

9/23
GIS Tracking Sheet

Case No.: DCI 2003-00062

Post-it®eLabel 005 725 427

Intake Date: Sept. 18



Project Name: Fenway family fun Center

STRAP Number(s): 35-45-24-00-00015.0030

Planner Name: Chip Block Ext. 8371

RAT

LEGAL DESCRIPTION VERIFICATION and INITIAL GIS MAPPING

Date: 23SEP103

INTAKE: DCI03062 [signature]

LEGAL SUFFICIENT

☒ YES

☐ NO

Initials:

If not, give brief explanation:

MAP UPDATE following FINAL ACTION

Date: 18MAY04

☐ Hearing Examiner Decision



Board of County Commissioner's Resolution

☐ Administrative Approval

☐

Blue Sheet

Zoning Notes: Z-04-011, DCI 2003-00062, 29MAR04, AMEND CPD
FOR FAMILY FUN PARK, CONDS

MAP UPDATED

☒ YES

☐ NO

Initials:

If not, give brief explanation:

Note to CPD: 000649



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land Lying in Section 35, Township 45 South, Range 24 East Lee County, Florida (Remaining Parcel Boundary)

A parcel of land situated in the State of Florida, County of Lee, Section 35, Township 45 South, Range 24 East, being a part of a parcel of land recorded in Official Record Book 1635 at Page 1728, Public Records, and further described as follows:

Starting at the northwest corner of the Northeast One Quarter (NE 1/4) of said Section 35; thence N89°08'58"E along the north line of said fraction for 65.00 feet to the Point of Beginning of the following described parcel; thence continue N89°08'58"E along the north line of said fraction for 552.56 feet to a concrete monument (stamped LB 4919) marking the current right-of-way line of Gladiolus Drive (C.R. 865); thence S43°13'35"E along said right-of-way line for 31.17 feet to a concrete monument (stamped LB 4919); thence S19°17'57"W along said right-of-way line for 325.43 feet to a concrete monument (stamped LB 4919) on the south line of the North One Half (N 1/2) of the Northwest One Quarter (NW 1/4) of the Northwest One Quarter (NW 1/4) of the Northeast One Quarter (NE 1/4) of said Section 35; thence S89°13'33"W along said fractional line for 459.56 feet to the east line of Parcel 60b as described in that certain Order of Taking recorded in Official Record Book 2512 at Pages 2992 through 3012, inclusive; thence N01°10'59"W along the easterly line of said Parcel 60b for 327.93 feet to the Point of Beginning.

Containing 3.92 acres, more or less.

Bearings are based on the right-of-way maps for Gladiolus Drive with the north line of the Northeast One Quarter (NE 1/4) of Section 35 as bearing N89°08'58"E.

Subject to a drainage easement over and across the westerly 30.00 feet thereof.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

RECEIVED
SEP 18 2003

34186DESC1

8/1/03
PERMIT COUNTER

OCI2003-00062

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker
Scott C. Whitaker, P.S.M. 4324

PRINCIPALS

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

Applicant's Legal Checked

by

ASSOCIATES

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDDOLF A. NORMAN, PE

SKETCH TO ACCOMPANY DESCRIPTION

OF A PARCEL OF LAND
LYING IN
SECTION 35, TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA.

LAKES PARK

P.O.C.
NORTHWEST CORNER
OF NORTHEAST 1/4
SECTION 35

JOINT USE ACCESS ROAD

N.89°08'58"E. 552.56'
(BEARING BASIS)

DRAINAGE CROSS-EASEMENT
O.R. 2563 PGS. 659

"PARCEL 60B"
TO LEE COUNTY
BY ORDER OF TAKING
O.R. 2512 PGS. 2992-3012

SUBJECT PARCEL

CLADIOLUS DRIVE REALIGNMENT
(C.R. 865)
CENTERLINE SURVEY FOR CLADIOLUS REALIGNMENT
CENTERLINE CONSTRUCTION FOR CLADIOLUS REALIGNMENT
N19°12'57"E. 31.17'
S.43°13'35"E. 31.17'
N19°20'57"E. 325.43'
S.19°17'57"W. 325.43'
OLD R/W
R/W
N19°20'57"E. 80'

S.89°13'33"W. 459.56'
SOUTH LINE OF
N1/2 NW1/4 NW1/4 NE1/4
SECTION 35

DCI 2003-00062
PERMIT COUNTER
SEP 18 2003
RECEIVED

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS,
AND RIGHTS-OF-WAY (WRITTEN AND UNWRITTEN, RECORDED
AND UNRECORDED).

BEARINGS ARE BASED ON THE RIGHT-OF-WAY MAPS FOR
CLADIOLUS DRIVE WITH THE NORTH LINE OF THE
NORTHEAST ONE QUARTER (NE 1/4) OF SECTION 35 AS
BEARING N89°08'58"E.

Applicant's Legal Checked
by 

*** THIS IS NOT A SURVEY ***

Bean, Whitaker, Lutz & Karen, Inc.

SCOTT C. WHITAKER, P.S.M.
Florida Certificate No. 4324

BOUNDARY - FENWAY FAMILY FUN PARK

Bean, Whitaker, Lutz & Karen, Inc. (LP 4819)

CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-4910 (239) 481-1331

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
7-28-03	34186	CDK	1"= 100'	1 OF 1	35-45-24

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

LEE COUNTY
RECEIVED

04 MAR 30 AM 9:01

COM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

DATE: March 29, 2004

To: Billie Jacoby
Development Services

FROM: 
Ann Polito
Legal Administrative Secretary

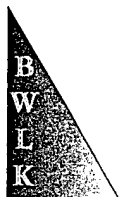
**RE: Fenway Family Fun Center at Lakes Park
Case #DCI2003-00062
Resolution #Z-04-011**

Attached is the legal verification letter pursuant to the above-referenced zoning case. Please place this letter in the appropriate zoning case file.

If you have any questions, do not hesitate to contact me.

/amp
Attachment

cc: Joan C. Henry, Assistant County Attorney



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

2004 MAR 19 AM 9:23
RECEIVED BY
LEE CO. ATTORNEY

March 22, 2004

Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

Re: Fenway Family Fun Center @ Lakes Park
Zoning Case Number DCI2003-00062
Resolution Number Z-04-011
BWLK Project Number 34186(03-14)

Dear Mr. Block:

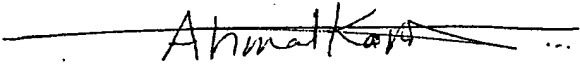
Per Assistant County Attorney, Ms. Donna Marie Collins' request, we have reviewed the draft resolution and the legal description & sketch submitted with the zoning application for the above referenced project. We find them to accurately reflect the Hearing Examiner's recommendation, and describe the property to be rezoned respectively.

In addition, both the "General Notes" and the "Property Development Regulations" have been removed from the Master Concept Plan. Eleven (11) full size prints, and eleven (11) 11" x 17" reductions are included herewith with a revision date as requested.

If you should have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.


Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

Enclosures

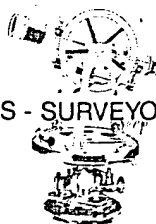
cc: Mr. Donald John Thiele, Manager, Bushwood Entertainment, LLC w/enclosures
Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosures
Ms. Donna Marie Collins, Esquire, Assistant County Attorney, Lee County Attorney's Office
w/enclosures

34186(03-14)VATTY REV MCP REQ 03-22-04.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



MCP
No Good
3/25/04

ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

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

WHEREAS, Tracy N. Bean, AICP, and Ahmad R. Kareh, P.E., M.S.C.E., filed and application on behalf of the applicant, Bushwood Entertainment, LLC, and the property owner, Mobil Oil Corporation, to amend the Commercial Planned Development (CPD) zoning approval and Master Concept Plan (MCP) of a 3.92-acre parcel in reference to a project to be known as Fenway Family Fun Center at Lakes Park CPD; and

WHEREAS, a public hearing was advertised and held on February 11, 2004, before the Lee County Zoning Hearing Examiner. Written submissions were requested by the Hearing Examiner at the close of the hearing with a due date of February 27, 2004. The Hearing Examiner gave full consideration to the evidence in the record for Case #DCI2003-00062; and

WHEREAS, a second public hearing was advertised and held on March 29, 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 amend the CPD zoning approval and MCP of a 3.92-acre parcel to allow for development of up to 12,500 square feet of building area with a maximum building height of 35 feet. The batting cage supports, wall, and net were proposed with a maximum height of 135 feet. Uses proposed include coin-operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service. Blasting is not a proposed development activity for this project. The property is located in the Central Urban Future Land 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 must be consistent with the one-page MCP entitled "Fenway Family Fun Center," stamped received Apr 08 2004, last revised 04/07/04, 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.

The maximum building square footage permitted in this development is 12,500 square feet.

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

a. Schedule of Uses

ACCESSORY USES AND STRUCTURES (LDC §§34-1171 *et seq.*, 34-2441 *et seq.*, 34-1863, 34-2141 *et seq.*, and 34-3108)

ADMINISTRATIVE OFFICES

CARETAKER'S RESIDENCE

ESSENTIAL SERVICES (LDC §§ 34-1611 *et seq.*, and 34-1741 *et seq.*)

ESSENTIAL SERVICE FACILITIES (LDC § 34-622(c)(13)): Group I (LDC §§ 34-1611 *et seq.*, 34-1741 *et seq.*, and 34-2141 *et seq.*)

PARKING LOT: Accessory

RACETRACKS (limited to go-cart track only)

RECREATIONAL FACILITIES:

Commercial (LDC § 34-622(c)(38)): **Group I** (limited to coin-operated amusement establishments that primarily provide coin-operated amusement devices; coin-operated includes coins, tokens, or other similar devices) and **Group III** (limited to the applicant's proposed bumper boats, kiddie merry-go-round, and batting cages)

RESTAURANTS (LDC § 34-622(c)(43)): Group II only

SIGNS, in accordance with LDC Chapter 30

STORAGE: Indoor only, (LDC § 34-3001 *et seq.*)

b. Site Development Regulations

Setbacks must be in conformity with the Commercial Tourist (CT) zoning district and with Deviation 1.

3. The buffer along Gladiolus Drive must include a five-foot-high berm integrated into the go-cart track design. The berm will taper to two feet high at the south property line. A 15-foot-wide buffer along the eastern property line will include a double staggered row hedge along the top of the berm, in addition to five trees per 100 linear feet, as required in a Type D buffer. The berm and buffer will provide a partial sound and visual barrier toward the east (Gladiolus Drive).
4. Casino-style games are prohibited.
5. The operation may open daily at 10:00 a.m. The operation must close at 10:00 p.m. Sunday through Thursday, and at 11:00 p.m. on Friday and Saturday. If, however, it is determined that the decibel level of the go-cart operation (carts and/or loudspeakers) exceeds the permissible decibel levels in Lee County Ordinance 93-15, the go-cart track must be closed until the developer or fun center operator perfects a means of assuring compliance with Ordinance 93-15.
6. The maximum permitted height of the poles and netting for the batting cage facility is 40 feet. The netting must be a dark green or black color.

7. Water management facilities serving this CPD must not adversely impact the existing water management facilities serving Lakes Park or preclude the development of the enhanced buffer required along the Lakes Park entrance road.
8. The developer must provide a minimum 20-foot-wide buffer containing five (5) trees (Florida #1 Standard) per 100 linear feet and a double staggered hedge row (100% native species) along the property line contiguous to the Lakes Park entrance road. The required trees must be a minimum of 14 feet tall from grade overall and have a six to eight-foot-wide spread at the time of planting. The number of trees may be reduced at the time of local development order for this project, if Lee County Parks and Recreation determines that improvements planned along the entrance road to Lakes Park negate the need for the trees to buffer the park from this development.
9. The developer must provide reasonable facilities to accommodate the safe access of pedestrians from Lakes Regional Park to the proposed amusement facility as determined by the Director of the Development Services Division and at the time of local development order application. The developer may also provide accommodations for pedestrian access to the miniature golf development contiguous to the south of the subject property.
10. Prior to issuance of a sign permit, the proposed project signage may be reviewed and commented upon by Lee County Department of Public Works. Otherwise, review and approval of the signage for this project will be governed by the sign regulations set out in LDC Chapter 30.
11. Approval of this amendment to the CPD zoning approvals 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.
12. Approval of this amendment to the CPD zoning approvals 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.
13. Alcoholic beverages may not be served or sold on the property. No alcoholic beverages may be brought onto the property by patrons.
14. Outdoor speakers are allowed only under the go-cart loading canopy, and must be directed into the loading area. The volume of those speakers must be no louder than is necessary to be heard in the loading area. No other outdoor speakers are allowed on the property.

SECTION C. DEVIATIONS:

1. Deviation (1) seeks relief from the LDC §34-2474(b)(1) requirement that commercial sports/amusement parks, amusement devices, and water slides may not be located less than 50 feet or a distance equal to the height of the structure of the device, wherever is greater, from any property under separate ownership, provided that such setback must be

100 feet from adjacent property zoned RS, TF, TFC, RM, MH, or RPD or any existing residential uses, to allow setbacks ranging from 10 feet to 40 feet as depicted on the MCP

This deviation is APPROVED SUBJECT TO the following:

- a. a 10-foot setback from the south property line; and
- b. a 25-foot setback from the Lakes Park entrance road (north property line), as conditioned in Conditions 3 and 8; and
- c. a 25-foot setback along Gladiolus Drive (east property line), as conditioned in Condition 3; and
- d. a 40-foot setback along the west property line, with the limitation depicted for the batting cage area.

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 04/07/04

The applicant has indicated that the STRAP number for the property is: 35-45-24-00-00015.0030.

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the amendment to the CPD zoning approval and MCP by demonstrating compliance with the Lee Plan, the LDC, and other applicable codes and regulations.
2. The amendment to the CPD, 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 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 deviation, as conditioned, enhances the achievement of the planned development objectives, and preserves and promotes 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 29th day of March 2004.

