

1. ACTION REQUESTED/PURPOSE: Consider the recommendation of Special Magistrate, C. Laurence Keesey issued in response to the Request for Relief filed on behalf of Kenneth Saundry, Jr. with regard to the Lee Boulevard Commercial Planned Development approved by the Board in August 2004.

2. WHAT ACTION ACCOMPLISHES: Allows the implementation of the Special Magistrate's recommendation as stated or as modified by the Board. In the alternative, if the Board rejects the recommendation, it allows the petitioners to pursue judicial relief.

3. MANAGEMENT RECOMMENDATION: Approve

4. Departmental Category: 9:30 PH6

5. Meeting Date: 8/16/05

6. Agenda:	7. Requirement/Purpose: (specify)		
<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	70.51	
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance		
<input type="checkbox"/> Appeals	<input checked="" type="checkbox"/> Admin. Code	2-16	
<input checked="" type="checkbox"/> Public: 9:30 a.m. or as soon thereafter as it may be heard	<input type="checkbox"/> Other		
<input type="checkbox"/> Walk-On			

8. Request Initiated:

Commissioner _____
 Department County Attorney
 Division Land Use
 By: *[Signature]*
 Joan C. Henry
 Assistant County Attorney

9. Background:

The history of Lee Boulevard CPD is as follows:

In 2004, the Petitioner sought to rezone 5.55 acres of land on Lee Boulevard from Residential (RS-1) to Commercial Planned Development (CPD) to allow commercial uses including pet store, restaurants, consumption on premises, and drive-thru. The Lee County Department of Community Development recommended approval of the request with conditions. The Hearing Examiner also recommended approval of the request with conditions. On August 30, 2004, the Board of County Commissioners approved the request to rezone the property to Commercial Planned Development, and permitted consumption on premises in excess of 500 feet from school property. Two access points on Fourth Street West were denied. The Board cited concerns with respect to consumption on premises near a school site and to residential impacts if access on Fourth Street West were permitted.

Thereafter, the Petitioner sought relief under The Florida Land Use and Environmental Dispute Resolution Act (§70.51, F.S.). In accordance with the Act, the County and the Petitioner selected a Special Magistrate. The Petitioner, his Counsel and County Staff met with the Special Magistrate in an effort to achieve a settlement proposal. A representative for the School District of Lee County and its Counsel also participated in the session with the Special Magistrate.

Continued on Page 2

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>				<i>[Signature]</i>	<i>[Signature]</i> 8/14/05	<i>[Signature]</i> 8/14/05	<i>[Signature]</i> 8/14/05	<i>[Signature]</i> 8/14/05	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN:
 8-2-05
 2:30
 COUNTY ADMIN
 FORWARDED TO: *[Signature]*
 8/14/05
 9:30 PM

CO. ATTY.
 FORWARDED
 TO: CO. ADMIN.
 8/2/05 1pm

The Special Magistrate facilitated a resolution of the conflict. The result was the Settlement of Issues that is attached to this blue sheet and is outlined as discussed by the letter to the Board from the Special Magistrate dated July 7, 2005. The Settlement of Issues was executed by Counsel for Petitioner and Lee County and is also incorporated into the Special Magistrate Recommendation to Board of County Commissioners.

The Terms of the Settlement of Issues can be summarized as follows:

- A. Modifies the Master Concept Plan for the Lee Boulevard CPD to adjust the Lee Boulevard access point that allows for better internal circulation and access to the project. There remains no access onto Fourth Street West.
- B. Consumption on Premises may be a permitted use on the site in any location as long as the consumption on premises is in conjunction with a Group II, III, or IV restaurant as provided in LDC §34-1264.

Options:

At this juncture, Florida Statutes §70.51 (21) requires the Board to:

1. Accept the Special Magistrate's recommendation by agreeing to implement the Settlement of Issues presented in his report;
2. Modify the recommendation by selecting an alternative; or
3. Reject the Special Magistrate's Recommendation. If the Board rejects the Recommendation, it would maintain the Master Concept Plan and uses permitted by the Board at the August 30, 2004, zoning hearing.

Failure by the Board to accept, modify, or reject the Special Magistrate's Recommendation by August 25, 2005, will be deemed a rejection by operation of law, unless the petitioner agrees to extend the period beyond the statutory 45 days. If the County accepts or modifies the Special Magistrate's Recommendation and the petitioners reject the acceptance or modification, or if the County rejects the Special Magistrate's Recommendation, the County must issue a written decision within 30 days that describes as specifically as possible the use or uses available to the subject real property in light of the rejection. The decision that describes the available uses constitutes the last prerequisite to judicial action and the matter will be ripe or final for subsequent judicial proceedings if the petitioner elects to file suit in a court of competent jurisdiction.

Staff Recommendation:

The Department of Community Development recommends that the Board accept the terms and Settlement of Issues. The location standards in the LDC provide that consumption on premises must occur at a distance of 500 feet from a non-commercial school. The regulations also provide that the 500 foot separation requirement does not apply to the Groups II, III, and IV restaurants, if the restaurant is in compliance with State requirements, the restaurant serves cooked, full-course meals prepared daily, and only a service bar is used, and the alcohol is only served to people who are dining or waiting to dine. In addition, the revised Master Concept Plan submitted by the Petitioner has been reviewed by Staff who agrees it will provide better traffic circulation into and out of the Commercial Planned Development. Lee County School District representatives reviewed both of these items and agree with the Petitioner's and County Staff's position.

As a procedural matter, the County Attorney suggests that the Board allow 10-15 minutes for the petitioners to address the Board; 10-15 minutes for the County staff to address the Board; and limit public comment on the recommendation to 3 minutes or less per person.

Attachments:

1. Recommendation of the Special Magistrate dated July 7, 2005
2. Request for Relief filed by the Petitioners Kenneth P. Saundry, Jr.
3. Response to the Request for Relief prepared by the County Attorney's Office
4. BOCC Zoning Resolution dated August 30, 2004 (Z-04-045)
5. Hearing Examiner Recommendation dated July 29, 2004
6. Staff Report on Lee Boulevard CPD dated April 20, 2004

Forward to: County Clerk

C. Laurence Keesey
Attorney at Law
18900 Bay Woods Lake Drive
Unit # 203
Fort Myers, Florida 33908



July 7, 2005

Douglas St. Cerny, Chairman
Lee County Board of Commissioners
P. O. Box 398
Fort Myers, FL. 33902-0398

Re: Recommendation of the Special Magistrate regarding
Request for Relief From Resolution Z-04-045;
Lee Boulevard CPD
Case No.: DCI 2004-00005; LU File No.: LU-04-09-2389

Dear Chairman St. Cerny:

On September 23, 2004 the Petitioner, Kenneth P. Saundry, Jr., filed a Request For Relief, pursuant to Section 70.51, Florida Statutes (2004), the Florida Land Use and Environmental Dispute Resolution Act. Pursuant to the Act, and Lee County Administrative Code provisions implementing the Act, by agreement of the parties I was designated the Special Magistrate for this case.

After expending a great deal of time and effort, the Petitioner and Lee County staff have resolved all of their issues regarding the Lee Board's rezoning approval on August 30, 2004 for the Lee Boulevard CPD. Attorneys for Lee County and Petitioner have executed a proposed Settlement of Issues, which is enclosed with this letter. In my opinion, the Parties' settlement resolves the issues in a manner that is not only satisfactory to both, but is also consistent with and protects the public health and safety interests underlying the Board's decision. A representative of the Lee School District and its attorney attended the final hearing in this matter, held on June 9, 2005, and stated that the District had no objection to the terms of the Settlement.


I forward the enclosed Settlement to you for the Board's consideration with my recommendation that the Lee Board approve the agreement and amend Resolution Number Z-04-045, regarding the Lee Boulevard CPD, only to the extent necessary to incorporate the terms of the enclosed Settlement of Issues and the revised Master Plan (6th revision, dated March 30, 2005) attached thereto.

ATTACHMENT 1

Pursuant to subsections 70.51(21) and (27) of the Act, the Lee Board should take action on this recommendation within 45 days after the date of its receipt by the Board. In addition, the Board should provide written notification of its final action in this matter to the Florida Department of Legal Affairs in Tallahassee within 15 days after the Board's decision.

Thank you for your consideration of this matter.

Sincerely,



C. Laurence Keeseey
Special Magistrate

cc: w/attachment

Joan C. Henry, Esq., Lee County Attorney's Office

Neale Montgomery, Esq., Pavese Law Firm

Keith Martin, Esq., School Board of Lee County

Pam Houck, Director, Zoning, Dept. of Community Development

Florida Department of Legal Affairs

**LEE COUNTY
BOARD OF COUNTY COMMISSIONERS**

KENNETH P. SAUNDRY, JR.,

Petitioner,

vs.

CASE NO: DCI 2004-00005

LEE COUNTY,

Respondent.

**SETTLEMENT OF ISSUES
RAISED IN A PETITION UNDER SECTION 70.51, FLORIDA STATUTES**

Petitioner, KENNETH P. SAUNDRY, JR., filed a Petition against Respondent, LEE COUNTY, for relief pursuant to Section 70.51, Florida Statutes, and after consultation and revisions to the master concept plan, the parties do hereby agree as follows:

1. Two issues were raised in the Petition filed by Kenneth P. Saundry, Jr. One issue was an issue of access to Fourth Street and internal traffic circulation, and the other was the issue of consumption on premises.

2. The Board of County Commissioners (BOCC) did not approve Petitioner's request for access onto Fourth Street in the underlying zoning action based on compatibility with the surrounding residential uses. Petitioner has revised the master concept plan to eliminate the Fourth Street access and adjusted the Lee Boulevard access point to enable delivery trucks to enter and leave the site in a forward motion. This permits the trucks to access the rear of the buildings for delivery purposes thereby addressing the Petitioner's concern about safe and efficient internal traffic circulation. The adjustments to the access points were reviewed by the Lee County Department of Transportation (DOT). DOT did not find the adjustments to be objectionable. A copy of the revised master concept plan is attached hereto and made a part hereof.

3. Lee County Land Development Code (LDC), Section 34-1264, provides for the sale or service for the on-premises consumption of alcoholic beverages. The location standards provide that consumption on premises must occur at a distance of five hundred (500) feet from a non-commercial school. The regulations provide that the 500 foot separation requirement does not apply to the Groups II, III, and IV restaurants, if the restaurant is in compliance with state requirements, the restaurant serves cooked, full-course meals prepared daily, and only a service bar is used, and the alcohol is only served to people who are dining or waiting to dine.

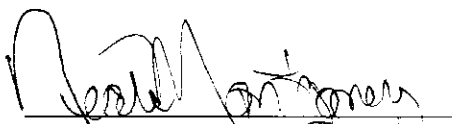
4. County staff will ensure compliance with the aforementioned LDC provisions through the review of occupational licenses, as well as the zoning review of state liquor licenses.

5. Section 562.45, Florida Statutes, prohibits the sale of alcohol for consumption on premises within 500 feet of a school "except for locations that are licensed as restaurants, and which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages." Section 562.45, F.S. also provides that if a local government, pursuant to ordinance, provides exceptions to the 500 foot distance requirement, those exceptions are permitted if the ordinance promotes the public health, safety and welfare. The sale of alcohol at a Group II, III, and IV restaurant is consistent with Section 562.45, F.S.

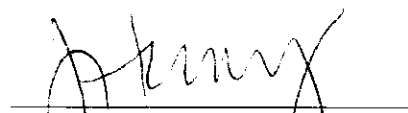
6. The Lee County School District (District) objected to the consumption of premises of alcoholic beverages during the underlying zoning hearing. After reviewing Petitioner's submissions during Section 70.51, F.S. process, the District no longer objects to the consumption on premises of alcoholic beverages in accordance with the above stated Florida Statutes and LDC requirements.

Now Therefore, the parties do hereby agree as follows:

1. Consumption on Premises can be a permitted use on the site in any location as long as the consumption on premises is in conjunction with a Group II, III, or IV restaurant.
2. The Master Concept Plan for the Lee Boulevard CPD zoning can be adjusted to be consistent with the attached master concept plan. The Fourth Street access is eliminated on the attached plan, the Lee Boulevard access is adjusted, and the internal traffic circulation is adjusted.



Neale Montgomery, Esq.
On behalf of Kenneth P. Saundry, Jr.



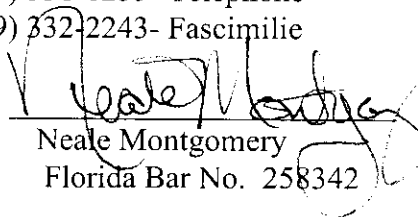
Joan Henry, Esq.
On behalf of Lee County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by regular U.S. Mail to Commissioner John Albion, Chair of the Lee County Board of County Commissioners, P.O. Box 398, Ft. Myers, FL 33902-0398, Don Stillwell, County Administrator, P.O. Box 398, Ft. Myers, FL 33902-0398, and Keith Martin, Esq., Lee County School Board, 2055 Central Avenue, Fort Myers, FL 33901 this 28th day of June, 2005.

Respectfully submitted,
THE PAVESE LAW FIRM
Attorneys for Kenneth P. Saundry, Jr.
1833 Hendry Street
Ft. Myers, Florida 33901
(239) 336-6235- Telephone
(239) 332-2243- Facsimilie

By:


Neale Montgomery
Florida Bar No. 258342

**LEE COUNTY
BOARD OF COUNTY COMMISSIONERS**

KENNETH P. SAUNDRY, JR.

Petitioner,

vs.

CASE NO. DCI2004-00005

LEE COUNTY BOARD OF
COUNTY COMMISSIONERS,

Respondent.

RECEIVED
LEE CO. ATTORNEY
2004 SEP 27 AM 9:11

**PETITION FOR RELIEF PURSUANT TO
SECTION 70.51, FLORIDA LAND USE AND
ENVIRONMENTAL DISPUTE RESOLUTION ACT**

Petitioner, KENNETH P. SAUNDRY, JR., files this petition against Respondent, LEE COUNTY BOARD OF COUNTY COMMISSIONERS, for relief pursuant to Section 70.51, Florida Statutes, the Florida Land Use and Environmental Dispute Resolution Act, and as ground therefore would state as follows:

1. Kenneth P. Saundry, Jr., ("Petitioner") is the contract purchaser of property located in Lehigh Acres on Lee Boulevard, see attached "Exhibit A" and the applicant in Lee County Development Case Number DCI2004-00005 to rezone the subject property.
2. Lee County Board of County Commissioners is a political subdivision of the State of Florida and is the governmental entity charged with exercising governmental authority over zoning decisions in Lee County Florida.

JURISDICTION

3. On August 30, 2004, the Lee County Board of County Commissioners heard Petitioner's application to rezone the property.
4. On September 20, 2004, the Assistant County Attorney denied our request for appeal, stating that the deadline for the appeal had expired. The County Attorney subsequently informed the petitioner that the deadline explicitly stated in the rehearing petition, attached as "Exhibit B" was a clerical error and that instead of 30 days to file, there were only 15 days.

5. Petitioner files this petition within 30 days of the rendition of the Board's decision on Petitioner's application to rezone the property in accordance with requirements of Section 70.51, Florida Statutes.

6. Petitioner believes that the Board's decision to deny access from 4th Street to the subject property and to prohibit alcoholic beverage consumption on premises is unreasonable and unfairly burdens the use of the subject property.

OWNER'S PROPOSED USE OF THE PROPERTY

7. In Case Number DCI2004-00005, Petitioner requested that the subject property be rezoned from the Single-Family Residential (RS-1) zoning district to the Commercial Planned Development (CPD) zoning district to permit but not be limited to the following uses: Package Liquor Store, Pet Store, Restaurants, Consumption on Premises, and Drive-Thru.

SUMMARY OF THE DEVELOPMENT ORDER

8. The Board approved rezoning the subject property from Single Family Residential (RS-1) to Commercial Planned Development (CPD) subject to the following limitations: no access to the proposed project is permitted on 4th street and barring the consumption of alcoholic beverages on premises. A copy of the resolution is attached herewith as "Exhibit C".

