

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

DATE CRITICAL
Blue Sheet No. 20040801

1. REQUESTED MOTION:

ACTION REQUESTED: Approve a request for a license to allow the temporary placement of a carport in a portion of a public utility easement and drainage easement and authorize the Chairman to execute the license.

WHY ACTION IS NECESSARY: Board approval is necessary to authorize the license

WHAT ACTION ACCOMPLISHES: Authorizes a license to allow the temporary placement of a carport in a portion of a public utility easement and drainage easement .

2. DEPARTMENTAL CATEGORY: 12
COMMISSION DISTRICT #3

C12B

3. MEETING DATE:

06-29-2004

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE Ch. 125, F.S.
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT _____
- C. DIVISION _____

BY: *John J. Fredyma*
John J. Fredyma, Asst. Co. Atty.

7. BACKGROUND: Frank L. and Linda S. Gonzales of 15545 Kapok Court, Fort Myers, (see attached map) seek to maintain an open-sided carport within a portion of the existing concrete driveway at their property at the end of a cul-de-sac street.. They have already obtained a variance to the otherwise required 25-foot street setback (Lee County Variance Case No. VAR2003-00039), but still need the County's permission to encroach within the 10-foot wide Public Utility Easement and Drainage Easement at this location.

Lee County Utilities has existing water and sewer lines in the easement and does not recommend the full vacation of the easement (because of existing facilities constructed there); however, the Department does not object to allowing the existing carport to remain, subject to certain conditions. One condition is the issuance of a Board-issued, fully revocable license. This would allow the carport to remain, but would require the property owner to remove it upon the request of the County if need be for utility line service or repair. A proposed license agreement has been proposed. The license includes the conditions approved by the Hearing Examiner in Variance Case No. VAR2003-00039. A copy the proposed license and conditions are attached.

County staff does not object to the issuance of the license (with the attached conditions). The property owner will be responsible for the cost of recording the license.

- Attachments: (1) Map
(2) Proposed license (and conditions)

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>Timothy</i>	<i>Approved</i>				
					OA	OM	RISK	GC	<i>6-16-04</i>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

6/14/04 3:30 PM

RECEIVED BY
COUNTY ADMIN
6/14/04
9:25 AM
COUNTY ADMIN
FORWARDED TO: *11*

PS

This Instrument Prepared by:

Office of the County Attorney
Lee County, Florida
Post Office Box 398
Fort Myers, Florida 33902-0398

STRAP No. 31-45-24-25-00000.0040

THIS SPACE FOR RECORDING

LICENSE

THIS LICENSE ("*License*") is executed this ____ day of _____, 2004, by **LEE COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, ("*County*" or "*Licensor*"), in favor of **FRANK L. GONZALES** and **LINDA S. GONZALES**, both of 15545 Kapok Court, Fort Myers, FL 33908 ("*Gonzales*" or "*Licensee*").

WHEREAS, Gonzales is the owner of real property located at 15545 Kapok Court, Fort Myers, Florida, described as being Lot 4 of that certain platted subdivision known as Kapok Village, according to the map or plat thereof on file and recorded in the Official Records of the Public Records of Lee County, Florida at Plat Book 33, Page 68 (the "*Property*"); and

WHEREAS, there is a 10-foot wide Public Utility Easement and Drainage Easement ("*Easement*") located on the front property line of Property; and

WHEREAS, the County has certain utilities in use and located within a portion of the Easement; and

WHEREAS, Gonzales seeks to construct an open-sided carport, a portion of which will encroach into the Easement; and

WHEREAS, Gonzales has applied for and received the necessary approval in the form of a Variance issued in Case No. VAR2003-00039 ("*Variance*") to allow the proposed carport to be constructed within the required 25-foot street setback, but the Variance cannot authorize any encroachment within the Easement; and

WHEREAS, the County's servicing utility department does not object to the construction of the proposed carport, provide certain conditions are observed; and

WHEREAS, the County has the authority to issue a license to Gonzales, which license is revocable at the will of the County, to allow the construction of the proposed carport within the Easement.

