



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING HEARING AGENDA

Wednesday, May 3, 2017

9:30AM

DCI2016-00020
Z-17-009

SR 80 7-ELEVEN #38047

NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, May 3, 2017 in the Board Chambers at 2120 Main St., Ft. Myers, FL, to review the written recommendations made by the Hearing Examiner and make a final decision on the case below.

DCI2016-00020 / SR 80 7-ELEVEN #38047

Commercial Planned Development request for proposed 0.76± acre two parcel site to permit a new 7-Eleven convenience store with 12 self-service fuel pumps.

Located at 12516 Palm Beach Boulevard, Fort Myers Shores Planning Community, Lee County, FL.

Copies of the Hearing Examiner's recommendation may be obtained or the file reviewed at the Zoning Section, 1500 Monroe St., Ft. Myers, FL. Telephone 239-533-8585 for additional information.

If you did not appear before the Hearing Examiner or otherwise become a participant for that case in which you wish to testify, the law does not permit you to address the Board of County Commissioners.

Statements before the Board of County Commissioners regarding the zoning case will be strictly limited to testimony presented to the Hearing Examiner, testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or to allege the discovery of new, relevant information which was not available at the time of the hearing before the Hearing Examiner.

If a participant decides to appeal a decision made by the Board of County Commissioners with respect to any matter considered at this hearing, a verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, 239-533-2314, Florida Relay Service 711, or jlguardia@leegov.com, at least 5 business days in advance.

DCI2016-00020
SR 80 7-ELEVEN
#38047

Staff Summary

CASE NUMBER & NAME: DCI2016-00020 / SR 80 7-Eleven # 38047

REQUEST: Commercial Planned Development request for proposed +/- 0.76 acre two parcel site to permit a new 7-Eleven convenience store with 12 self-service fuel pumps.

RESOLUTION NUMBER: Z-17-009

LOCATION: 12516 Palm Beach Blvd., Fort Myers Shores Planning Community, Lee County, FL

OWNER: R + S INC

AGENT: Brian R. Smith
Ensite, Inc.
2401 First St., Ste 201
Fort Myers, FL 33901

STAFF POSITION: AGREES with Hearing Examiner recommendation of APPROVAL WITH CONDITIONS.

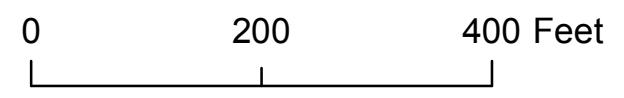
PARTICIPANTS: (0) None



Subject Property

DAVIS BLVD

PALM BEACH BLVD



Summary of Hearing Examiner Recommendation

SR 80 7-ELEVEN #38047

Request: Rezone 0.76± acres from Commercial Planned Development (CPD) and Commercial (C-1) to CPD to redevelop the property with a new convenience food and beverage store and 12 self-service fuel pumps.

Location: 12516 Palm Beach Boulevard
Fort Myers Shores Planning Community
(District 5)

Size: .76 acres

Recommendation: Approve with conditions.

Deviations: 10 (1 deviation is in dispute)

Public Concerns: None

Hearing Examiner Remarks:

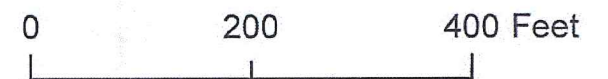
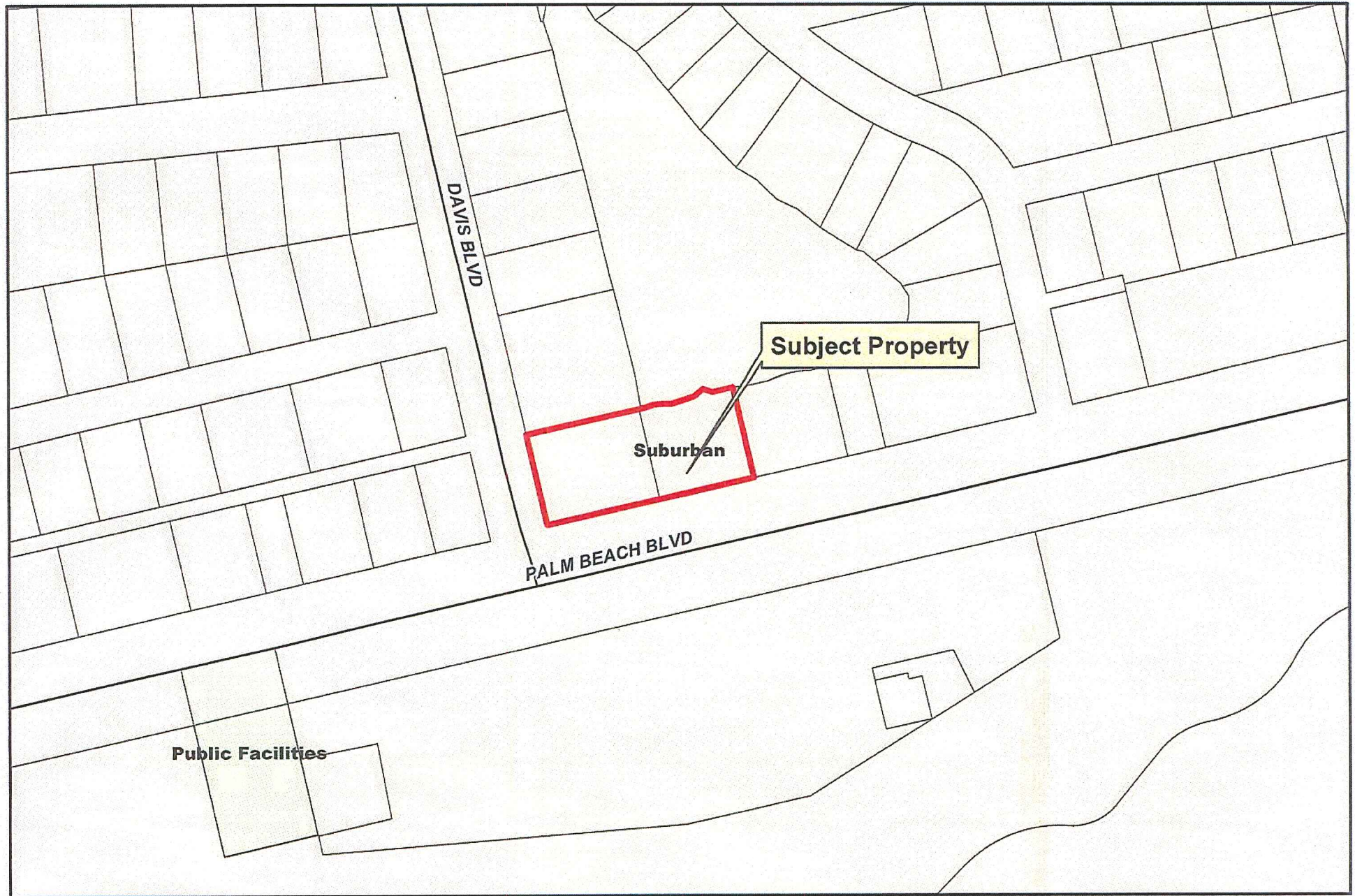
The proposed rezoning will facilitate redevelopment of two parcels on State Road 80/Palm Beach Boulevard.