BRIEF STATEMENT OF THE IMPACT OF DEVELOPMENT ORDER

9. The prohibition on allowing access by 4th Street to the rear of the proposed project inordinately burdens the site design. The Hearing Examiner determined that access on 4th Street should be limited to service deliveries and only operate between the hours of 8:00 a.m. and 7:00 p.m. daily. A copy of the Hearing Examiner's report is attached herewith as "Exhibit D". The Board considered alternative positions which were not that of the Hearing Examiner or the staff and did not allow the Petitioner an opportunity to respond. The purpose of the site design is to lessen the traffic impact between vehicular/pedestrian circulations within the main ingress/egress of the site and that of service vehicles and the service entrance located along 4th Street. By eliminating the 4th Street access, an unsafe condition exists for pedestrians that cannot be mitigated by redesigning the project. In addition, the total buildable area of retail space on the site will be reduced because of the additional on site vehicular driveway necessary to access the rear loading area from the front of the project. Given the narrow configuration of the subject property, which is typical of the residential plats to form commercial centers in Lehigh, the elimination of service lanes located at the rear of the property would inordinately burden the site further.

10. The decision prohibiting consumption of alcohol on the premises significantly impacts the proposed use of the site. The intended use would provide Lehigh with a much needed family-style restaurant and therefore help build a more well rounded community. The amount of commercial space in Lehigh is limited and due to Lehigh's configuration it is difficult to provide certain services because of the location of commercial space. The Board's decision barring consumption of alcoholic beverages on the premises contravenes the exception to location

standards applicable to family-style restaurants pursuant to the Lee County Land Development Code. The on-site restaurant would meet the requirements of Restaurant Groups II, III, and IV, as provided in Article VI, Section 34-622 of the Code. The Petitioner represents that the proposed on-site restaurant will qualify for the exemption. Furthermore, the decision prohibiting consumption of alcohol on the premises is contrary to Florida state beverage law. Pursuant to state statute, locations licensed as restaurants which derive at least 51 percent of their revenue from the sale of food and nonalcoholic beverages are exempted from the location requirement which prohibits on-premises consumption of alcohol within 500 feet of a school. Fla. Stat. §562.45. This exception would certainly apply to any of the restaurants considered for development on the premises, as the sale of meals comprises the vast majority of the sales revenue of family-style restaurants such as Pizza Hut, Carabbas, or Chili's. In denying the Petitioner's request to allow consumption of alcohol beverages on the premises, the Board's decision contravened state law by ignoring a statutory exception to the location requirement and significantly impacted the proposed project such that it may not be able to continue.

REQUESTED RELIEF

11. Based on the foregoing, Petitioner requests the County to forward this request for relief from the Board's decision to a special master who is mutually acceptable to the County and Petitioner for further proceedings in accordance with the requirements of Section 70.51.

Respectfully submitted,

PAVESE, HAVERFIELD, DALTON
HARRISON & JENSEN, L.L.P.
Post Office Drawer 1507
1833 Hendry Street
Fort Myers, FL 33902
(239) 336-6249

By: 

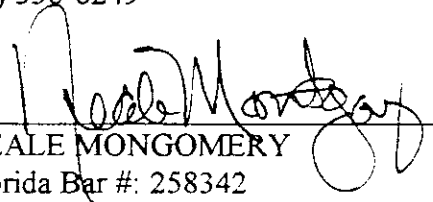
NEALE MONTGOMERY

Florida Bar #: 258342

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by regular U. S. Mail to Commissioner John Albion, Chair of the Lee County Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902-0398, Don Stillwell, County Administrator, P.O. Box 398, Fort Myers, FL 33902-0398, and Bob Gray, Acting Lee County Attorney, P.O. Box 398, Fort Myers, FL 33902-0398, this 23 day of September, 2004.

PAVESE, HAVERFIELD, DALTON
HARRISON & JENSEN, L.L.P.
Post Office Drawer 1507
1833 Hendry Street
Fort Myers, FL 33902
(239) 336-6249

By: 
NEALE MONGOMERY
Florida Bar #: 258342

**LEE COUNTY RESPONSE TO
REQUEST FOR RELIEF
PURSUANT TO F.S. 70.51
(LEE BOULEVARD CPD)**

The Board of County Commissioners granted the Lee Boulevard CPD rezoning request to change the zoning designation on a 5.55+/-acre parcel from the Residential (RS-1) to Commercial Planned Development (CPD). At the Board hearing, the applicant withdrew a request for the use of a package store on the premises. The Board did not approve the requested use of "consumption on premises in conjunction with a restaurant, group III" within 500 feet of Sunshine Elementary School. The applicant also requested two access points on Fourth Street, which the Board denied. The Board rendered this decision based on the record before the Hearing Examiner and presentation of participants in the hearing before them.

When the Board examines a request to rezone property from one district to another, it must consider the impacts on the surrounding property. The Board must then consider whether the requested use will be compatible with the existing and planned development in the surrounding area. The subject area lies within the Central Urban Land Use Category pursuant to the Lee County Comprehensive Plan Future Land Use Map. Additionally, this property is located within 500 feet of Sunshine Elementary School. The rear of the property abutting Fourth Street abuts property that is zoned Residential. The applicant is not presumptively entitled to consumption on premises nor access on to Fourth Street. The applicant is not entitled to relief on the decision denying the consumption on premises within 500 feet of the school, based on its argument that Board's decision contravenes state law by ignoring a statutory exception to the location requirement. The Board's action is consistent with the provisions of the Lee Plan.

The County had legitimate and compelling concerns regarding the access points from Fourth Street, particularly since the accesses proposed were intended for the use of delivery trucks. These vehicles would be traveling through an existing residential neighborhood to access the property. This poses a compatibility issue with the existing residential neighborhoods. Fourth Street is a dead end road with minimal traffic. The addition of proposed truck traffic would be significant for the proposed project. The Board approved an access point on Sara Street (which abuts Fourth Street) and Lee Boulevard.

The County had legitimate and compelling concerns regarding consumption on premises in a group III restaurant given the proximity of the property to Sunshine Elementary School. A representative from the school board submitted concerns for health safety and welfare of school children. Staff recommended that the use be located 500 feet from the school property, for that reason, as well as the project's close proximity to an existing residential neighborhood. Although state law provides an exception for such uses in a restaurant, the recommendation of Staff was to allow the use 500 feet from the school. Approval and confirmation of Staffs' recommendation by the Board is consistent with the

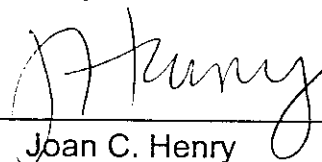
Lee Plan. Lee Plan policy 5.1.5 requires that existing and future residential areas be protected from encroachment of uses that are potentially destructive to the character and integrity of the residential environment. The County is not required to approve consumption on premises with the group III restaurant within 500 feet of a school.

If the application was approved for both access onto Fourth Street and consumption on premises within 500 feet of Sunshine Elementary School, the project would be incompatible with the surrounding residential development and school. The County is vested with discretion to impose conditions in planned development zoning. An examination of the record, as well as the existing conditions of the surrounding community, confirm that there was competent, substantial evidence to support the Board's approval of the planned development with the conditions imposed. The nature of the existing and developing residential neighborhood constitutes relevant evidence and is adequate to support the conclusion that consumption on premises within 500 feet of the school and access on to Fourth Street are not appropriate and compatible with the surrounding area. The record presented to the Board contain maps, reports and other information that supports their decision. The petitioner cannot show that the development as approved by the Board is unreasonable given the nature of the surrounding development.

Local government has the discretion to decide which uses are compatible with existing uses, in particular, residential development and uses located within 500 feet of a school. The petitioner's rezoning request to Commercial Planned Development was approved and is consistent with the Lee Plan. The approval as conditioned by the Board does not substantially impair the use of the property because it is consistent with the general character of the neighborhood. The zoning resolution is not unreasonable nor does it unfairly burden the property. Accordingly, the applicant is not entitled to relief under the Act.

Lee County

By



Joan C. Henry
Assistant County Attorney

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

WHEREAS, Kenneth P. Saundry, Jr., filed an application on behalf of the property owners, Barry and Wendy Gionfriddo, to rezone a 5.55-acre parcel from Single Family Residential (RS-1) to Commercial Planned Development (CPD) in reference to Lee Boulevard Commercial Retail Center CPD; and

WHEREAS, a public hearing was advertised and held on June 24, 2004, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2004-00005; and

WHEREAS, a second public hearing was advertised and held on August 30, 2004, 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, 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 rezone a 5.55-acre parcel from RS-1 to CPD to allow, but not be limited to, the following uses: Package Liquor Store, Pet Store, Restaurants, Consumption on Premises, and Drive-thru. Buildings are limited to a maximum height of 40 feet. No blasting is proposed on site. The property is located in the Central Urban Use Category and is legally described in attached Exhibit A. The request is APPROVED SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. Development of this project must be consistent with the one-page Master Concept Plan entitled "Lee Boulevard - Exhibit 6-J Master Plan - DCI2004-00005," stamped RECEIVED OCT 01, 2004, last revised October 1, 2004, except as modified by the conditions below. Development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:

a. Schedule of Uses

Administrative Offices
Animal Clinic/Veterinary Offices (no outdoor kennels or runs) no overnight boarding of animals unless it is associated with medical care or treatment
Automatic Teller Machine (ATM)
Automobile Parts Store (no installation)
Banks and Financial Establishments, Groups I, and II
Broadcast Studio, Commercial Radio and Television (in compliance with LDC § 34-1441 et. seq.)
Business Services, Group I
Clothing Stores - General
Clubs, Commercial, or Fraternal Organizations
Consumption on Premises (COP) (only in conjunction with Restaurants, Group III; must be in excess of 500 feet from school property); (Outdoor seating for a Restaurant, Group III, COP, and clubs COP must be reviewed through the Special Exception process on a case-by-case basis)
Contractors and Builders, Group I
Drive Through Facilities (limited to Banks and Financial Establishments, Groups I, and II; Laundry or Dry Cleaning, Group I; Drugstore, Pharmacy; Drug Store, Pharmacy; Restaurant, Fast Food)
Essential Services
Essential Service Facilities, Group I
Fences, Walls
Food Store, Groups I, and II
Gift and Souvenir Shop
Hardware Store
Hobby, Toy, and Game Shops
Household and Office Furnishings, Groups I, II, and III
Laundry or Dry Cleaning, Group I
Medical Offices
Non-store Retailers, Group I
Paint, Glass and Wallpaper
Personal Services, Groups I, II, and IV
Pet Shop (restricted to either the 3,000-square-foot building or the 6,000-square-foot building in the northwest portion of the property as depicted on the MCP)
Rental or Leasing Establishment, Groups I, and II (mopeds, and scooters may only be permitted if stored indoors; passenger car pick-up & drop-off is NOT permitted)
Restaurants, Groups I, II, III, and IV
Restaurants, Fast Food (Restricted to one lane only)
Schools, Commercial
Signs, in accordance with LDC Chapter 30
Social Services, Groups I, and II
Specialty Retail Shops, Groups I, II, III, and IV
Studios
Used Merchandise Stores, Groups I, II, and III
Variety Store

b. Site Development Regulations

Development Criteria	All Uses
Setback from Public, and Private Streets	Minimum of 25 feet
Setback from Other Perimeter Boundary	Minimum of 20 feet
Internal Access Drives	Minimum of 10 feet
Space Between Buildings	20 feet, or ½ the building height (per the LDC), whichever is greater
Setback from Waterbody	Minimum of 25 feet
Setback from Internal Lot Lines Under Separate Ownership	Minimum of 10 feet
Building Height	Maximum of 40 feet, and 3 stories
Lot Width	Minimum of 75 feet
Lot Depth	Minimum of 100 feet
Lot Area	Minimum of 7,500 square feet
Maximum Lot Coverage	45 percent

3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
4. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), and be reviewed for and found consistent with the retail commercial standards for site area, including range of gross floor area, location, tenant mix, and general function, as well as all other Lee Plan provisions.
5. No access is permitted on 4th Street.
6. Prior to development order approval, all of the easements depicted on the MCP, which are not being accommodated, must be vacated.
7. Blasting is not permitted on the site.
8. Prior to local development order approval, a minimum of 30 percent open space must be delineated on the development order plans.
9. Sara Avenue North, from Lee Boulevard to the Project entrance, must be upgraded to a Category A road, which satisfies LDC §10-291(2).

SECTION C. DEVIATIONS:

1. Deviation (1) seeks relief from the LDC § 34-2018 (b) requirement to provide that parking lots be within 300 feet of each use and not be separated by a right-of-way or easements exceeding 25 feet in width; to allow joint use of parking areas in all areas of the site so that the parking lot functions to serve all of the uses occupying space within structures on the site. This DEVIATION IS APPROVED SUBJECT TO the following conditions:
 - a) Any and all shared parking cannot be separated by a right-of-way or easement exceeding 25 feet in width.
 - b) As depicted on the MCP, all parking spaces will be within walking distance of all uses. Thus, it is reasonable to allow all parking spots to be utilized for parking for all of the uses to be provided on-site. Hence, this deviation will serve to enhance the overall development and will not be detrimental to the health, safety, or welfare of the public. As conditioned, this deviation will allow shared parking in excess of 300 feet away from a use but not if separated by a right-of-way or easement exceeding 25 feet in width, which is not the intention as depicted on the MCP.
2. Deviation (2) - WITHDRAWN.
3. Deviation (3) seeks relief from the LDC §10-285(a) requirement to provide a 660-foot separation between access ways, access roads or streets; to allow an intersection separation of 450 feet between the south leg of Sara Avenue North and the proposed access onto Lee Boulevard as depicted on the MCP. This DEVIATION IS APPROVED SUBJECT TO the following:

The left-in movement issue must be addressed at the development order stage or during the Administrative Code (AC) 11-3 process.
4. Deviation (4) - WITHDRAWN.

SECTION D. EXHIBITS AND STRAP NUMBER:

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

- Exhibit A: Legal description of the property
Exhibit B: Zoning Map (subject parcel identified with shading)
Exhibit C: Master Concept Plan dated October 1, 2004

The applicant has indicated that the STRAP numbers for the property are:

26-44-26-07-00032.0010	26-44-26-07-00032.0110	26-44-26-07-00032.0120
26-44-26-07-00032.0130	26-44-26-07-00032.0140	26-44-26-07-00032.0160
26-44-26-07-00032.0170	26-44-26-07-00032.0180;	26-44-26-07-00032.0190
26-44-26-07-00032.0200		

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and other applicable codes and regulations.
2. The CPD rezoning, as conditioned:
 - a. meets or exceeds the performance and locational standards set forth for the potential uses allowed by the request; and,
 - b. is consistent with the densities, intensities, and general uses set forth in the Lee Plan; and,
 - c. is compatible with existing or planned uses in the surrounding area; and,
 - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development; and,
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The approval of this CPD rezoning request satisfies the following criteria:
 - a. the proposed use or mix of uses is appropriate at the subject location; and
 - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan will be available and adequate to serve the proposed land use.
5. The approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34 to protect the public health, safety, and welfare.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Judah, seconded by Commissioner Coy 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	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 30th day of August 2004.