NOW THEREFORE, for and in consideration of the sum of One and xx/100 Dollar (\$1.00), the promises of the Licensee contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County hereby authorizes, approves and issues a License to Gonzales to construct a carport within a portion of the Easement, subject to the following conditions:

1. The above recitals are acknowledged by the parties to be true and correct and are incorporated herein by reference.
2. This License is temporary and fully revocable by the County at any time and for any reason whatsoever as determined solely by the County.
3. This License may be terminated by the County upon the sending of a notice of revocation to the Licensee, via regular mail, postage prepaid, at the address for the property as maintained by the Lee County Tax Collector.
4. This License allows the placement and construction of a carport with the Easement, but such use is specifically made subject to the conditions approved and made a part of Lee County Variance Case No. VAR2003-00039, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.
5. Licensee, by accepting this License, specifically accepts and agrees to be bound by the stated conditions contained therein
6. The carport cannot be enclosed with solid or fixed walls or any type of fixed lattice and no other buildings, structures, fixtures or improvements may be placed or constructed within the Easement.
7. Licensee, as the current owner of the Property, for themselves, their heirs, successors and assigns, agree, upon the receipt of a request of the County or any other servicing utility, to immediately remove the Carport. In the event Licensee fails to immediately remove the Carport when requested, then the County is authorized to enter onto the Property of the Licensee to remove the Carport at the full expense of the Licensee or any subsequent owner of the Property.
8. This License will create the relationship of Licensee and Licensor between the parties, and no estate or title will pass out of the Licensor. This License may not be construed to constitute an easement.
9. This License will be binding upon and inure to the benefit of the successors, assigns, executors, personal representatives and administrators of the respective parties hereto.

This License applies only to the interest of Lee County and its Board of County Commissioners in the Easement herein described, and does not warrant the title or represent any state of facts concerning the title.

IN WITNESS WHEREOF the COUNTY has caused this License to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year first written above.

(OFFICIAL SEAL)

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO LEGAL FORM:

Office of County Attorney

Exhibit "A"

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

VARIANCE: VAR2003-00039
APPLICANT: LINDA GONZALES, in reference to KAPOK COURT CARPORT
HEARING DATE: SEPTEMBER 4, 2003 [no hearing]
CONTINUED HRG. DATES: OCTOBER 30, 2003 [no hearing]
JANUARY 8, 2004
MAY 26, 2004