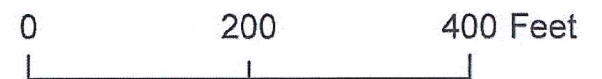
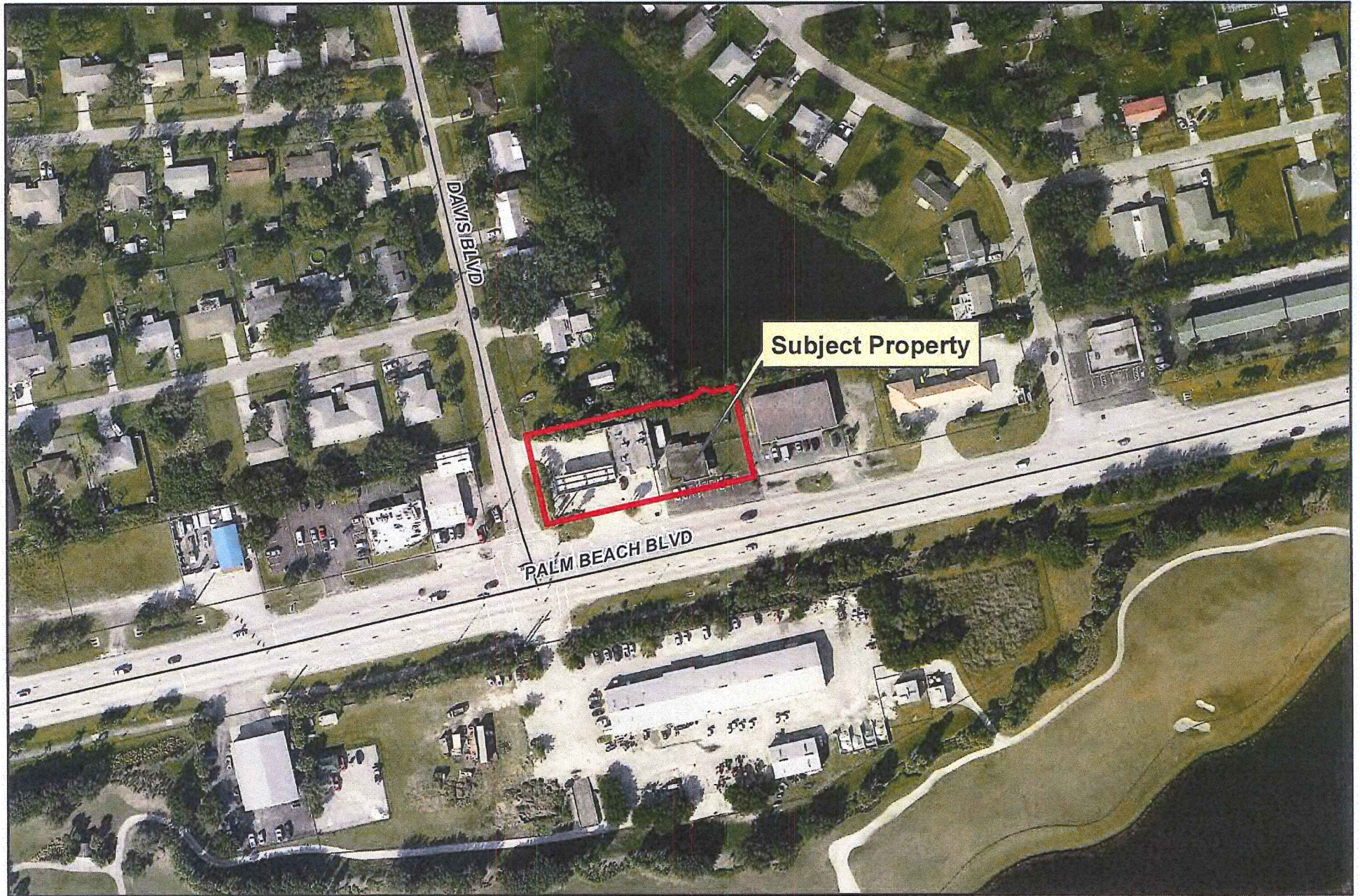
The application includes a deviation to eliminate a code required vehicular interconnection with adjacent commercial property. Staff did not support the requested deviation. If the deviation is denied, an interconnection with adjacent property will trigger the need for several additional deviations to address reductions to buffers, setbacks, open space and the public use area.

Although the LDC requires interconnection of commercial properties, the Lee Plan encourages redevelopment of S.R. 80 with an emphasis on open space and aesthetics. When balancing conflicting objectives, the Hearing Examiner must afford greater emphasis to objectives that achieve the primary goal of enhancing community character.

The Hearing Examiner has recommended minor revisions to the wording of conditions to improve clarity. No substantive changes were made to existing conditions.

Detailed recommendation follows





OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2016-00020
Applicant: Creighton Construction & Management, LLC
Regarding: **S.R. 80 7-ELEVEN #38047**
Location: 12516 Palm Beach Boulevard
Fort Myers Shores Planning Community
(District 5)
Hearing Date: March 30, 2017

I. **Request:**

Request to rezone 0.76± acres from Commercial Planned Development (CPD) and Commercial (C-1) to CPD to permit a new convenience food and beverage store with 12 self-service fuel pumps on property legally described in Exhibit A.

II. **Hearing Examiner Recommendation:**

Approval, *subject to* conditions and deviations set forth in Exhibit B.

III. **Discussion:**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners on applications to rezone property.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone .76 acres of property to Commercial Planned Development (CPD).

In preparing a recommendation to the Board, the job of the Hearing Examiner is to apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC) and other County regulations to the facts adduced at the hearing. There must be substantial competent evidence in the record to support the Hearing Examiner's recommendation. Discussion supporting the recommendation of approval of the request follows below.