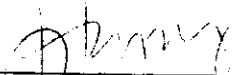
ATTEST:
CHARLIE GREEN, CLERK

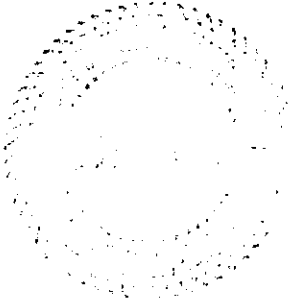
BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Deputy Clerk

BY: 
Chairman

Approved as to form by:


Joan C. Henry
County Attorney's Office



CLERK'S OFFICE

2004 OCT -8 AM 10:07

Exhibit A
Legal Description
Property located in Lee County,
Florida
Page 1 of 2

PH 3.C.1


**LEGAL DESCRIPTION
SAUNDRY LEE BOULEVARD**

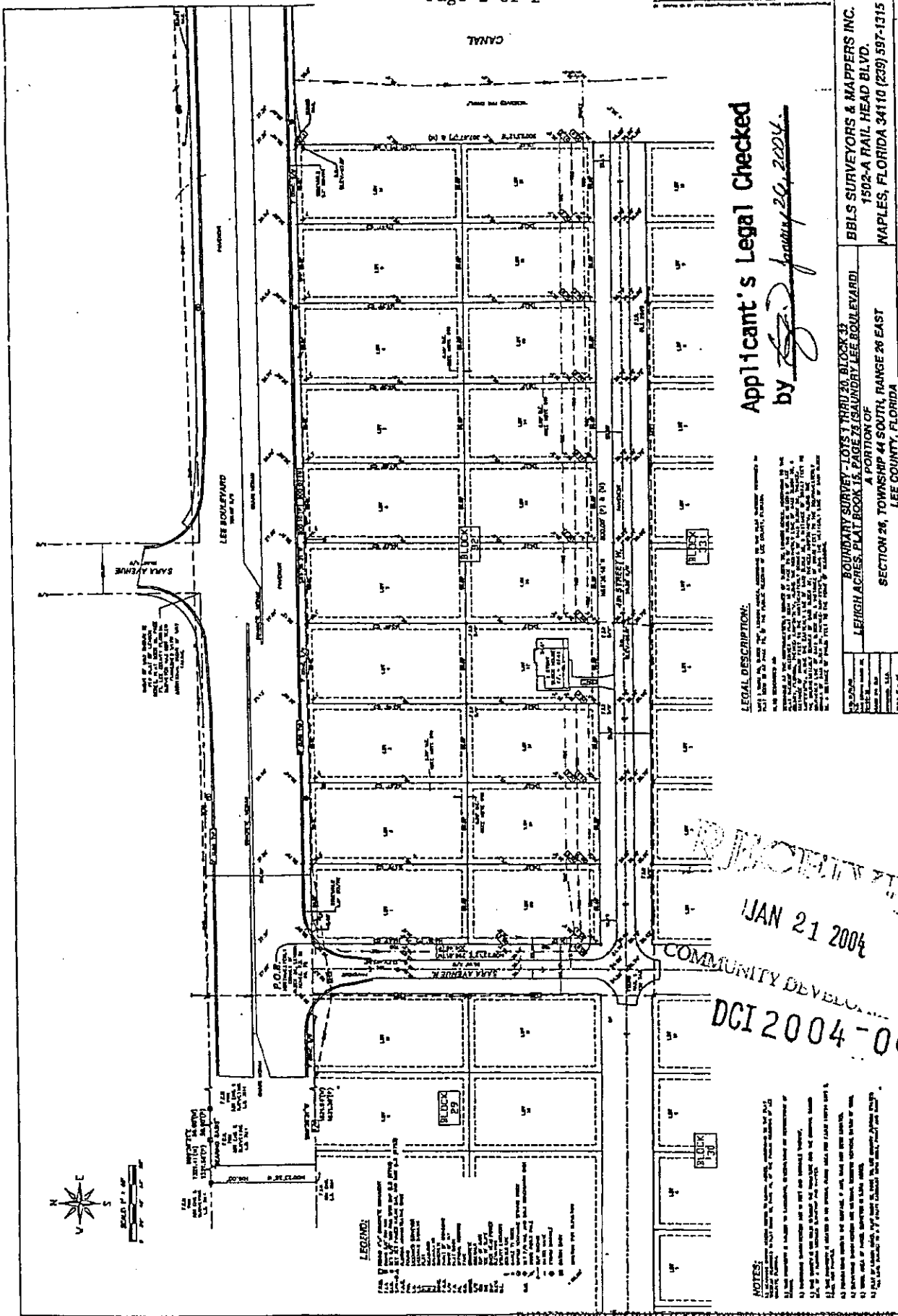
LOTS 1 THRU 20, BLOCK 32, LEHIGH ACRES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 15 AT PAGE 75, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

ALSO DESCRIBED AS:

BEGINNING AT THE NORTHWESTERLY CORNER OF BLOCK 32, LEHIGH ACRES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 15 AT PAGE 75 OF THE PUBLIC RECORD OF LEE COUNTY, FLORIDA, THENCE: S.89°36'31"W., ALONG THE NORTHERLY LINE OF SAID BLOCK 32, A DISTANCE OF 800.07 FEET TO THE NORTHEASTERLY CORNER OF SAID BLOCK 32, THENCE; S.00°23'12"W., ALONG THE EASTERLY LINE OF SAID BLOCK 32, A DISTANCE OF 307.67 FEET TO THE SOUTHEASTERLY CORNER OF SAID BLOCK 32, THENCE; N.89°36'48"W., ALONG THE SOUTHERLY LINE OF SAID BLOCK 32, A DISTANCE OF 800.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID BLOCK 32, THENCE: N.00°23'12"E., ALONG THE WESTERLY LINE OF SAID BLOCK 32, A DISTANCE OF 296.81 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINS 5.55 ACRES, MORE OR LESS.

Applicant's Legal Checked

by  January 26, 2024.



Applicant's Legal Checked
by *[Signature]* January 20, 2004

LEGAL DESCRIPTION:
 THAT PART OF THE PLAT OF LEE COUNTY, FLORIDA, SHOWING THE LOTS IN BLOCK 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

BOUNDARY SURVEY - LOTS 1 THRU 20, BLOCK 33
 1502-A RAIL HEAD BLVD.
 NAPLES, FLORIDA 34110 (239) 597-1315
 BBLS SURVEYORS & MAPPERS INC.

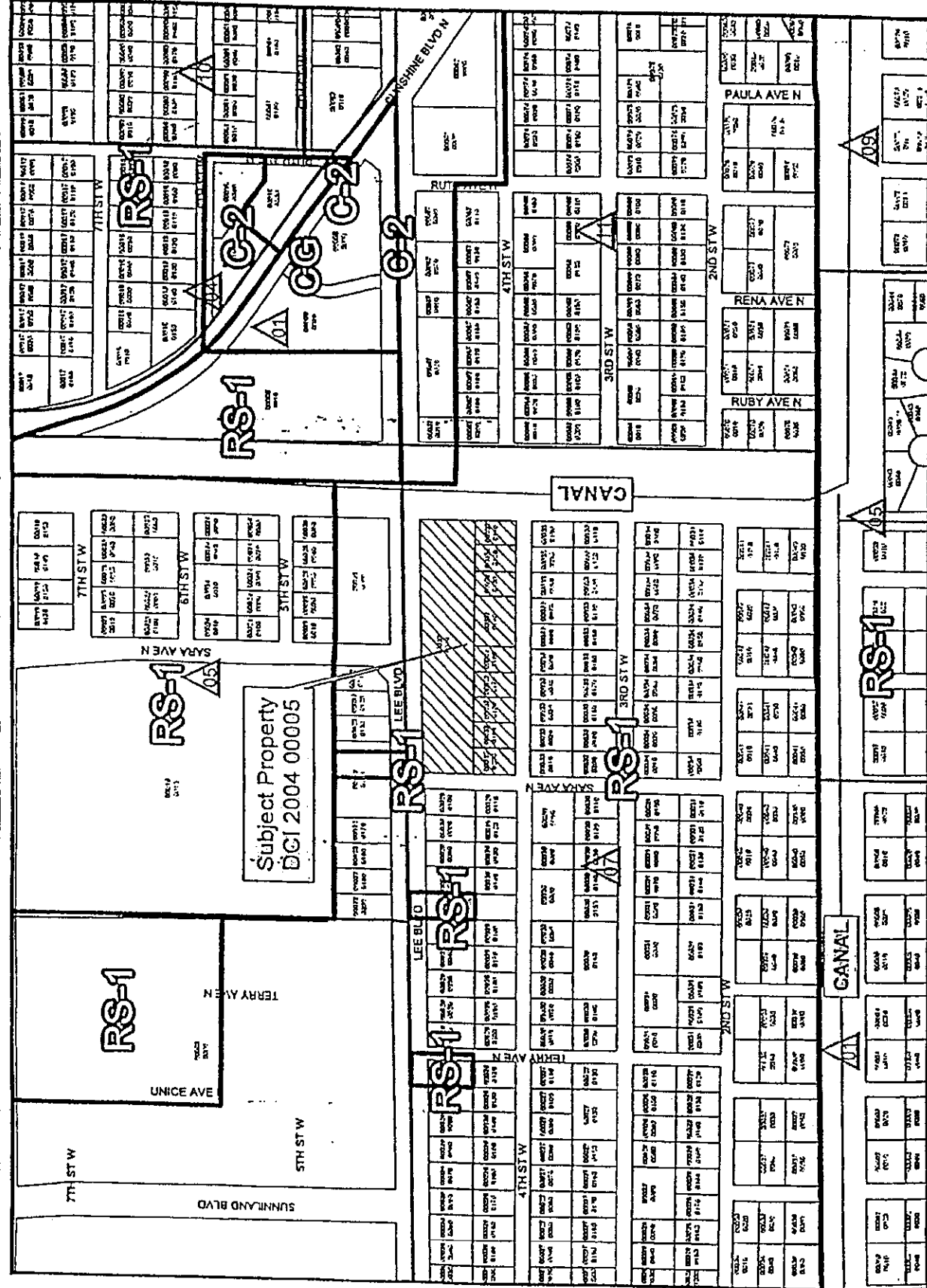
RECEIVED
 JAN 21 2004
 COMMUNITY DEVELOPMENT
 DCI 2004-00005

EXHIBIT 6A

5/13/21

ZON: 3 MAP

EXHIBIT B



500 250 0 500 Feet

508

Z-04-045

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2004-00005
APPLICANT: KENNETH P. SAUNDRY, JR., in reference to
LEE BOULEVARD COMMERCIAL RETAIL CENTER CPD
HEARING DATE: JUNE 24, 2004

I. APPLICATION:

This matter came before the Lee County Hearing Examiner as an Application for a Rezoning to a Commercial Planned Development (CPD), pursuant to the Lee County Land Development Code (LDC).

Filed by KENNETH P. SAUNDRY, JR., 8310 Big Acorn Circle, #1001, Naples, Florida 34119 (Applicant); JOHN & ELAINE EBERHARD, 61 Wild Cat Road, Burlington, Connecticut 06013; BARRY & WENDY GIONFRIDDO, 2512 Queen Drive, Lehigh Acres, Florida 33971 (Owners); JEFFREY R. JENKINS, AICP, VANASSE & DAYLOR, LLP, 12730 New Brittany Boulevard, Suite 600, Fort Myers, Florida 33907 (Agent).

Request is to rezone the 5.55-acre property from the Single-Family Residential (RS-1) zoning district to the Commercial Planned Development (CPD) zoning district to permit but not be limited to the following uses: Package Liquor Store, Pet Store, Restaurants, Consumption on Premises, and Drive-Thru. Buildings are to be a maximum of 40 feet in height. No blasting is proposed on-site.

The subject property is located on Lee Boulevard (travel east on Lee Boulevard and turn right into Sara Avenue North. The subject property is located at the southeast quadrant of Lee Boulevard and Sara Avenue North intersection), in Section 26, Township 44 South, Range 26 East, Lee County, Florida (District #5).

II. STAFF REPORT AND RECOMMENDATION: APPROVAL WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Jeff E. Laurien. The Staff Report is incorporated herein by this reference.

III. RECOMMENDATION OF HEARING EXAMINER:

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners APPROVE the Applicant's request for a rezoning from the RS-1 zoning district to the CPD zoning district for the real estate described in Section IX. Legal Description WITH THE FOLLOWING CONDITIONS AND DEVIATIONS:

A. CONDITIONS:

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Lee Boulevard - Exhibit 6-J Master Plan - DCI2004-00005," stamped Received April 9, 2004, last revised April 7, 2004, except as modified by the conditions

below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Administrative Offices
Animal Clinic/Veterinary Offices (no outdoor kennels or runs) no overnight boarding of animals unless it is associated with medical care or treatment
Automatic Teller Machine (ATM)
Automobile Parts Store (no installation)
Banks and Financial Establishments, Groups I, and II
Broadcast Studio, Commercial Radio and Television (in compliance with LDC Section 34-1441 et. seq.)
Business Services, Group I
Clothing Stores - General
Clubs, Commercial, or Fraternal Organizations
Consumption of Premises (COP) (only in conjunction with Restaurants, Group III); Outdoor seating for a Restaurant, Group III, COP, and clubs COP must be reviewed through the Special Exception process on a case-by-case basis)
Contractors and Builders, Group I
Drive Through Facilities (limited to Banks and Financial Establishments, Groups I, and II; Laundry or Dry Cleaning, Group I; Drugstore, Pharmacy; Drug Store, Pharmacy
Essential Services
Essential Service Facilities, Group I
Fences, Walls
Food Store, Groups I, and II
Gift and Souvenir Shop
Hardware Store
Hobby, Toy, and Game Shops
Household and Office Furnishings, Groups I, II, and III
Laundry or Dry Cleaning, Group I
Medical Offices
Non-store Retailers, Group I
Package Liquor Store
Paint, Glass and Wallpaper
Personal Services, Groups I, II, and IV
Pet Shop (restricted to either the 3,000-square-foot building or the 6,000-square-foot building in the northwest portion of the property as depicted on the Master Concept Plan)
Rental or Leasing Establishment, Groups I, and II (mopeds, and scooters may only be permitted if stored indoors; passenger car pick-up & drop-off is NOT permitted)
Restaurants, Groups I, II, III, and IV
Restaurants, Fast Food (Restricted to one lane only)

Schools, Commercial
 Signs, in accordance with LDC Chapter 30
 Social Services, Groups I, and II
 Specialty Retail Shops, Groups I, II, III, and IV
 Studios
 Used Merchandise Stores, Groups I, II, and III
 Variety Store

b. Site Development Regulations

Development Criteria	All Uses
Setback from Public, and Private Streets	Minimum of 25 feet
Setback from Other Perimeter Boundary	Minimum of 20 feet
Internal Access Drives	Minimum of 10 feet
Space Between Buildings	20 feet, or ½ the building height (per the LDC), whichever is greater
Setback from Waterbody	Minimum of 25 feet
Setback from Internal Lot Lines Under Separate Ownership	Minimum of 10 feet
Building Height	Maximum of 40 feet, and 3 stories
Lot Width	Minimum of 75 feet
Lot Depth	Minimum of 100 feet
Lot Area	Minimum of 7,500 square feet
Maximum Lot Coverage	45 percent

3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.

4. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee Plan provisions.

5. The two proposed access points on 4th Street West are to be limited to service deliveries for the shopping center and are to operate only between the hours of 8.00 a.m., and 7:00 p.m., daily

6. Prior to development order approval, all of the easements depicted on the Master Concept Plan, which are not being accommodated, must be vacated.

7. Blasting is not permitted on the subject site.
8. Prior to local development order approval, a minimum of 30 percent open space must be delineated on the development order plans.
9. Sara Avenue North must be upgraded to a Category A road from Lee Boulevard to the project entrance, which satisfies LDC Section 10-291(2).

B. DEVIATIONS:

Deviation 1 requests relief from LDC Section 34-2018 (b) that requires parking lots to be within 300 feet of each use, and not be separated by a right-of-way or easements exceeding 25 feet in width, to allow joint use of parking areas in all areas of the site, so that the parking lot functions to serve all of the uses occupying space within structures on the site. The Hearing Examiner recommends **APPROVAL** of this deviation with the following conditions:

- a) Any and all shared parking cannot be separated by a right-of-way or easement exceeding 25 feet in width.
- b) As depicted on the Master Concept Plan, all parking spaces will be within walking distance of all uses. Thus, it is reasonable to allow all parking spots to be utilized for parking for all of the uses to be provided on-site. Hence, this deviation will serve to enhance the overall development and will not be detrimental to the health, safety, or welfare of the public. As conditioned, this deviation will allow shared parking in excess of 300 feet away from a use but, not if separated by a right-of-way or easement exceeding 25 feet in width, which is not the intention as depicted on the MCP.

Deviation 2 - WITHDRAWN.

Deviation 3 requests relief from LDC Section 10-285(a) which requires a 660 foot separation between access ways, access roads or streets, to allow an intersection separation of 450 feet between the south leg of Sara Avenue North and the proposed access onto Lee Boulevard as depicted on the MCP. The Hearing Examiner recommends **APPROVAL** of this Deviation, provided that:

The left-in movement issue be addressed at the Development Order stage or during the Administrative Code (AC) 11-3 process.