ATTEST:
CHARLIE GREEN, CLERK

BY:

Deputy Clerk

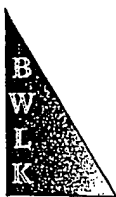
BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

Chairman

Approved as to form by:

Donna Marie Collins
County Attorney's Office



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
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email - fmoffice@bwlk.net
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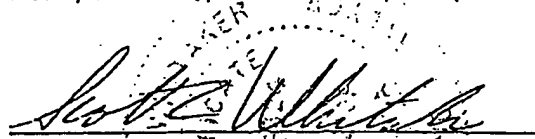
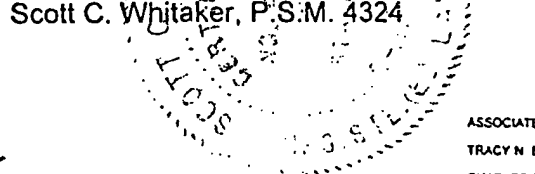
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RECEIVED
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CCI2003-00062

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Scott C. Whitaker, P.S.M. 4324


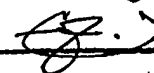
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CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

Applicant's Legal Checked

by



ASSOCIATES

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SKETCH TO ACCOMPANY DESCRIPTION

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LEE COUNTY, FLORIDA.

LAKES PARK

P.O.C.
NORTHWEST CORNER
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SECTION 35

JOINT USE ACCESS ROAD

P.O.B.

N.89°08'58"E. 552.56'
(BEARING BASIS)

DRAINAGE CROSS-EASEMENT
O.R. 2563 PG. 659

"PARCEL 608"
TO LEE COUNTY
BY ORDER OF TAKING
O.R. 2512 PGS. 2992-3012

SUBJECT PARCEL

SOUTH LINE OF
N1/2 NW1/4 NW1/4 NE1/4
SECTION 35

CLADIOLUS DRIVE REALIGNMENT
(C.R. 865)
CENTERLINE SURVEY FOR CLADIOLUS REALIGNMENT
CENTERLINE CONSTRUCTION FOR CLADIOLUS REALIGNMENT

DCI 2003-00062

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by 

... THIS IS NOT A SURVEY ...

Bean, Whitaker, Lutz & Kerch, Inc.

SCOTT C. WHITAKER, P.S.M.
Florida Certificate No. 4324 D

BOUNDARY - FENWAY FAMILY FUN PARK

Bean, Whitaker, Lutz & Kerch, Inc. (S 419)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

1804-1 MCCORD BOULEVARD, FORT MYERS, FLORIDA 33901-4810 (239) 481-1331

SK34186-BND.DWG

DATE 7-28-03 PROJECT NO. 34186

SCALE 1"=100'

SHEET 1 OF 1

FILE NO. (S-419) 35-45-24

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS,
AND RIGHTS-OF-WAY (WRITTEN AND UNWRITTEN, RECORDED
AND UNRECORDED).

BEARINGS ARE BASED ON THE RIGHT-OF-WAY MAPS FOR
CLADIOLUS DRIVE WITH THE NORTH LINE OF THE
NORTHEAST ONE QUARTER (NE 1/4) OF SECTION 35 AS
BEARING N89°08'58"E.

ZONING MAP

Lakes Park

AG-2

19.64 AC

SUBJECT
2020
PROPERTY

AG-2

1.92 AC

AG-2

12.80 AC

Gladiolus Drive

Old Gladiolus Dr

00015
0050
3.97 AC

1.74 AC

CPD

2.24 AC

AG-2

CPD

CS-1

.99 AC

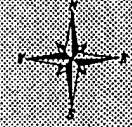
1.48 AC

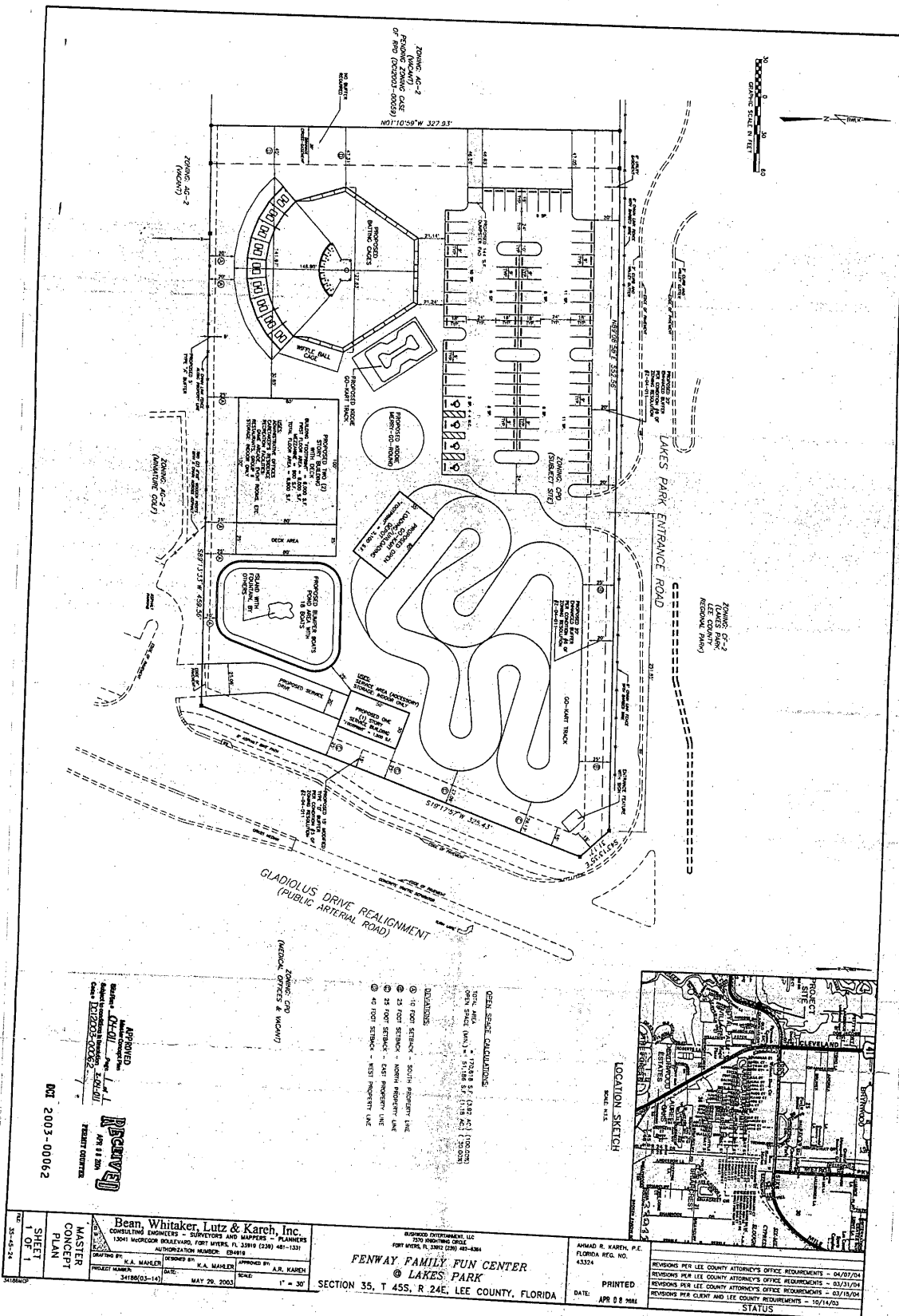
21.9 AC

5.27 AC

7.61 AC

EXHIBIT B





OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2003-00062
APPLICANT: BUSHWOOD ENTERTAINMENT, LLC, in reference to
FENWAY FAMILY FUN CENTER AT LAKES PARK
HEARING DATE: FEBRUARY 11, 2004
WRITTEN SUBMISSION: FEBRUARY 27, 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 BUSHWOOD ENTERTAINMENT, LLC, 7570 Knightwing Circle, Fort Myers, Florida 33912 (Applicant); MOBIL OIL CORPORATION, % EXXON MOBIL CORPORATION, P. O. Box 4973, Houston, Texas 77210 (Owner); AHMAD R. KAREH, P.E., M.S.C.E and TRACY N. BEAN, AICP, % BEAN, WHITAKER, LUTZ & KAREH, INC., 13041 McGregor Boulevard, Fort Myers, Florida 33919; and BARRY D. FISHER, MANAGER, % BUSHWOOD ENTERTAINMENT, LLC, 7570 Knightwing Circle, Fort Myers, Florida 33912; and DONALD JOHN THIELE, MANAGER, % BUSHWOOD ENTERTAINMENT, LLC, 11106 Lakeland Circle, Fort Myers, Florida 33913 (Agents).

Request is to rezone 3.92 acres from Commercial Planned Development (CPD) to Commercial Planned Development (CPD) to allow development of up to 12,500 square feet of building area with a maximum building height of 35 feet (and 135 feet for batting cage supports, wall and net). Uses proposed include coin-operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service. Blasting is not a proposed development activity for this project.

The subject property is located at 7350 Gladiolus Drive (southwest corner of Gladiolus Drive and Lakes Park entrance), in Section 35, Township 45 South, Range 24 East, Lee County, Florida (District #3).

II. STAFF REPORT AND RECOMMENDATION: APPROVE WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Chip Block. 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 CPD to CPD to allow development of up to 12,500 square feet of building area for the real estate described in Section IX. Legal Description WITH THE FOLLOWING CONDITIONS AND DEVIATIONS:

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COMMUNITY DEVELOPMENT
REC'D SECOND FLOOR

A. CONDITIONS:

1. The development of this project must be consistent with the one-page Master Concept Plan entitled "Fenway Family Fun Center," stamped received November 26, 2003, last revised October 14, 2003, 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.

The maximum building square footage permitted in this development is 12,500 square feet.

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

a. Schedule of Uses

ACCESSORY USES AND STRUCTURES (LDC Sections 34-1171 et seq., 34-2441 et seq., 34-1863, 34-2141 et seq., and 34-3108)

ADMINISTRATIVE OFFICES

CARETAKER'S RESIDENCE

ESSENTIAL SERVICES (LDC Sections 34-1611 et seq., and 34-1741 et seq.)

ESSENTIAL SERVICE FACILITIES (LDC Section 34-622(c)(13)): Group I (LDC Sections 34-1611 et seq., 34-1741 et seq., and 34-2141 et seq.)

PARKING LOT: Accessory

RACETRACKS (limited to go-cart track only)

RECREATIONAL FACILITIES:

Commercial (LDC Section 34-622(c)(38)): **Group I** (limited to coin-operated amusement establishments that primarily provide coin-operated amusement devices; coin-operated includes coins, tokens, or other similar devices) and **Group III** (limited to the applicant's proposed bumper boats, kiddie merry-go-round, and batting cages)

RESTAURANTS (LDC Section 34-622(c)(43)): Group II only

SIGNS, in accordance with Land Development Code Chapter 30

STORAGE: Indoor only, (LDC Section 34-3001 et seq.)

b. Site Development Regulations

Setbacks must be in conformance with the Commercial Tourist, CT district and with Deviation 1.

3. The buffer along Gladiolus Drive must include a five-foot-high berm as part of the go-cart track design. The berm will taper to two feet high at the south property line. A 15-foot-wide buffer along the eastern property line will include a double staggered row hedge along the top of the berm, in addition to five trees per 100 linear feet, as required in a Type D buffer. This berm and buffer will provide a partial sound and visual barrier toward the east (Gladiolus Drive).

4. This project is not permitted to have any casino style games.

5. The operation may open daily at 10:00 a.m. The operation must close at 10:00 p.m. Sunday through Thursday, and at 11:00 p.m. on Friday and Saturday. If, however, it is determined that the decibel level of the go-cart operation (carts and/or loudspeakers) exceeds the permissible decibel levels in Lee County Ordinance 93-15 after 9:00 p.m., the go-cart track must be closed at 9:00 p.m. until a means of assuring compliance with Ordinance 93-15 is perfected by the developer or fun center operator.

6. The maximum permitted height of the poles and netting for the batting cage facility is 40 feet. The netting must be a dark green or black color.

7. Water management facilities developed as part of this CPD must not adversely impact the existing water management facilities serving Lakes Park or preclude the development of the enhanced buffer as required along the Lakes Park entrance road.

8. The developer must provide a minimum 20-foot-wide buffer containing five (5) trees (Florida #1 Standard) per 100 linear feet and a double staggered hedge row (100% native species) along the property line contiguous to the Lakes Park entrance road. The required trees must be a minimum of 14 feet tall from grade overall and have a six to eight-foot-wide spread at the time of planting. The number of trees may be reduced at the time of local development order for this project, if Lee County Parks and Recreation determines that improvements planned along the entrance road to Lakes Park negate the need for the trees to buffer the park from this development.

9. The developer must provide reasonable facilities to accommodate the safe access of pedestrians from Lakes Regional Park to the proposed amusement facility as determined by the Director of Division of Development Services and at the time of local development order application. The developer **MAY** also provide accommodations for pedestrian access from the subject property to the miniature golf development contiguous to the south of the subject property.

10. Prior to issuance of a sign permit, the proposed project signage may be reviewed and commented upon by Lee County Department of Public Works. Otherwise, review and approval of the signage for this project will be governed by the sign regulations set out in LDC Chapter 30.

11. 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.

12. 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.

13. No alcoholic beverages shall be served or sold on the subject property, and cannot be brought onto the subject property by its patrons.

14. Outdoor speakers are allowed only under the go-cart loading canopy, and must be directed into the loading area. The volume of those speakers must be no louder than is necessary to be heard in the loading area. No other outdoor speakers are allowed on the subject property.

B. DEVIATIONS:

Deviation 1 seeks relief from LDC Section 34-2474(b)(1) which requires commercial sports/amusement parks, amusement devices and water slides shall not be located less than 50 feet or a distance equal to the height of the structure or the device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property zoned RS, TF, TFC, RM, MH, or RPD or any existing residential uses, to allow setbacks ranging from 10 feet to 40 feet as depicted on the Master Concept Plan.

The Hearing Examiner recommends **APPROVAL** of the Deviation as follows:

- A. A 10-foot setback from the south property line; and
- B. A 25-foot setback from the Lakes Park entrance road (north property line), as conditioned above in Conditions 3 and 8; and
- C. A 25-foot setback along Gladiolus Drive (east property line), as conditioned in Condition 3 above; and
- D. A 40-foot setback along the west property line, with the limitation depicted for the batting cage area.

IV. HEARING EXAMINER DISCUSSION:

This is a request to rezone a 3.92-acre parcel from CPD (Commercial Planned Development) to CPD to allow development of a recreational/amusement park with a go-cart track, batting cages, bumper boats and a 12,500-square-foot building housing arcade games, a Group II (accessory) restaurant, a caretaker's residence and a party room. The subject property is located on the west side of Gladiolus Drive, abutting the south side of the Lakes Park entrance road. It is abutted on the north by Lakes Park (CF-2 zoning), on the south by a miniature golf course (AG-2 zoning), on the east (across the six lanes of Gladiolus Drive) by medical office uses, and on the west by vacant AG-2 zoned lands. It is designated Central Urban in the Lee Plan.