Synopsis

The request seeks to rezone two parcels with CPD and C-1 zoning to the CPD zoning district to facilitate redevelopment. The properties total .76 acres and are located at the north east quadrant of the State Road 80² (S.R. 80) and Davis Boulevard intersection.

¹ LDC 34-145(d)(1)b. 1 and 6; LDC 34-145(d)(4)a

² Also known as Palm Beach Boulevard

Both properties are developed with commercial businesses. The CPD parcel is developed with a small convenience store with 6 self-service fuel pumps. The C-1 parcel is developed with a commercial building. All structures will be razed to accommodate redevelopment of the property. The proposed MCP reflects that together, the two parcels will accommodate a 3,010 square foot convenience store and 12 self-service fuel pumps.

Staff recommended approval of the CPD zoning district, finding the request satisfied the review criteria in the Lee Plan and LDC.

Zoning History

The property was platted as part of the Fort Myers Shores subdivision in the mid 1950's. The west parcel was rezoned from C-1 to CPD in 2000.³ The resolution approved an array of commercial uses, including 3,100 square foot convenience food and beverage stores with 6 self-service fuel pumps.⁴ The east parcel is zoned C-1 and developed with a commercial building operated as a Metro PCS store.

Commercial Use Appropriate

The site is appropriate for commercial development because it is situated at the intersection of an arterial and collector road,⁵ and also because it lies in the middle of a stretch of commercial uses fronting S.R. 80.⁶ The Master Concept Plan (MCP) reflects development of a convenience store and 12 self-service fuel pumps. The proposed use will serve residential development in the area as well as the traveling public.

Redevelopment will revitalize consistent with the vision of the Caloosahatchee Shores planning community the existing commercial development on the property.⁷ The proposed commercial use of the property will serve as a transition from the busy S.R. 80 corridor and residences in the Fort Myers Shores subdivision.⁸

Character of Area

State Road 80 hosts a wide variety of commercial uses ranging from medical offices to mini storage. Large commercial nodes are located east and west of the property.⁹ Those intersections are developed with supermarkets, retail centers, banks, pharmacies, and other convenience stores with gas pumps.

³ Z-00-066 approved October 30, 2000.

⁴ The approved MCP reflected a convenience store with six self-service fuel pumps.

⁵ Lee Plan Goal 6.

⁶ Once the property is cleared for redevelopment, the parcel will be the Lee Plan definition of "infill". See, Lee Plan Glossary and Policy 6.1.7.

⁷ Lee Plan Goal 21. See also, Objective 2.6.

⁸ Lee Plan Policy 6.1.4.

⁹ Large commercial nodes are located at the intersections of S.R. 80 and Buckingham Road as well as S.R. 80 and S.R. 31.

The site is at a signalized intersection of S.R. 80 and Davis Boulevard. Directly across S.R. 80 to the south is the golf maintenance facility for the Verandah subdivision and a fire station.¹⁰

Urban services and infrastructure is available to the area, including transit.¹¹

Lee Plan Consistency

The site is in the Fort Myers Shores Planning Community.¹² The location east of I-75 places the site within the Caloosahatchee Shores area of the community.¹³ The property is classified as Suburban on the Lee Plan Future Land Use Map.¹⁴ Suburban lands are generally located on the fringe of more intensely developed areas.¹⁵

The site is also located within a Mixed Use Overlay.¹⁶ Much of the S.R. 80 corridor from S.R. 31 to Buckingham Road lies within a Mixed Use Overlay. Mixed Use Overlay areas are typically proximate to public transit routes, education facilities, residential, shopping and employment centers as well as recreation opportunities. While it is desirable for property in the Mixed Use Overlay to be developed as mixed use, it is not mandatory.¹⁷

The proposed CPD is consistent with the Lee Plan in several respects. The Caloosahatchee Shores Community Plan favors intense commercial uses along S.R. 80 in this particular area.¹⁸ The community plan also favors the application of development regulations in a manner that promotes redevelopment along the road corridor.¹⁹ The Lee Plan encourages high intensity land uses on parcels abutting transit corridors.²⁰ S.R. 80 is the main thoroughfare between Fort Myers and the East Coast.²¹

Compatibility with surrounding development.

The community surrounding the site is developed with a mixture of residential development, commercial businesses, churches, and medical offices. The proposed use²² has existed on the site for over 15 years and is integrated into the fabric of the

¹⁰ Fort Myers Shores Fire Department Station 1.

¹¹ Lee Plan Policy 2.2.1.

¹² Lee Plan Vision Statement Paragraph 4; Map 16.

¹³ Lee Plan Vision Statement Paragraph 4 and Map 16 Planning Communities Map; Lee Plan Map 1 Special Treatment Areas and Goal 21.

¹⁴ Lee Plan Map 1.

¹⁵ Lee Plan Policy 1.1.5

¹⁶ Lee Plan Map 1 page 6 of 8.

¹⁷ Lee Plan Glossary describes "Mixed Use" as follows: "The development, in a compact urban form, including residential and one or more different but compatible uses, such as but not limited to: office, industrial and technological, retail, commercial, public, entertainment, or recreation. *These uses may be combined within the same building or may be grouped together in cohesive neighboring buildings with limited separation, unified form and strong pedestrian interconnections to create a seamless appearance.* True mixed use developments primarily consist of mixed use buildings as defined by this Glossary." (*emphasis supplied*)

¹⁸ Lee Plan Objective 21.2 and Policy 21.2.1.

¹⁹ Objective 21.2, *See also*, Objective 2.6.

²⁰ Lee Plan Policies 6.1.3 and 39.1.6; *See also*, Objective 4.1. and Lee Plan Map 3C

²¹ The proposed CPD is located in an area that will serve the community and the traveling public. *See*, Lee Plan Objective 21.2, Policy 21.2.1.

