

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20021025

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Deny request for a rehearing of the Board's decision in Zoning Case No. DCI2001-00063 for an amendment to the Legends RPD.

**WHY ACTION IS NECESSARY:** Lee County Land Development Code Section (LDC) 34-84(a) allows aggrieved parties to file a written request for a public rehearing by the Board for a modification or rescision of decisions made in zoning actions.

**WHAT ACTION ACCOMPLISHES:** Allows Board to consider whether a rehearing is warranted on the basis of new evidence or points of law or fact that may have been overlooked or understood in the Board's previous ruling.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #

*AP #1*

**3. MEETING DATE:**

*10-08-2002*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:  
15 minutes

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE
- ORDINANCE      *LDC 34-84*
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT      *DCD*
- C. DIVISION          *Zoning Division*
- BY: *Mary Gibbs*  
Mary Gibbs, Director

**7. BACKGROUND:**

U.S. Homes filed an application to amend the Legends Residential Plan Development to change the designation of two tracts of land within the project from single-family to multi-family residential. The application was heard by the Board on August 19, 2002. The Board denied the request on inconsistencies with Policies 5.1.5 and 24.1.4 of the Lee Plan. *See attached resolution Z-02-019.* In addition, the Board found that the proposed multi-family densities were not consistent with the densities of the surrounding single-family development within the Legends. Specifically, the development of the two tracts with multi-family residential uses would result in the residents within those tracts traveling through areas already developed with single-family residences at a significantly lower density. The Board determined that there were no conditions that would provide sufficient safeguard to the public's interest to warrant approval. Since the Board did not specify that the denial was without prejudice, the denial of the request is deemed "with prejudice" pursuant to LDC Section 34-211(a)(1). The effect of a denial with prejudice is that the applicant may not file an application containing the same request for one year.

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Mary Gibbs</i>	N/A	N/A	N/A	<i>Secretary</i>	OA <i>9/25/02</i>	OM <i>9/25/02</i>	RISK <i>9/25/02</i>	GC <i>9/25/02</i>	

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

**Rec. by CoAtty**  
Date: *9/24/02*  
Time: *3:00pm*  
Forwarded To: *County Admin*  
*9/25/02*

RECEIVED BY  
COUNTY ADMIN. *TD*  
*9/25 3:00*  
COUNTY ADMIN.  
FORWARDED TO: *BT*  
*9/25 3:00*

The purpose of this agenda item summary is to present the criteria set forth in the LDC for approving a request to rehear a zoning action along with staff's recommended findings with regard to each criteria. Also attached to this agenda item summary is a copy of the applicant's Request for Rehearing, as well as the argument offered in support of the request.

#### Applicant's Request

The substance of the applicant's request is for the Board to remand the case to the Hearing Examiner so that residents within Tract L-1 of the Legends RPD may be noticed of a hearing on the proposal to develop the remainder of Tract L with multi-family uses. Thus, the request for rehearing is for the limited purpose of requesting a partial remand of the case to the Hearing Examiner in order to take testimony with regard to the issue of whether there are objections by Tract L-1 lot owners who have purchased lots subsequent to the initial notices and hearing. At the time the request to amend the Legends RPD was originally noticed, the lots within Tract L-1 were owned by U.S. Homes (the applicant). As a result, single-family home purchasers within Tract L-1 were not notified of the proposal to develop the remainder of the tract with multi-family uses.

The applicant proposes to limit the scope of the requested remand to a reconsideration of the issue of whether multi-family development is appropriate on the remainder of Tract L (L-2) within the Legends RPD. The applicant waives objections to the denial of multi-family use on Tract K for the purposes of the requested rehearing on Tract L. In support of the request for rehearing, the applicant reiterates the arguments made at the August 19<sup>th</sup> zoning hearing that there was not significant opposition to the request for multi-family uses in Tract L-2. Applicant submits that there may have been confusion with regard to the width of roads in the subdivision and whether the width of the roadway was adequate to permit sidewalks. It is further asserted that the speculation regarding pavement widths and right-of-way widths would be clarified by remand to the Hearing Examiner.

The applicant desires an opportunity to allow the property owners within Tract L-1 to comment on the proposal to develop the remainder of Tract L with multi-family residential units without filing a new zoning application.