This property was previously the subject of a rezoning request to CPD for development with a convenience food and beverage store with gas pumps on the front parcel, and a multi-story office building on the rear parcel. That request was remanded, by the Board of County Commissioners, to the Hearing Examiner for further review, in light of that Applicant's request to sell alcoholic beverages and to have a 24-hour operation. That CPD request, however, was never brought back before the Hearing Examiner, and the proposed rezoning is in no way associated with that prior request.

The subject property is basically rectangular in shape, with approximately 328 feet of width and 450 feet of depth. It has access to Lakes Park entrance road on the north boundary, but no direct access to Gladiolus Drive. Applicant's Master Concept Plan depicts the parking lot,

with 81 parking spaces, in the northwest portion of the site, and the batting cages in the southwest corner. The western portion of the site is the closest to Lakes Park. The go-cart track is located in the northeast portion adjacent to Gladiolus Drive, and the bumper boat area is in the southeast corner. The 8,900-square-foot two-story building is set between the batting cages and the bumper boats on the south boundary, and a 1,500-square-foot service building is nestled between the bumper boats and the go-cart track along Gladiolus Drive. A 25-foot-wide driveway to the service building is depicted from a shared access point with the miniature golf course on the south boundary.

The two-story building will contain administrative offices, an arcade game room, a sandwich shop/restaurant, and a group activity room for family birthday parties, etcetera. The 900-square-foot second floor will contain the caretaker's residence. The property will be fenced and the entrance onto Lakes Park entrance road and the service drive on the south boundary will be gated and the gates will be closed at night.

A pedestrian interconnect to Lakes Park is planned along the northwest property line of the subject property, and the location will be determined when the Lakes Park Master Plan is completed. Applicant and the property owner to the south are already in negotiations for a pedestrian interconnect between those two properties. They agreed that such an interconnect would enhance both their businesses.

Applicant is requesting a four-part deviation from the required 50-foot setback for commercial recreational uses. A 25-foot setback is planned for the north and east sides of the site - along Lakes Park entrance road and Gladiolus Drive. Applicant has agreed to install a 20-foot-wide buffer, with five-foot-high berm running around the northeast corner and tapering down to a two-foot-high berm at the southeast corner. This berm, with Type "D" plantings on the top and sides, will provide a sound and visual barrier to the north and east for the go-cart track.

A 10-foot setback is planned for the south boundary - adjacent to the parking lot and the miniature golf course. The owner of the miniature golf course property has no objections to the proposed 10-foot setback, since most of the subject property will abut his parking lot. A 40-foot-wide setback is planned for the west boundary, which, when added to the County's 65-foot-wide drainage easement, will provide a 105-foot distance between the batting cage and parking lot and the AG-2 zoned property that is currently being reviewed for RPD approval.

Applicant has asked for hours of operation starting at 10:00 a.m. and closing at 10:00 p.m. week nights, and 11:00 p.m. on Friday and Saturday nights. They asserted that those hours of operation are consistent with other similar recreational uses, and will not have any adverse impacts on the adjacent properties or persons.

It was explained that the closest existing residential units are approximately 850 to 900 feet across Gladiolus Drive to the east. In addition to the six lanes of Gladiolus Drive, those residences are separated from the subject property by a large medical office building and heavy vegetation. Given the distance, the size and location of the building, the heavy vegetation behind the building, and the small size of the engine in the go-carts, it was the opinion of the Applicant's sound expert that the noise from the go-carts and other recreational uses would not exceed the decibel levels as described in the Lee County Noise Ordinance 93-15 (see Applicant's Exhibit 3). He stated in his report that the engines on these go-carts would not be as noisy nor as intrusive as a lawnmower engine.

It was also the opinion of the sound expert that the configuration of the five-foot-high berm and the vegetative plantings along the north boundary will adequately buffer the sound and visibility of the go-cart track from Lakes Park. He advised that the sound of the go-carts will also be attenuated by distance between the track and the activity areas of Lakes Park, as well as the trees and shrubs within Lakes Park itself.

Staff recommended approval of the rezoning request, with conditions, finding that the request, as conditioned, met the intent of the Lee Plan and Land Development Code. They found that the proposed uses were appropriate for this location, and that the uses would be compatible with the adjoining uses. It was their finding that the proposed uses, as conditioned, would not be injurious or detrimental to the existing residential development, or to the public health, safety and welfare.

The primary concern of the Department of Parks and Recreation was the noise associated with the go-cart activity, which they felt would be disturbing to the peace and quiet of Lakes Park. They asserted that people come to Lakes Park to get away from urban activities and sounds, so they did not want the ambiance of Lakes Park to be destroyed by the noise of the go-carts. Applicant testified that the go-carts will have a fiberglass shell and a more extensive muffler system that will reduce the noise emanating from the go-cart engines. They suggested that the Hearing Examiner visit the King Richard's fun center in Naples to get an idea of the noise levels and intrusiveness of the go-carts, since those are the same type of go-cart that Applicant will have on the site.

The Department's concerns were ameliorated by the five-foot-high berm, with vegetative plantings, and by the explanation and opinion of the Applicant and their sound expert.

After additional discussions with Applicant and the imposition of additional conditions, Staff recommended approval of the four-part Deviation, with conditions, finding that the approval met the criteria for approval set out in the LDC and would not be detrimental to the area.

Two homeowners from the Park Side Condominiums, located on the east side of Gladiolus Drive, attended the public hearing as representatives of their condo association. These speakers objected to the rezoning, arguing that the go-carts and other activities on the subject property would adversely effect the value of their residential property and their life styles. They noted that, when Lakes Park has a special event, lots of people park along Old Gladiolus on condo property, breaking their sprinkler heads and landscaping, and strewing trash all over the entrance to their development. They feared that any overflow of vehicles for the fun center would do the same thing, and they did not want that to happen. Lastly, they were afraid that they would be able to hear the go-carts, especially later in the evening, and asked that the fun center be required to shut down earlier than 10:00 p.m.

The undersigned Hearing Examiner concurs with Staff's analysis, findings and recommendation of approval, with conditions, finding that the request, as conditioned, meets the criteria for approval set out in LDC Section 34-145, and is consistent with the intent of the Lee Plan and the Land Development Code. She also finds that the request, as conditioned, will be compatible with the planned and existing uses in the area, and will not be detrimental or injurious to the persons or properties in the immediate vicinity.

In keeping with the discussion on the record, the Hearing Examiner has recommended two new conditions and has revised two existing conditions. The two new conditions restrict the use of loudspeakers and prohibit the sale or service of alcoholic beverages on this property. One of the revised conditions relates to the hours of operation and requires additional actions by the developer or operator if the go-cart operation is found to exceed the decibel levels set out in Ordinance 93-15 after 9:00 p.m. Although the Hearing Examiner found, on her visit to King Richard's in Naples, that the go-carts were not noisy - sounding more like an amplified swarm of bees, she is including these additional conditions in the event that Applicant sells the business to a less conscientious operator.

The Hearing Examiner revised Condition 10, signage, to allow the Department of Public Works to only review and comment on Applicant's proposed signage, instead of having final approval of the signage. The Hearing Examiner understands the Department's concern about the effect of adjacent signage on the entrance to Lakes Park. Even though the Department argues that it is protecting the public's interests, she does not believe that those interests rise to the level of an overwhelming public need which would justify "amending" the written and duly adopted procedures with which this and all other sign Applicants must abide. It is her opinion that the County's wish to protect its property is no different than any other adjacent property owner's wish to have some control over the signage being installed by his neighbor, and, as such, does not warrant special concessions.

Lee County has specific regulations and procedures for the approval of signs, and the Department of Public Works has no part in those procedures, either as a part of County government or as an adjacent property owner. In the Hearing Examiner's opinion, the Department of Public Works or any other department of the County government should not be treated any differently in this case than in all other cases involving sign requests.

It is the opinion of the Hearing Examiner that the conditions imposed herein are reasonably related to the impacts anticipated from the proposed development, and, with other regulations, will safeguard the public's interests.

It is also the Hearing Examiner's opinion that the Deviation, as conditioned, meets the criteria for approval, and will enhance the proposed project, while promoting the protection of the public health, safety and welfare.

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 this request, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes or regulations.

B. That the request, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.

C. That the request, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

D. That the request, as conditioned, is compatible with existing or planned uses in the surrounding area.

E. That approval of the request, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.

F. That the request, as conditioned, will not adversely affect environmentally critical areas and natural resources.

G. That the proposed uses, as conditioned, are appropriate at the subject location.

H. That the recommended conditions to the Master Concept Plan are reasonably related to the impacts anticipated from the proposed development, and, with other regulations, will provide sufficient safeguard to the public interest.

I. That the approved Deviations, as conditioned, will enhance the objective of the proposed development, and will promote the protection of the public health, safety and welfare. (LDC Section 34-377)

J. That 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:

Master Concept Plan, prepared by Bean, Whitaker, Lutz & Kareh, Inc., dated MAY 29, 2003, last revised 10/14/03, date stamped "RECEIVED NOVEMBER 26, 2003 PERMIT COUNTER"

Lee County Property Appraiser Aerial Photograph, Date of Photography April-May 2002, Map Date 02/2004 [color]

STAFF'S EXHIBITS

- 1 Memorandum from Chip Block to the Hearing Examiner, dated February 26, 2004, re: revised language for Condition 8 [post hearing submittal]

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

APPLICANT'S EXHIBITS

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

- 1 Berming and Vegetative Plan (hand drawn) [color]
- 2 Copy of letter to Diana M. Parker from Tracy N. Bean, with Bean, Whitaker, Lutz & Kareh, Inc., dated February 11, 2004, listing alternative Conditions 3, 5, 8, and 9, and Deviations for Amusement Setbacks A, B, C, & D

- 3 A composite exhibit containing the document "Review of Concession Go-Kart Noise and General Noise Levels" for the proposed Fenway Family Fun Park, prepared for Mr. Barry Fisher by Peter F. Olesen and Associates, Inc., Consulting Engineers
- 4 Traffic Comparison Chart, presented by A. Kareh
- 5 Composite exhibit consisting of three letters in support of the proposed project
- 6 Letter from Ahmad Kareh to Hearing Examiner, dated February 27, 2004, re: agreement with Staff's revised language for Condition 8 [post hearing submittal]

OTHER EXHIBITS

Sether's Exhibit

- 1 Letter of concern, dated February 11, 2004, from Parkside Condominium Association and photograph [color]

VII. PRESENTATION SUMMARY:

The Hearing Examiner explained the hearing process and placed all the participants under oath. Tracy N. Bean, Certified Planner with Bean, Whitaker, Lutz & Kareh, Inc., introduced herself as the representative of the Applicant, Bushwood Entertainment LLC. The proposed request was to rezone 3.92 acres from Commercial Planned Development (CPD) to CPD to allow for commercial recreation uses. She indicated that Ahmad R. Kareh, a Professional Engineer, was also present and that he would speak about traffic and drainage issues if there were any questions. She noted that Jim Sanders, with Arnold Sanders Consulting Engineers, an expert in sound analysis, and D. J. Thiele, a representative of the Applicant, were also at the hearing to present testimony.

The proposed rezoning was to allow approximately 12,500 square feet of building area for commercial recreation use, including coin-operated arcade games, go-kart tracks, bumper boats, batting cages, and a Group II restaurant that would be limited to food and beverage service for the patrons of the Fun Center. Other uses listed in the Schedule of Uses would be accessory uses to the commercial recreation uses requested.

The vacant subject property was located at 7350 Gladiolus Drive. It was first rezoned to CPD in 1993, by Zoning Resolution Z93-014, and was approved for 29,999 square feet of commercial uses, of which 5,000 square feet were approved for a convenience food and beverage store with fuel pumps,. The remaining 24,999 square feet were approved for commercial recreation uses on a three-lot subdivision. That approval received a two-year extension that expired in 2001.

A short time later, a new Master Concept Plan (MCP) was submitted, which included 20,000 square feet of general office buildings, and a convenience food and beverage store with 24 fueling stations and a carwash on a two-lot subdivision. That case was remanded by the Board of County Commissioners (BOCC) to the Hearing Examiner for further review and was never approved.

Ms. Bean explained that the instant case was the result of a meeting with Pam Houck, Director of Zoning, in May of 2003, who asked the Applicant to submit a new MCP and rezoning application for the proposed change of use. The proposed project would be limited, by parcel areas, to specific amusement devices.

She indicated that the perimeter boundaries were adjacent to road rights-of-way on the north and east sides. She referenced the aerial photograph (color) and pointed out the location of the subject property and Lakes Park, to the north, which consisted of 282 acres. To the south was a private commercial miniature golf course recreational facility, known as Castle Golf, that had been in existence for approximately 18 years and was zoned AG-2. To the west was a 65-foot-wide strip of land, owned by Lee County Lakes Park, that wrapped around the site and down to Gladiolus Drive. She noted that there was also 19 acres of vacant AG-2 zoned property beyond that 65-foot strip, but there were no pending rezoning or development activities on that site. There was a pending rezoning case for a Residential Planned Development (RPD), to be known as Gladiolus RPD, approximately 420 feet southwest of the subject property.

Continuing, Ms. Bean referenced Gladiolus Drive, which had approximately 200 feet of right-of-way, and pointed out several CPD-zoned parcels of land that had not been developed on the south side of Gladiolus Drive. There was a medical facility on the corner of Gladiolus Drive and Old Gladiolus Drive, which was zoned CPD. Further down Old Gladiolus and east of the commercial properties was Parkside Condominiums in RM-2 zoning. There was approximately 800 feet from the subject property's east property line to the condominium development, which was the nearest existing multi-family use. A single-family residence was located approximately 1,000 feet southwest of the subject property.

Ms. Bean stated that Lakes Park was a regional park zoned Community Facilities (CF-2). It provided passive recreational activities in a natural setting, and included lakes for swimming and canoeing, picnic facilities, walking paths, jogging paths, biking paths, and a small gauge railroad. It was noted that the park had annual events and other activities that took place throughout the year.

The Applicant agreed with Staff's recommendation of approval and the proposed Conditions 1, 2, 4, 6, 7, 10, 11, and 12, as contained in the Staff Report. However, they did not agree with proposed Conditions 3, 5, 8, and 9. She had met with Chip Block, Planner, and Michael Pavese, Public Works, and had come up with some alternatives. Therefore, she had revised the conditions, per their meeting, and asked to read them into the record.