III. HEARING EXAMINER DECISION:

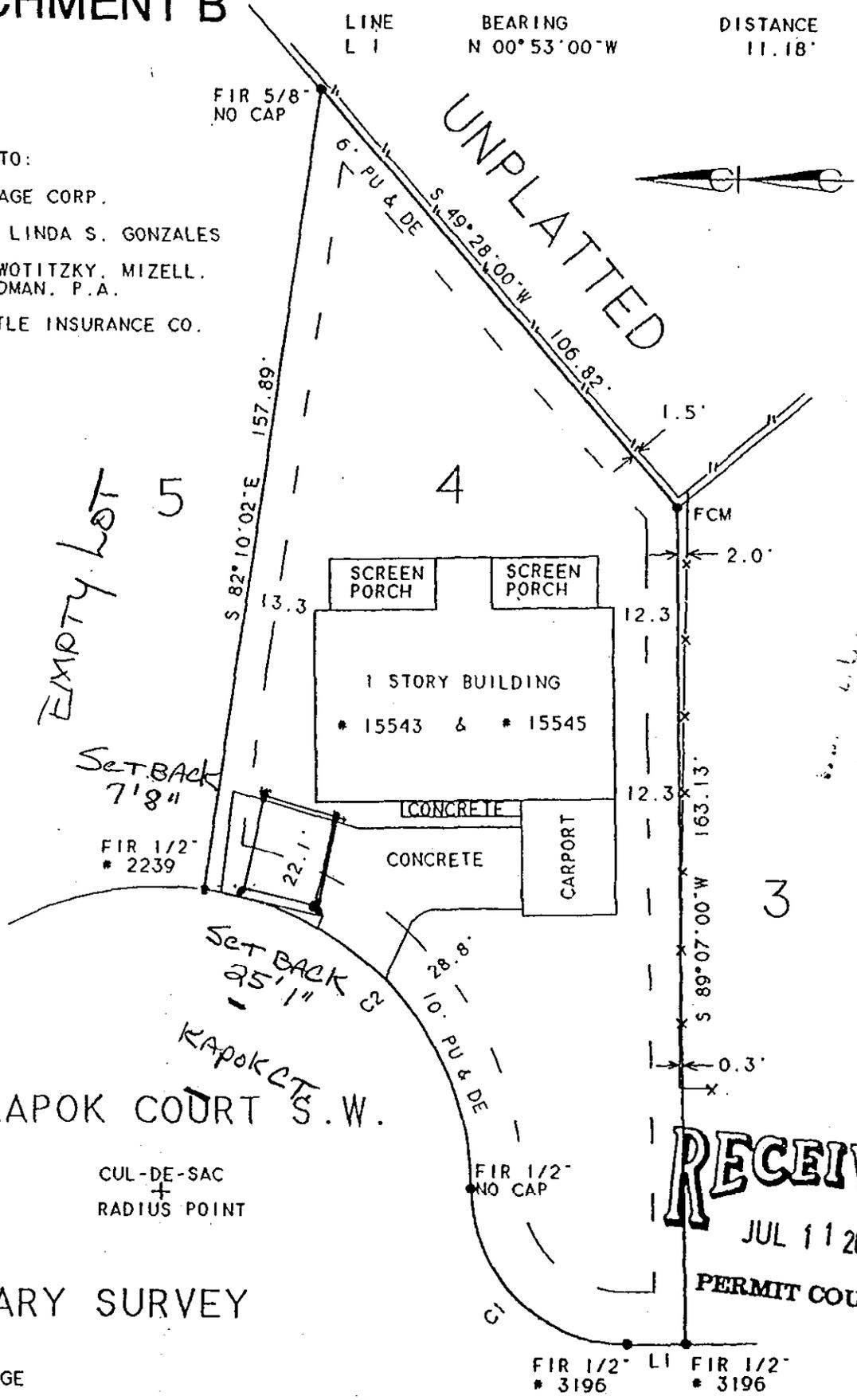
The undersigned Lee County Hearing Examiner **APPROVES** the Applicant's request for a Variance from the minimum required 25-foot street setback to a zero-foot street setback for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITIONS:

1. The Variance is limited to the zero-foot setback from Kapok Court as shown on the Applicant's site plan date stamped "Received July 11, 2003 Permit Counter."
2. Prior to the issuance of a building permit, the applicant must obtain approval from the Board of County Commissioners for the construction of the carport encroaching within the 10-foot-wide Public Utility and Drainage Easement along the front on the property.
3. The property owner must obtain a building permit and final inspection for the carport within six (6) months of the approval by the Board of County Commissioners reference above.
4. The carport must be constructed in substantial conformity with the style or design of the structure, attached as **Exhibit B** to this Decision, prepared by Andrew L. Calvetti, P.E., an engineering consultant for Accent Awning.
5. The carport cannot be enclosed with solid or fixed walls or any type of lattice.
6. The carport can remain within the portion of the 10-foot-wide Public Utility and Drainage Easement depicted on the site plan, provide the servicing utilities do not object to the placement of the structure at his location.
7. The property owners (for themselves, their heirs, and assigns) agree to remove the carport upon the request of any of the servicing utilities. Any such removal will be at the sole cost or expense of the property owner. After such removal, the carport may be replaced or reinstalled, provided it is done so in a manner consistent with the terms of this approval.
8. Should the carport be removed for a period in excess of one year, the Variance will be null and void...
9. If the Variance is approved, the Applicant must record a copy of the Hearing Examiner's Decision in the Officials Records Books of Lee County, Florida, to place subsequent purchasers on notice with respect to the terms of the Hearing Examiner's decision. The Applicant must pay the cost of the recording.

CURVE	DELTA ANGLE	RADIUS	ARC	TANGENT	CHORD	CHORD BEARING
C 1	90° 00' 00"	30.00'	47.12'	30.00'	42.43'	N 44° 07' 00" E
C 2	81° 17' 02"	60.00'	85.12'	51.50'	78.16'	N 48° 28' 29" E

ATTACHMENT B

CERTIFIED TO:
 GMAC MORTGAGE CORP.
 FRANK L. & LINDA S. GONZALES
 WOTITZKY, WOTITZKY, MIZELL,
 ROSS & GOLDMAN, P.A.
 CHICAGO TITLE INSURANCE CO.