Deviation 4 requests relief from LDC Section 34-1263(4) that requires Planned Developments that contemplate the sale of alcohol for off-premises consumption to be more than 500 feet from a school, to allow the sale of alcohol for off-premise consumption within the planned development. The Hearing Examiner recommends **APPROVAL** of this Deviation.

IV. HEARING EXAMINER DISCUSSION:

The Applicant, Lee Boulevard Commercial Retail Center CPD, is requesting a rezoning from the Residential (RS-1) zoning district to the Commercial Planning Development (CPD) zoning district for a 5.55-acre parcel located on the southeast quadrant of the Lee Boulevard and Sara Avenue North intersection, Lee County, Florida.

If approved, the Applicant intends to develop the site with a variety of commercial uses that are usually found in such a retail center. Buildings will be limited to a maximum of 40 feet in height. There will be a maximum of 55,000 square feet of commercial uses on the site. It is anticipated that 18,000 square feet will be for office uses, and the remaining 37,000 square feet will be used for mixed commercial uses. The existing single-family home on the parcel will be demolished prior to the site's development, and no blasting will take place in the project.

To the north of the site (across Lee Boulevard) are RS-1-zoned parcels made up of a mixture of vacant lots and single family residences. To the east is an IDD Canal. To the south (across 4th Street West) are RS-1 zoned parcels made up of a mixture of vacant lots and single family residences. Finally, to the west (across Sara Avenue North) are RS-1 zoned parcels made up of a mixture of vacant lots and single family residences. All of the parcels in the area (including the subject parcel) are in the Central Urban land use category.

As envisioned by the Applicant on the Master Concept Plan (MCP), the project will be developed with six (6) commercial buildings that will range in size from 3,000 square feet to 25,000 square feet. The Applicant would like to be allowed to access the site from four separate locations. These would be one each from Lee Boulevard and Sara Avenue, and two from 4th Street West. The Applicant also intends to ring the property with dry detention areas and buffers.

The Staff has recommended approval of the request with conditions that are intended to make the project compatible with the surrounding uses and consistent with the Lee Plan and the Land Development Code (LDC). They have however, voiced a concern with three compatibility issues as the project has been presented by the Applicant.

The first issue involves consumption of alcohol on-site, and the sale of alcohol for off-site consumption. The second issue concerns the two access points that the Applicant has requested on 4th Street West. The third issue addresses the potential locations of the pet store use.

The alcohol issue was one that was raised initially by the School District of Lee County. In a letter that was sent to the Zoning Staff, the School District's representative exhibited a concern with the proposed projects proximity to the existing Sunshine Elementary School. In the letter it was argued that the School is within 500 feet of the project, and that alcohol sales should not be allowed to be placed in such close proximity to a school. The letter goes on to quote from Florida Statutes, §562.45(2)(a), that states in part:

...except for locations that are licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, ...a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety and general welfare of the community....

Under County regulations, this 500-foot separation requirement is to be measured in a straight line from the main entrance of the establishment that will serve the alcohol, and the nearest property line of the school.

Based upon the State standard, any alcohol consumption that will take place in the proposed project (in other than a restaurant that derives at least 51 percent of its revenue from food or nonalcoholic beverages) must be located more than 500 feet from the school unless the Board of County Commissioners conclude that this will "promote the public health, safety and general welfare of the community"; a very difficult standard to meet.

The Applicant concurs with this provision and they have withdrawn any request to have a stand alone bar or cocktail lounge within 500 feet of the Sunshine Elementary School. However, the Staff has recommended that no on-site consumption of alcohol should take place anywhere on the project, not just within 500 feet of the school, even for those uses where alcohol would not be the primary purpose of the establishment. That is, this would apply to a restaurant where food comprises more than 51 percent of sales no matter where on the site it is located.

The Staff's rationale for this position seems to be based on the conclusion that any business in the project that has on site consumption of alcohol would be within easy walking distance of the school, not just those within 500 feet, and that this would be detrimental to the health, safety and welfare of the elementary school students. Furthermore, the Staff had a concern with the impact that the sale of alcohol would have on the existing residential uses found to the north, south and west.

While it is true that a portion of the subject property is within 500 feet of the elementary school (primarily the northern portion), it must be kept in mind that it is unlikely that patrons of a restaurant located on the south side of Lee Boulevard (a six-lane arterial highway) will be walking to the school (located on the north side of Lee Boulevard) or that they will in any way pose a health, safety or welfare problem to any of the children who would be attending the elementary school. It is even less likely that elementary school students would walk across this same six lane highway to attend the restaurant. As such, there seems to be no support for the conclusion that a restaurant that also serves alcohol would pose any threat to the students or Staff of the Sunshine Elementary School.

Furthermore, there is even less support for the position that was taken by the Staff that the on-premises consumption of alcohol in a restaurant should be prohibited even for those businesses that are more than 500 feet from a school.

Finally, the fact that there are residences around the proposed project does not change the conclusion that restaurants that serve alcohol pose any threat to nearby residents. If the Applicant were requesting a stand-alone bar or cocktail lounge use this conclusion might be different. Since however, they are not, the recommendation to the Board is to allow the on-site consumption of alcohol in a restaurant, the main product of which is food and non-alcoholic beverages.

The Staff has also recommended the prohibition of the sale of alcohol for off-site consumption anywhere in the project. During the discussion on this question, an issue of first impression was presented that must be addressed if it is ultimately concluded that the Applicant should be allowed this use. It was pointed out that LDC §34-1263 might have some bearing on this issue. This section of the LDC is entitled "Sale for off-premises consumption [of alcohol]". It discusses the criteria that must be considered when addressing this issue. Specifically, §34-1263(e) seems to prohibit the sale of alcoholic beverages for off-site consumption of alcohol within 500 feet of, among other uses, a school or residence. However subparagraph (3) of this section exempts "package stores" that are located with 500 feet of a residence if they are found in a shopping center that is greater than 25,000 square feet in size. Since this project is

55,000 square feet in size, there is no legal impediment to a "package store" at this location. However, this section does not exempt "package stores" in such shopping centers if they are located within 500 feet of a school.

Therefore since a portion of the shopping center is located within 500 feet of the Sunshine Elementary School, it would be necessary for the Applicant to receive a Deviation from this requirement if it is to be allowed such a use. Since it has already been concluded that the sale of alcohol for off-site consumption does not pose any health, safety or welfare concerns with respect to the elementary school located across a six lane arterial highway, a Deviation has been included to allow this use.

The second issue with which the Staff had a concern was with the two access points on 4th Street West, that are being requested by the Applicant. The Applicant intends to use the two access points for service deliveries to the various businesses that are to be located in the project. They want to place the delivery trucks behind the businesses to prevent potential conflicts between the trucks and pedestrians who would be using the shopping center.

The Staff's had two objections to this request. The first objection revolves around Policy 24.1.1 of the Lee Plan. This Policy purport to prohibit the establishment of a "main access point" for a new development if traffic is required to travel through areas with significantly lower densities or intensities (e.g. commercial traffic through a residential area). First, this Policy does not prohibit such an access point, it merely requires adequate mitigation if it is to be allowed. Having said that, this policy does not apply to the current request. The evidence in the record clearly establishes the fact that the main entrances for this project are to be on Lee Boulevard and Sara Avenue North. The 4th Street West access points are to be service entrances for delivery trucks. As noted, they were designed to allow deliveries to be made to the rear of the businesses in the project and to place this traffic away from pedestrian traffic in the shopping center.

Furthermore, the Applicant submitted evidence that clearly established that there are no fewer than 14 other locations in Lehigh Acres where an entrance to a shopping center is accessed through a residential neighborhood. That seems to be the pattern in Lehigh Acres because of the way Lehigh was laid out years ago. Taking this in to consideration, along with the fact that there is a critical shortage of commercial property in Lehigh Acres, and that this area of Lee Boulevard has been placed in the Lehigh Commercial Overlay Area, makes the access points on 4th Street West appropriate. After all, this is a developing commercial area of the County along Lee Boulevard.

The other part of the objection is that having commercial traffic traveling through residential areas and the potential conflict this will cause with residential neighborhood traffic. In essence the argument is that commercial traffic is incompatible with a residential neighborhood. There was no showing at the hearing (other than anecdotal testimony) that the volume of commercial traffic that is expected to occur at the proposed shopping center will cause any traffic delays or traffic conflicts with neighborhood vehicles. In fact, the evidence seems to support the conclusion that the small amount of commercial traffic that a small shopping center will generate is likely to be less at the P.M. peak hour than if the project were allowed to develop with single family homes. As such, the recommendation is to allow the two service access points on 4th Street West .

The last issue that was discussed at the public hearing was concerned with the advisability of allowing a pet shop to exist anywhere in the shopping center. The Applicant wanted flexibility for this use, but the Staff had a concern with the volume of noise that a pet shop could generate and its impact on residents. The Staff recommended that the pet shop use be limited to either the proposed 3,000-square-foot building or the 6,000-square-foot building located in the northwest corner of the Master Concept Plan.

Apparently, there have been complaints about noise associated with pet shops, and the Staff wanted to eliminate that potentiality with this project. This is a reasonable condition that addresses the limited goal of avoiding a potential nuisance without totally eliminating the use. Therefore, a condition has been recommended that will confine this use to the two buildings suggested by the Staff.

Based upon the foregoing, it is found that the requested rezoning, as conditioned, is compatible with the surrounding uses and consistent with the Lee Plan and the Land Development Code. It is recommended that the Lee County Board of County Commissioners approve the request.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

- A. That the Applicant has proved entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and any other applicable code or regulation.
- B. That the request will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.
- C. That the request is consistent with the densities, intensities and general uses set forth in the Lee Plan.
- D. That the request is compatible with existing or planned uses in the surrounding area.
- E. That approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development.
- F. That, where applicable, the request will not adversely affect environmentally critical areas and natural resources.
- G. That the proposed use or mix of uses is appropriate at the subject location.
- H. That the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest.
- I. That the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
- J. That the requested deviations enhance the achievement of the objectives of the planned development.

K. That the requested deviations preserve and promote the general intent of Chapter 34, Land Development Code, to protect the public health, safety and welfare.

L. That, where the change proposed is within a future urban area category, urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

VI. LIST OF EXHIBITS:

Lee Boulevard Master Plan, prepared for Saundry Associates, Inc., prepared by Vanasse Daylor, Sheet 1 of 1, dated December 1, 2003, last revised April 7, 2004, date stamped "Received April 9, 2004 Zoning Counter"

Aerial Photograph [color]

STAFF'S EXHIBITS

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

- 1 Composite Exhibit of 21 photographs of businesses in Lehigh that sell alcohol
- 2 Site Plan (8½" x 11"), prepared by Vanasse Daylor, dated June 24, 2004
- 3 Aerial photograph (8½" x 11"), prepared by Vanasse Daylor, dated June 23, 2004 [color]
- 4 Aerial photograph (11" x 17") [color]
- 5 Four photographs depicting examples of Residential Conditions on 4th Street West
- 6 Résumé for E. Randy Spradling, Professional Engineer
- 7 Aerial photograph labeled "Commercial Properties", dated December 2002 [board]

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

OTHER EXHIBITS

Lee County School District

- 1 Letter to Jeff Laurien from Kathy Babcock, Long Range Planner, dated June 15, 2004, re: Letter of opposition for COP use

VII. PRESENTATION SUMMARY:

The Hearing Examiner explained the hearing process and placed all the participants under oath. Jeff Laurien, Senior Planner for the Department of Community Development, noted he had one new attachment and a couple of minor revisions to the Staff Report, which he wanted to go over quickly before the Applicant made their presentation. Mr. Laurien noted he had a letter from the School District of Lee County, dated June 15, 2004, regarding a revision to Attachment F of the Staff Report. Neale Montgomery, Attorney for the Applicant, objected, noting that a member of the School Board was present, and they could speak for themselves. The Hearing Examiner labeled the letter as School Board Exhibit #1.

Continuing, Mr. Laurien brought up the use of Pet Shops. He noted there had been some discussion between the Applicant and Staff regarding that issue. The Staff Report had recommended the Pet Shop be located in the 6,000-square-foot building in the northwest portion of the property. However, Lee County recently received an application for the adjoining piece of property to be rezoned to CPD. Therefore, there was an opportunity for that area to become CPD in the near future, so Staff agreed to allow the pet shop use in either the 3,000-square-foot building or the 6,000-square-foot building in the northwest corner.

Ms. Montgomery, introduced Ron Nino, of Vanasse Daylor, and noted he had been qualified as an expert in zoning and land planning matters in this forum in the past. She requested he be so accepted for the instant case. After hearing no objections, the Hearing Examiner accepted him as such.

Mr. Nino introduced himself and described the project as located on the south side of Lee Boulevard at the intersection of Sara Avenue. It was bounded by Sara Avenue, 4th Street, Lee Boulevard, and an IDD canal, which was on the east side. It was immediately across the street from the Sunshine Elementary School, and approximately six miles east of Interstate 75. It was located within the Lehigh Commercial Zoning Overlay, which provided for commercial development on the frontage lots and platted lands when adjacent to commercial designated lands.

The project had been submitted as one that would contain a gross floor area of 55,000 square feet, of which 18,000 square feet was intended for office uses and the balance of 37,000 square feet for mixed commercial uses, as described in the Schedule of Uses. The site was designed to gain access from Lee Boulevard, Sara Avenue, and limited controlled service delivery access points off of 4th Street west. Mr. Nino noted Staff had indicated that the project was in compliance with the open space and buffer requirements, as illustrated on the Master Concept Plan (MCP).

As to the objections Staff had raised with respect to this petition, Mr. Nino noted there were three areas that were in dispute. One had to do with uses that were involved in the sale of alcoholic beverages. Another was the location of the animal clinic, and then there was the question of the access points from 4th Street.

Regarding the sale of alcoholic beverages, after looking at LDC Section 34-1262, it was his opinion that they were consistent with that section, and there was no justification for limiting uses that were involved in the sale of alcoholic beverages. Lee Boulevard was an arterial street, and it was developing in the nature of intense commercial activity. It would be his opinion that the full range of commercial activities was appropriate in this location, including those that deal with the onsite consumption of alcohol or package liquor stores.

He noted the Applicant intended for the subject site to be extremely suitable for restaurants that would be involved in the sale of onsite consumption of alcohol. He gave the Hearing Examiner a packet of 21 colored photographs that indicated the type of shopping centers in Lehigh that have restaurant activities that involve the consumption of alcohol on premises, all of which were similar to what the Applicant was proposing for the subject site. The Hearing Examiner labeled the packet of photographs as Applicant's Composite Exhibit #1.

Furthermore, Mr. Nino said it was important to note that the entire site (sic) was more than 500 feet from the Sunshine Elementary School. To that extent, they had prepared an overlay on their site development plan which showed where that 500-foot line bisects the property. The Hearing Examiner labeled that as Applicant's Exhibit #2. Mr. Nino noted that a substantial amount of floor area was beyond the 500-foot line.

With that taken into account, there was no reason why uses that involve the sale of alcoholic beverages should be precluded or deleted from the list of permitted uses. They met the perimeters or conditions precedent to the sale of alcoholic beverages. Furthermore, Section 34-1262 does make provision for granting of a deviation for CPDs. Therefore, he requested they be allowed a deviation from the provision of Section 34-1262, as provided in Section (e)(4) thereof, to the extent that part of the shopping center may indeed lie within 500 feet to the front door of a use that involved the consumption of alcoholic beverages.

With that being said, Mr. Nino indicated that Staff had a problem with certain uses, such as private clubs, fraternal organizations, and membership organizations. He offered that the Applicant would agree to delete those uses. However, they were insistent that a package liquor store and restaurants that allow onsite consumption should not be caught up in the regulation.

Ms. Montgomery referred to Condition 2.a. in the Staff Report and wondered if he was suggesting that Staff remove the underlining (sic) from that portion of the Consumption on Premises and, on Page 3 of 11, the strikethrough on Package Liquor Store, to which Mr. Nino agreed.