The Hearing Examiner asked Ms. Bean if those were the conditions that were included in her February 10, 2004 letter? Ms. Bean stated those were the conditions that were discussed at their pre-hearing meeting with Staff, but that they had been revised. However, she wanted to explain the Master Concept Plan (MCP) before she read the new conditions into the record.

Ms. Bean referred to the MCP for the Fenway Family Fun Center at Lakes Park, explaining that it would be a privately-owned facility and would not be connected with Lakes Park. She pointed out the location of the go-cart track, batting cage, bumper boat pond, a small maintenance building, and another building that would be two stories and have a deck. The two-story building would house an arcade games room, an event room (for birthday parties, etc.), and seating for a limited service restaurant that would serve only the on-site patrons. The bumper boats would be electrically driven, so there would be very little noise associated

with that activity. The go-carts would be gasoline powered, and there would also be a small merry-go-round.

Next, she pointed out the 81-space parking area, advising that it included a few more than the required 72 parking spaces. The entrance would be off the Lakes Park entrance road, which was a private road. A service entrance, utilized strictly by service trucks, would be located further south at the shared access point with Castle Golf.

The Applicant had discussed some type of pedestrian crossing with the owners of Castle Golf, so that people could walk back and forth between the two facilities. She noted that Mr. Thompson, with Castle Golf, was at the hearing and, as soon as she concluded her presentation, he would like to speak.

Ms. Bean noted that the green areas shown on the MCP were the buffer areas that were proposed by the Applicant. Typically, commercial uses adjacent to a right-of-way (in this case a private right-of-way) did not require a buffer, but the Applicant had included a Type D (15-foot-wide) buffer, which consisted of trees and shrubs. They would also provide a five-foot-high berm adjacent to the go-cart track, in addition to the trees and double-staggered hedge row on top of the berm. The hedge row would be 36 inches tall at planting and would be maintained at 48 inches high as a solid vegetative wall on top of the berm that would buffer the go-cart track.

The berm would extend from the south side of the project's entrance road off Lakes Park, and would wrap around to nearly the end of the curve on the track. Then it would taper down to two (2) feet in height at the south property line. Even though the berm would be shorter along the southern property line, it would still have the double staggered hedge row and required trees (five trees per 100 linear feet) on top of it. In all, there would be 17 trees, in addition to the hedge on that side and approximately 28 trees and the hedge on the other side.

One of the things that the Staff Report had brought up was that Lakes Park was in the process of preparing a Master Plan. Ms. Bean said they had been able to get a very rough idea of what that master plan encompassed, as it related to the entrance road. It showed canopy-type trees planted in the Lakes Park Road right-of-way, outside of this property's boundary line. The Applicant suggested that they be allowed to obtain administrative relief from providing all the trees along that roadway, if Lakes Park was not at the point of getting a Certificate of Compliance by the time this project's MCP was approved.

She stated that the proposed open space was 20 percent, which was the minimum required for a small project. They felt the proposed uses would be compatible with the area since there were existing commercial recreational uses to the south and a regional park to the north. Although there was the potential for development to the west, it was presently vacant. The nearest residential uses were to the east, approximately 800 feet away, and to the southwest, approximately 420 feet away.

Next, Ms. Bean read the following revised conditions into the record:

Condition 3 - The buffer along Gladiolus Drive must include a five-foot berm as part of the Go-Kart Track. The berm will taper to two (2) feet at the south property line. A 15-foot-wide buffer along the eastern property line will include double staggered rows along the top of the berm, in addition to (five

trees/100 L.F.) the trees required for a Type D buffer. This will provide a partial sound and visual buffer toward the east (Gladiolus Drive).

Condition 5 - The operation may open daily at 10:00 a.m. This coincides with the 10:00 a.m. opening of Castle Golf and is one (1) hour later than the 9:00 a.m. opening of Lakes Regional Park.

Condition 8 - The developer must provide a minimum 15-foot-wide buffer containing a double staggered row (100 percent native species) along the top of the five-foot berm created by the Go-Kart Track along the property line contiguous to the Lakes Regional Park entrance road. The developer will provide trees. The five-foot berm will end at the entrance to the Fenway Family Fun Center.

Condition 9 - The developer must provide reasonable facilities to accommodate the safe access of pedestrians from Lakes Regional Park to the proposed amusement facility as determined by the Director of Division of Development Services and at the time of local development order application.

Ms. Bean pointed out that Staff recommended that there be some kind of pedestrian access from Lakes Park to the subject project. There was an existing bus stop at the intersection of Lakes Park Entrance Road and Gladiolus Drive. The Applicant would like to comply with the pedestrian access request, but they asked that it not be required until the development order stage so that the access could be shown at the entrance to their facility or on the west side, where the Lakes Park entrance road turn-around was located. The Applicant felt one of those two locations would be safer than locating it on Gladiolus Drive.

The Applicant requested only one deviation, which had four parts, regarding setbacks and Ms. Bean believed it was justified. According to the LDC Section 34-247(b)(1), a 50-foot setback was required from an amusement park or amusement devices to any property boundary line under private ownership. The first part of the Applicant's deviation request was to allow a 10-foot setback along the southerly property line adjacent to Castle Golf. Ms. Bean asserted that, since Castle Golf was a similar outdoor commercial recreational facility, the Applicant and the owner of Castle Golf discussed a service drive that would connect to Castle Golf's entrance drive from Gladiolus Drive. There would be approximately 25 feet between the miniature golf course and the Fun Center's batting cages and bumper boats, with a pedestrian access between the two sites. They would also provide a Type A buffer along that property line, but there would be a break in the buffer to allow for pedestrian access. Ms. Bean felt the proposal could be approved with testimony from Mr. Thompson, the property owner of Castle Golf, who was present at the hearing.

The second part of the deviation requested a 25-foot setback from Lakes Park entrance road, which was a private easement. Under the LDC, the right-of-way setback from a private roadway would be 20 feet, but the Applicant has chosen to provide a 25-foot setback, in lieu of the required 50-foot setback for this amusement center.

The nearest Lakes Park structure to the subject property was a picnic pavilion approximately 240 feet from the proposed parking lot and go-cart track. The Lakes Park entrance would be buffered from the amusement devices by the parking lot, the 15-foot-wide buffer and the five-foot-high berm along the northern property line. Ms. Bean submitted a rendering of the proposed berm into the record and the Hearing Examiner labeled it as Applicant's Exhibit 1.

The third part of the proposed deviation was for a setback of 25 feet from Gladiolus Drive. The nearest commercial parcel was about 200 feet from the subject property and the nearest commercial building was approximately 500 feet from the subject property. Ms. Bean wanted this part of the deviation request approved with the Applicant's agreement to provide the berm, the double-staggered hedge and the buffer trees, as described in Condition 3.

The last part of the Applicant's deviation request was to allow a 40-foot rear setback along the western property line. Ms. Bean stated the vacant property to the southwest was under development order review for a residential project known as Gladiolus RPD. That project would be 420 feet from the subject property. The vacant property immediately to the west was owned by Lee County, and was used and recorded as a drainage easement (Official Record Book 2512, Page 2992), and would never be developed. Ms. Bean pointed out the location of a 30-foot drainage easement along the west boundary of the subject property that was being used by Lee County, and indicated that it was an area that would never be developed and that the Applicant's development would never enter. Combining the existing 30-foot easement on the Applicant's property with the 65-foot easement owned by Lee County would provide 95 feet of buffer to any activity on the Fun Center site.

In addition, the proposed 40-foot setback would provide open space and drainage on the subject site and would allow a 105-foot separation between the amusement devices and the adjacent private property. Because of that, the Applicant felt the proposed setbacks on all sides of the subject property met the intent of the LDC Section 34-2474(b)(1), and would also reduce noise impacts and light intrusion onto the adjacent properties.

The Hearing Examiner asked if the 40-foot setback would actually start at the edge of the 30-foot easement or was the 30-foot easement part of the 40-foot setback? Ms. Bean clarified that the 40-foot setback began at the subject property's boundary line and went 10 feet beyond the easement.

The Hearing Examiner questioned whether Ms. Bean wanted to be accepted as an expert witness in land use, planning and zoning? Ms. Bean indicated that she did, and, after hearing no objections from Staff, the Hearing Examiner accepted her as such.

Ms. Bean submitted a letter regarding Conditions 3, 5, 8, 9 and the requested Deviation into the record and the Hearing Examiner labeled it as Applicant's Exhibit 2.

Next, Larry Thompson introduced himself as the owner of Castle Golf and, in response to the Hearing Examiner's inquiry, indicated that he had owned the property for the past 18 years. He noted that he had designed it, built it, and it was family-owned. He purchased the entire property from the rest of his family approximately a year and a half ago.

The Hearing Examiner asked Mr. Thompson if, after reviewing the Applicant's proposal, he had any objections to the south boundary setback? He stated that he had no objections, and in response to her question about pedestrian access between the projects, asserted that he believed they were as good a fit as two businesses could get. He felt the relationship was quite obvious, compared to the Exxon-Mobil station that had been previously planned for this site. He stated that not providing a pedestrian access between Castle Golf, the Fun Center, and Lakes Park would be absolutely senseless.

Chip Block, with Community Development, introduced himself and asked Mr. Thompson, since he had no objection to the proposed project, did he expect or anticipate any negative impacts from the location of the proposed structures? Mr. Block explained that the proposed deviation was for setbacks for amusement structural devices, such as the batting cages and bumper boats. Since Lee County regulations were intended to protect the health, safety and welfare of adjacent property owners, he wanted Mr. Thompson to provide testimony regarding any negative impacts the reduced setbacks might have on his property. Mr. Thompson really did not anticipate any adverse or negative impacts to his property. He had visited the site and the location of the closest structures would be the bumper boats, noting that the amusement park would be closest to his business' parking area. Therefore, he did not anticipate any problems and believed the proposed Fun Center would actually be an enhancement to his operation.

Mr. Block began Staff's presentation by indicating he had been working in the planning and zoning field for approximately 25 years, both in the State of Kentucky and, for the last 19 years, in Lee County. He asked to be accepted as an expert witness in planning and zoning matters, and, after hearing no objections from the Applicant, the Hearing Examiner accepted him as such.

Mr. Block referred to the Staff Report, dated January 26, 2004, which included Staff's analysis of the proposed rezoning from CPD to a new CPD for the development of the site. Staff recommended approval, with conditions, as it was consistent with Lee Plan. He then referred to the Applicant's objection to Conditions 3, 5, 8, and 9, and their proposed revised language for those conditions. He stated that, instead of going into great detail on the recommended conditions, he would begin by addressing the conditions on which the Applicant had no objections.

The first condition addressed compliance with the MCP that was located on the board. The second condition was the requirement to follow the Schedule of Uses, which essentially addressed uses that were anticipated within this family fun park, and excluded uses that would be found in other types of CPDs, such as retail commercial uses and professional office uses. Condition 4 prohibited any type of casino style games, because the project was designed to be a family fun center. Condition 5 limited the hours of operation from 10:00 a.m., instead of 11:00 a.m. as requested by the Applicant, to 10:00 p.m., Sunday through Thursday and until 11:00 p.m. on Friday and Saturday.

Continuing, Mr. Block explained that Condition 6 limited the batting cage height to 40 feet and required the netting to be dark green or black in color. The Applicant had requested the batting cage supports, wall, and net be 135 feet in height, but Staff did not believe that height would be appropriate. After negotiating with the Applicant, an agreement was reached at the 40-foot height. Condition 7, regarding water management facilities not adversely impacting Lakes Park, was proposed by the Department of Public Works. Condition 10, regarding the issuance of a sign permit, required that the proposed signage be reviewed by the Lee County Department of Public Works.

Lastly, he indicated that Condition 11 addressed the fact that the zoning request did not address mitigation of the project's vehicular or pedestrian traffic impacts and that additional conditions may be required at the time of the local permitting process. Condition 12, regarding the Acreage Allocation Table under the Lee Plan, designated the amount of commercial acreage that could be developed in this area, and that matter would also be reviewed at the time of the local development order.

Mr. Block referenced the proposed Deviation and indicated that Staff had originally recommended denial of the entire request. However, since Mr. Thompson, the adjacent property owner, indicated that he had hoped that type of project would come to the area; had no objection to the project being located next to his miniature golf course; and did not believe it would adversely impact his business, Staff agreed to recommend approval of the deviation for the southern property line (10 feet) setback, as shown on the MCP.

The Hearing Examiner asked if Staff intended to continue with their objections to Paragraphs B, C, and D? Mr. Block related that Paragraph C was for Gladiolus Drive; however, LDC Section 34-2474(b)(1) required a 50-foot setback from a property under separate ownership. The setback in question was a street setback, not a property under separate ownership. It was actually a County right-of-way and, in his opinion, a 25-foot street setback requirement would apply. Therefore, he did not believe approval of Paragraph C was necessary.

Next, in response to the Hearing Examiner's inquiry about Paragraph B (Lakes Park entrance road), Mr. Block stated the setback requirement for an entrance road was a little bit different, and deferred that question and any inquiries regarding Paragraph D (western property line) to Michael Pavese, with Lee County Department of Public Works. He believed Mr. Pavese could better address whether or not his Department would agree or disagree to recommend approval of the deviation requests for those two locations because they involve issues in which the Department of Public Works was interested. He stated the same held true for the proposed alternative language for Conditions 8 and 9 because, in both instances, Mr. Pavese had proposed those conditions. Mr. Block realized that Condition 8 was very specific, and was aware that Mr. Pavese had been working within his department to see if there could be some alternative language provided.

Mr. Block referred to Condition 3, regarding the buffer along Gladiolus Road, and expressed Staff's appreciation to the Applicant's effort to accommodate the five-foot-high berm. The berm would begin at the edge of the curve of the go-cart track (or at the northern edge of the maintenance area), and would go northward to where it would turn and run along Lakes Park Drive. He pointed out the area on the MCP posted on the hearing exhibit board. It was surrounding an area where there would be high intensity of activity and noise associated with the go-carts. A five-foot-high berm, with vegetative buffering, was requested by Staff and agreed to by the Applicant. The berm height would change as it progressed southward along Gladiolus Drive to where the two-story building and driveway would be located. At that point, the berm and buffer tapered down in height from five feet to two feet. Staff understood the height reduction, however, they were concerned about the visibility of vehicles being limited by the five-foot-high hedge, with trees and shrubs, and a two-foot-high berm along the driveway.

