistent with statutory, policy and procedural requirements for FDOT.)
2) If my husband's role at his company changes from being an employee to also having an ownership interest in the Developer, does that create a conflict or a prohibited action?
3) Would I be precluded from investing in the project or is it a disclosure on my annual filing should it meet reporting thresholds?

I am happy to provide any additional information that will assist in this inquiry. Please feel free to call me at 407.580.9244 or email me at nliquoricpa@gmail.com for additional information or clarification.

Thank you in advance for your assistance in this matter.

Respectfully,

Nicola A Liquori

Nicola A. Liquori

10

Wheelock Street Capital and Gentry Land Development paid $150 million Wednesday for the Green Island Ranch in Osceola County. (SVN Saunders)

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St. Cloud's Gentry Land Company and Wheelock Street Capital completed the blockbuster deal Wednesday in Osceola County, paying $150 million Wednesday for the nearly 6,000-acre Green Island Ranch property south of Lake Tohopekaliga.

Gentry President Reed Berlinsky told **GrowthSpotter** the development team made an offer that was "a tad bit over" the $140 million list price and agreed to close the deal in a single transaction, rather than a series of takedowns, which was important to the sellers.

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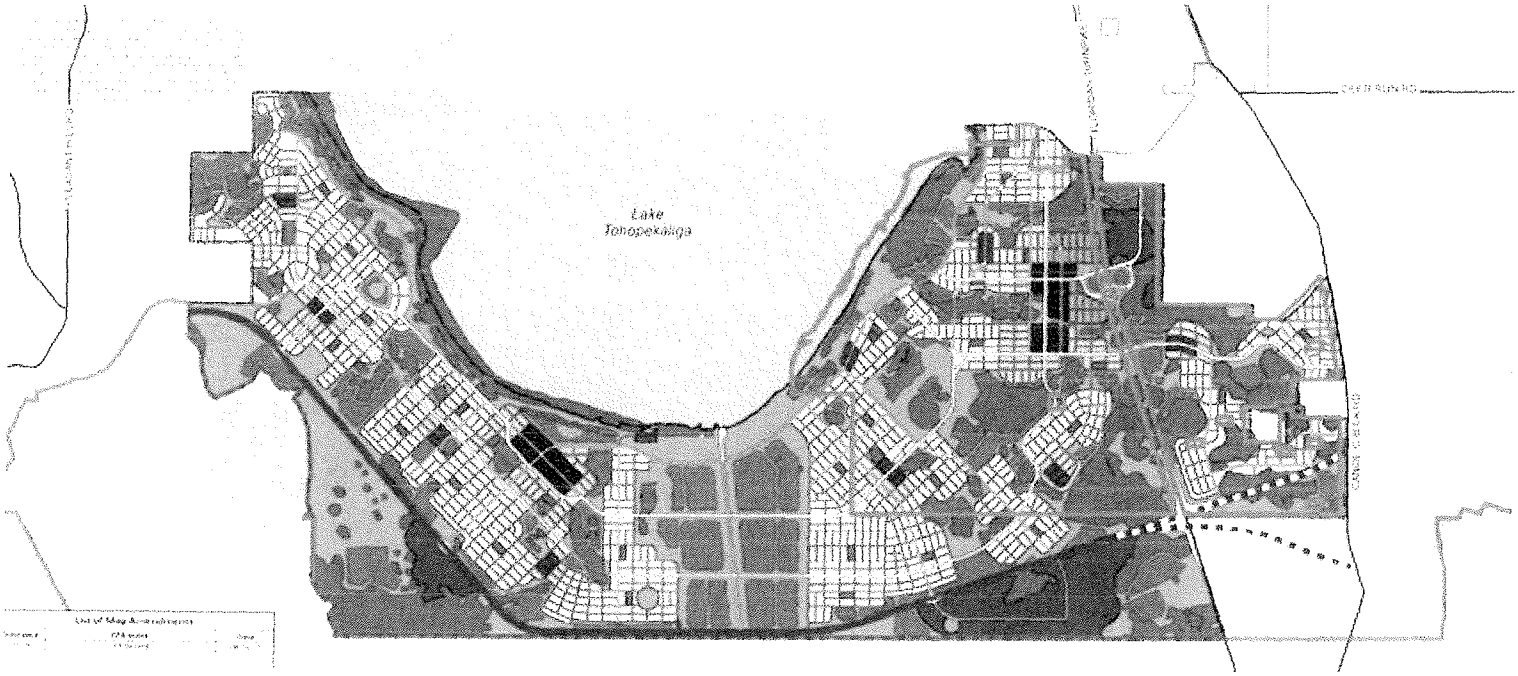
"We had a great team of people, and everybody's worked really hard for the last month to cram this into a holiday and get it done. So we're really excited about moving forward," Berlinsky said.