#### Standard of Review

LDC Section 34-84 governing the rehearings of decisions allowed for a request to rehear a zoning matter provided the petitioner states with particularity, the new evidence or points of law or fact that the Board has overlooked or misunderstood. The Board has the discretion to deny the request based exclusively on the applicant's written request and supporting documentation, as well as the staff's written analysis thereof. The deliberations of the Board with respect to whether to grant a rehearing does not constitute a public hearing, and no oral testimony is allowed or may be considered by the Board in the course of these deliberations.

#### The Staff Analysis of the Request

The applicant has not met the criteria set forth in LDC Section 34-84 to substantiate the grant of a rehearing of the Board's decision in the Legends RPD case. Specifically, the LDC requires that the applicant state with particularity the new evidence or the points of law or fact that the Board overlooked or misunderstood in making its decision. The request filed by U.S. Homes Corporation does not allege new evidence or points of law or fact that have been overlooked or misunderstood. Accordingly, the Board should deny the request.

The Board's basis for denial set forth in Section C of Zoning Resolution Z-02-019 provides sufficient basis and rationale for the denial of the requested amendment to the Planned Development. The basis of the denial was not founded on lack of notice to property owners. The basis of the denial was premised on compatibility. The reasoning states that the requested amendment was not consistent with Lee Plan Policies 5.1.5 and 24.1.4 and Sections 34-83(b), 34-377(b), and 34-411 of the LDC. The Board concluded that the requested amendment to convert single-family parcel to multi-family development was not consistent with the densities of the surrounding single-family development located in Parcel G and the Eastern portion of Parcel L (known as Parcel L-1), and that this inconsistency would result in a development tract density several times higher than abutting single-family development. In addition, the Board concluded that development of the remainder of Parcel L as multi-family is not compatible with existing single-family uses in Parcel G and the eastern portion of Parcel L (known as

Parcel L-1), particularly since those tracts will share infrastructure and access. The Board noted that development of Parcels K and L with multi-family dwellings would result in travel through areas with significant lower densities without the provision of adequate mitigation, contrary to the Lee Plan and the LDC. Finally, the Board concluded that the conditions proposed did not adequately provide sufficient safeguard to the public interest since the conditions did not sufficiently ameliorate the impact anticipated by additional density and traffic anticipated from the proposed multiple family development.

In sum, it is staff's conclusion that the applicant has not met the standard for rehearings of zoning requests set forth in Section 34-84 of the LDC because they have not provided new evidence or points of law or fact that the Board has overlooked or misunderstood. Instead, the applicant seeks to use the rehearing process as a vehicle to avoid resubmitting its request to amend the designation of Tract L-2 from single-family to multi-family development.

- Attachments:
- 1) Resolution Z-02-019, U.S. Homes in reference to Legends RPD
  - 2) Request for Rehearing filed by U.S. Home Corporation

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

WHEREAS, James E. Curry filed an application of behalf of the property owner, Kings Wood Development Co., L.L.C., to amend an existing Residential Planned Development (RPD), in reference to Legends RPD; and

WHEREAS, a public hearing was advertised and held on April 10, 2002, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2001-00063; and

WHEREAS, a second public hearing was advertised and held on August 19, 2002, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record, including the Lee Plan and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to amend the Legends RPD to allow the development of multiple family dwelling units within Parcels K and L. The property is located in the Outlying Suburban Future Land Use Category and is legally described in attached Exhibit A. The request is DENIED based on the findings set forth in Section C.

SECTION B. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: The legal description of the property
- Exhibit B: Zoning Map (subject parcel identified with shading)

The applicant has indicated that the STRAP numbers for the properties are: 28-45-25-07-0000K.0000, 28-45-25-07-000L1.0000 & 28-45-25-07-000L2-0000

SECTION C. FINDINGS AND CONCLUSIONS:

1. The applicant did not prove entitlement to amend Parcels K and L to allow for the development of multiple family dwelling units because the requested amendment to the Master Concept Plan and zoning approvals is not consistent with Lee Plan Policies 5.1.5 and 24.1.4. and Sections 34-83(b), 34-377(b) and 34-411 of the Land Development Code (LDC).