²² The request seeks approval for two additional fuel pumps, two additional access drives and several deviations.

neighborhood. The redevelopment of the two parcels into a single project will maintain contiguous development patterns in the area.²³

Commercial development adjacent to areas of established residential neighborhoods must be compatible with or improve the area's existing character.²⁴ The proposed MCP arranges the convenience store and fuel pumps in a manner to minimize impacts on surrounding land uses.²⁵ The site layout will improve internal traffic circulation for patrons by placing the convenience store on the eastern half of the property. An eight foot wall will be installed along the north property line along with trees and shrubs.²⁶ These site design features minimize the visual impact of the development from nearby residences.²⁷

The applicant held the requisite community meeting on the proposed amendment in October 2016.²⁸ The Caloosahatchee Shores Review Committee did not support the requested deviations.²⁹

Environmental

The property has been improved for many years and has no environmental features. The proposed MCP meets the code requirements for open space.³⁰ The developer will install landscape buffers during the development order phase of construction.³¹

Accessibility to Transit

The Lee Plan directs the County to require new development to provide convenient access to mass transit.³² If a project lies within the Lee Tran public transit service area, the project must be designed to facilitate the use of the transit system.³³ Lee Tran has a bus route along S.R. 80 with stops a short distance from the site,³⁴ allowing future employees the option to utilize alternative transportation methods to reach work.³⁵ The MCP reflects an FDOT proposed 8-10 foot multi-use path within the S.R. 80 right-of-way. Once constructed, the multi-use path will provide convenient access to the transit stop.³⁶

²³ Lee Plan Objective 2.1.; LDC 34-413, 34-411(j) - *Where a proposed planned development is surrounded by existing development or land use with which it is compatible and of an equivalent intensity of use, the design emphasis shall be on the integration ...with the existing development, in a manner consistent with current regulation.*

²⁴ Lee Plan Policy 135.9.5: See also, Objective 2.6 and Policy 2.6.2.

²⁵ LDC 34-411(i).

²⁶ See, LDC 34-411(k).

²⁷ Lee Plan Policies 5.1.5, 6.1.6, 135.9.6.

²⁸ Lee Plan Objective 21.6 and Policy 21.6.3; see also LDC 33-1482.

²⁹ See, Minutes: Caloosahatchee Shores Plan Review Committee, October 27, 2016 Staff Report Attachment I.

³⁰ Lee Plan Policy 6.1.6; LDC 10-415.

³¹ The request includes deviations from LDC landscape buffer width and composition due to site constraints.

³² Lee Plan Objective 43.2, Policy 43.1.8.

³³ LDC 10-442; 34-411(e).

³⁴ Lee Plan Future Transportation Map Series (Map 3C Financially Feasible Transit Network). There are two transit stops on S.R. 80 in the vicinity of the project: One 250 feet west of the site and one across the street. See, Staff Report Attachment O. The Hearing Examiner observed a sidewalk west of Davis Boulevard to the bus stop. FDOT plans to construct a multi-use path within the S.R. 80 right-of-way further facilitating access to nearby transit stops.

³⁵ Lee Plan Policies 43.1.1. and 43.1.8; LDC 10-442, 34-411(e).

³⁶ All development proposed along roadways depicted on the Lee Plan Sidewalk/Bike-Ped Facilities Maps must provide facilities for bicycles and pedestrians. See, 10-256(a); Lee Plan Maps 3D-1 and 3D-2. Construction of sidewalk facilities are site related improvements. Waiver is possible under certain circumstances; however the developer must pay a fee in lieu contribution equal to the cost of constructing the improvement prior to the issuance of a local development order. See, LDC 10-256(c)(5); Lee County Administrative Code 11-9 (Sec. VI).

Traffic

The intersection of S.R. 80 and Davis Boulevard is controlled by a traffic signal. Two driveways will provide access to the property. The driveway access to S.R. 80³⁷ will be limited to right-in/right-out turning movements.³⁸ The access to Davis Boulevard will accommodate full turning movements.³⁹ The applicant seeks a deviation to eliminate an interconnection with the commercial property to the east.⁴⁰ The requested deviation is discussed in further detail under the heading "Deviations".

The proposed site design offers access to the public road system allowing safe and efficient flow of vehicles to the site.⁴¹ Redevelopment of the two parcels as a convenience store with self-service fuel pumps will result in a lower traffic generation despite the addition of six more fuel pumps. This is because the proposed MCP eliminates the freestanding commercial building on the east parcel.

No transportation related concerns were identified by staff or the applicant.⁴² The Traffic Impact Statement (TIS) confirms S.R. 80 will continue to operate at acceptable levels of service at project build-out.⁴³ Site-related improvements, if any, will be addressed at the time of local development order approval.⁴⁴

Urban Services

Urban services and infrastructure are available to serve the project.⁴⁵ The site is served by paved roads, potable water, sanitary sewer service,⁴⁶ fire protection,⁴⁷ EMS, and transit.⁴⁸

Conditions

Staff recommended several conditions of approval. Some conditions were necessary to address requested deviations. These conditions are reasonably related to the impacts anticipated from the proposed development.⁴⁹

³⁷ S.R. 80 is a six lane divided arterial.

³⁸ The proposed MCP represents a reduction in the existing number of curb cuts to S.R. 80.

³⁹ The driveway access to Davis Boulevard requires a deviation from the intersection separation standards for collector roadways.

⁴⁰ Deviation 9 seeks relief from LDC 10-610, 33-1493, and 34-2015.

⁴¹ Plan Policy 4.1.2, 6.1.3, Goal 11, Policy 39.1.1.; LDC 34-411(d).

⁴² Lee Plan Standard 11.3.

⁴³ Lee Plan Goal 11, Standard 11.3; LDC 34-411(d); Traffic Impact Statement dated August 31, 2016 prepared by TR Transportation Consultants, Inc. and Memorandum prepared by Marcus Evans, P.E, Lee County Senior Engineer dated February 20, 2017 (Staff Report Attachments K and M respectively).

⁴⁴ Lee Plan Policy 38.1.6; LDC 10-286.

⁴⁵ Lee Plan Objective 2.2 and Policies 1.1.5, 2.2.1.

⁴⁶ Potable water and sanitary sewer lines are in operation adjacent to the property. See, Staff Report Attachment N. Lee Plan Maps 6 and 7.

⁴⁷ The Fort Myers Shores Fire Protection and Rescue District has a station across the street and provides both fire protection and emergency medical services.

⁴⁸ Lee Tran Route 100.

⁴⁹ LDC 34-83(a)(4)a.3; LDC 34-932(c).

The Hearing Examiner has recommended minor revisions to the wording of conditions to improve clarity. No substantive changes were made to existing conditions.

Deviations

The request includes 10 deviations from the LDC.⁵⁰ “Deviations” are departures from the land development regulations.⁵¹ The requested deviations pertained to parcel dimensions, setbacks, and buffer criteria.⁵² The applicant also requested deviations from driveway separation standards,⁵³ interconnection with adjacent properties,⁵⁴ parking location,⁵⁵ and driveway access width.⁵⁶

The Lee Plan discourages deviations that reduce landscape and buffer standards in the Caloosahatchee Shores Community.⁵⁷ The policy objective is to promote community character. Accordingly, the requested deviations from landscape and buffering standards must be carefully examined to avoid compromising community character.