The Green Island Ranch property, marked in pink, represents nearly half of Osceola County's South Lake Toho district. It has entitlements for 17,000 homes as well as a future urban center and a marina on Lake Toho. (Heidt Design)

Dusty Calderon and Dean Saunders from SVN Saunders Ralston Dantzler Real Estate represented the Partin family, which had owned the ranch for over 100 years. Calderon, a family member and broker on the deal, said he was humbled to be a part of the county's largest single land sale in over a decade. The same property had sold for $220 million in 2008, but the buyers defaulted and the land went back to the Partin family. The sellers provided $50 million in financing for the buyers.

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"It's a big payday, but it still smarts a bit," Calderon admitted. "I think we've been pretty good stewards of the land. Now it's time to pass the torch."

In anticipation of the closing, Berlinsky and his planning team from Heidt Design met last Friday with Osceola County's planning staff to discuss the current entitlements of the ranch property, which makes up a significant portion of the county's South Lake Toho Element. Osceola County approved a Mixed-Use Conceptual Master Plan for the SLT district in 2010, and Berlinsky said development would begin on the acreage east of the Florida's Turnpike.

"It is a very much a long-term project that will run for several decades," Project Manager Matt Call said. "You know, what's exciting about the project is the amount of commercial and office and other things that will come in the future. But I know right now everyone's focused on the Canoe Creek neighborhoods and the potential for launching those in the next few years."

Call said they intend to file a Concept Plan (CP) in early 2022 for the first four neighborhoods, which are accessible by Canoe Creek Road. The CP would closely align with the CMP, which entitles those neighborhoods for 2,156 detached dwelling units and 1,316 attached homes, for a combined 3,472. "You know, we're really focused on the South Lake entitlements, because we realize that the value of the property is the underlying entitlements that come along with it," Call said.

The property spans the Florida's Turnpike and includes a future intersection with the planned Southport Connector Expressway. (SVN Saunders)

The size and scale of those four neighborhoods alone is comparable to Berlinky's most recent venture with Wheelock: the award-winning Starkey Ranch master-planned community north of Tampa. In the case of Green Island, it represents just a fraction of the land now under control of the developers. Heidt Design President Patrick Gassaway said the firm would manage the project from its Celebration office.

Christie Barreiro, Director of Community Planning for Heidt Design, said the construction would begin in Canoe Creek Neighborhood 3 (CCN-3), which is accessible from Canoe Creek Road and is entitled for 1,040 dwelling units. The first K-8 school site would likely be in CCN-1, which is closer to the turnpike and has entitlements for

768 dwelling units. "That's also where the South Lake Toho CMP had envisioned a larger community center," she said. "So our thought was the K-8 school would be near that community center for good synergy, higher density and intensity of uses."

Gassaway said the Turnpike currently serves as a barrier to development of the East Neighborhoods and future urban center. "There's a small agricultural underpass currently, which will incorporate into our trail system," he said. "But Reed's goal is to move the East-West framework street, which is, in essence, a four-lane divided collector road, from Canoe Creek and ultimately over the Turnpike in a rapid and continuous way. The nature of the neighborhoods is such that we're going to grow just like the adopted plan contemplated. The initial phases of SLT were considered to be Canoe Creek Neighborhoods 1-4, and that's easy to envision and currently accessible and easy to incorporate in the infrastructure that's available."

Construction will start with Canoe Creek Neighborhood 3, which is accessible now from Canoe Creek Road. Within five years, the developer will have built an overpass over the Florida's Turnpike, unlocking the western half of the ranch for future development. (Osceola County)

The SLT Element includes two Turnpike interchanges, including one with the future South Lake Connector toll road, which is currently in the Project Development and Environmental Study phase with the Central Florida Expressway Authority. Gassaway said that while the initial phases get underway in the Canoe Creek neighborhoods, the developers will work closely with Osceola County, the Turnpike Authority and the Central Florida Expressway Authority to accelerate work on those projects — including filing an Interchange Justification Report with the Federal Highway Administration.

Call said that within five years, the development team would have an established community in the Canoe Creek section with multiple homebuilders selling a variety of housing product types. He estimates it will take that long to design and permit the first overpass. In the meantime, the team will have completed their visioning for the neighborhoods west of the Turnpike. That includes more than 2.5 miles of lake frontage and a future marina.

"We're really excited about what we're going to unlock on the west side of the project for the future," Berlinsky said. How best to implement the SLT plan and make use of Lake Toho will be a priority going forward. "You can't not see the lake," he said. "It's a huge part of this project. But because it is, we're going to spend a lot of time figuring out how to do it, and how to make it work. And that's a lot of discussions because it's going to be a long process."

EDITOR'S NOTE: *An earlier version of this story stated that the $150 million sale was a record for Osceola County. The same property previously sold for $220 million.*

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Laura Kinsler

Laura Kinsler is the editor of GrowthSpotter. She joined the company in 2015 as Osceola County reporter after a 15-year career at the Tampa Tribune. A proud graduate of the University of Georgia's Grady College of Journalism & Mass Communication, Laura follows the Georgia Bulldogs religiously.