He noted that the aerial photograph showed the driveway into Castle Golf and he had previously seen recreational vehicles parked on the paved shoulder. The lower berm would afford truck drivers and others leaving the facility sufficient visibility of Gladiolus Drive traffic, from a safety standpoint, for turning purposes. Therefore, Staff had no objection to the Applicant's revised language for Condition 3 regarding the buffering. It addressed the Gladiolus Drive buffer, the staggered hedge and 17 trees that would adequately buffer the area. He noted that Staff was originally concerned about whether the bumper boats would be gas or electrically powered. However, the Applicant testified that the bumper boats would be electrically powered and that there would be no noise associated with them, except for the screaming children getting wet. Therefore, Staff supported the rewording of Condition 3 and recommended approval of the revised language and the request.

The Hearing Examiner asked if "Caretaker's Residence," listed in the Schedule of Uses was a typical use associated with that type of development? She also asked how many family centers, with of the same types of amusement activities, had been approved in Lee County? Mr. Block replied that the subject project would be the first. He noted that Greenwell's was located in the City of Cape Coral and that there had been another located on Colonial Boulevard, off US 41, but it had closed down. However, he had visited several facilities in the Orlando area that had included caretakers' residences.

The Hearing Examiner asked if it was Staff's belief that a caretaker's residence, given the nature of the use, was appropriate on the subject property for protection of the facilities? Mr. Block agreed and indicated that the type of fencing that would be used would not keep people out. There may be a clapboard fence along Lakes Park, but there were really no security measures proposed. The caretaker's residence would give the resident the ability to keep an eye on people that enter the site; keep people from accessing the go-cart track at the wrong time; getting into the netting; or someone jumping into the bumper boat pool to swim. It would provide some level of protection and security to the site, which Staff believed was appropriate. Furthermore, Mr. Block clarified that the proposed caretaker's residence, an apartment on the second floor, would be part of the proposed 12,500-square-foot building.

Then the Hearing Examiner asked if "Restaurants, Group II" was an automatic accessory use? Mr. Block replied that it was not necessarily an accessory use, but a walk-up type restaurant facility. He had reviewed the definitions of the three groups of restaurants and pointed out that Group III was defined as a sit-down type restaurant and that Group II was defined as a deli or pizza-style eatery, such as is located in shopping centers. He noted that the proposed project may advertise, but it would be strictly for the facility users and their birthday party services.

The Hearing Examiner stated the subject property was located between Lakes Park, which had a small snack bar that was not always open, and Castle Golf. She was concerned that, if it was not an accessory use, customers and traffic from Lakes Park and the miniature golf facilities would use Fenway Park's eatery. Mr. Block said Staff anticipated accessory uses, but they would not be advertised-type operations. The food service would be for the people at the facility and those having birthday parties. He suggested that, if restaurant use was termed accessory to the recreational facilities and used only as an accessory use to those recreational facilities, it would resolve some of the Hearing Examiner's concerns. In addition, it would also prevent the restaurant from being used as a primary use on the site.

The Hearing Examiner asked if Staff had looked at the eateries from the point that it would serve those other facilities, as well as the Fenway Fun Center? Mr. Block had spoken with the Applicant regarding their facility's relationship with Castle Golf and the Applicant and Mr. Thompson indicated that they would work together, hand-in-hand. During one of their meetings, Ms. Bean advised him that, if a birthday party was held at the subject property, there was a good possibility that those patrons would also play miniature golf at Castle Golf. In fact, they had discussed an internal bridge connection.

Continuing, Mr. Block stated, as far as Lakes Park was concerned, there may be some crossover pedestrian traffic, as opposed to vehicular traffic. That was why there was a condition regarding a pedestrian access to Lakes Park. It would afford the opportunity for people already parked at Lakes Park to walk across to Fenway Fun Center and use their facilities. There was some type of relationship between the two facilities, but not necessarily between Lakes Park directly. They would work together because it was a great draw for both

of them. Mr. Block confirmed that the proposed restaurant use would be an accessory use to the recreational facilities.

At that point, Ms. Bean stated that their initial restaurant plan proposed limited food and beverages; it was Staff's suggestion that, due to the definitions, it be changed to Restaurants, Group II.

The Hearing Examiner asked Ms. Bean if the restaurant would be open from 10:00 a.m. to 10:00 p.m. or just for the special events, and was advised that it would be open the entire time. At that point, the Hearing Examiner said she would give the Restaurants, Group II some consideration before making her final decision. If a Group II was typically not advertised or allowed signage that would entice people off the street, it may be left as Group II, rather than making it an accessory use only. Lakes Park did not offer many eating accommodations, unless the patrons take their own food. If the facilities were willing to work together, it probably should not be restricted strictly to patrons of Fenway Fun Center.

Next, the Hearing Examiner stated she would visit Greenwell's, in order to experience the sound level of the go-carts and determine whether the proposed 10:00 p.m. closing time for Sunday through Thursday was appropriate. She noted that 10:00 p.m. during the week nights seemed very late for students. Mr. Block explained he had assigned those hours after reviewing the surrounding facilities and Greenwell's. In addition, there would possibly be teenagers between the ages of 16 to 18 using the go-cart facility. The State law required drivers between the ages of 16 and 17 to be off the streets by 11:00 p.m. Therefore, if the closing hour of the facility was 10:00 p.m., there would still be time for them to drive home. By law, working minors were not subject to that regulation if they were driving straight from work to home.

The Hearing Examiner indicated she had a concern with Condition 10, in that it stated "project signage must be approved by the Lee County Public Works." She believed that a review and comment authority would be acceptable, but "approval" was well beyond their responsibilities and was not normally an authority or jurisdictional concern they normally dealt with. Mr. Block understood her concern and noted that Lakes Park and Public Works wanted something that was positive toward the facility at Lakes Park. He indicated that Mr. Pavese would address that issue during his testimony.

Lastly, the Hearing Examiner stated that she had concerns regarding Conditions 8 and 9, but would reserve those questions for Mr. Pavese.

Mr. Block interjected that Kim Trebatoski, with Lee County Environmental Sciences, would be available if any environmental concerns arose. He did not believe there were any, as he had documented in the Staff Report.

At that point, Mike Pavese, with Lee County Public Works, introduced himself and stated he had suggested the conditions from the perspective of Lee County Parks and Recreation, which was a division of Public Works. He agreed that the proposed use, in general, was a good fit for the area. The challenge was to integrate the proposed commercial use with the passive and active recreational uses that occurred in Lakes Park. The park was utilized as an urban refuge and they wanted that character preserved.

Mr. Pavese stated that the primary concern of John Yarborough, the Director of Public Works, was the noise generated by the go-cart use. Evidently his concerns were similar or the same as the Hearing Examiner's concerns. Ms. Bean had been informed that the noise was a major concern of the Parks Department. The Applicant's noise expert was present and he hoped that concern would be alleviated.

Mr. Pavese explained that Condition 8 was initiated by Parks and Recreation. He indicated that the Lakes Parks Master Plan was currently being developed by Wilson Miller, and would be a broad-brush attempt to foresee and/or direct changes to Lakes Park. The project would be ongoing over a long period of time and would cost approximately 30 million dollars.

As previously mentioned by Ms. Bean, sketches were prepared by Wilson Miller of the entrance to Lakes Park. The aerial photograph showed the south side of the entrance road and the north boundary of the subject property with the right-of-way extending into the wooded area, as highlighted on the aerial photograph. On the sketches, the Park's Master Plan projected trees and shrubbery within their private driveway area; that was not a right-of-way or a road adjacent to the subject property. He and Mr. Block had discussed the sketch with the Applicant during a recent meeting.

Condition 8 came about after speaking with a person at Wilson Miller who was involved with the Master Plan, and with Dave Berra, the landscape architect and planner with Lee County Parks and Recreation. They suggested that an enhanced and expanded buffer be provided along the Lakes Park entrance drive, which was the reason behind the 20-foot width, as opposed to 15 feet. They believed a 20-foot expanded buffer, with five trees and a double staggered hedge, would be adequate and appropriate. If, sometime in the future, Lakes Park called for more trees and shrubs on the north side of the buffer, they believed it would border on overkill. It was possible that the total number of trees between both properties could be located differently or clustered and the size could be reduced, but, at this stage of planning, they did not know when that would occur.

Mr. Pavese was also concerned that the Applicant would have to attend another public hearing to amend the buffer condition. When he was processing rezoning requests, a buffer size could not be reduced administratively. He had spoken with Mr. Block and believed they were in agreement. He further believed that, after speaking with Ms. Bean, they had agreed to the 20-foot-wide buffer and recommended its approval, as evidenced in the Staff Report. Of the available property depth, six feet was a utility easement that could not have any plantings. Thus, with only a 15-foot-wide buffer, nine feet was all that would be available for the planting of trees and shrubs.

The Hearing Examiner commented that, given the easement, a 15-foot-wide buffer would provide a denser vegetation. Mr. Pavese agreed that it would be denser, but it would not allow a natural landscape layout, and the plantings would be jammed into a nine-foot-wide area. They also requested taller trees be planted, which would be consistent with the Lakes Park vegetation. When they spoke with the Applicant, they provided more detail as to how the go-cart tracks were designed, and then incorporated an undulating berm around the edge of the track. That would help buffer the go-cart use more from the entrance road, thereby alleviating the initial concerns of distractions to people leaving the park.

Mr. Pavese believed a 50-foot setback should be required from the property line because it was a private property line and not a public right-of-way, like the Gladiolus Drive property. They wanted the condition to remain, as written, with the ability to administratively amend it at the time the Certificate of Compliance (CC) was issued when Staff would have a more realistic idea of what would happen. At that time, the Applicant may possibly be asked to incorporate some of the required trees into the driveway area, if that was consistent with the plan, but it did present a real quandary right now.

The Hearing Examiner asked if the placement of the trees and shrubs on the top of the berm had been taken into consideration? She realized they were asking for a 20-foot-wide buffer, but there was also a five-foot-high berm and she did not think that could not be placed within the 20 feet. As far as mimicking the height of the existing trees in Lakes Park, the additional five feet would go a long way in adding height to those buffer trees. Mr. Pavese stated that it was not considered because both he and Mr. Block had only considered the possibility of a flat go-cart track at the time the Staff Report was written.

The Hearing Examiner stated that Applicant's Exhibit 1 clearly depicted the vegetation on top of the berm that was set back from the road. Mr. Pavese explained that he had requested 25 feet because, based on the information he had been provided, it was hard for him to envision how it would look. He was looking at a 25-foot setback from the Lakes Park property line to what was described as the go-cart track. He was neither an architect nor an engineer, and did not know how much land it would take to put in a five-foot-wide berm. Depending on the slope, a standard slope might not be adequate for a go-kart track. That was one of the issues that concerned him regarding the buffering along the entrance road.

The Hearing Examiner asked Mr. Block if there was an administrative procedure that could be used regarding the buffering? She did not believe there was, which meant that she could not give the Applicant administrative rights that the LDC did not specifically authorize. If the LDC did not specifically state that a particular request fit within the Administrative Amendment approval process, the Hearing Examiner did not have the authority to include it in a condition.

Mr. Block partially agreed with the Hearing Examiner's statement, because an Administrative Amendment specifically stated that buffers and open space could not be decreased. However, a condition could be worded to include additional vegetation. However, he understood the Hearing Examiner's concern regarding conditioning an off-site area. The Hearing Examiner stated that she could require that it be done, however, she did not have the authority or control over what and where they had to do it. Mr. Pavese noted that it had been done in the past, although he had never agreed with it.

As an example, Mr. Block stated that they had allowed temporary uses to proceed through the administrative process when they extended beyond their time frame if it did not increase the intensity or density of the project. Therefore, possibly, a condition could be worded to allow the enhancement of the buffer and not necessarily a reduction in the size of the buffer beds. He suggested that the condition could also include wording for an alternative buffer, in the event that Lakes Park had a commitment that landscaping would be planted in that area by a specific time. By wording the condition in that manner, the condition and buffering would be established and the buffering would not be reduced. The Hearing Examiner suggested that they work with the County Attorney on that matter.

At that point, Donna Marie Collins, Assistant County Attorney, introduced herself and stated the Applicant had asked for a deviation from 50 feet to 25 feet from a private property line at Lakes Park. That was where the enhanced buffer requirement came in, as it was directly tied to their deviation. She did not believe Lakes Park planned to landscape the entrance road. The reason for the densely-vegetated buffer was because the Applicant wanted to reduce the LDC requirement regarding an adjacent property by 50 percent.

The Hearing Examiner stated it was her understanding that Mr. Pavese was saying that, just in case the Lakes Park road was built before the Fenway Fun Center, that maybe the Applicant would install all the plantings on the Lakes Park property instead of their own. Ms. Collins and Mr. Pavese disagreed. Mr. Pavese stated that he wanted to work with the Applicant to not require them to put in a specific type of buffer, if they knew the Lakes Park Master Plan had already been approved by the BOCC and if they were further along with a site specific plan. If he knew a landscape buffer was to be planted north of the Applicant's property line, the Applicant could place a different type of buffer on their property line. He did not want them to have the restriction and expense of providing a bigger buffer, if it was not necessary. Furthermore, if there was any way to avoid it, he did not want them to have to go back through the public hearing process. The Hearing Examiner acknowledged her understanding of Staff's points.

Then, Ms. Collins asked if the Applicant could only be required to plant hedges, since the County knew it would be planting trees? Mr. Pavese did not know that the County would only be planting trees. Ms. Collins stated that, in her opinion, the Applicant had requested a 50 percent setback reduction, and she asked that the trees be there and that was the end of it. The Hearing Examiner insisted that it needed to be placed into some type of condition. Ms. Collins reiterated she did not support an Administrative Amendment regarding the buffer.

The Hearing Examiner believed it was unfair to the Applicant to not have a specific plan instead of providing condition language that states, if the County did one thing, the Applicant would do another. There was no way for the Applicant to go forward with their plans if they did not have a definite requirement. The Hearing Examiner stated that the Applicant and Staff needed to discuss the matter as it would have an effect on both sides and she would not make a unilateral decision on the matter unless both sides provided input for the condition.

Mr. Block suggested that the hearing record be left open in order to meet with the Applicant and reach an agreement on such a condition. Ms. Collins stated it was nice to know that Staff was willing to consider an Administrative Amendment as an alternative, but did not believe it was a good practice. Mr. Pavese reiterated his belief that the Applicant's project would be developed before the County completed their project.