2. The requested amendment is not consistent with densities of the surrounding single-family development located in Parcel G and the east portion of Parcel L, and would result in a development tract density several times higher than abutting single-family development.
3. The Development of Parcel K and the remainder of Parcel L as multi-family is not compatible with the existing single-family uses located in Parcel G and the east portion of Parcel L, particularly since those tracts will share infrastructure and access. Development of Parcels K and L with multi-family dwellings will result in travel through areas with significantly lower densities without the provision of adequate mitigation, contrary to Lee Plan Policy 24.1.4. and the Land Development Code.
4. The proposed conditions do not adequately provide sufficient safeguard to the public interest because they do not sufficiently ameliorate the impacts created by the additional density and traffic anticipated from the proposed multiple family development.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Judah, seconded by Commissioner Janes, and, upon being put to a vote, the result was as follows:

Robert P. Janes	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Nay
John E. Albion	Aye

DULY PASSED AND ADOPTED this 19<sup>th</sup> day of August 2002.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: *Lisa A. Purice*  
Deputy Clerk

BY: *Ray Judah*  
Chairman



Approved as to form by:

*Donna Marie Collins*  
Donna Marie Collins, Esq.  
County Attorney's Office

EXHIBIT "A"  
DCI2001-00063  
PAGE 1 OF 1

LEGAL DESCRIPTION

In Sections 21 and 28, Township 45 South, Range 25 East: All of the lands included in the following recorded subdivisions:

LEGENDS GOLF AND COUNTRY CLUB - UNIT 1 Subdivision, Plat Book 62, Pages 49-51, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 2 Subdivision, Plat Book 62, Pages 68-72, and LEGENDS GOLF CLUBHOUSE Subdivision, Plat Book 63, Pages 83-84, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 3 Subdivision, Plat Book 65, Pages 17-20, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 4 Subdivision, Plat Book 65, Pages 34-44, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 5 Subdivision, Plat Book 65, Pages 49-52, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 7 Subdivision, Plat Book 68, Pages 46-48, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 6 Subdivision, Plat Book 68, Pages 81-82, and LEGENDS GOLF AND COUNTRY CLUB - UNIT 8 Subdivision, Plat Book 70, Pages 40-47.

All as recorded in the Public Records of Lee County, Florida.

RECEIVED

COMMUNITY DEVELOPMENT

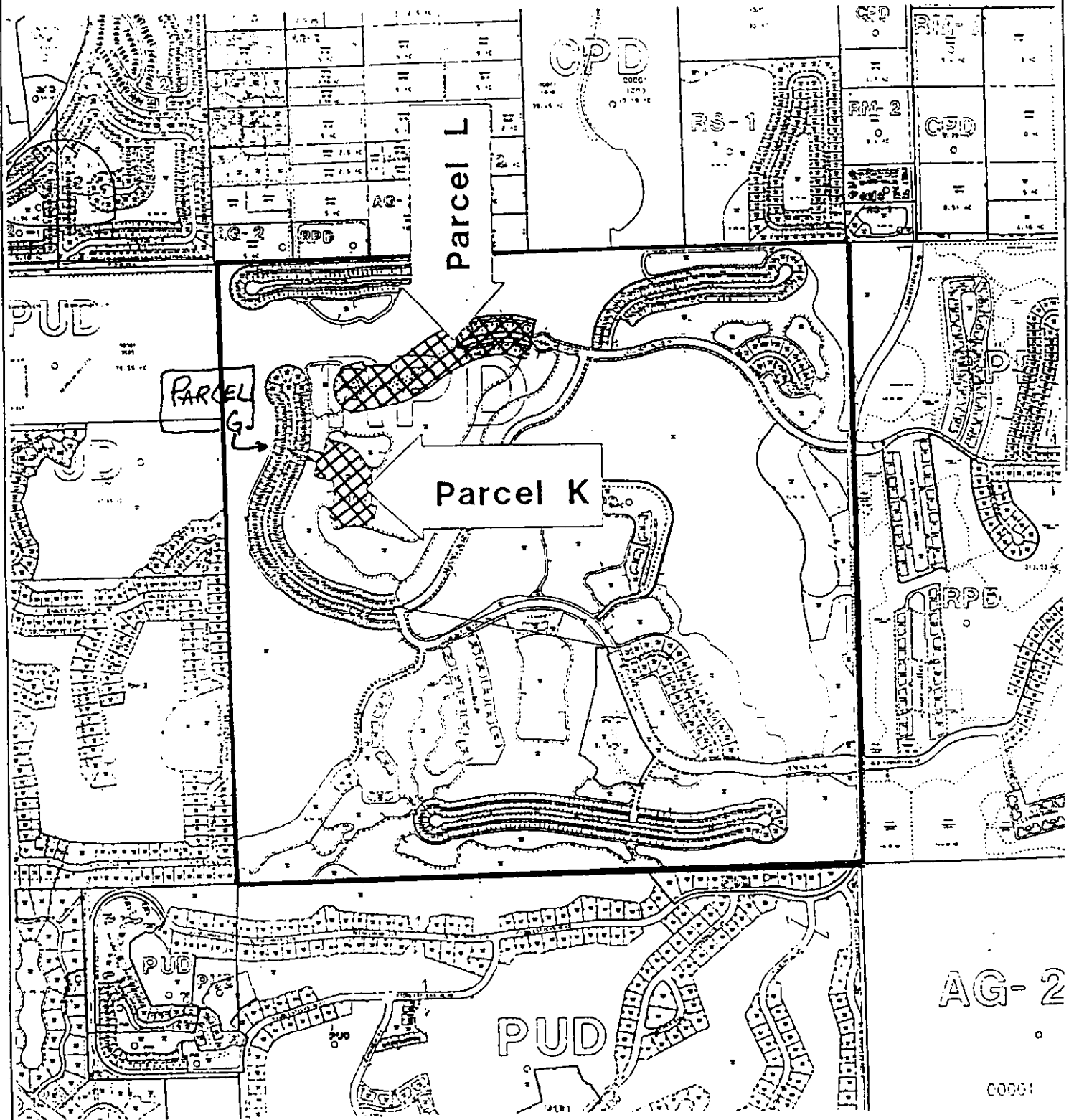
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Applicant's Legal Checked