EMPTY LOT 5

Set Back 7' 8"

Set Back 25' 1"

KAPOK CT S.W.

CUL-DE-SAC
 +
 RADIUS POINT

RECEIVED
 JUL 11 2003

PERMIT COUNTER

BOUNDARY SURVEY

LOT 4
 KAPOK VILLAGE
 LEE COUNTY, FLORIDA
 PLAT BOOK 33 PAGE 68

*No THRU STREET
 DEAD-END*

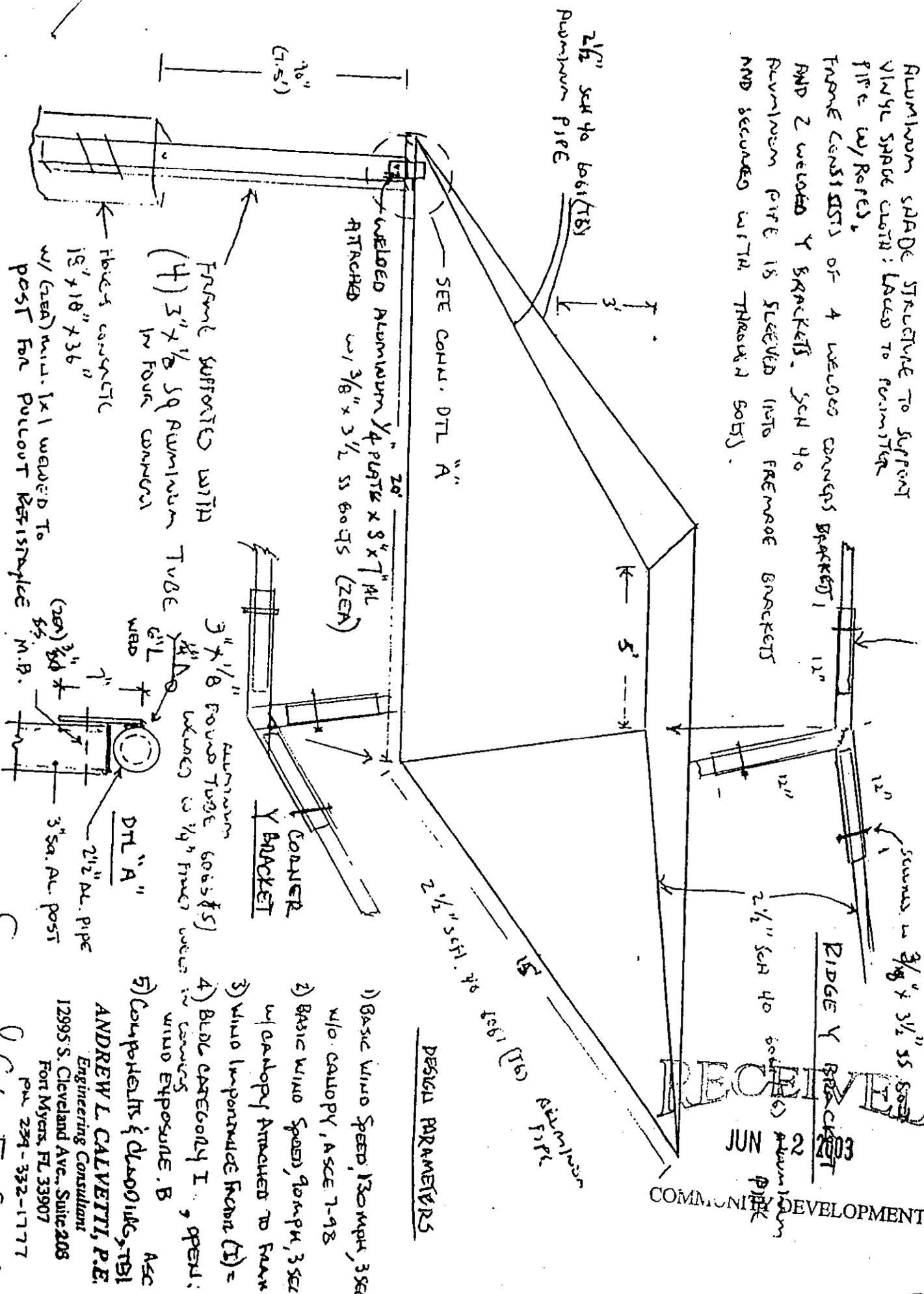
11575 MARSHWOOD LN
 Ft. Myers, FL 33908

3 1/8" round aluminum tube 6063 (T5)
 welds

LINDA GONZALES RESIDE
 KOPAL ST.
 Ft. Myers, FL A.

ALUMINUM SHADE STRUCTURE TO SUPPORT
 VINYL SHADE CLOTH: LACED TO PERIMETER
 PIPE W/ RIFES,
 FRAME CONSISTS OF 4 WELDED CORNER BRACKETS
 AND 2 WELDED Y BRACKETS. SEE 40
 ALUMINUM PIPE IS SLEAVED INTO FREEMOVE BRACKETS
 AND SECURED WITH THREAID BOLTS.

REC'D JUN 22 2003
 COMMUNITY DEVELOPMENT



DESIGN PARAMETERS

- 1) Basic Wind Speed, 130 mph, 3Sec w/o. catlory, ASCE 7-98
- 2) Basic Wind Speed, 90 mph, 3Sec w/ catlory Attached to Frame
- 3) Wind Importance Factor (I) = 1.0
- 4) Bluff Category I, open; wind exposure, B
- 5) Components & details, ASCE 7-98

ANDREW L. CALVETTI, P.E.
 Engineering Consultant

12995 S. Cleveland Ave., Suite 208
 Fort Myers, FL 33907
 PH: 239-332-1777
 FAX: 239-332-1777
 E-MAIL: acalvet@comcast.net

 **LEE COUNTY**
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (941)479-8181

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Douglas R. St. Cerny
District Two

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District Three

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District Four

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County Manager

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County Attorney

Diana M. Parker
County Hearing
Examiner

January 27, 2004

Linda Gonzales
15545 Kapok Court
Fort Myers, FL 33908

**SUBJECT: PROPOSED PUBLIC UTILITY & DRAINAGE EASEMENT VACATION
STRAP # 31-45-24-25-00000.0040
KAPOK COURT, KAPOK VILLAGE**

Dear Ms. Gonzales:

Lee County Utilities is in receipt of your request for review and recommendation concerning the proposed petition to vacate a Public Utility and Drainage Easement within Kapok Village as recorded in Plat Book 33, Page 68. It is our understanding that a canvas carport has been constructed within the easement boundaries which you prefer not to remove.

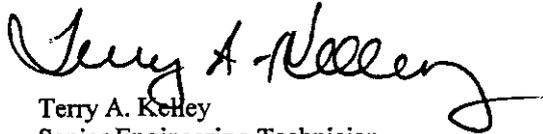
We have carefully reviewed your request and the associated attachments and legal description provided. Record drawings indicate that Lee County Utilities owns and maintains sanitary sewer facilities within and/or near the easement to be vacated. Therefore, please be advised that Lee County Utilities currently OBJECTS to the proposed vacation.

However, Lee County Utilities would support a variance allowing the canvas carport to remain with the understanding that if Lee County Utilities' personnel have a need to access these sanitary sewer facilities for repair, operations, maintenance, etc. and the canvas carport obstructs or interferes with these activities in any way, it would need to be dismantled/removed as quickly as possible and at no cost to the County.

If you should have any questions, or require further assistance, please do not hesitate to contact our office at 479-8531.

Sincerely,

LEE COUNTY UTILITIES



Terry A. Kelley
Senior Engineering Technician
Utilities Engineering Division

cc: Nettie Richardson, Development Services
Thom Osterhout, Lee County Utilities
Correspondence File

RECEIVED

MAR 10 2004

S:\UTILS\Engr\TAK\LETTERS\VAC\FY 2004\Gonzales, L - Kapok Court - Easement Vacation - Objection

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 335-2111
Internet address <http://www.lee-county.com>

AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER COMMUNITY DEVELOPMENT



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