The Hearing Examiner confirmed that they were still discussing Condition 8 and not the deviation. Mr. Pavese agreed and suggested that, if the Hearing Examiner decided to incorporate the berm, it should be described as five feet above the existing grade, otherwise the intent and effect would be diminished. The Hearing Examiner stated she automatically assumed that anything would be above grade when measuring height on anything to be constructed.

Next, referencing Condition 9, Mr. Pavese stated it was very hard for him to understand how the berm worked. It would have been different if they had been provided with a cut-away side view to reference. If the five-foot-high berm left them with a 20-foot-wide clear zone from the property line to wherever the nearest structure was, they could incorporate the trees or the

hedge on the side of the berm. That would accomplish what Staff had requested. He did not mean that Staff wanted 20 feet and then the start of the berm; just 20 feet of clear space. Ms. Bean stated that Condition 8 could be achieved because they had 25 feet between their property line and the nearest structure, although they were not going to incorporate it as a buffer.

At that point, Ahmad Kareh, with Bean, Whitaker, Lutz & Kareh, Inc., introduced himself and stated he had prepared Applicant's Exhibit 1 and there was only 15 feet available west of the entrance. Mr. Pavese replied that Staff wanted the buffer to include the entire distance. If the Applicant agreed, Mr. Kareh stated they could move the parking lot five feet to the south in order to conform with the requirement.

For clarity purposes, Mr. Block stated it was his understanding that the Applicant agreed with Condition 8. The Hearing Examiner added that it would include a 20-foot-wide buffer with five trees per 100 linear feet and a double staggered hedge row. Mr. Block indicated that the only difference would be from the entrance to Gladiolus Drive, where the five-foot-high berm would also be located. The buffer would run across the entire northern side, including a berm from the entrance down to Gladiolus Drive. The Hearing Examiner asked Mr. Pavese if he still recommended 14-foot-tall trees, even with the five-foot-high berm? Mr. Pavese asked that the hearing record remain open on that matter so that he could confer with the landscaper for Lakes Park.

It was Mr. Block's conclusion that Condition 8 was acceptable to the Applicant and the five-foot-high berm would be added. In addition, if the height of the trees could be adjusted, the Hearing Examiner would be advised.

Mr. Pavese referred to Condition 9 and stated it was included to accommodate the safe access of pedestrians from Lakes Park and the miniature golf development to the subject property. The County might also have improvements on their property to require cars to yield at a crosswalk in an area of lesser traffic. If the County felt that people would be prone to running across the street, the County may ask for striping to be installed. However, Mr. Pavese did not believe it would be anything unreasonable and the public would be encouraged to use the sidewalks. He noted that Staff also felt the interconnection to Castle Golf made sense.

The Hearing Examiner asked how the phrase "Staff would also encourage" in Condition 9, would be enforced? It was her understanding that the Applicant had spoken with the adjacent neighbor to the south and they had agreed it was a good business decision for both of them to have a joint pedestrian access. Mr. Pavese believed it could not be enforced as it was not like the requirement of a stub out to an adjacent property. Furthermore, at the development order phase, Development Review would probably try to deny the development order if it did not show the access. It was not a requirement, but Staff encouraged them to do it.

Mr. Block suggested that instead of Staff encouraging the access, it could be reworded to the developer may provide accommodations, etcetera. That way, they would have the option of doing it if an agreement was worked out with Mr. Thompson, and there would be no question that they had crossed over the property line with an access.

The Hearing Examiner stated that, given the term "may provide", if it suddenly showed up on the plan during development review but wasn't on the original plan, Staff would not reject it because it did not comply with the MCP. Furthermore, it was agreed that the language should state "may." Mr. Block agreed.

Continuing, Mr. Pavese understood that the Hearing Examiner did not agree with Condition 10 and explained his rationale. Under the Hearing Examiner's proposal, if the Public Works department was only allowed to review and comment, that meant the potential user of the subject property, provided they were in compliance with County's sign ordinance, could not be refused a sign permit by the Code Enforcement department. There were many different types of signs allowed for commercial uses, based on size and proximity to arterial roads such as Gladiolus Drive. They were concerned with some type of commercial signage being erected on the property that was inconsistent with the nature of Lakes Park. They wanted a rustic-type signage and the Applicant had indicated that it would most likely be implanted into the berm, with which they agreed.

The Hearing Examiner replied that in addition to Public Works exceeding their authority with the statement "must be approved by", they were also an adjacent property owner. Although Lakes Park had a stake in the perception of the area, close proximity property owners were not generally asked if they approved of a proposed sign. The way Condition 10 was written indicated that the County should be given preference that would not be given to the public. The Hearing Examiner did not believe that request to be equitable or that she had the authority to abrogate the LDC requirements, or to allow it to happen as written.

Mr. Pavese respectfully disagreed with the Hearing Examiner and explained that it was a planned development. Even though Lakes Park was the adjacent property owner, they also represented the taxpayers of Lee County. Lakes Park was a public facility and he had a responsibility to the people of the County that use that park. Because it was a planned development, he believed the Hearing Examiner had the ability to condition it in whatever manner protected the health, safety and welfare of the general public. Further, he did not believe there would be an issue about the project signage, but they were concerned if someone else actually developed the property. The Hearing Examiner understood the situation but was concerned that, by allowing this to be an approval situation for Public Works, it would set up a completely new signage standard.

Next, with regard to the deviation, Mr. Pavese stated the Applicant had requested to deviate from the required 50 feet from the north property line to the go-cart track, to allow a setback of 25 feet. On the west property line, they had requested to deviate to a maximum of 40 feet from the outer edge of the batting cage facility, in addition to a three-foot deviation a little north of that, for the netting. The County did not object to granting the deviation for the west property line, given the 65-foot-wide, heavily vegetated property in between this property and the next developable to absorb any impacts.

During conversations with the Applicant and Mr. Block, Mr. Pavese stated they had discussed the possibility of redesigning the site with the go-cart track and the batting cages in different areas. However, the Applicant had indicated they had already investigated that scenario and had valid reasons for the placement of the activities and the building.

The only other matter raised by Mr. Yarborough during a telephone conversation just before the hearing, was noise attenuation, because people utilized Lakes Park for passive recreation. After hearing from the Applicant's noise expert, the County would depend on the Hearing Examiner's analysis of that testimony to ascertain if their requirements would be adequate to attenuate any noise from the track. He did not know if the setback increase to 50 feet would necessarily do anything to attenuate the noise level. They just wanted to ensure that the placement of the track and the required buffer would be sufficient to prevent any impacts to Lakes Park.

Mr. Pavese clarified an earlier statement where he stated, "it had been done before." He did not intend there had been a condition to administratively amend something. He meant that he had seen a planned development that approved a deviation, as a part of the condition for approval, that required the Applicant to do something else on another piece of property that was not even part of the plan. The Hearing Examiner replied that, if she had done that, it had slipped by her.

Additionally, with regard to the restaurant use, Mr. Pavese stated that during his brief career in the zoning department, it was always his understanding, that Restaurant, Group II was normally just an ancillary function to the principal use of the building or the property, such as a food court in a mall, the snack bar in the Justice Center or the K-Mart luncheonette. The Hearing Examiner asked if it was not designated, was it automatically, by regulation, an ancillary use? He replied that was his understanding of the regulations that a Group II restaurant was not allowed unless it was ancillary to another use. The Hearing Examiner advised that she would review the regulations to refresh her memory.

First to speak from the public was Marian Haney, who was a member of the Board of Parkside Condominiums. They were concerned that the project would affect their increasing property values and they did not want that to be reversed. When Lakes Park had an event such as the Medieval Faire, the traffic was a major concern because the cars parked along Old Gladiolus Drive in front of their condominiums and broke the water sprinklers. There was also trash thrown all around. Currently, they heard the loud speakers at a nearby Lowe's and they were concerned with the increased noise level from the late hours proposed for the project. When their condominiums were constructed, they did not have WalMart, Lowe's, Home Depot and all the other stores around them. They were a nice little community by themselves with only a mobile home community at the end of the road.

Next to speak was Wayne Sether who introduced himself as the treasurer of the Parkside Condominium Association. He prefaced his testimony by saying that perhaps the Hearing Examiner could neither react to nor have an effect on what he was about to say. He said they were very concerned with the noise level from the proposed various activities such as the go-carts racing around the track and people screaming. He had already spoken with one of the developers concerning the noise level. Furthermore, he requested that outside speaker amplification not be allowed. As previously mentioned by Ms. Haney, they heard the loud speaker from Lowe's all day long.

Continuing, he was concerned that, when the 81 parking spaces at the fun center were filled and someone did not want to use the paid parking at Lakes Park, they would travel along Old Gladiolus Drive and park on the grass in front of their condominiums and leave trash all over the area. Also, there was always a terrible problem during the Medieval Faire. People also break the flood lights and landscape lights by running over them; each one of those costs the property owners \$48 to replace. He would ask that "no parking" signs be placed in front of

their complex on Old Gladiolus Drive. The Hearing Examiner stated that she did not have jurisdiction over that, but directed Mr. Sether to relate his concerns to the Lee County Department of Transportation.

In addition, Mr. Sether stated the condominium residents were concerned with the 11:00 p.m. closing time and would prefer closing at 9:00 p.m. Mr. Sether then asked if alcohol would be served and was told it would not be. Another concern they had was whether there would be an off-duty policeman hired to take care of security and direct the increased traffic, and asked how the increase in overall traffic was being handled? He likened the high-speed traffic on Gladiolus Drive to the Indianapolis Speedway and wanted to know what could be done to alleviate that problem. People took their lives into their own hands when they tried to cross that road.

The Hearing Examiner advised Mr. Sether that two of his matters needed to be presented to the Lee County Department of Transportation; the "no parking signs" on their property and the safety concern for the intersection. Lee County Department of Transportation must specifically address the safety concern. The amplification concern would be discussed when the Applicant returned later in the hearing, probably during the Applicant's rebuttal.

At that point, Ms. Bean presented a document entitled "Review of Concession Go-Kart Noise and General Noise Levels" along with a graph entitled Common Noise Sources and Levels that were labeled as Applicant's Exhibit 3. She then introduced Jim Sanders, of Arnold Sanders Consulting Engineers, Inc., to address the noise concerns.

Reading from the graph, the Hearing Examiner asked if "Ten Carts 150 feet from Track Center" was the cumulative sound of the 10 go-carts and that one go-cart would generate less than the 61 decibels? Ms. Bean agreed that the Hearing Examiner's interpretation was correct.

Mr. Sanders stated that he had a degree in Industrial Engineering and worked primarily in the engineering business and had dealt with sound vibrations for 25 years. Additionally, he had three years experience with generators and approximately 1.5 years with his partner Rick Arnold, in Fort Myers. He stated that he had read and reviewed the proposal given to the Applicant by Peter F. Olesen and Associates, Inc., entitled "Review of Concession Go-Kart Noise And General Noise Levels," Applicant's Exhibit 3. Mr. Olesen had been specifically involved in that type of activity for 12 years during which he had prepared many studies, specifically involving amusement facilities. Included in the report were five separate studies from different facilities, over different periods of time, and performed by different organizations. Mr. Sanders believed the concern of most people was the noise from the go-carts and that was what Applicant's Exhibit 3 demonstrated. He realized there were also loudspeakers and people yelling, but he believed the go-cart noise to be the major concern.

Mr. Sanders explained that sound was measured in decibels, dBA primarily. The "A" recording of sound was more relevant to the human ear as the obnoxious or annoying type. All the sounds talked about were referenced as dBA. As an example, 60 dBA would be a noise level less than that at the public hearing and could be compared to a normal room conversation. However, doubling the sound at 60 dBA would give a reading of 63 dBA - not 120 dBA. Likewise, if the sound was cut in half, it would drop from 60 dBA to 57 dBA.

Next, Mr. Sanders reviewed the different examples on the graph entitled "COMMON NOISE SOURCES AND LEVELS," part of Applicant's Exhibit 3. These included conversational speech at 60 decibels, the average residence at 50 decibels (which took into account a running air conditioner), a power mower about 15 feet away at 90 decibels, a vacuum cleaner at 80 decibels, and freeway traffic 50 feet away at 75 decibels. He stopped at the corner of Lakes Park and Gladiolus Drive on his way to the hearing and performed a quick, informal reading with a decibel meter. The sound level at the medical center across from the subject property registered at between 65 and 70 decibels from the passing cars and trucks. When the traffic lightened up, the decibel level dropped to 58.6. However, when a dump truck passed, it registered 80.4 decibels. Based on the studies done, 10 go-carts at 150 feet from the center of the track would produce about 70 decibels.

Mr. Sanders explained that sound could be reduced in many ways including lowering it at the source with a better muffler, putting a hood around the sound to hold it in, blocking the sound by a berm with trees and shrubbery, or doing nothing by virtue of distance. The intensity of the sound waves traveling through the air were reduced the farther away it was from the source of the noise. If the sound was 80 decibels at the source, it would be lower at a distance 200 feet. Therefore, the 10 go-carts at 150 feet registering 70 decibels were predicted to be 62 decibels at 300 feet from the source, with no blocking or buffering. The level of sound just dissipated over that distance.

After visiting the site and reviewing the report that documented go-cart operations at other sites, there was probably nothing in the proposed request that would exceed Lee County's sound ordinance levels, published in Lee County Ordinance No. 93-15. Additionally, there were different noise level requirements for commercial, as opposed to residential, uses. During the time periods of 7:00 a.m. to 10:00 p.m., commercial zoning was allowed 70 decibels at the property line and residential was allowed 66 decibels.

Summarizing, Mr. Sanders stated that 62 decibels at 300 feet from the activity was below the allowed 66 decibels for residential uses. In addition, at 10:00 p.m. the permissible noise level for residential uses would drop to 55 decibels. So, the time period from 10:00 p.m. to 11:00 p.m. would need to be addressed. He further stated that the only way to get an actual reading was for the go-carts to be run on the track and for sound readings to be taken. The level of sound was dependent on many variables. For example, noise was louder during the winter than in the summer because of denser air that allowed the sound waves to travel better. Shrubs and a berm were excellent ways to keep the sound contained.