Next Mr. Nino addressed the question of limiting the geographic location of the animal clinic. It was his professional opinion that there was nothing incompatible vis a vis the other uses that were permitted by this PUD (sic) CPD to which Staff had not taken any other exceptions. The whole issue of compatibility spanned a spectrum of attitudes by planners. With all respect to Staff, Mr. Nino thought they had taken an extreme interpretation of the applicability of the notion of compatibility.

The Applicant had agreed that an animal clinic, in this context, was basically a veterinarian office. They were not suggesting that they would have any outdoor kenneling or boarding, but that the animal clinic was a location where one or more veterinarians would take care of animals, which would be no different from a physician's office. The activity would take place indoors. The Hearing Examiner said there might have been a concern about overnight stays by the animals, and maybe he would like to address that concern.

Ms. Montgomery said there was no problem about being able to board animals. Obviously, when animals have to be sedated they have to be kept overnight. However, it would be all internal, and they would be monitored. Those animals would be limited in their movement because they have had surgery, so they would not be making a lot of noise. They were not intending to board animals independent of the clinic itself.

Mr. Nino noted he would treat pet shops altogether differently than an animal clinic. The Hearing Examiner stated Staff was restricting the pet shop to a certain area. Mr. Nino argued there was no justification for limiting the geographic location of a pet shop or an animal clinic on this site. The Hearing Examiner stated he could see the rationale for the animal clinic, but a pet shop would have animals there 24 hours per day. That may be one of the concerns the Staff had. If he had problems with that, he would need to explain why he felt the pet shop should not have any restrictions.

Mr. Nino responded that they were talking about something that was in an indoor environment. He did not believe that a pet shop that had cats, birds, and puppies would impact a residential area. He did not believe that anyone would hear those animals from an adjacent restaurant area any more than people in the pet shop would hear noises coming from a restaurant or other retail center that may be in the shopping center.

Next Mr. Nino addressed the issue of the 4th Street West service drive. He noted they had looked at comparable situations in the Lehigh area off of Lee Boulevard. Quite frankly, he was unable to understand the prohibition on the service drive that had been proposed in light of conditions in the neighborhood. Ms. Montgomery requested Mr. Nino to explain exactly what the Applicant was asking to do.

Mr. Nino stated they were asking to have a service drive, limited to service delivery vehicles only, and they would be prohibited from using that driveway before 8:00 a.m. or after 7:00 p.m. There would be a wall along 4th Street West, with vegetation that would help ameliorate some of the sound and mitigate the visual appearance of a blank wall. To that extent, they would also be agreeable to an enhanced landscaping theme along there that would further visually block the wall. Between the wall and the enhanced landscaping, it was their opinion that was no real compatibility issue. He also discussed the movements of the service vehicles, and noted that their traffic engineer would speak more directly to that issue.

Mr. Nino displayed a board exhibit that depicted various commercial sites in Lehigh, and noted that not all of these buildings had access points on the parallel street systems. Ms. Montgomery asked what the small middle aerial was with the little red dots. Mr. Nino explained the red dots were the locations of each of the small aerials surrounding the middle aerial that show where there were uses that in some measure accessed a residential street. It was determined that had happened by in large because Lehigh Acres had been created as a very large residential platted lot subdivision. (Applicant's Exhibit #7)

Mr. Nino explained that was why walls, buffers, and landscaping would be put in place to mitigate some of the issues in Lehigh Acres, and was a requirement of the LDC. The requirement was to help mitigate the areas between commercial and abutting residential zones. However, there were situations where it was unavoidable, and Mr. Nino distributed six photographs along with a small aerial map which had been taken along 5th Street. The Hearing Examiner labeled those as Applicant's Composite Exhibit #3.

He pointed out one example where a street had been created between two businesses to allow for a joint commercial access off 5th Street through to Lee Boulevard. To the west of that, there was a commercial development called the Grease Monkey. It made provision for the very same scenario, so when another building was built there, they would share the driveway between the two streets. He felt that was a far more impacting condition on the residences than a circuitous service drive in the nature of the subject property's design. Mr. Nino said their traffic expert was present to further describe that situation.

The Hearing Examiner felt the Staff was concerned not so much with the internal circulation than the fact that these commercial vehicles would have to go through a residential area to get into the project. He understood that was what he was discussing now, but it was not so much the internal design that was the real concern. The concern was the impact on the neighborhood from the trucks traveling through the neighborhood to get to the commercial site. Mr. Nino acknowledged that.

He pointed out 4th Street on the aerial, labeled Applicant's Exhibit #4, and gave the Hearing Examiner four photographs of the residential conditions on that street. The Hearing Examiner labeled the set of pictures as Applicant's Composite Exhibit #5. The nature of Lehigh Acres was such that it could be expected there would be more people employed in the construction industry and would own their own construction vehicles. Also everybody used Fed-X, UPS, and some may use Office Max or other office supply businesses who deliver directly to their residence.

Ms. Montgomery suggested that if this piece of property were developed into residential, the traffic would be even greater than it will be with this project. Mr. Nino agreed. Ms. Montgomery said the Lee Plan, and the Vision 2020 section for Lehigh (page I-7) indicated the following:

Lehigh will more than double the projected 2020 population. Lehigh will continue to struggle with providing sufficient non-residential uses to accommodate a community of its size. New Provisions for providing these uses has been implemented and will aid in this problem, however, residents will continue to commute from this community to the core communities such as Ft. Myers, and Gateway/Airport for employment, shopping and other services. This community will also struggle with providing an adequate road network to reduce traffic congestion as the population grows.

Ms. Montgomery cross-examined Mr. Nino regarding key issues of his presentation in regard to the Lee Plan's Vision 2020, if he was in agreement with the vision statement. Mr. Nino stated Lehigh needed to create places of employment and places for dealing with their daily needs so they do not have to clutter up the highways and come to locations in Ft. Myers. Mr. Nino felt that was why the County conducted the Commercial Overlay. Ms. Montgomery stated that commercial uses were permitted and encouraged within that Commercial Overlay. In fact, the County will not let the area be changed to other uses. Mr. Nino agreed that they work hard to protect those areas that accommodate nonresidential uses, and it was important to provide the needs of the community close at hand.

Mr. Laurien had a few questions. He questioned Mr. Nino regarding his testimony on the consumption on premises, the request for a deviation from Section 34-1263 (e)(4), and if he was requesting a deviation from that particular regulation. Mr. Nino said to the extent that the shopping center was less than 500 feet from the school. The Hearing Examiner requested to have that regulation read. The Hearing Examiner stated that anytime they have had someone requesting a COP it was within 500 feet. Unless there was a Special Exception, the purpose of this was to have a public hearing on it, not a deviation request. Legal advice was requested from the County Attorney's Office. Joan Henry, Assistant County Attorney said she would like to take a look at it.

The Hearing Examiner said when it was justified, they had routinely approved the COP within a shopping center and had never addressed the 500 feet because the assumption was it was heard in a public hearing, and it was not necessary to get a deviation. If that was the case, then a Special Exception had to have a variance associated with it within 500 feet, and that was how it was done here. Ms. Montgomery agreed with the Hearing Examiner. Ms. Montgomery referred to the School Board's letter, and noted it was actually misleading. The Hearing Examiner noted he had read the Florida Statute and the School Board's letter, and stated he concurred with Ms. Montgomery's interpretation. He added that it might not be approved by the BOCC, but the Statute was not an impediment in and of its self.

In Subsection 4, Ms. Henry said the language was clear because it was referring to a CPD, if they were requesting the use closer than the 500-foot requirement. Therefore, she felt a deviation needed to be submitted, and would be part of the Application requirements if they chose to have that use. Her recommendation would be to continue the hearing so that the Applicant could submit that, and Staff would have the opportunity to evaluate it. It was actually an application requirement, so for sufficiency purposes it needed to be done if they wanted that deviation.

Ms. Henry stated it was a separate provision, so a deviation would need to be submitted. The Hearing Examiner said he did not know what he would recommend at this time, but if he did recommend to the BOCC that the Applicant should be allowed to have this use within 500 feet, he would also recommend the BOCC approve the deviation.

Mr. Laurien said he had one further question about the traffic. They had determined that if the subject property were developed for single-family uses, the traffic impact would be worse than the proposed commercial use. Mr. Montgomery noted she had asked the question after consulting with the traffic expert. The question was if there would be more traffic than with the use they were requesting. Mr. Nino's answer was that it would be worse. Mr. Laurien noted that Staff had not received any information from a traffic engineer regarding that particular issue, and Mr. Nino was not considered to be a traffic engineer.

The Hearing Examiner noted Mr. Nino had been accepted as an expert in zoning and planning matters, not traffic matters. He had given information from a third party, so to the Hearing Examiner that was hearsay, and he would not give that information as much weight as he would from a traffic engineer. Ms. Montgomery stated they would do that next. The Hearing Examiner said he understood that, but for the instant purposes they were not there yet. Ms. Montgomery redesigned the question to be if there were a row of residential houses along there, and assuming they were gone all day, would there be more traffic in the evening peak hours when they were coming home and then going out again, than there would be from the commercial site.

Mr. Laurien wondered if that would also be true with respect to the total traffic produced by the proposed two access points on 4th Street during the day, as opposed to just PM peak hours. Ms. Montgomery deferred the question to Mr. Spradling.

Ms. Montgomery introduced Randy Spradling, Senior Transportation Engineer from Vanasse Daylor. She noted Mr. Spradling had been a traffic consultant for Lee County in the past, and was qualified on numerous occasions as an expert in transportation planning. His resume was presented to the Hearing Examiner, and it was labeled as Applicant's Exhibit #6.

Mr. Spradling introduced himself, spoke of his current employment, and noted that indeed he was a past employee of Lee County. He gave a brief history of his professional duties and experience while with the County. Mr. Montgomery requested that Mr. Spradling be accepted as an expert witness in transportation planning and engineering. Without objections, he was accepted.

Mr. Spradling noted that one of the questions that came up in the discussion was regarding the 4th Street access points. Policy 24.1.4 of the Lee Plan reads, "Main access points from new development will not be established where traffic is required to travel through areas with significantly lower densities or intensities (e.g., multifamily access through single-family areas, or commercial access through residential areas)." From a traffic engineer's standpoint, a main access was an access point that carried a substantial portion of the daily site generated traffic into and out of a site.

The 4th Street access, as proposed, would not provide suitable site access or egress for store or office patrons, and neither was it intended for that purpose. Their secondary service access points were intended to accommodate the delivery vehicles that would be going to the backs of these commercial establishments. Ms. Montgomery asked Mr. Spradling what he would identify as the main access from a transportation standpoint. Mr. Spradling stated the main access points would be from Lee Boulevard and Sara Avenue North. The Traffic Impact Study (TIS) that was submitted with the application supported the assertion through the assignment of the peak hour traffic to those two accesses. He noted that traffic engineers typically study the peak hours of operations more so than the daily operations.

Mr. Laurien stated Mr. Spradling had addressed standard residential traffic, and that was different from what was being proposed in this application. That was standard commercial traffic that was a much higher intensity than the typical plumbing truck or UPS truck going through a standard residential area.

Mr. Laurien also noted that the Applicant had indicated that they would restrict the hours of operation of these commercial vehicles entering off from 4th Street, and also the type of vehicles entering off from 4th Street. However, the type of vehicle and the hours of operation were not an issue which was germane to Policy 24.1.4, and LDC Section 10-8(2)c. This was regardless of the hours they would be entering the area or the type of traffic.

The policy stated clearly that "Main access points from new development will not be established where traffic is required to travel through areas with significantly lower densities or intensities (e.g., multifamily access through single-family areas, or commercial access through residential areas)." This made no mention of restricting it to certain hours or types of vehicles.

The final issue here was with the requested use of pet shops and the animal clinic. Mr. Laurien said the animal clinic perspective, if the Applicant was willing to restrict it to no overnight stays, Staff would be willing to support that use on any location on the subject property. However, without that restriction, again Staff would maintain their recommendation that it could only be located in the northwest portion of the property in either the 3,000 or 6,000 square-foot building, as he had mentioned earlier.

As to the pet shop, Staff still maintained that it should be located within the northwest portion of the property in either the 3,000 or 6,000-square-foot building. The reason for this was because the County had received numerous complaints over the years about noise coming from pet shops that were in areas close to residential developments. Staff had learned from those

complaints that they should not be allowing pet shops or animal clinics that had overnight stays to be located in close proximity to residential developments where the noise from the animals could have an adverse impact. That referred back to Policy 5.1.5 of the Lee Plan regarding adverse impacts upon existing neighborhood environment.

Mr. Laurien noted he had worked on an amendment to a CPD about 1.5 years ago where a pet store/animal clinic was in close proximity to a residential development. At that time, Staff had recommended the only location where the pet shop/animal clinic could be located was in the building farthest away from the residential development. The Applicant agreed to that, and eventually it was approved with that restriction.

Continuing, he wanted to make it clear that although Staff had recommended certain conditions and had recommended denial of certain uses on the subject property, they were keenly aware of the need for commercial uses in Lehigh Acres. Ultimately, they were recommending approval of a great majority of the request for commercial uses. Clearly, they were not denying the entire Application. Therefore, Staff recommended approval of the Applicant's request for rezoning from RS-1 to CPD, with Conditions 1 through 9 and Deviations 1 and 3. Deviation 2 had been withdrawn. He said he was available to answer any questions at this time.

Ms. Montgomery asked Mr. Laurien if he agreed that the property was located within the Lehigh Commercial Overlay area. Mr. Laurien stated the northern portion of the lots were located within the commercial overlay. The rear lots were located in the assembly area of the commercial overlay area. Therefore, there were two different distinctions on the property. The Assembly overlay was the section where one could assemble a whole block and it would be appropriate to build commercial uses.

Mr. Laurien said it was appropriate to put Commercial on an entire block, if it can be assembled, based on review by Staff for all other considerations, such as the Lee Plan and the LDC and other regulations. Ms. Montgomery suggested that was the subject of Policy 1.8.3. She noted she had been advised by the Planning Department there were cases where single-family could not be done in the Commercial Overlay because it had been set aside for commercial use only. Mr. Laurien stated he was not aware of that.

Mr. Laurien agreed with the Commercial Overlay and the Lee Plan insofar as there were limited opportunities for commercial for Lehigh. Ms. Montgomery understood that the Planning Staff was of the opinion that, even the areas designated under the Commercial Overlay were inadequate to address the existing and expected commercial demands for Lehigh. Mr. Laurien said he believed that to be correct.

She inquired if it was his opinion that it was important to try to utilize a properly designed area for commercial uses when there was that opportunity? Mr. Laurien said he agreed it was imperative to properly design commercial areas when there was the opportunity, such as this request. She questioned him if he thought that an efficient internal traffic circulation system was important, and he replied it was equally as important as the external traffic circulation.

Mr. Laurien indicated he had been out to the site. He agreed with Mr. Nino's description and the aerial's that support the fact that the subject property was surrounded by a six-lane arterial, a very wide canal right-of-way, and two local roads? Ms. Montgomery noted in that the property did not immediately abut any incompatible use, and Mr. Laurien noted it also was separated by roads and a canal.

There was a discussion that not all of the sites designated on the Commercial Overlay were abutting single-family platted lots for the most part, but they were separated by a road or a canal. There was also a discussion about the importance to try to provide uses such as offices and restaurants for the residents of Lehigh within the Lehigh area itself, and Mr. Laurien noted that was a valid issue. In response to Ms. Montgomery's inquiry, he agreed that some of the restaurants he visited served alcoholic beverages.

Kenneth Saundry, owner of the subject property, pointed out that the block and home the planner had referred to was a home he had already purchased. He planned to demolish it and make it part of the whole block. Therefore, his proposal would not have any affect on that home.

Ms. Henry noted for clarification purposes in the Schedule of Uses that it listed drive-thru facilities (limited to banks, financial establishments, laundry or dry cleaning, drugstore, pharmacy, restaurants, and fast food restaurants). She said she did not see Fast Food Restaurants listed in the Schedule of Uses. She inquired if the Applicant had requested Fast Food Restaurants. Mr. Nino said it was listed Restaurants, Fast Food (Restricted to one lane only). It was noted not to be in alphabetic order, and it would be corrected.