by gms 3/18/02

DCI 2001-00063

# ZONING MAP





# LEE COUNTY

FILE

## APPLICATION FOR REQUEST FOR CONTINUANCE, DEFERRAL, WITHDRAWAL, OR REHEARING

**RECEIVED**  
AUG 31 2002

REQUEST FOR: (refer to back of sheet for special notes)

CONTINUANCE     DEFERRAL     WITHDRAWAL  
 REHEARING     WITHDRAWAL OF ADMINISTRATIVE APPEAL

ZONING COUNTER

If a DEFERRAL OR CONTINUANCE is requested, please indicate:

Length of time \_\_\_\_\_

From:  Hearing Examiner     BOCC

1. Date of Scheduled Hearing: \_\_\_\_\_
2. Applicant/Project Name: U.S. Home Corporation in ref. to Legends RPD Amendment
3. Tracking/Hearing/Application Number: DCI 2001-00063
4. Date Decision was Rendered: August 19, 2002
5. Type of Application-Check RPD Amendment  
 Rezoning     Special Exception     Variance     Other
6. Reason for request (If rehearing is requested, see Special Notes on Back):  
See attached statement

Steven C. Hartsell    8.29.02  
Signature of applicant or authorized agent    Date

Steven C. Hartsell, Authorized Agent

Name (typed or printed legibly)

P. O. Drawer 1507, Fort Myers, FL 33902

Address

DCI 2001-00063  
RECEIVED BY  
LEE CO. ATTORNEY  
02 SEP -4 AM 11:12

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 29th day of August  
20 02 by Steven C. Hartsell who is personally known to me or who produced  
\_\_\_\_\_ as identification.

OFFICIAL NOTARY SEAL  
LAURIE L GIARRUSSO  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC928660  
MY COMMISSION EXP. MAY 6, 2004

Laurie L. Giarrusso  
Signature of Notary Public  
Laurie L. Giarrusso

Printed Name of Notary Public

FEE \$ \_\_\_\_\_  
DATE PAID: \_\_\_\_\_

RECEIPT NUMBER: \_\_\_\_\_  
INTAKE BY: \_\_\_\_\_



**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA**

**IN RE: U.S. HOME CORPORATION  
in ref. to LEGENDS RPD AMENDMENT**

**CASE NO. DCI 2001-00063**

AUG 30 2002

**REQUEST FOR REHEARING**

Pursuant to Lee County Land Development Code §34-84 the Applicant in this case, U.S. Home Corporation, hereby files this Request for Rehearing for the limited purpose of **requesting a remand to the Hearing Examiner** in order to take testimony with regard to the issue of whether there are objections by the new lot owners who have purchased lots in Tract L subsequent to the initial notices and hearing. The hearing would obviously remain open to the public so that any neighbors, including those in Tract G, who might desire to participate or provide input would be permitted to do so as well. As grounds the Applicant states that:

1. If the request for rehearing and the remand is approved, the Applicant acknowledges that the request for multi-family use in Tract K has been denied and waives any objections to that denial for purposes of the rehearing and remand. The Applicant accepts the BOCC decision on that issue as being final.
2. The Staff and the Hearing Examiner recommended approval, with conditions, of the request for multi-family use in Tract L-2. The only objections to the multi-family use in Tract L-2 that came from property owners in Tract G were from Mr. DeMartini and his neighbor who live on the cul-de-sac across the lake from the end of the Tract L-2 cul-de-sac. Their main objection was related to the height and proximity of the multi-family units in Tract L-2 – both issues adequately addressed by the conditions proposed by the Hearing Examiner and Staff. Denial of the multi-family use will result in duplexes / two-family homes placed in the L-2 cul-de-sac as originally designed, in closer proximity to the Tract G cul-de-sac homes than those homeowners desired and without the limiting conditions recommended by the Hearing Examiner.
3. The concerns raised by the Board with regard to multi-family use in Tract L were motivated predominantly by concerns that new lot owners in Tract L might not have been given notice or had a reasonable opportunity to voice concerns or objections to

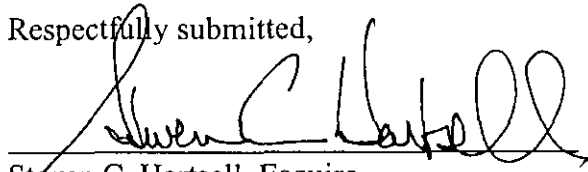
the multi-family use proposed in Tract L-2. The Applicant strongly believes that those owners do not have objections to the proposed use because they were given notice during the sales process. The alternative to the remand would be to require the Applicant to refile the request as a new zoning application that will require another 9-12 months to be heard on this limited issue. It will require an entirely new application, sufficiency review, and all of the attendant processing simply to address the same issue that would be addressed through the remand. Not only is that time consuming and expensive for the Applicant, it is also an inefficient use of the Staff time and resources, since by the time it comes back to the Staff for a staff report, the reviewer will have to re-examine the previous case, Hearing Examiner Recommendations and County Commission minutes in order to refresh his memory or to understand the case.

4. The Applicant agrees to provide notice to, or alternatively to supply the names of, the new property owners in Tract L and to cover the costs of the Staff providing individual notice to the new property owners who would be affected by the multi-family use in Tract L-1. The Board's decision appeared to be founded upon a concern that when the application was originally made and the notices of the hearing were provided, many of those lot owners did not own their lots and might not have been aware of the proposed change to multi-family. That speculation was not a matter of record before the Board or the Hearing Examiner, and the Applicant would request the opportunity to be able to factually address that issue before the Hearing Examiner.
5. Since there was no significant opposition to the request for multi-family use in Tract L-2, and the Applicant had agreed to conditions to address the limited concerns of the neighbors in Tract G, the Staff recommended approval, the Hearing Examiner recommended approval and there was no significant testimony with regard to the possible impacts on Tract L-1 owners and whether mitigation like providing a sidewalk could mitigate the possible impacts. Such mitigation would be another matter for the Hearing Examiner to consider on remand.
6. There was also confusion with regard to the issue of how wide the roads were in the subdivision and whether the width of the roads was adequate to permit a sidewalk which might be a means for mitigating possible impacts. The confusion created by the speculation about pavement widths and right-of-way widths is appropriately clarified by remand to the Hearing Examiner.

WHEREFORE, the Applicant respectfully requests the Board of County Commissioners to grant the rehearing for the specific purpose of remanding the case to the Hearing Examiner for the limited issue of considering whether the multi-family use in Tract L-2 is appropriate in view of the foregoing issues.

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Rehearing has been furnished to Donna Marie Collins, Assistant Lee County Attorney, P. O. Box 398, Fort Myers, FL 33902-0398; Mary Gibbs, Director, Department of Community Development, P. O. Box 398, Fort Myers, FL 33902-0398; and Alvin "Chip" Block, Department of Community Development, P. O. Box 398, Fort Myers, FL 33902-0398 by Hand Delivery this 30<sup>th</sup> day of August, 2002.