At that point, the Hearing Examiner asked Mr. Sanders if it was his opinion that the placement of the requested go-cart activity, at the decibels they were known to create, would not have an adverse effect on a future residential development south west of the go-carts? He agreed and explained that the sound would be no louder than the fan in the hearing room. It was not even heard until you actually thought about it. The Hearing Examiner then asked if the traffic along Gladiolus Drive would have any sound attenuation effect? Mr. Sanders replied that the sounds coming from the go-carts would be less than the sound coming from the vehicles on the road, as it was not the traffic attenuating the go-cart sound; it was the distance. In addition, he said that the buffer of trees and shrubs between the site and the condominiums would absorb a lot of sound.

Next, the Hearing Examiner referred to Lakes Park and the berm with light vegetation and trees that would only run half way along the north side. She asked that Mr. Sanders give his opinion of the noise level in that area and if the berm and trees would act as a noise retardant at Lakes Park. He replied that the berm covered a distance of approximately 400 to 500 feet over the cleared parking lot area. Ms. Bean added there would be 14 to 16 trees and a double staggered hedge on the berm. Further, Mr. Sanders assumed the lower foliage on the trees would not be much higher than the higher foliage of the hedge; which would thereby reduce the size of the opening for the sound to go through. In addition, the angle of the sound would be reflected upwards.

Continuing, the Hearing Examiner questioned whether the County planting additional trees would help with the sound attenuation of the go-cart track. Mr. Sanders referred to an small island area in the roadway on the Lakes Park property that could be planted with trees to also act as a sound absorber.

In summary, Ms. Bean concluded that his testimony was that the inner area of Lakes Park, where the majority of the recreation would take place, would have less attenuation. Mr. Sanders remarked, that given the distance between the areas, and without trees or buffering, the noise level would probably be below 60 decibels with ten carts running on the track.

Ms. Collins asked if they were testifying that there would be a maximum of 10 carts running on the track at any given time? Mr. Sanders replied that the studies was based on that number of go-carts. The Applicant, Barry Fischer stated there would be a total of 20 carts, but only 10 would be loading at any given time, thereby providing continuity to the flow. The total ride time would be approximately five minutes. Further, the test data used a full-throttle example of stationary carts running at 5,000 rpm, when, in reality they run at about 3,500 rpm and would not be just in one place, but would be scattered around the track.

To clarify this further, D. J. Thiele, the Applicant, stated that not only did the carts have mufflers, they had extended mufflers. They were built by J. & J. Amusements, which built the highest quality go-carts in the business, and provided them with extended mufflers to lessen the noise. In addition, the carts were not open, except for the back end, but were enclosed with a fiberglass shell. Three-quarters of the motor would be encased in fiberglass. They would be purchasing the most noise-reduced go-cart in the industry. Mr. Sanders related that was an example of reducing the noise at the source so that it would not have to be attenuated as much.

At that point, the Hearing Examiner asked if Staff and the Applicant had decided the five-foot-high berm was not necessary, and did they believe that the sound emanating from the track would be attenuated enough to be within the comfortable range for the nearby residents? Mr. Sanders replied that it would be within the range of the County's ordinance. However, with the berm and the vegetation, it would be a more comfortable level.

Then, Mr. Pavese asked for clarification about the maximum amount of decibels from a commercial use at a residential property line. Mr. Sanders confirmed that 55 decibels were allowed. As an example, he stated if the subject property bordered a commercial site it would be allowed 72 decibels dropping to 65 decibels at 10:00 p.m. For a residential bordering line, the permissible sound level was 66 decibels during the day, and reduced to 55 at 10:00 p.m.

Next to speak was Ahmed Kareh of Bean, Whitaker, Lutz & Kareh, Inc., who stated that he had been practicing civil engineering for more than 15 years. He presented a traffic comparison, labeled as Applicant's Exhibit 4, that was prepared in accordance with the Institute of Transportation Engineer's Manual. It demonstrated that, for this recreational use, there would be an average of 354 daily trips. However, their count estimated eight trips during the A.M. (peak) hours and 23 during the P.M. (peak hours) hours. Comparing that to a residential use with 10 dwelling units per acre in the Central Urban category, 3.94 acres x 10 would allow 39 units, which generated an average of 436 daily trips, with 37 A.M. (peak hour) trips and 46 P.M. (peak hour) trips.

Mr. Kareh stated that most of the uses in that area were medical offices. If this property were developed with medical offices, approximately 20 percent of land area was allowed for a building. Based on that percentage, he calculated 34,000 square feet with 1,175 average daily trips, with 83 A.M. trips and 113 P.M. trips. Using a Traffic Impact Statement (TIS) from a previous case, there would be 2,550 average daily trips with 206 A.M. trips and 248 P.M. trips. In that example, the A.M. traffic was approximately 25 times more than the requested use and the P.M. traffic had approximately 10 times more traffic.

In conclusion, he stated that their proposed use would have a very minimal effect on the roads and should not have a negative impact. As part of the TIS, he prepared the level of analysis required by Lee County, which found that Gladiolus Drive operated at a Level of Service (LOS) "D" and would remain at the same level with their project.

Reflecting on the traffic figures, the Hearing Examiner calculated that based on a 13-hour operational day, 354 trips were slightly more than 27 trips per hour on the roadway that would be attributable to this project.

Further, the Hearing Examiner indicated that she was inclined to restrict the use of outdoor speakers and advised Ms. Bean that the matter needed to be addressed in the public hearing.

Ms. Bean then returned to present her closing statements. She stated that in order to be more efficient and safety conscious, the facility would be using outdoor speakers to give repetitive instructions to the go-cart drivers and amplification was needed. There would not be any music; it was simply for instructional purposes for the go-cart drivers.

The Hearing Examiner asked where the speakers would be located, and Mr. Thiele advised that they would be located inside the covered area of the track where the customers would be loaded into the go-carts. It was very important for them to be aware of the rules for operation and was essential for safety purposes. Speakers would not be placed in any other area, would be directed into that area and would not be exceedingly loud. Mr. Fischer remarked that the speakers at Lowe's were structured so that the speakers could be heard throughout the parking lot. Their speakers would be contained within the canopy area and would not be at the same volume.

The Hearing Examiner asked if the Applicant's had been to Greenwell's and would their facility be operated in the same manner, as she would be using it as a comparison for their project? It was important for her to know if their facility would be different, so that any adverse conditions found elsewhere could be discounted in her decision regarding their request.

Mr. Thiele testified that he had run a similar facility in Massachusetts for 15 years and he could address the concerns over the trash and hours of operation. In his opinion, when he visited Greenswell's with his family, he did not like the way it was operated and thought that it needed a face lift. That was not the way their facility would operate. It would be more upscale, with a clean, well lit parking lot, clean restrooms and no trash scattered about. It would be done right.

The Hearing Examiner then asked if the Greenwell go-carts had the same fiberglass body as the Applicant had described, to which Mr. Thiele replied they had fiberglass bodies, but their carts were much older and he did not believe they had the same muffler system. Further, Greenwell's had a similar loading area with a roof, but the Applicant's roof would be pitched, which he believed would work to hold the sound in that area. The noise of the carts would be very different from theirs. Then, Mr. Fischer recommended that the Hearing Examiner visit King Richards in Naples located on the east side of Airport Pulling Road, one-mile or two south of Immokalee Road.

Ms. Bean returned to address the parking concerns of the nearby residents, noting that their facility was privately owned and had no connection with Lakes Park. People visiting Lakes Park would use that parking facility and it was very unlikely that anyone visiting the fun center would cross over Gladiolus Road to park. Based on Mr. Ahmed's TIS, their facility actually allowed four complete parking turnovers during the day, which provided more than adequate parking for their needs. Further, she believed the trash and debris was associated with Lakes Park and would not necessarily be connected with the fun center. The onsite caretaker would address that issue on a daily basis.

The Hearing Examiner questioned whether there would be a gate across the entrance that would be closed after hours and Mr. Fischer replied there would be either an electronic or manually closed gate. He stated they were also concerned about the events held at Lakes Park, because of the number of people it generated. Unfortunately, the masses of people attending an event did not care where they parked. Their facility would also have to address the parking and trash issues from Lakes Park patrons and they would work with them to ensure it worked for everyone.

In closing, Ms. Bean stated that the 11:00 p.m. closing time was an industry standard and the 10:00 p.m. to 11:00 p.m. time was only on Friday and Saturday. That time period would actually be used to wrap things up and prepare for the next day. There would not be the same level of activity during those hours that there would be between 7:00 p.m. and 8:00 p.m., or between 8:00 p.m. and 10:00 p.m. on a weekend night. Mr. Thiele related that his northern facility operated from 9:00 a.m. to 11:00 p.m. every day, and that the activity during the last hour trickled down, which gave them time to prepare for the next day. It was not a busy hour, but was an essential hour.

At that point, Mr. Block reiterated that the Condition 8 language regarding buffering still needed to be worked on. Other than that matter, Staff approved the request and found it consistent with the Lee Plan.

As final remarks, the Hearing Examiner agreed with the request, with minor concerns. However, a condition that stated alcohol was not allowed would be added, which the Applicant had already agreed with. That condition would lessen additional noise from adult patrons. If the property was sold, the next owner may not agree with a verbal statement. Additionally, there may be a condition added that indicated the speakers would be allowed only in the

loading/training area and nowhere else in the park. Further, the Hearing Examiner advised the closing time issue would be reviewed.

The record would be left open until Friday, February 27, 2004 at 5:00 p.m. for written submissions from the Applicant and Staff regarding Condition 8. If additional time was required, the Hearing Examiner should be notified at least 24 hours in advanced.

In addition, the Hearing Examiner announced that a site visit, for comparison purposes, would be conducted to King Richard's and Greenwell's before her recommendation was issued. At that time, the hearing was closed.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. J. L. (Jim) Sanders, % Arnold/Sanders Consulting Engineers, Inc., 16681 McGregor Boulevard, Suite 202, Fort Myers, Florida 33908

ADDITIONAL COUNTY STAFF:

1. Donna Marie Collins, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902-0398
2. Mike Pavese, Lee County, P. O. Box 398, Fort Myers, Florida 33902-0398

PUBLIC PARTICIPATION:

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

For:

1. Larry Thompson, 7400 Gladiolus Drive, Fort Myers, Florida 33908

Against:

1. Marian Haney, 15051-1 Parkside Drive, Fort Myers, FL 33908
2. Wayne Sether, 15101 Parkside Drive, #4, Fort Myers, Florida 33908

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

For: NONE

Against: NONE

General:

1. Rosemary Sentelik, 15104-5 Parkside Drive SW, Fort Myers, Florida 33908

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 5th day of March 2004. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

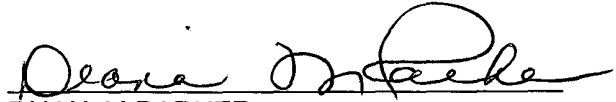
B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

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.



DIANA M PARKER
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land
Lying in
Section 35, Township 45 South, Range 24 East
Lee County, Florida
(Remaining Parcel Boundary)

A parcel of land situated in the State of Florida, County of Lee, Section 35, Township 45 South, Range 24 East, being a part of a parcel of land recorded in Official Record Book 1635 at Page 1728, Public Records, and further described as follows:

Starting at the northwest corner of the Northeast One Quarter (NE 1/4) of said Section 35; thence N89°08'58"E along the north line of said fraction for 65.00 feet to the Point of Beginning of the following described parcel; thence continue N89°08'58"E along the north line of said fraction for 552.56 feet to a concrete monument (stamped LB 4919) marking the current right-of-way line of Gladiolus Drive (C.R. 865); thence S43°13'35"E along said right-of-way line for 31.17 feet to a concrete monument (stamped LB 4919); thence S19°17'57"W along said right-of-way line for 325.43 feet to a concrete monument (stamped LB 4919) on the south line of the North One Half (N 1/2) of the Northwest One Quarter (NW 1/4) of the Northwest One Quarter (NW 1/4) of the Northeast One Quarter (NE 1/4) of said Section 35; thence S89°13'33"W along said fractional line for 459.56 feet to the east line of Parcel 60b as described in that certain Order of Taking recorded in Official Record Book 2512 at Pages 2992 through 3012, inclusive; thence N01°10'59"W along the easterly line of said Parcel 60b for 327.93 feet to the Point of Beginning.

Containing 3.92 acres, more or less.

Bearings are based on the right-of-way maps for Gladiolus Drive with the north line of the Northeast One Quarter (NE 1/4) of Section 35 as bearing N89°08'58"E.

Subject to a drainage easement over and across the westerly 30.00 feet thereof.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

RECEIVED
SEP 18 2003

34186DESC1 PERMIT COUNTER 8/1/03

DCI2003-00062

PRINCIPALS

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker
Scott C. Whitaker, P.S.M. 4324

ASSOCIATES

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDOLF A. NORMAN, PE

Applicant's Legal Checked

by *[Signature]*

EXHIBIT A

DCI2003-00062

05-Mar-04 - Page 32

SKETCH TO ACCOMPANY DESCRIPTION

OF A PARCEL OF LAND
LYING IN

SECTION 35, TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA.

LAKES PARK

P.O.C.
NORTHWEST CORNER
OF NORTHEAST 1/4
SECTION 35

NORTH LINE
OF NORTHEAST 1/4
SECTION 35

JOINT USE ACCESS ROAD

P.O.B.