The Caloosahatchee Shores LDC regulations allow deviations⁵⁸ based on the same LDC criteria applicable to all zoning requests.⁵⁹ The regulations require an applicant to demonstrate a requested deviation will achieve the objectives of the planned development and not cause a detriment to public interests.⁶⁰

The landscape and buffering standards are intended to achieve a visually attractive community promoting the character of Caloosahatchee Shores.⁶¹ The applicant’s testimony and evidence successfully demonstrated that the proposed wall and landscaping will adequately screen the project from nearby residential development consistent with the spirit and intent of the code. The applicant also demonstrated the constraints of redevelopment presented challenges to compliance with the code criteria for parcel depth, structure setbacks, parking and access drive widths.

The applicant’s request to eliminate the required interconnection was not supported by staff. Staff acknowledged the interconnection may not be critical for the existing use of adjacent property, but an interconnection may be useful in the future.⁶² If the deviation is denied, the MCP must be revised to include several more deviations to authorize reductions to buffers, setbacks, open space and elimination of the public use area.⁶³

⁵⁰ Deviation #8 was withdrawn at hearing. Four of the remaining 10 deviations were previously approved on the west parcel in zoning resolution Z-00-066.

⁵¹ LDC 34-2.

⁵² LDC 10-416, 33-1523(b)(convenience food and beverage stores), 34-1353.

⁵³ LDC 10-296.

⁵⁴ LDC 10-610, 33-1493 and 34-2015.

⁵⁵ LDC 33-1520.

⁵⁶ LDC 34-2013(b).

⁵⁷ Lee Plan Policy 21.1.3.

⁵⁸ LDC 33-1484; this section appears to be a conflict with the sentiments expressed in the Lee Plan, which discourage deviations. Perhaps a stricter standard for deviations from design standards and signs should be included in the LDC within this planning community to remain consistent with the intent expressed in the Lee Plan.

⁵⁹ LDC 33-5.

⁶⁰ LDC 34-373(a)(9); see also, LDC 33-1484, 34-377(a)(4) and Lee Plan 2.2.1.

⁶¹ See, Lee Plan Goal 21, Objective 21.1.

⁶² Lee Plan Policy 21.2.4. FDOT’s proposed multi-use path within the S.R. 80 corridor will interconnect the parcels.

⁶³ Applicant’s representatives testified that up to six additional deviations would be necessary to accommodate a vehicular interconnection with the property to the east.

Lee Plan directives favoring redevelopment of the S.R. 80 corridor weigh in favor of approving the requested deviation.⁶⁴ Great importance is placed on open space and aesthetics in the Caloosahatchee Shores Community.⁶⁵ Moreover, the community plan also encourages the application of development regulations in a manner that promotes redevelopment.⁶⁶

The request to eliminate the interconnection achieves the principal goal of improving the aesthetics of the road corridor by providing open space, landscaping, and public use area.⁶⁷ Faced with challenges presented by redevelopment, the Hearing Examiner must balance conflicting objectives, affording greater emphasis to the objectives that achieve the goal of enhancing community character.⁶⁸ For this reason, the Hearing Examiner recommends approval of the deviation.

Public Participation

The applicant attended two community meetings to present details of the proposed zoning application.⁶⁹ No members of the public attended the hearing before the Hearing Examiner.

Conclusion

The Hearing Examiner recommends approval of the request subject to the conditions set forth in Exhibit B.

IV. Findings and Conclusions:

Based on the testimony and exhibits in the record, the Hearing Examiner makes the following findings and conclusions:

A. The requested zoning to the Commercial Planned Development district complies with the Lee Plan. See, Lee Plan Vision Statement - Paragraph 4, Lee Plan Goals 2, 6, 11, and 21, Objectives 2.2, 2.6, 4.1, 21.1, 21.2, 21.6, Policies 1.1.5, 2.1.1, 2.1.2, 4.1.1, 6.1.3, 6.1.6, 6.1.7, 6.1.12, 21.2.1, 21.6.3, 39.1.1, 43.1.1, 43.1.8 and Maps 1, 6, 7, 16.

⁶⁴ Lee Plan Goal 21, See also, Objective 2.6.

⁶⁵ Goal 21, Objectives 21.1, 21.2; LDC 33-1511, 33-1522, 33-1523.

⁶⁶ Objective 21.2, See also, Objective 2.6.

⁶⁷ Lee Plan Policy 6.1.12; LDC 33-1.

⁶⁸ See also, LDC 10-600, 34-612(2); See also, LDC 1-2 (regulations must be liberally construed to carry out the Board's intent and interest in public health, safety and welfare).

⁶⁹ Lee Plan Objective 21.6, Policy 21.6.3; LDC 33-1482; Meetings were held at the Fort Myers Shores Fire Station on October 11th and 26th, 2016. The second meeting was before the Caloosahatchee Shores Planning Committee, although they were not able to achieve a quorum. The members present did not support the requested deviations. (Minutes of the Caloosahatchee Shores Plan Review Committee (*sic*) dated October 27, 2016), Staff Report Attachment I.

B. The request including deviations, meets the Land Development Code and other County regulations; LDC 1-2, 10-7, 10-286, 10-415, 10-442, 33-1, 33-1482, 33-1511, 33-1522, 33-1523, 34-411, 34-413, and 34-612(2).

C. *As conditioned*, the Commercial Planned Development zoning district is:

1. Compatible with existing and planned uses in the area. See, Lee Plan Objectives 2.6, 21.2, Policies 2.1.2, 2.2.1, 2.6.2, 5.1.5, 6.1.3, 6.1.4, 6.1.6, 39.1.6, 135.9.5, 135.9.6; LDC 34-411(i).

2. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goal 77, Objective 77.2;

3. Will provide access sufficient to support the proposed intensity of development, and the expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval. See, Lee Plan Goal 11, Standard 11.3, Objective 43.2, Policies 4.1.2, 6.1.3, 6.1.5, 21.2.4, 38.1.6, 39.1.1, and 43.1.8; See also LDC 34-411(d).

4. Will be served by urban services and infrastructure. See, Lee Plan Glossary, Lee Plan Goals 2, 11, Objectives 2.1, 2.2, Policies 1.1.5, 2.2.1, 6.1.4, Maps 6 and 7, and LDC 34-411(d).