Ms. Montgomery readdressed consumption of premises, and she respectfully submitted that Staff had relied heavily on the School Board, and the School Board had relied heavily on the Statutes. In her personal opinion, their legal interpretation was incorrect, and she believed they had discussed the appropriate interpretation. Therefore, she did not feel that was an appropriate basis for the denial of the consumption on premises. She also mentioned the students would have to cross a six-lane highway to get to the subject property with a restaurant that might serve alcohol.

She thought the only way they would be in that restaurant was if they were accompanied by their parents when they all went out to eat. In fact, she felt the parents had more influence in the home regarding alcohol use, than to assume the children would be influenced by the restaurant that served alcohol in the vicinity of their school.

Next Ms. Montgomery addressed the design section under Goal 4 of the Lee Plan. She noted it spoke about providing for a safe and efficient internal circulation, and she felt Mr. Laurien agreed that was important. She questioned would the provision of commercial ingress and egress points stop all delivery trucks from using the other entrances. She did not think so. However, it was important to have a good, safe and efficient flow of traffic.

Unless it was disruptive to the single-family neighborhood, she did not think that many peak hour trips would go through the single-family area. There would be a few more cars/trucks, but she did not think that rose to the level of disruptive. The greatest good would be to provide better traffic circulation for the site.

Ms. Montgomery also touched on the pet store/animal clinic issue. She felt Mr. Laurien would prefer that there be no animals staying overnight in the facilities. She suggested that they not board them, but if an animal had surgery they ought to stay at the facility overnight to be monitored and have medical attention. Those animals were typically sedated, and therefore would not be making any noise.

Reviewing the noise impact from the pet store, Ms. Montgomery said it would have no more noise impact to the residential area than the six-laned highway noise. The walls of the building and the wall on the back of the property, as a buffer, would eliminate most of the sound that would be traveling into the residential area.

The Hearing Examiner mentioned that the way that Ms. Montgomery wanted to condition the pet store, would basically put the pet store and shop in the office building portion rather than in the retail area. Mr. Laurien noted that was correct. Mr. Laurien mentioned that Staff have intended for that area to be offices, but there had been no restriction to that effect. The Hearing Examiner explained the reason he raised that question was basically if he were to go along with Staff's recommendation and the design did not change, then they could not have a pet shop in that area, because that area was not being used for that purpose.

In closing, Mr. Laurien stated he felt the Staff Report clearly identified Staff's position. The Hearing Examiner indicated that he would conduct a site visit before issuing his recommendation, which he thought would be three or four weeks. The hearing was closed.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

- 1 Neale Montgomery, Attorney, Pavese Law Firm, 1823 Hendry St., Ft. Myers, FL 33901
- 2 Ron Nino, Planner, Vanasse Daylor, 1230 New Brittany Blvd, Ste 205, Ft. Myers, FL 33907
- 3 Randy Spradling, Traffic Engineer, Vanasse Daylor, 1230 New Brittany Blvd, Ste 205, Ft. Myers, FL 33907

ADDITIONAL COUNTY STAFF:

1. Joan Henry, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902-0398

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VII):

For: NONE

Against:

1. Kathy Babcock, c/o School District of Lee County, 3308 Canal Street, Ft. Myers, FL 33916

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER RECOMMENDATION:

For: NONE

Against: NONE

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the Hearing Examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the Hearing Examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. This recommendation is made this 29th day of July, 2004. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

B. The original-file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

C. The Board of County Commissioners will hold a hearing at which they will consider the record made before the Hearing Examiner. The Department of Community Development will send written notice to all hearing participants of the date of this hearing before the Board of County Commissioners. Only participants, or their representatives, will be allowed to address the Board. The content of all statements by persons addressing the Board shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

D. The original file containing the original documents used in the hearing before the Hearing Examiner will be brought by the Staff to the hearing before the Board of County Commissioners. Any or all of the documents in the file are available on request at any time to any County Commissioner.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.



SALVATORE TERRITO
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, Florida 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

**LEE COUNTY, FLORIDA
ZONING DIVISION
STAFF REPORT**

TYPE OF CASE: PLANNED DEVELOPMENT/DCI

CASE NUMBER: DCI2004-00005

HEARING EXAMINER DATE: June 24, 2004

I. APPLICATION SUMMARY:

- A. Applicant: Lee Boulevard Commercial Retail Center CPD
- B. Request: Request is to rezone the 5.55+/- acre property from Residential (RS-1) to Commercial Planned Development (CPD), to permit but not be limited to the following uses: Package Liquor Store, Pet Store, Restaurants, Consumption on Premises, and Drive-Throughs. Buildings are to be a maximum of 40 feet in height. No blasting is proposed on-site.
- C. Location: The subject property is located on Lee Boulevard (travel east on Lee Blvd. and turn right into Sara Ave. N, the property is located at the south-east quadrant of Lee Blvd. and Sara Ave. N intersection), in S26-T44S-26E, Lee County, FL. (District #5)
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property:

The subject property is currently zoned Residential (RS-1), is vacant, and is within the Central Urban land use category. The front half of the property is located within the commercial overlay zone within Lehigh Acres, and the rear half of the property is within the lot assembly overlay zone within Lehigh Acres.
- E. Surrounding Land Use:

<u>Existing Zoning & Land Use</u>	<u>Future Land Use Map</u>
North: Across Lee Boulevard, Residential (RS-1) zoned properties, some built with single-family homes, some vacant	Central Urban
East: I.D.D. Canal	Central Urban
South: Across 4 th Street, Residential (RS-1) zoned properties, some built with single-family homes, some vacant	Central Urban
West: Across Sara Avenue, Residential (RS-1) zoned properties, some built with single-family homes, some vacant	Central Urban

F. Size of Property: 5.55± acres

II. RECOMMENDATION:

Staff recommends Approval of the Applicant's request for rezoning from RS-1 to CPD with the following conditions and deviations:

A. Conditions

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Lee Boulevard - Exhibit 6-J Master Plan - DCI2004-00005," stamped received APR 09 2004, last revised 04-07-04, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:

a. Schedule of Uses

Administrative Offices

Animal Clinic/Veterinary Offices (no outdoor kennels or runs) (restricted to the 6,000 square foot building in the northwest portion of the property as depicted on the Master Concept Plan)

Automatic Teller Machine (ATM)

Automobile Parts Store (no installation)

Banks and Financial Establishments, Groups I, and II

Broadcast Studio, Commercial Radio and Television (in compliance with LDC Section 34-1441 et. seq.)

Business Services, Group I

Clothing Stores - General

Clubs, Commercial, or Fraternal Organizations

~~Consumption of Premises (COP) (only in conjunction with Restaurants, Group III; and Clubs, Commercial, Fraternal, or Membership Organizations; Outdoor seating for a Restaurant, Group III; COP, and clubs COP must be reviewed through the Special Exception process on a case-by-case basis)~~

Contractors and Builders, Group I

Drive Through Facilities (limited to Banks and Financial Establishments, Groups I, and II; Laundry or Dry Cleaning, Group I; Drugstore, Pharmacy; Restaurants, Fast Food) (Restricted to one lane only)

Drug Store, Pharmacy

Essential Services

Essential Service Facilities, Group I

Fences, Walls

Food Store, Groups I, and II

Gift and Souvenir Shop

Hardware Store

Hobby, Toy, and Game Shops

Household and Office Furnishings, Groups I, II, and III

Laundry or Dry Cleaning, Group I

Medical Offices
 Non-store Retailers, Group I
~~Package Liquor Store~~
 Paint, Glass and Wallpaper
 Personal Services, Groups I, II, and IV
 Pet Shop (restricted to the 6,000 square foot building in the northwest portion of the property as depicted on the Master Concept Plan)
 Rental or Leasing Establishment, Groups I, and II (mopeds, and scooters may only be permitted if stored indoors; passenger car pick-up & drop-off is NOT permitted)
 Restaurants, Groups I, II, III, and IV
 Schools, Commercial
 Signs in accordance with LDC Chapter 30
 Social Services, Groups I, and II
 Specialty Retail Shops, Groups I, II, III, and IV
 Studios
 Used Merchandise Stores, Groups I, II, and III
 Variety Store

b. Site Development Regulations

Development Criteria	All Uses
Setback from Public, and Private Streets	Minimum of 25 feet
Setback from Other Perimeter Boundary	Minimum of 20 feet
Internal Access Drives	Minimum of 10 feet
Space Between Buildings	20 feet, or ½ the building height (per the LDC), whichever is greater
Setback from Waterbody	Minimum of 25 feet
Setback from Internal Lot Lines Under Separate Ownership	Minimum of 10 feet
Building Height	Maximum of 40 feet, and 3 stories
Lot Width	Minimum of 75 feet
Lot Depth	Minimum of 100 feet
Lot Area	Minimum of 7,500 square feet
Maximum Lot Coverage	45%

3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
4. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b),

be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee Plan provisions.

5. Prior to the recording of any resolution on this application, the two accesses onto 4th Street West, as depicted on the Master Concept Plan, must be removed from the Master Concept Plan, and replaced with a 15 foot wide type 'C' buffer which must extend along the entire southern boundary of the subject property.
6. Prior to development order approval, all of the easements depicted on the Master Concept Plan, which are not being accommodated, must be vacated.
7. Blasting is not permitted on the subject site.
8. Prior to local development order approval, a minimum of thirty percent open space must be delineated on the development order plans.
9. Sara Avenue North must be upgraded to a Category A road from Lee Boulevard to the project entrance, which satisfies LDC Section 10-291(2).

B. Deviations

Deviation one requests relief from LDC Section 34-2018 (b) that requires parking lots to be within 300 feet of each use, and not be separated by a right-of-way or easements exceeding 25 feet in width, to allow joint use of parking areas in all areas of the site, so that the parking lot functions to serve all of the uses occupying space within structures on the site.

Staff recommends APPROVAL of this deviation with the following conditions:

Any and all shared parking cannot be separated by a right-of-way or easement exceeding 25 feet in width.

As depicted on the Master Concept Plan, all parking spaces will be within walking distance of all uses. Thus, it is reasonable to allow all parking spots to be utilized for parking for all of the uses to be provided on-site. Hence, this deviation will serve to enhance the overall development and will not be detrimental to the health, safety, or welfare of the public. As conditioned, this deviation will allow shared parking in excess of 300 feet away from a use but, not if separated by a right-of-way or easement exceeding 25 feet in width, which is not the intention as depicted on the MCP.

Deviation two requests relief from LDC Section 10-329(e)(1)(a)(2) with the requirement for a 50-foot setback from water retention or detention excavation to any existing or property owner proposed right-of-way line or easement, to permit a 25-foot setback.

Upon substantive review of this application, per Development Services comments, staff has determined that this deviation is not necessary (please see attachment 'D'). Hence staff recommends that this deviation be withdrawn. This deviation would only be necessary for wet detention areas. Since the Master Concept Plan depicts all detention areas to be dry, this deviation is unnecessary.

Deviation three requests relief from LDC Section 10-285(a) which requires a 660 foot separation between access ways, access roads or streets, to allow an intersection separation of 450 feet between the south leg of Sara Avenue North and the proposed access onto Lee Boulevard as depicted on the MCP.

Staff recommends APPROVAL of this deviation (see attachment 'E'), from Lee County Department of Transportation). However, staff also reiterates per regulations, that "the proposed left-in movement issue will be addressed at the Development Order stage or in the administrative code (AC-11-3) process."

This deviation will not adversely impact the health, safety, or welfare of the public.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of planned development rezonings, staff makes the following findings and conclusions:

1. The applicant has proven entitlement to the Rezoning, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested zoning, as conditioned:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas or natural resources.
3. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services, as defined in the Lee Plan, are available and adequate to serve the proposed land use.
5. The proposed mix of uses, as conditioned, is appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
8. The deviations granted:
 - a) enhance the objectives of the planned development; and

- b) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

III. BACKGROUND INFORMATION AND ANALYSIS:

Introduction/Synopsis

This is a request to rezone the 5.55+/- acre property from Residential (RS-1) to Commercial Planned Development (CPD), to permit but not be limited to the following uses: Package Liquor Store, Pet Store, Restaurants, Consumption on Premises, and Drive-Throughs. Buildings are to be a maximum of 40 feet in height. No blasting is proposed on-site.

The site is currently occupied by a single single-family home which is to be razed prior to development. The rest of the site has been previously cleared.

Master Concept Plan

The proposed Master Concept Plan (MCP) is a one page document entitled, "Lee Boulevard - Exhibit 6-J Master Plan - DCI2004-00005", stamped received April 9, 2004. The MCP depicts six (6) commercial buildings ranging in size from 3,000 square feet to 25,000 square feet. Four accesses are proposed, one (1) on to Lee Boulevard, one (1) onto Sara Avenue North, and two (2) onto 4th Street West. Dry detention areas and buffers are to ring much of the development.

Lee Plan Considerations

The entire subject property is located within the Central Urban future land use category.

The Central Urban land use category is described in Policy 1.1.3, of the Comprehensive Plan as follows:

POLICY 1.1.3: The Central Urban areas can best be characterized as the "urban core" of the county. These consist mainly of portions of the city of Fort Myers, the southerly portion of the city of Cape Coral, and other close-in areas near these cities; and also the central portions of the city of Bonita Springs, Iona/McGregor, Lehigh Acres, and North Fort Myers. This is the part of the county that is already most heavily settled and which has or will have the greatest range and highest levels of urban service—water, sewer, roads, schools etc. Residential, commercial, public and quasi-public, and limited light industrial land uses (see Policy 7.1.6) will continue to predominate in the Central Urban area. This category has a standard density range from four dwelling units per acre (4 du/acre) to ten dwelling units per acre (10 du/acre) and a maximum density of fifteen dwelling units per acre (15 du/acre).

The proposed rezoning is for commercial uses. Thus, the proposed rezoning is consistent with this policy.

POLICY 1.8.1: Commercial uses are permitted on lands in the **Lehigh Commercial** overlay once commercial zoning has been approved in accordance with this plan.

The northern portion of the subject property is within the Lehigh Commercial overlay. Thus, this commercial rezoning is consistent with this policy.

POLICY 1.8.3: Because of the shortage of suitable undivided tracts in Lehigh Acres (whose boundaries for the purposes of this plan are shown on Map 16), commercial uses may also be appropriate on certain other lands that might otherwise be used for residential lots.

1. *Many such lands with the **Lot Assembly** overlay. These lands are platted for single-family lots and are under multiple ownerships. Commercial uses on individual lots or small assemblies of lots would generally be intrusive to existing or emerging neighborhoods. However, assemblies of entire blocks would provide suitable commercial parcels. Major lot assemblies could qualify for commercial zoning whether assembled by government action, private sector purchases, cooperative arrangements between individuals, or similar arrangements.*

The southern portion of the subject property is within the **Lot Assembly** overlay, and an entire block has been assembled for this request. Thus, this proposal is consistent with this policy.

OBJECTIVE 2.1: DEVELOPMENT LOCATION: *Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.*

The subject property is located on Lee Boulevard, an area which has experienced rapid commercial and residential development recently, and will likely continue to do so in the foreseeable future. Thus, this application is consistent with this policy.

OBJECTIVE 2.2: DEVELOPMENT TIMING: *Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. Development orders and permits (as defined in F.S. 163.3164(7)) shall be granted only when consistent with the provisions of Sections 163.3202(2)(g) and 163.3180, Florida Statutes and the county's Concurrency Management Ordinance.*

All necessary public facilities including sewer, water, police, fire, and ambulance are already existing in the area. Thus, this application is consistent with this policy.

POLICY 5.1.5: *Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in Chapter 10 of the Land Development Code are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The Land Development Code will continue to require appropriate buffers for new developments.*

There are two compatibility issues which staff is concerned with in this case. The first is with the uses which involve the consumption on premises of alcohol, and the sale of alcohol for consumption off-site. The second is with the two (2) proposed accesses onto 4th Street West.

Zoning staff have received a letter from the School District of Lee County (see attachment 'F'). This letter clearly states the School District's concerns regarding the consumption of alcohol on the subject property, given the location of the property in close proximity to the existing Sunshine Elementary School across Lee Boulevard.