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COMPANY INFO

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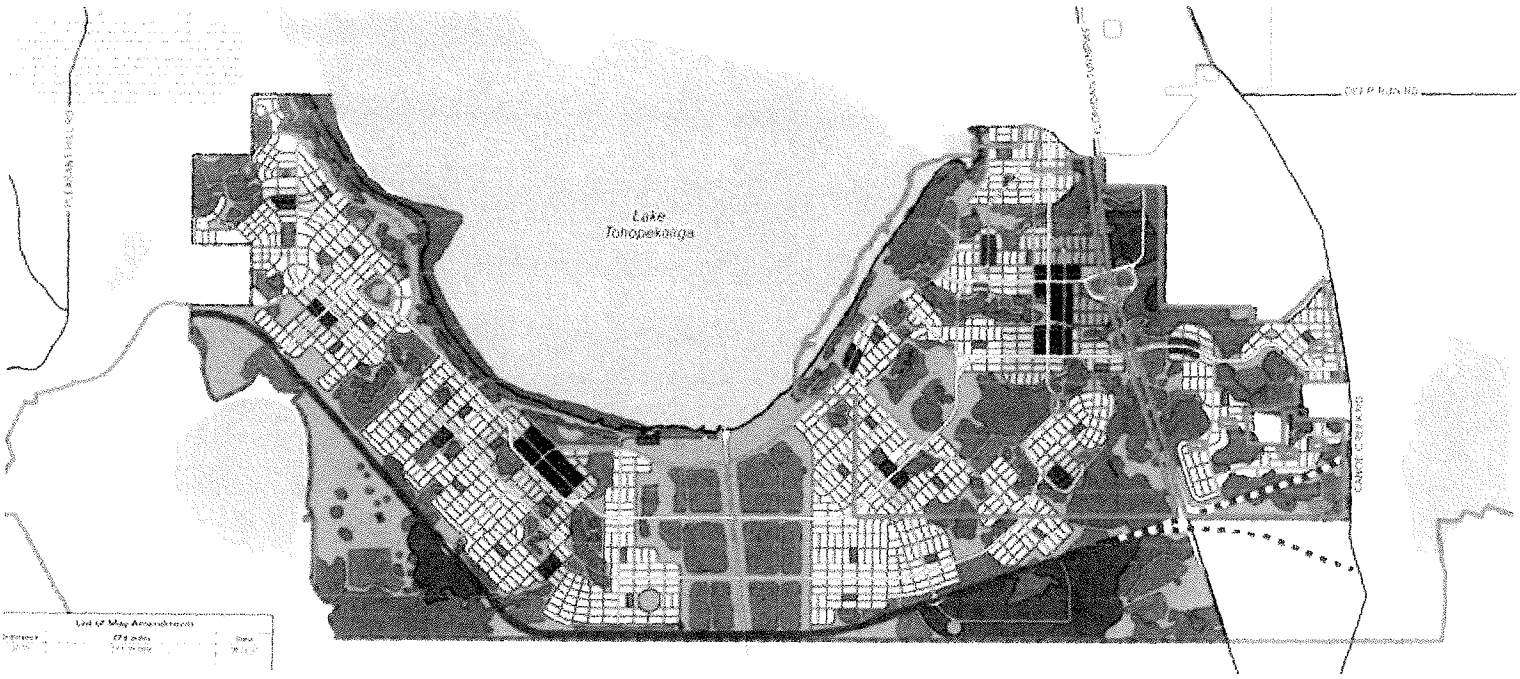

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"It is a very much a long-term project that will run for several decades," Project Manager Matt Call said. "You know, what's exciting about the project is the amount of commercial and office and other things that will come in the future. But I know right now everyone's focused on the Canoe Creek neighborhoods and the potential for launching those in the next few years."

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Laura Kinsler

Laura Kinsler is the editor of GrowthSpotter. She joined the company in 2015 as Osceola County reporter after a 15-year career at the Tampa Tribune. A proud graduate of the University of Georgia's Grady College of Journalism & Mass Communication, Laura follows the Georgia Bulldogs religiously.

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Steverson, Kathryn

From: Zuilkowski, Steven
Sent: Thursday, March 24, 2022 2:29 PM
To: Steverson, Kathryn
Subject: FW: Commission on Ethics: Formal Opinion Request

From: Nicola Liquori <nliquoricpa@gmail.com>
Sent: Thursday, March 24, 2022 1:59 PM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Subject: Re: Commission on Ethics: Formal Opinion Request

Thank you for following up. Yes, you are correct; I am requesting a formal opinion.

Please let me know if there is any additional information that I can provide.

Regards,
Nicola Liquori

On Thu, Mar 24, 2022 at 1:55 PM Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us> wrote:

> Ms. Liquori:
>
> On the phone when we last spoke, I indicated that we were unable to render advice to you at the staff level due to the complexity of your issue and I recommended that you request a formal opinion from our Commission. You indicated on the phone that you did want a formal opinion from the Commission. Can you confirm for me that my understanding is correct? Once you confirm, we can add your matter to our Commission's agenda.
>
> Sincerely,
>
> Steven J. Zuilkowski
>
> **Steven J. Zuilkowski**
>
> *Senior Attorney*
>
> Florida Commission on Ethics
>
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