D. The proposed uses are appropriate on the property. See, Lee Plan Objective 21.2, Policies 6.1.1, 6.1.2, 6.1.7, 6.1.8 and 21.2.1.

E. The recommended conditions provide sufficient safeguards to protect the public interest and are reasonably related to the impacts of development. See, Lee Plan Policy 6.1.3, 6.1.6, See also, LDC 34-83(a)(4)a.3, 34-377(a)(3); 34-411(i), (j) and (k), 34-932 (b) and (c).


F. The deviations, as conditioned:

1. Enhance the planned development, and

2. Preserve and promote the general intent of the LDC to protect the public health, safety and welfare. Lee Plan Policy 2.2.1, LDC 33-5, 33-1484, 34-377(a)(4).

Case: DCI2016-00020

Date of Recommendation: April 6, 2017.



Donna Marie Collins
Chief Hearing Examiner

Office of the Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Recommendation

- Exhibit A Legal Description and Vicinity Map
- Exhibit B Recommended Conditions and Deviations
- Exhibit C Exhibits Presented at Hearing
- Exhibit D Hearing Participants
- Exhibit E Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

EXHIBIT A

LEGAL DESCRIPTION

LOTS 26 THRU 30 AND 32 THRU 36, BLOCK 8, UNIT 1, FORT MYERS SHORES, A
SUBDIVISION, LOCATED IN SECTION 30, TOWNSHIP 43 SOUTH, RANGE 26 EAST,
AS DESCRIBED IN PLAT BOOK 9 PAGE 151, OF THE PUBLIC RECORDS OF LEE
COUNTY, FLORIDA.

STRAP NUMBER

Applicant's Legal Checked
By BSJ 1/11/17

30-43-26-01-00008.0300

30-43-26-01-00008.0320

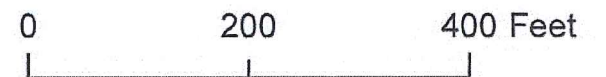
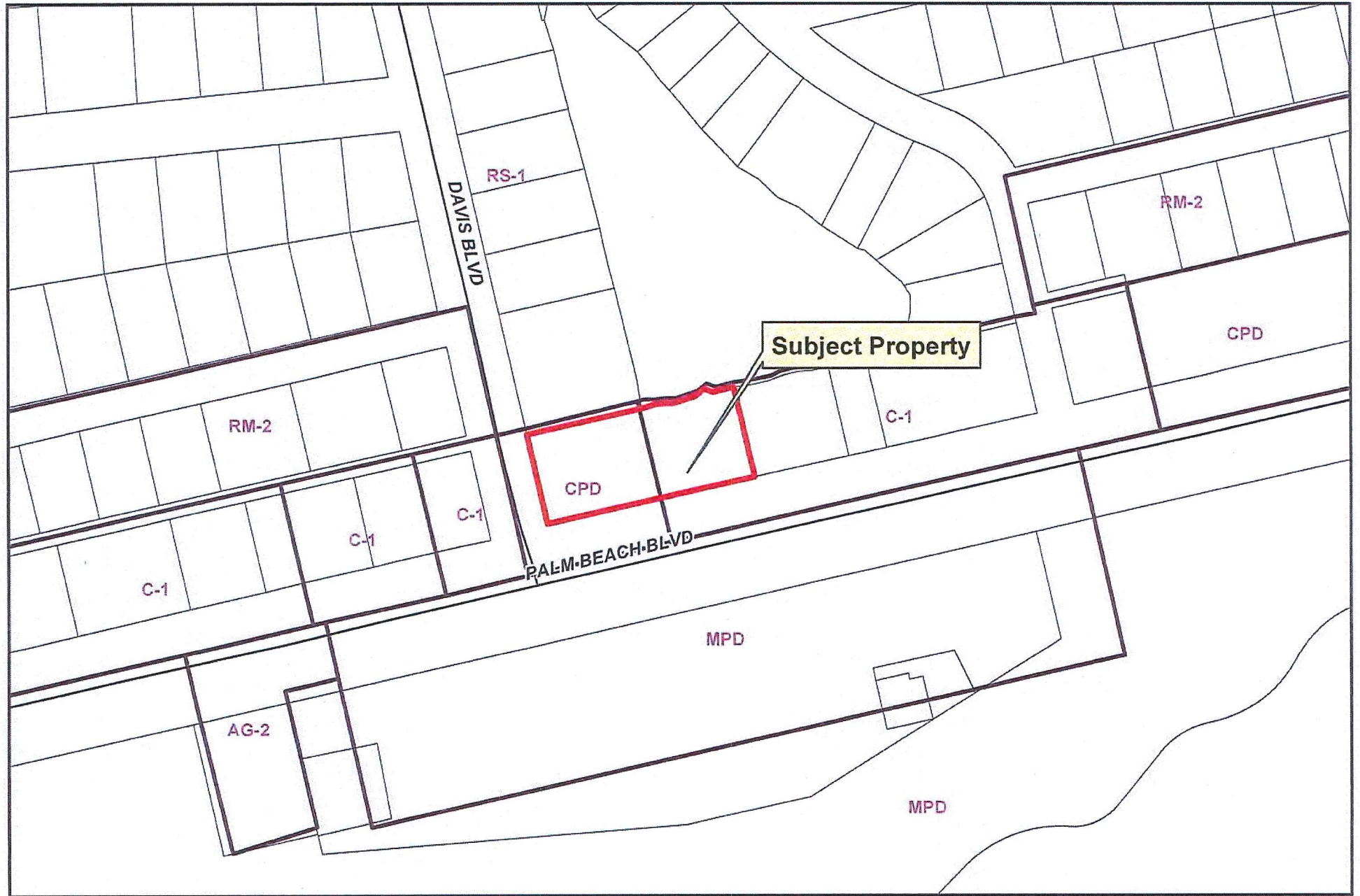


Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

The Hearing Examiner has recommended minor revisions to the wording of conditions to improve clarity. No substantive changes were made to existing conditions. References to sections of the LDC applicable pursuant to Condition 1, LDC 10-7, 34-4 and 34-934 are recommended for removal to avoid redundancy.

CONDITIONS:

1. Master Concept Plan/Development Parameters
Development must be consistent with the one page Master Concept Plan (MCP) entitled "Master Concept Plan," stamped received March 16, 2017, last revised March 15, 2017, except where modified by the conditions below.

Development must comply with the Lee County Land Development Code (LDC) at time of local development order approval, except where deviations have been approved in this resolution. Changes to the MCP may require further development approvals.