As can be seen in attachment 'G', which depicts a 500 foot zone around the elementary school in the area of the subject property, much of the subject property is within 500 feet of the school.

As is quoted in the letter from the School District, Florida Statute 562.45(2)(a) is germane to the consumption of alcohol on-premises when within 500 feet of a school. Given this statute, and the general concern for the health, safety, and welfare of school children, the School Board recommends denial of "any uses that could include alcohol consumption on premises." In conversation with Kathy Babcock, the author of the letter from the School District, this recommendation of denial is to include ALL consumption of alcohol on premises on the subject property (even those businesses that would be outside of the 500 foot radius, and those businesses which would derive at least 51 percent of their gross revenues from the sale of food and non-alcoholic beverages). This is the case since even those businesses which would be in excess of 500 feet from the school would still be within easy walking distance of the school, and any consumption of alcohol, whether the primary sales of a business or not, could be detrimental to the health, safety, and welfare of students at Sunshine Elementary School.

Further, the consumption on premises of alcohol within very close proximity to an existing residential neighborhood (across 4th Street, within 500 feet), is also of concern to staff with regard to compatibility with those residences. Often businesses that serve alcohol are open later at night which could pose a noise problem.

Thus, with concern for the health, safety, and welfare of the children attending Sunshine Elementary School, and the likelihood of compatibility issues with the existing residential neighborhood in close proximity to the subject property, the use of consumption on premises is inconsistent with this policy of the Lee Plan. Therefore, staff recommends denial of Consumption on Premises as a use on the subject property (see requested use crossed out above, in the Schedule of Uses).

The proposed package liquor store on the subject property in close proximity to the existing elementary school, and existing residences also poses similar health, safety, and welfare concerns as consumption on premises. Thus, staff also recommends denial of the Package Liquor Store as a use on the subject property (see requested use crossed out above, in the Schedule of Uses).

The second compatibility issue is that of the two (2) proposed accesses onto 4th Street West, as depicted on the MCP. These accesses are intended for the use of delivery trucks. Although the applicant has proposed the limitation of the types of trucks, and schedules (times) to use these accesses, these vehicles would still be traveling through an existing residential neighborhood to utilize these accesses to the subject property. This poses a significant compatibility issue with the existing residential neighborhood that the trucks would be traveling through. It is important to note that 4th Street, upon which the accesses are proposed, is a dead-end at the east end of the subject property. Thus, traffic on this road is minimal. Hence, the addition of the proposed truck traffic onto this street would be significant. It is also reasonable to expect that the persons who have purchased homes on this road, near a dead-end did so in the anticipation of limited vehicle traffic, especially given the existing zoning of residential on the subject property. Thus, these proposed accesses are inconsistent with this policy of the Lee Plan. Therefore, staff recommends denial of these proposed accesses. Please see condition 5 above, regarding this issue. This issue is further discussed below with regard to Policy 24.1.4, of the Lee Plan.

POLICY 24.1.4: Main access points from new development will not be established where traffic is required to travel through areas with significantly lower densities or intensities (e.g. multifamily access through single-family areas, or commercial access through residential areas). Bolding added for emphasis.

The two (2) proposed accesses onto 4th Street West, as depicted on the Master Concept Plan, are intended to be the main accesses for truck delivery on the subject site. To utilize these two (2) proposed accesses, the trucks would have to travel along 4th Avenue West from Sara Avenue North to the entrances, through an existing single-family residential neighborhood. This is clearly in violation of Policy 24.1.4, since this would constitute commercial access through residential areas, which is specifically called-out in this policy as inconsistent. Thus, staff recommends denial of these two (2) accesses. Please see condition 5 above, regarding this issue.

This denial is further supported by comments from Development Services (please see attachment 'D'), which states that they cannot support these accesses based on LDC Section 10-8(2)c., and LDC Section 10-291(2).

LDC Section 10-8(2)c. States:

The development shall be designed so as to minimize traffic impacts on surrounding areas, particularly to prevent traffic related to industrial land uses (see chapter 34) from traveling through predominantly residential areas. Main access points to a development will not be established where traffic is required to travel over local streets through areas with significantly lower densities or intensities, e.g., multifamily access through single-family residential areas, except where adequate mitigation can be provided.

The proposed development will not minimize traffic impacts on surrounding area (existing residential development on 4th Street). No differentiation can be made between the access points being for employee and service traffic as opposed to the general public. No mitigation would be adequate to prevent an adverse impact to the existing residential homes on 4th Street should commercial traffic be allowed to utilize the road for access to the proposed development. Thus, these proposed accesses are not consistent with this regulation. Thus, staff recommends condition 5, above.

LDC Section 10-291(2), states:

All development must abut and have access to a public or private street designed, and constructed or improved, to meet the standards in section 10-296. Any development order will contain appropriate conditions requiring the street to be constructed or improved as may be appropriate in order to meet the standards in section 10-296. Direct access for all types of development to arterial and collector streets must be in accordance with the intersection separation requirements specified in this chapter.

4th Street does not currently meet the standards in section 10-296, and to condition that it be improved to such standards would be incompatible with the existing residential development on the street. Thus, these accesses are not consistent with this regulation. Thus, staff recommends condition 5, above.

The applicant has submitted aerial photographs in defense of their request for these two (2) accesses which, in the applicant's opinion depict similar commercial access through residential neighborhoods. Staff has reviewed these aerials, and has determined that either they are not similar situations, or are old zonings which received development orders, and/or building permits prior to the existence of current pertinent regulations such as Policy 24.1.4. Regardless of this, even if such accesses had been granted previously, under current regulations, this does not justify their granting in this case. Each individual rezoning application must be reviewed upon its' own merits. Thus, staff's recommendation, above, for denial of these accesses.

Neighborhood Compatibility

Please see above, in Lee Plan discussion.

Environmental Issues

Environmental Sciences, inspected the subject property, and found no indigenous plants, native trees, or listed species on-site (please see attachment). However, they are recommending condition 8, above to ensure adequate open space is provided on-site.

Special Case Issues

Easements

The Master Concept Plan depicts several easements on the subject property which will not be accommodated (would not permit the continued, unfettered use) by the proposed buildings. The County Attorney's Office has determined that these easements do not need to be vacated prior to receiving zoning approval. Instead, the County Attorney's Office has recommended condition 6, above, to address this issue.

Pet Shop, Animal Clinic/Veterinary Offices

To alleviate any noise from these uses that could emanate from the buildings, staff is recommending that they only be allowed in the 6,000 square foot building depicted in the northwest portion of the subject property, as depicted on the MCP, to maximize distance from residential uses in the area. Please see schedule of uses, above.

Rental or Leasing Establishment, Groups I, II

To prevent the proliferation of mopeds, scooters, and passenger cars for rental proliferating in the parking lot (a shared parking lot), staff is recommending that mopeds, and scooters be permitted as conditioned above, in the Schedule of Uses, and the use of passenger cars not be permitted, as detailed above in the Schedule of Uses.

Transportation

With regards to the proposed access on Sara Avenue North (please see attachment 'D'), staff recommends condition 9 above.

Per comments from Development Services, with regard to the Level Of Service (LOS) on Lee Boulevard (see attachment 'I'), the LOS on Lee Boulevard is currently LOS 'B', and will drop to a LOS 'C' once the subject project is completed. However, a LOS 'C', is an acceptable LOS in Lee County.

IV. ATTACHMENTS:

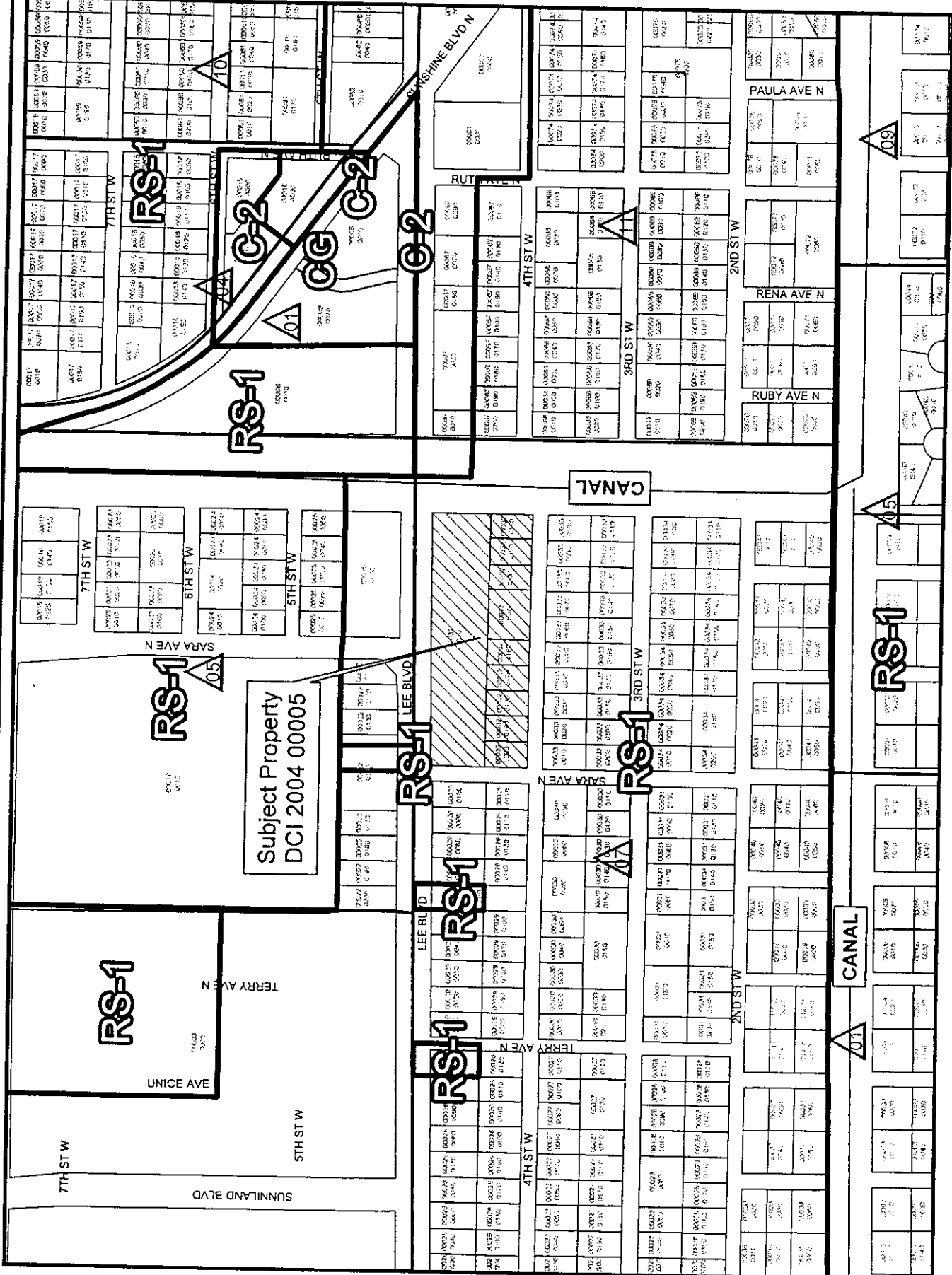
- A. Map of surrounding zoning
- B. Master Concept Plan (reduced)
- C. Aerial (reduced)
- D. Development Services comments
- E. Lee County Department of Transportation comments

- F. The School District of Lee County comments
- G. Aerial depicting 500 foot boundary around Sunshine Elementary School
- H. Environmental Sciences comments
- I. Development Services comments regarding Level Of Service on Lee Boulevard

cc: Applicant
County Attorney
Zoning/DCI File

ZONING MAP

5/13/2004



Subject Property
DCI 2004 00005

Attachment A



MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DIVISION OF DEVELOPMENT SERVICES

DATE: 05/10/04

To: Jeff Laurien

Zoning Department

FROM: Melissa Roberts

RE: DCI2004-00005

I have reviewed the above project for the requested zoning change and can support the request, with the following comments and conditions.

1) With regards to the two access points on 4th Street W., staff cannot support access to 4th Street W. as there is no difference between the access points being for employee and service traffic as opposed to general public traffic. In both cases there would be commercial traffic intermingling with the residential traffic which is addressed in LDC Section 10-8(2)c. Additionally, 4th street is a currently a substandard local road. LDC Section 10-291(2) requires access to commercial developments to be from a Category A road.

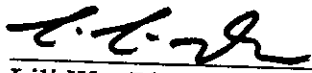
2) With regards to the access point on Sara Avenue N., staff can support this access point with a condition that Sara Avenue N. be upgraded to a Category A road from Lee Blvd to the project entrance, which satisfies LDC Section 10-291(2).

3) If all of the required water quality areas are dry detention, deviation 2 will not be needed as the excavation setbacks in LDC Section 10-329(d) only apply to wet retention systems.

ATTACHMENT D

Memo

To: Jeff Laurien
Senior Planner, Zoning Division

From: 
Lili Wu, Planner
Department of Transportation

Date: May 7, 2004

Subject: Lee Boulevard Commercial Retail (DCI2004-00005)

The Deviation #3 requests to allow an intersection separation of 450 feet between the south leg of Sara Ave. North and the proposed site access (right-in/right-out and left-in) on Lee Boulevard. We have no objection to the proposed access point onto Lee Boulevard. However, the left-in movement issue will be addressed at the Development Order stage or in the administrative code (AC-11-3) process.

LW/mlb

ATTACHMENT E



THE SCHOOL DISTRICT OF LEE COUNTY

2055 CENTRAL AVENUE • FORT MYERS, FLORIDA 33901-3916 • (239) 334-1102 • TTD/TTY (239) 335-1512

LEE COUNTY RECEIVED
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COMM. DEV
PUB. WORKS. CNTR.
SECOND FLOOR

JEANNE S. DOZIER
CHAIRMAN • DISTRICT 2

ELINOR C. SCRICCA, Ph.D.
VICE CHAIRMAN • DISTRICT 5

ROBERT D. CHILMONIK
DISTRICT 1

JANE E. KUCKEL, Ph.D.
DISTRICT 3

STEVEN K. TEUBER
DISTRICT 4

JAMES W. BROWDER, Ed.D.
SUPERINTENDENT

KEITH B. MARTIN
BOARD ATTORNEY

May 5, 2004

Mr. Jeff E. Laurien
Lee County Development Services Division
P.O. Box 398
Fort Myers, FL 33902-0398

Re: Lee Boulevard Commercial Retail Center, DCI Substantive Review, Case #DCI2004-00005

Dear Mr. Laurien:

Thank you for the opportunity to review Lee Boulevard Commercial Retail Center for substantive comments with regard to educational impacts. This proposed development is in the East Choice Zone of the District, on Lee Boulevard in the Lehigh Acres Planning Area. This letter is in response to your request dated April 30, 2004.

This development should have no impact on classroom needs based on the applicant's indication that this is a Commercial Planned Development and will not have residential dwelling units as part of this development.

However, due to the location of the existing Sunshine Elementary School, which is within five hundred (500) feet of the applicant's property, the School District of Lee County is requesting that any uses that could include alcohol consumption on premises be denied.

Please be advised that Florida Statute 562.45 (2) (a) states "... A location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety and general welfare of the community..."

Additionally, Lee County Ordinance Chapter 4, Article 1, Section 4.2 (b) states "The on-premise consumption of alcoholic beverages of any kind is prohibited within five hundred (500) feet of a church or school, unless a special permit allowing such on-site consumption is first obtained from the Board of County Commissioners. The five hundred (500) foot requirement within which a special permit is required hereunder shall be measured by a straight line from the main entrance of the establishment desiring to have on-premise consumption of alcoholic beverages and the nearest property line of the church or school."

ATTACHMENT F

DISTRICT VISION

TO PREPARE EVERY STUDENT FOR SUCCESS

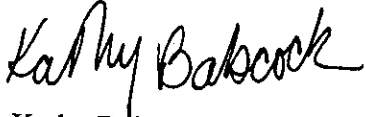
DISTRICT MISSION

TO PROVIDE A QUALITY EDUCATION IN A SAFE AND WELL-MANAGED ENVIRONMENT

As the existing Sunshine Elementary School is within five hundred (500) feet of the subject property, and based on the Florida Statute and Lee County Ordinance cited above, the School District of Lee County is requesting that any uses that could include alcohol consumption on premises be denied.