Respectfully submitted,



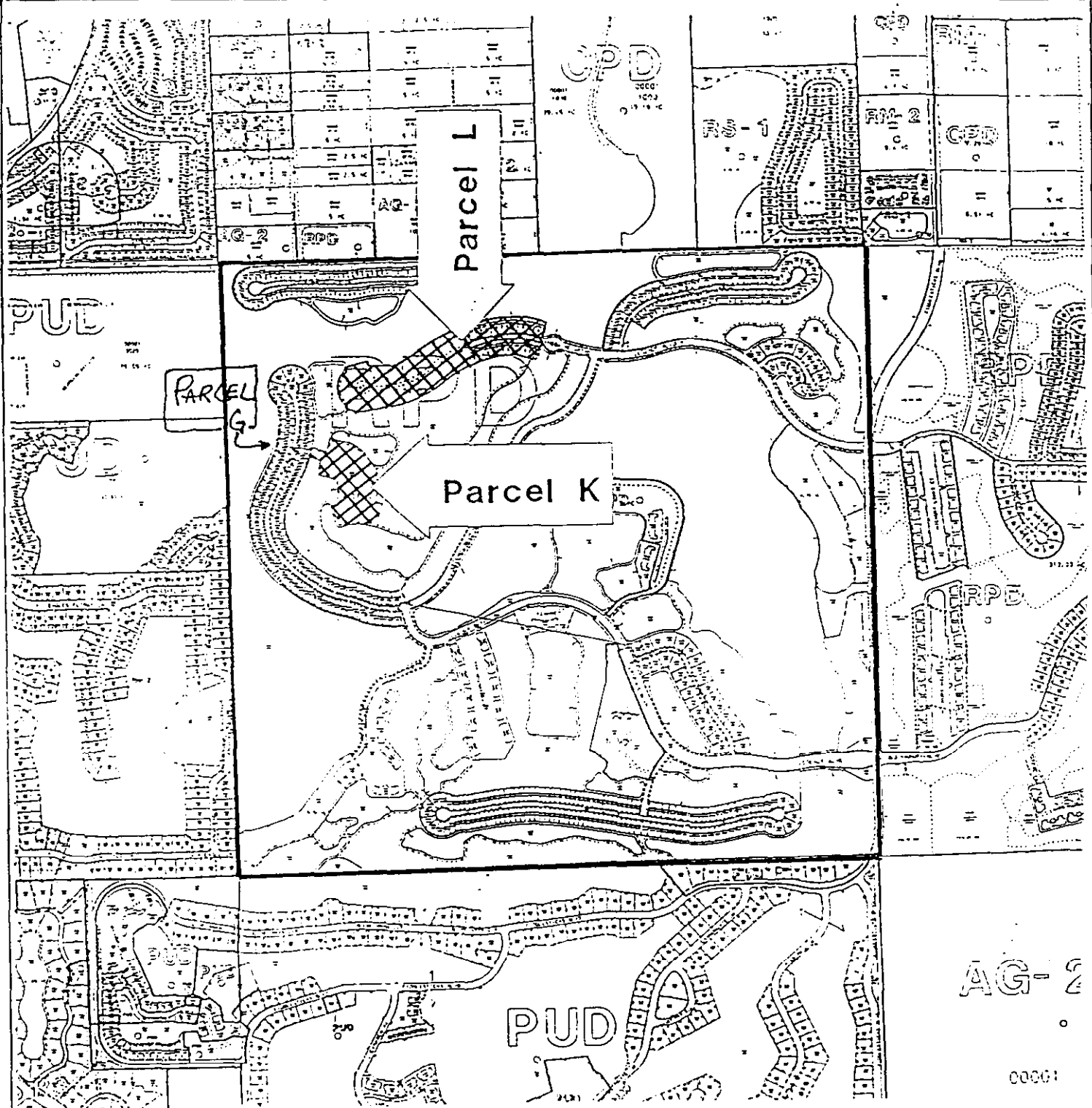
Steven C. Hartsell, Esquire  
Florida Bar #305030  
Attorney for the Applicant, U.S. Home Corporation  
Pavese, Haverfield, Dalton, Harrison & Jensen, LLP  
1833 Hendry Street, P. O. Drawer 1507  
Fort Myers, FL 33902-1507  
239-336-6244, Fax: 239-332-2243

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AUG 30 2002

DCI 2001-00003

# ZONING MAP



AUG 30 2002

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