The project is approved for 3,010 square feet of commercial floor area.

2. Permitted Uses and Site Development Regulations
 - a. Permitted Uses
 - Administrative Offices
 - Amateur Radio Antennas and Satellite Earth Stations: When accessory to an existing principal use
 - Animals: Clinic, Control Center: (Including Humane Society)
 - Assisted Living Facility
 - ATM: (automatic teller machine)
 - Auto Parts Store
 - Automobile Repair and Service: (Groups I, II)
 - Automobile Service Station

 - Bait and Tackle Shop
 - Banks and Financial Establishments: (Groups I, II)
 - Bar or Cocktail Lounge
 - Bed and Breakfast ~~(df)~~
 - Boats: Boat parts store, Boat rental, Boat sales
 - Business Services: (Groups I, II)

 - Car Wash
 - Cleaning and Maintenance Services
 - Clothing Stores: General
 - Clubs: Fraternal ~~(34-2111)~~, membership organization
 - Communication Facility: Wireless
 - Contractors and Builders: (Groups I, II)

Convenience Food and Beverage Store: Limited to 12 pumps
Cultural Facilities

Day Care Center, Adult, Child
Department Store
Drive-through Facility for any permitted use
Drugstore, Pharmacy

Emergency Operations Center
EMS, Fire or Sheriff's Station
Essential Services
Essential Service Facilities: (Groups I, II)
Excavation: Water retention

Flea Market: Indoor only
Food Stores: (Groups I, II)
Funeral Home or Mortuary: No cremation

Health Care Facilities: (Group III, ~~IV~~) (Hex: Group IV (Hospitals)
Not appropriate on the property)

Hobby, Toy and Game Shops
Hotel/Motel
Household and Office Furnishings: (Groups I, II)

Insurance Companies

Laundromat
Laundry or Dry Cleaning: (Group I)
Lawn and Garden Supply Store
Library

Maintenance Facility: (Government)
Mass Transit Depot or Maintenance Facility: (Government-operated)
Medical Office
Mobile Home Dealers

Non-store Retailers: (All Groups)

Package Store
Parks: (Group I)
Parking Lot: Accessory, Park-and-ride, temporary
Personal Services: (Groups I, II, III, IV)
Pet Services
Pet Shop
Pharmacy
Place of Worship
Plant Nursery
Post Office

Recreation, Facilities: Commercial: (Group I) Personal, Private on/off-site
Rental or Leasing Establishments: (Groups I, II, III)

Repair Shops: (Groups I, II)
Research and Development Laboratories: (Group I)
Restaurant, Fast Food
Restaurants: (Groups I, II, III, IV)
Schools: Commercial, non-commercial
Signs ~~in accordance with chapter 30~~ (Hex: It is not necessary to reference LDC Chapter 30. It is applicable by virtue of Condition 1 and LDC 30-4 34-378, 34-934)
Specialty Retail Shop: (Groups I, II, III, IV)
Storage: Indoor Only, ~~Storage Open~~ (Hex: Open storage not appropriate on the property. The request did not include deviations necessary to support open storage on the site.)
Studios
Supermarket

Used Merchandise Stores: (Groups I, II, III, IV)

Variety Store
Vehicle and Equipment Dealers: (Groups I, II, III, IV)

b. Site Development Regulations

Minimum lot area and dimensions:

Lot area:	7,500 square feet
Lot width:	75 feet
Lot Depth:	100 feet

Setbacks:

Street, Arterial:	25 feet
Street, Local:	25 feet

Side Yard:	15 feet
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Rear Yard:	25 feet
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Water body, other:	25 feet
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Maximum height:	35 feet
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Minimum Open Space:	30%
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Maximum lot coverage:	40%
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3. Vehicular/Pedestrian Impacts

Zoning approval does not address mitigation of vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.

4. Lee Plan Consistency

This zoning resolution does not guarantee local development order approval. Future development order approvals must comply with the Lee Plan.

5. Concurrency

Zoning approval does not constitute a finding that the proposed project meets the concurrency requirements of the Lee Plan or LDC. The developer must demonstrate compliance with concurrency requirements prior to local development order approval.

Hearing Examiner Note: The Hearing Examiner has deleted text referencing the exemption from transportation concurrency for Lehigh because it was not applicable to this property.

6. Development Permits

Issuance of a County development permit does not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the County if the Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies or (b) undertakes actions that result in a violation of state or federal law.

DEVIATIONS:

1. **Minimum Parcel Depth.** Deviation 1 seeks relief from LDC 34-1353(c)(2), to allow a minimum parcel depth of 120 feet where a minimum of 150 feet is required for convenience food and beverage stores.

Approved.

2. **Minimum Structure Setback (Primary Structure).** Deviation 2 seeks relief from LDC 34-1353(d)(1), to allow a minimum building setback of 26 feet from arterial and collector streets where a minimum of 50 feet is required for convenience food and beverage store uses.

Approved.

3. **Fuel Canopy Setback.** Deviation 3 seeks relief from LDC 34-1353(d), to allow a minimum building setback of 33 feet from Palm Beach Boulevard and 46 feet from Davis Boulevard where a minimum of 50 feet is required from arterial and collector streets for convenience food and beverage store use.

Approved.

4. **Street Right-of-Way Buffer Landscaping.** Deviation 4 seeks relief from LDC 34-1353(e)(1), to allow a minimum 8 foot right-of-way landscape buffer where a minimum of 25 feet is required for convenience food and beverage store uses.

Approved, subject to the following condition:

The development order landscape plans must show 100% palms to meet the right-of-way buffers along Davis Boulevard and the southwestern right-of-way adjacent to S.R. 82/Palm Beach Boulevard. Palms must be clustered in groups of three; planted four foot

on center; and have a four foot difference in height at time of installation. Each palm tree cluster will equal one code required canopy tree.

5. **Buffer from Residential.** Deviation 5 seeks relief from LDC 33-1523(b) and 10-416(d), to allow a minimum 15 foot buffer, 8 foot high masonry wall, 5 trees per 100 feet and a single hedge row adjacent to residential use on property line where a minimum of 30 feet, 10 trees per 100 feet and a double hedge row is required.

Approved.

6. **Buffer from Residential.** Deviation 6 seeks relief from LDC 34-1353(f)(1), to allow a minimum 15 foot buffer with an 8 foot masonry wall adjacent to residential property where a minimum of 25 feet is required for convenience food and beverage store uses.