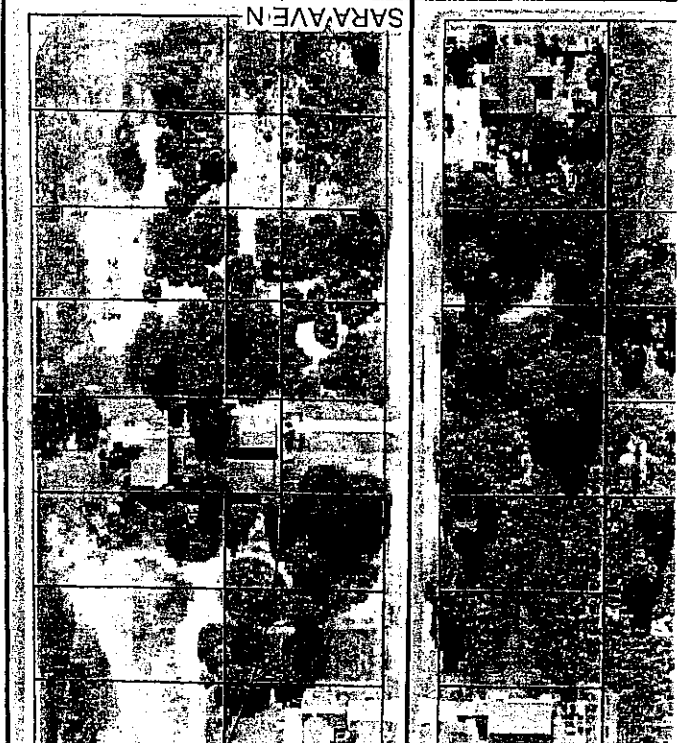
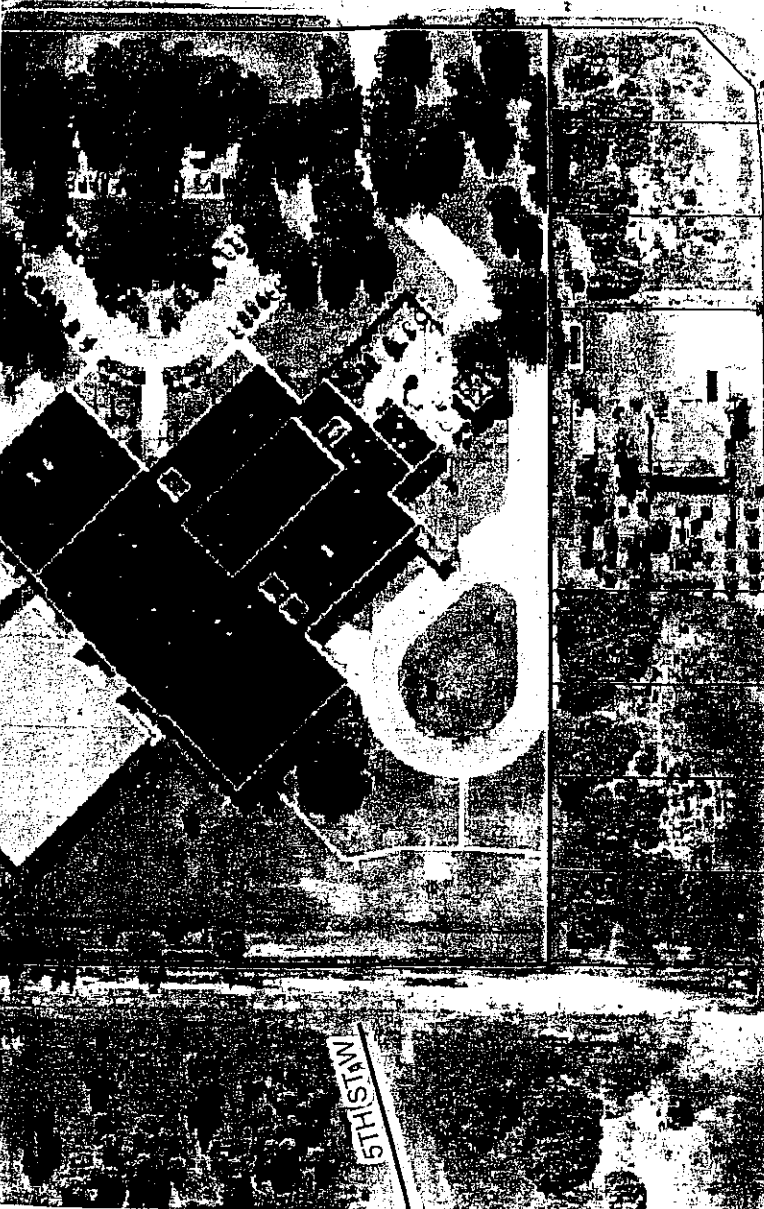
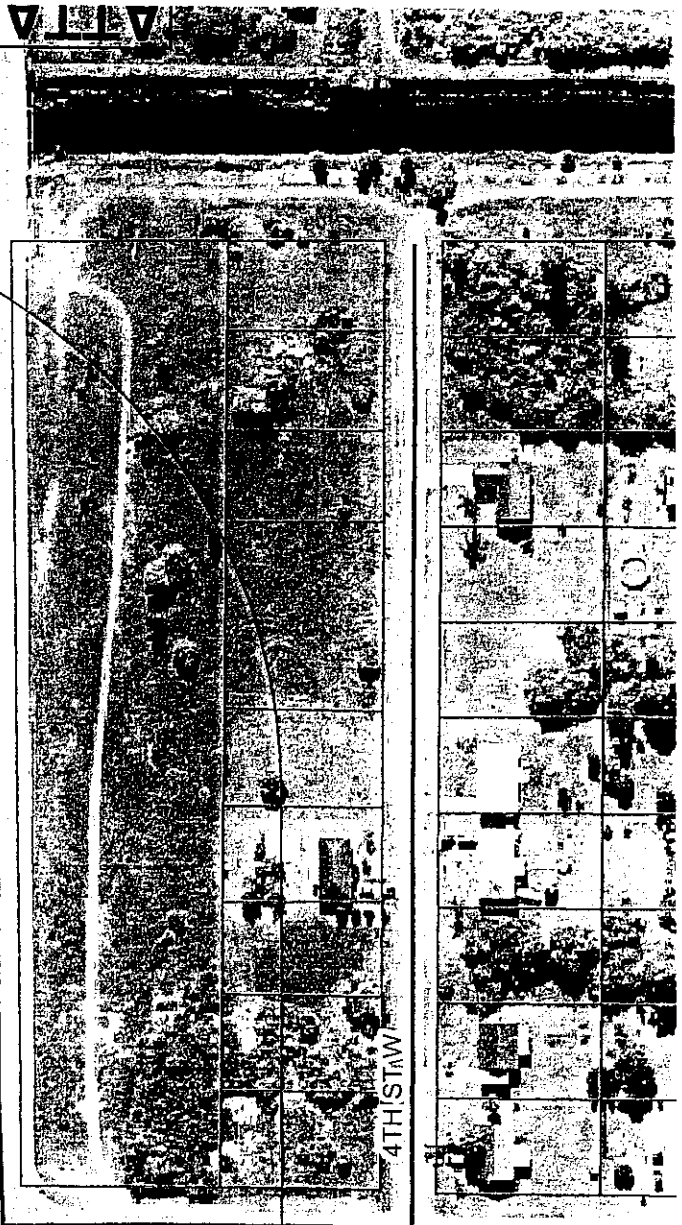
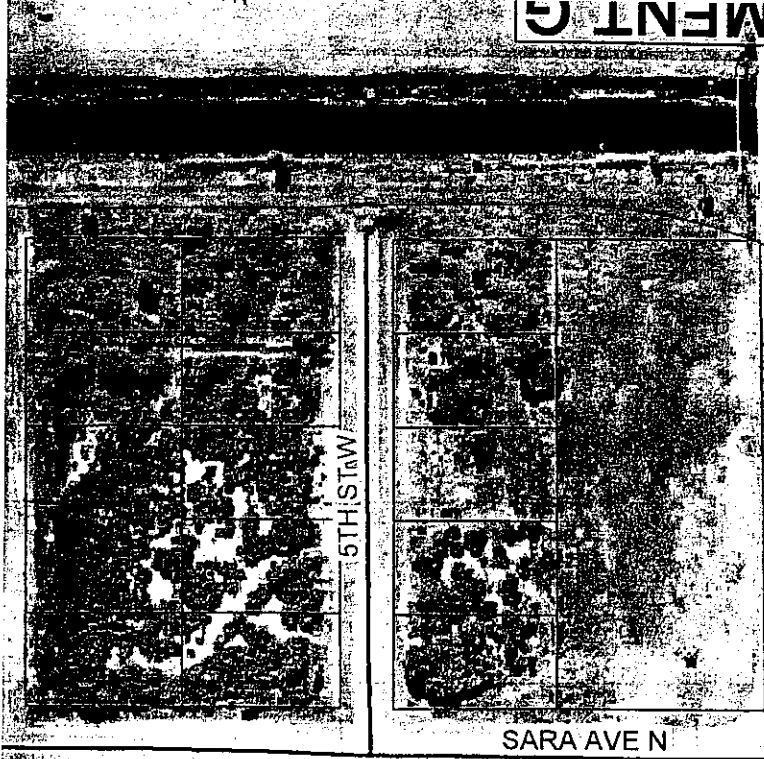
Thank you for your attention to this issue. If I may be of further assistance, please give me a call at (239) 479-4205.

Sincerely,

A handwritten signature in black ink that reads "Kathy Babcock". The signature is written in a cursive, flowing style.

Kathy Babcock, Long Range Planner
Department of Construction and Planning

Cc: William G. Moore, Jr.
Executive Director, School Support



LEE COUNTY
SOUTHWEST FLORIDA



RIAAVEN

LEAVEN

2ND STW

2ND STW

3RD STW

3RD STW

SRAAVEN

4TH STW

4TH STW

LEE BLVD

LEE BLVD

SRAAVEN

5TH STW

6TH STW

DCI2004-0005 Lee Boulevard CPD Attachment "C"

0:\Projects\2004\20040707\20040707.dwg, 20040808 09:52:17 PM

PROJECT SUMMARY
 Project Name: Standy Associates, Inc.
 Project Location: 831 Bly Acorn Circle, Suite 1001, Naples, FL 34115
 Project Description: Master Plan for Lee Boulevard
 Date: 08/08/04
 Scale: 1" = 40'

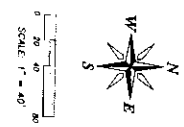
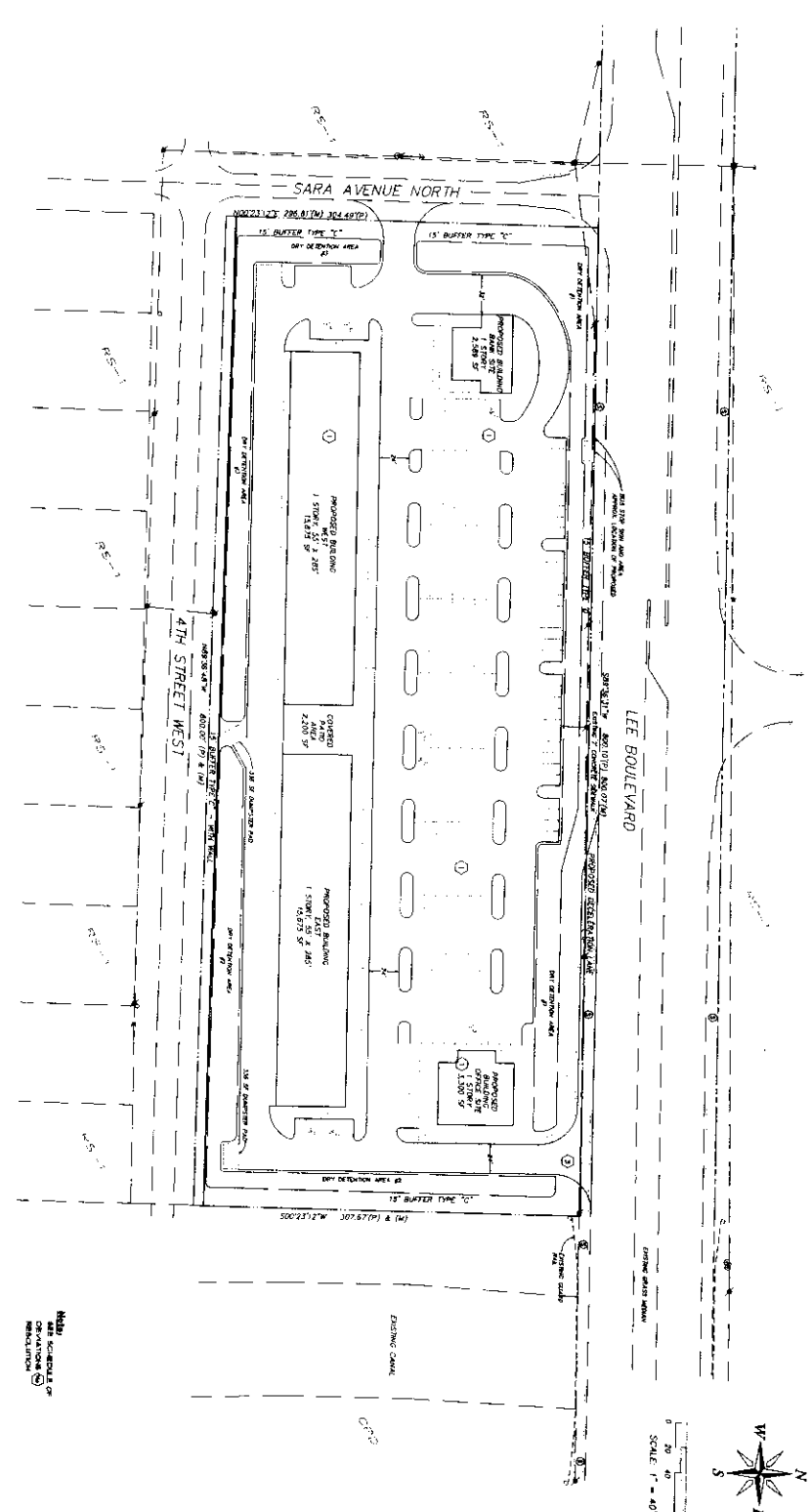
REGULATORY ZONING AND LAND USES
 Zoning: RS-1
 Land Use: Single-Family Residential
 Subdivision: 100-1
 Other: 100-1

LAND USE SUMMARY / OPEN SPACE REQUIREMENTS

Land Use	Permitted Use	Min. Lot Area	Min. Lot Width	Min. Lot Depth	Min. Setback	Min. Open Space
Commercial/Industrial	Permitted	10,000 sq ft	30 ft	100 ft	5 ft	10%
Residential	Permitted	10,000 sq ft	30 ft	100 ft	5 ft	10%
Public/Community	Permitted	10,000 sq ft	30 ft	100 ft	5 ft	10%

STAMP NUMBERS

24-44-12-01	07-0000120001
24-44-12-02	07-0000120002
24-44-12-03	07-0000120003
24-44-12-04	07-0000120004
24-44-12-05	07-0000120005
24-44-12-06	07-0000120006
24-44-12-07	07-0000120007
24-44-12-08	07-0000120008
24-44-12-09	07-0000120009
24-44-12-10	07-0000120010



Vanasse Daylor Project & Sheet Title Lee Boulevard - Exhibit 6-J Master Plan - DC2004-00006	Project Location Section 26, Township 44 S, Range 26 E Lee County, FL	REVISIONS The information herein is the property of Vanasse Daylor & Associates, Inc. and is not to be distributed outside of the project without the written consent of the company. All drawings are to be read in conjunction with the project specifications. 1" = 40' DATE: 08/08/04 DRAWN: RPN CHECKED: RPN APPROVED: RPN	
		Project No. DC2004-00006	Sheet No. 1 of 1