Approved, subject to the following condition:

The development order landscape plans must show a 15 foot wide buffer along the north property line with an 8 foot wall installed 12.5 feet off of the property line and 5 trees per 100 linear feet and a single hedge row installed at 48 inches in height.

7. **Connection Separation.** Deviation 7 seeks relief from LDC 10-285(a), to allow a minimum 90 foot connection separation where a minimum of 330 feet connection separation is required for collector roads.

Approved.

8. **Deviation #8 - Withdrawn**

9. **Vehicular Interconnection to Adjacent Commercial Property.** Deviation 9 seek relief from LDC 33-1493(c), 10-610(e) and 34-2015(2)(f), to allow for no vehicular interconnection to the parcel to the east where a vehicular interconnect is required.

Approved.

10. **Parking Location.** Deviation 10 seeks relief from LDC 33-1520(b), to allow for parking on the side of the building where parking is required to be located at the rear of the building along the S.R. 80 Corridor.

Approved.

11. **Parking Lot Access.** Deviation 11 seeks relief from LDC 34-2013(b), to allow a 42 foot wide access at the property line where a maximum width of 35 feet is required.

Approved.

Exhibits to Conditions:
B1 Master Concept Plan

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF'S EXHIBITS

1. *DCD Staff Report*: Prepared by Dirk A. Danley, Jr., Planner, dated February 23, 2017 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

APPLICANT'S EXHIBITS

a. *Applicant's 48 Hour Notice*: Letter dated March 28, 2017 from Charles J. Basinait, Esq., to the Hearing Examiner's Office, with copies to Jason Sawyer, Dirk Danley, Michael Jacob, Shellie Johnson, Ted Treesh, Brian Smith, & Audra Ennis (5 pages – 8.5"x11")

1. *PowerPoint Presentation*: Prepared by Henderson/Franklin Attorneys at Law, En-Site, TR Transportation & Creighton Construction & Development (multiple pages – 11"x17" & 1 - CD) [color]

2. *Master Concept Plan*: Prepared by En-Site, dated 09-09-16, last revised 3-15-17 (1 page – 11"x17" & 1 board – 24"x36")

3. *Aerial Photograph*: Location Map prepared by En-Site, dated 03-23-17 (1 page – 11"x17" & 1 board – 24"x36") [color]

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Dirk A. Danley, Jr.
2. Elizabeth Workman

Applicant's Representatives:

1. Charles Basinait, Esq.
2. Shellie Johnson
3. Brian R. Smith
4. Ted Treesh

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS:

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

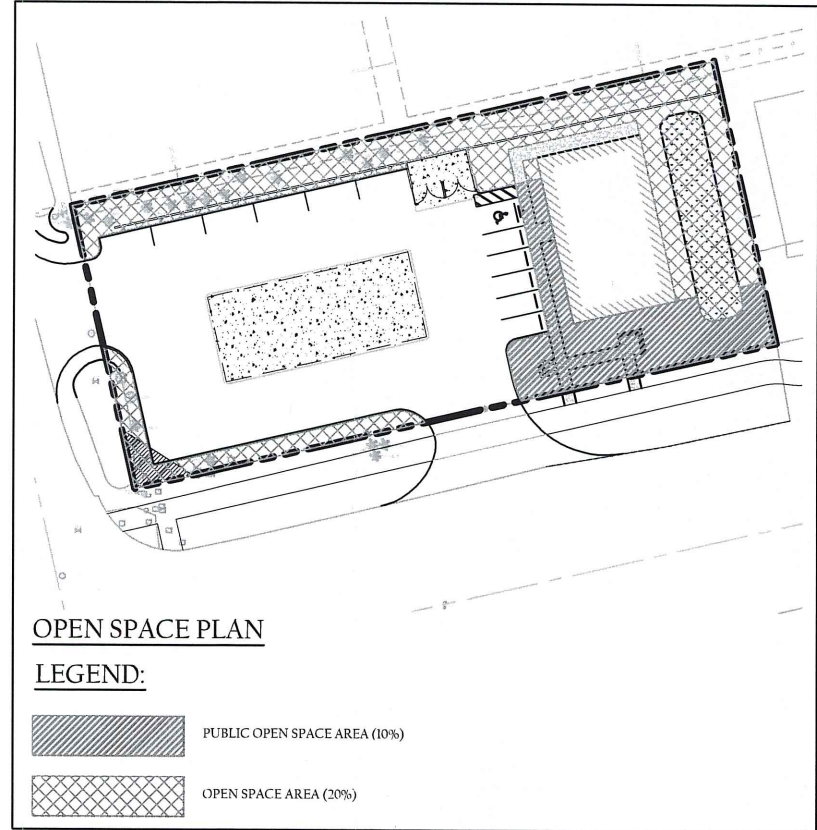
HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. Notice or copies of this recommendation will be provided to the Lee County Board of County Commissioners.

B. The Board will hold a final hearing to consider the Recommendation and the record before the Hearing Examiner. The Department of Community Development will notify hearing participants of the Board hearing date. Only Parties and participants may address the Board at the final hearing. Statements to the Board are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of the discovery of relevant new evidence not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner.

COPIES OF TESTIMONY AND TRANSCRIPTS:

Every hearing is recorded. Recordings are public records that are part of the case file maintained by the Department of Community Development. The case file and recordings are available for examination and copying by interested persons Monday through Friday between 8:00 a.m. and 4:30 p.m.



RECEIVED
 MAR 16 2017

COMMUNITY DEVELOPMENT

DCI 2016-00020

TABLE A

OPEN SPACE CALCULATIONS (PER LDC 33-1522):	
TOTAL PROJECT AREA	±0.75 AC.
COMMERCIAL OPEN SPACE REQUIREMENT (30%)	
REQUIRED:	±0.15 AC (20%) OPEN SPACE
	±0.08 AC (10%) PUBLIC OPEN SPACE
MIN. PROVIDED:	±0.25 AC (33%)

LEGEND:

- [Dotted Pattern] OPEN SPACE / WATER MANAGEMENT
- [Triangle with #] DENOTES LOCATION OF REQUESTED DEVIATIONS.

NO.	DATE	DESCRIPTION
R1	11-08-16	PER COUNTY COMMENTS
R2	1-9-17	PER COUNTY COMMENTS
R3	1-12-17	PER ADDITIONAL DEVIATION
R4	3-13-17	REV. HEIGHTS AND DEVIATIONS
R5		
R6		

DATE:	09-09-16
PROJECT NO.:	1195-12
FILE NO.:	1195-12-MCP.dwg
SCALE:	SEE PLAN

Master Concept Plan

MCP