N.89°08'58"E 552.56'
(BEARING BASIS)

DRAINAGE CROSS-EASEMENT
O.R. 2563 PG. 659

"PARCEL 608"
TO LEE COUNTY
BY ORDER OF TAKING
O.R. 2512 PGS. 2992-3012

SUBJECT PARCEL

N.01°10'59"W 327.93'

N.01°10'59"W 327.93'

S.89°13'33"W 459.56'

SOUTH LINE OF
N1/2 NW1/4 NW1/4 NE1/4
SECTION 35

CLADIOLUS DRIVE REALIGNMENT
(C.R. 865)
CENTERLINE SURVEY FOR CLADIOLUS REALIGNMENT
CENTERLINE CONSTRUCTION FOR CLADIOLUS REALIGNMENT
OLD R/W - N19°20'57"E 325.43'
R/W - S.19°17'57"W 325.43'



Applicant's Legal Checked
by

*** THIS IS NOT A SURVEY ***
Bean, Whitaker, Lutz & Kapeh, Inc.

BEAN, WHITAKER, LUTZ & KAPEH, P.S.M.
Florida Certificate No. 4324 D

BOUNDARY - FENWAY FAMILY FUN PARK

Bean, Whitaker, Lutz & Kapeh, Inc. (C.R. 4810)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
1841-1 MOOREBORO BULEVARD, FORT MYERS, FLORIDA 33919-8910 (239) 481-1331

RECEIVED
SEP 18 2003

PERMIT COUNTER

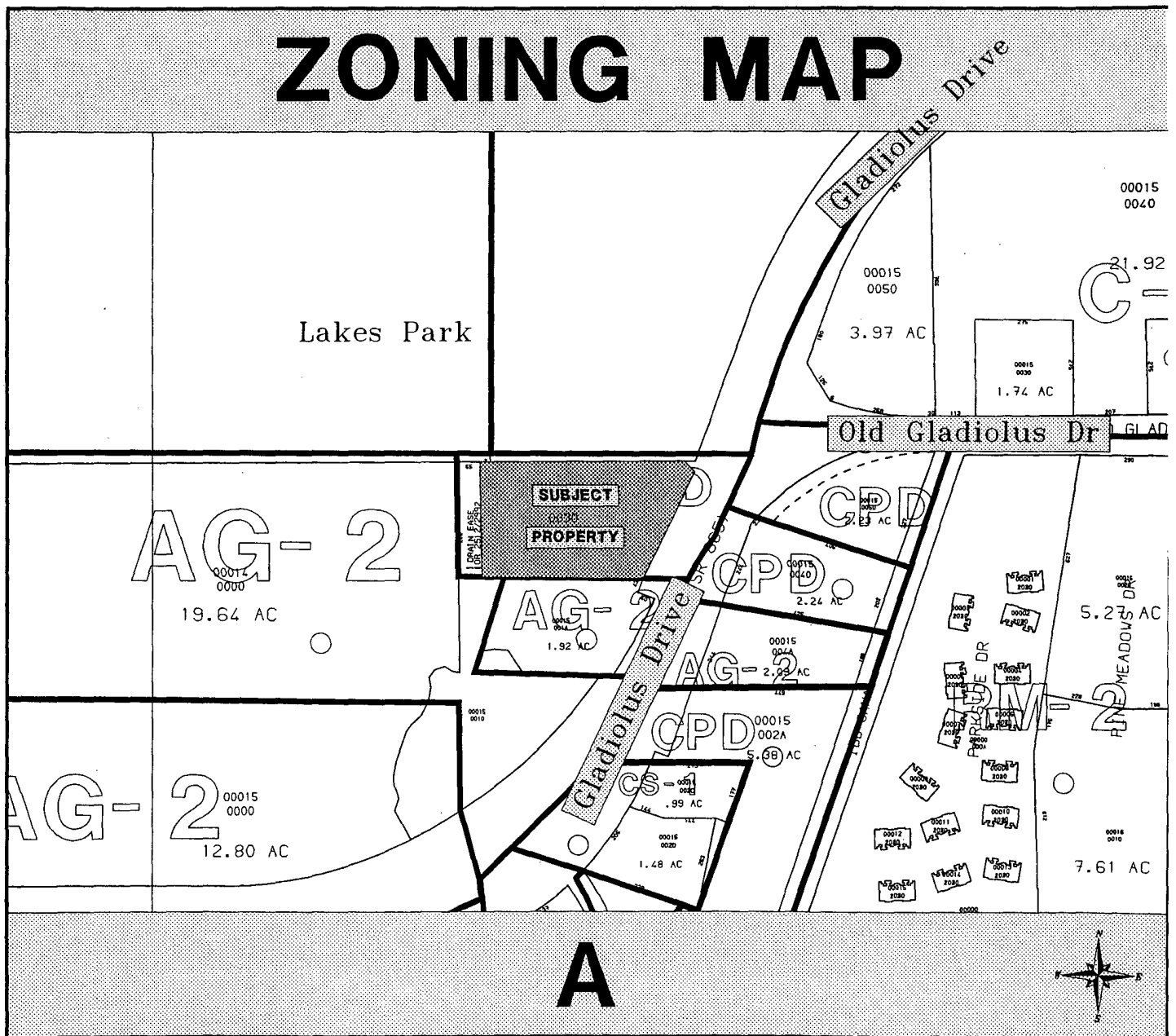
DCI 2003-00062

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS,
AND RIGHTS-OF-WAY (WRITTEN AND UNWRITTEN, RECORDED
AND UNRECORDED).

BEARINGS ARE BASED ON THE RIGHT-OF-WAY MAPS FOR
CLADIOLUS DRIVE WITH THE NORTH LINE OF THE
NORTHEAST ONE QUARTER (NE 1/4) OF SECTION 35 AS
BEARING N89°08'58"E.

DATE	7-28-03	PROJECT NO.	34186	DRAWN BY	CDK	SCALE	1" = 100'	SHEET	1 OF 1	FILE NO. (S-44)	35-45-24
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ZONING MAP



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

ORDER FOR CONTINUANCE

CASE NUMBER: DCI2003-00062
APPLICANT: BUSHWOOD ENTERTAINMENT, LLC, in reference to
FENWAY FAMILY FUN CENTER AT LAKES PARK
RESPONSE DATES: FEBRUARY 27, 2004

The hearing on the above-styled case began as scheduled on February 11, 2004. At the conclusion of the presentations of Staff and Applicant and, following the comments and presentations of other interested parties present, the matter was continued to the date and time set forth below to allow the Staff and the Applicant to submit additional materials, only as requested by the Hearing Examiner, which are responsive to questions, issues and concerns which arose during the course of the proceedings.

Written submissions shall be in the form of:

- 1) A Joint (or separate) submittal from Applicant and Staff consisting of revised language for Condition 8.

This matter is continued to **FRIDAY, FEBRUARY 27, 2004 AT 5:00 P.M., FOR SUBMISSION OF MATERIALS AS REQUESTED BY THE HEARING EXAMINER.** At, or before this time, the requested materials will be submitted to the Hearing Examiner, and other responding parties, and the Hearing Examiner will determine if these submissions are sufficient. **NO HEARING WILL BE HELD AND NO TESTIMONY WILL BE HEARD.** If the Hearing Examiner determines that these submissions are insufficient, a subsequent hearing will be set to discuss this matter further and notices will be sent to all parties involved.

Accordingly, written submittals will be delivered to the Office of the Hearing Examiner, 1500 Monroe Street, Suite 218, Fort Myers, Florida, on or before these dates. Copies of this order will be furnished to the Staff, the Applicant, and all hearing participants.

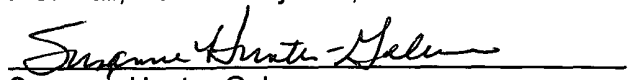
DONE AND ORDERED this 11th day of February, 2004.



DIANA M. PARKER
LEE COUNTY HEARING EXAMINER
P. O. Box 398 (1500 Monroe Street, Suite 218)
Fort Myers, Florida 33902-0398
Telephone: 239/479-8100 Fax: 239/479-8106

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforesaid Order was sent to all hearing participants, officially established as of the above Order date, either by U.S. Mail, Inter-County Mail, or Facsimile Transfer on the 12th day of February, 2004.



Suzanne Hunter-Galvan
Office Manager

February 12, 2004

LEE COUNTY, FLORIDA
ZONING DIVISION
STAFF REPORT

TYPE OF CASE: PLANNED DEVELOPMENT/DCI

CASE NUMBER: DCI2003-00062

HEARING EXAMINER DATE: February 11, 2004

I. APPLICATION SUMMARY:

- A. Applicant: Bushwood Entertainment, LLC in ref. to Fenway Family Fun Center @ Lakes Park
- B. Request: Rezone 3.92 acres from Commercial Planned Development to Commercial Planned Development to allow development of up to 12,500 square feet of building area with a maximum building height of 35 feet (and 135 feet for batting cage supports, wall and net). Uses proposed include coin operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service. Blasting is not a proposed development activity for this project.
- C. Location: The subject property is located at 7350 Gladiolus Drive (SW corner of Gladiolus Dr. & Lakes Park entrance), in S35-T45S-R24E, Lee County, FL. (District #3)
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property: The subject property is located in the Central Urban future land Use category of the Lee Plan. The site is currently zoned CPD with a vacated Master Concept Plan. The subject property is currently vacant.
- E. Surrounding Land Use:

Existing Zoning & Land Use

North: CF-2, Lakes Regional Park

East: Gladiolus Drive; then CPD, medical office

South: AG-2, miniature golf (Kastle Golf)

West: AG-2, vacant (the first 65 feet is part of Lakes Park, then a parcel that the subject of an application for RPD zoning)

Future Land Use Map

Public Facilities

Central Urban

Central Urban

Central Urban

- F. Size of Property: 3.92± acres

II. RECOMMENDATION:

Staff recommends **APPROVAL** of the Applicant's request for rezoning from Commercial Planned Development to Commercial Planned Development with the following conditions and deviations:

January 26, 2004

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Page 1 of 7

A. Conditions

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Fenway Family Fun Center," stamped received NOV 26, 2003, last revised 10/14/03, 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.

The maximum building square footage permitted in this development is 12,500 square feet.

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

a. Schedule of Uses

ACCESSORY USES AND STRUCTURES (LDC Sections 34-1171 et seq.,
34-2441 et seq., 34-1863, 34-2141 et seq., and 34-3108)
ADMINISTRATIVE OFFICES
CARETAKER'S RESIDENCE
ESSENTIAL SERVICES (LDC Sections 34-1611 et seq., and 34-1741 et
seq.)
ESSENTIAL SERVICE FACILITIES (LDC Section 34-622(c)(13)): Group I
(LDC Sections 34-1611 et seq., 34-1741 et seq., and 34-2141 et seq.)
PARKING LOT: Accessory
RACETRACKS (limited to go-cart track only)
RECREATIONAL FACILITIES:
Commercial (LDC Section 34-622(c)(38)): **Group I** (limited to coin-
operated amusement establishments that primarily provide coin-
operated amusement devices; coin-operated includes coins, tokens,
or other similar devices) and **Group III** (limited to the applicant's
proposed bumper boats, kiddie merry-go-round, and batting cages)
RESTAURANTS (LDC Section 34-622(c)(43)): Group II only
SIGNS in accordance with Land Development Code Chapter 30
STORAGE: Indoor only, (LDC Section 34-3001 et seq.)

b. Site Development Regulations

Setbacks must be in conformance with the Commercial Tourist, CT district
and with Deviation 1.

3. The buffer along Gladiolus Drive must include a 5 foot high berm above grade along with a Type "D" buffer along the eastern property boundary line in order to provide a partial sound and a visual buffer toward the east.
4. This project is not permitted to have any casino style games.

5. The operation may open daily at 11:00 AM. The operation must close at 10:00 PM, Sunday through Thursday, and at 11:00 PM on Friday and Saturday.
6. The maximum permitted height of the poles and netting for the batting cage facility is 40 feet. The netting must be a dark green or black color.
7. Water management facilities developed as part of this CPD must not adversely impact the existing water management facilities serving Lakes Park or preclude the development of the enhanced buffer as required along the Lakes Park entrance road.
8. The developer must provide a minimum 20 foot wide buffer containing 5 trees (Florida #1 Standard) per 100 linear feet and a double staggered hedge row (100% native species) along the property line contiguous to the Lakes Park entrance road. The required trees must be a minimum of 14 feet tall overall and have a 6 to 8 foot wide spread at the time of planting.
9. The developer must provide facilities to accommodate the safe access of pedestrians from Lakes Park to the proposed amusement facility as determined by the Director of Development Services at the time of local development order application. Staff would also encourage the developer to provide accommodations for pedestrian access from the subject property to the miniature golf development contiguous to the south of the subject property.
10. Prior to issuance of a sign permit, project signage must be approved by the Lee County Department of Public Works during the local permitting process.
11. 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.
12. 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.

B. Deviations

The applicant has requested only one deviation from the Land Development Code.

Deviation 1 seeks relief from LDC Section 34-2474(b)(1) which requires commercial sports/amusement parks, amusement devices and water slides shall not be located less than 50 feet or a distance equal to the height of the structure or the device, whichever is greater, from any property under separate ownership, provided further

that such setback shall be 100 feet from any adjacent property zoned RS, TF, TFC, RM, MH, or RPD or any existing residential uses; to allow the following:

- A. 10 foot - south property line
- B. 25 foot - Lakes Park entrance road (North property line)
- C. 25 foot - Gladiolus Drive (East property line)
- D. 40 foot - West property line

This deviation is recommended to be **DENIED**. Staff believes that the site could be re-designed to comply with the required setbacks without adversely impacting the achievement of the planned development, while continuing to protect the public's health and safety.

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 to Commercial Planned Development by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested CPD 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 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.

III. BACKGROUND INFORMATION AND ANALYSIS:

Introduction/Synopsis

The applicant is requesting approval of a rezoning to Commercial Planned Development to allow the development of this site with a commercial recreational facility consisting of batting cages, go-cart track, bumper boats, merry-go-round, and a two story building to house an arcade and restaurant. This site is currently zoned CPD but with a Master Concept Plan that has been vacated.

Master Concept Plan

The proposed development includes up to a total of 12,500 square feet of total floor area. Uses planned in this development are similar to uses found in other family oriented commercial recreation developments: a go-cart track, batting cages; bumper boat area; and a building housing the offices, game arcade and event rooms where food and beverages will be served.

Access to the development is planned with two separate connections. The primary access is from the Lakes Park Entrance Road. This will serve as the customer access to the site to the parking lot serving the site. A secondary access is planned with the connection to the Kastle Golf miniature golf course access. This will serve as the service delivery access to the site.

Fifteen foot wide buffers are planned along the northern and eastern boundaries of the site adjoining the two roads. A 5 foot buffer is planned along the southern boundary next to the miniature golf course. No buffer is proposed along the western portion of the site adjoining Lakes Park.

Lee Plan Considerations

Staff recommends that this request be found CONSISTENT with the Lee Plan as offered in the recommended zoning actions and conditions of approval.

The subject property is located in the Central Urban future land use category of the Lee Plan. This category is described as follows in the Lee Plan:

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). (Amended by Ordinance No. 94-30, 02-02)

This is a proposed commercial use of land consistent with the above Policy of the Lee Plan.

POLICY 2.2.1: Rezoning and development-of-regional-impact proposals will be evaluated as to the availability and proximity of the road network; central sewer and water lines; community facilities and services such as schools, EMS, fire and police protection, and other public facilities; compatibility with surrounding land uses; and any other relevant facts affecting the public health, safety, and welfare. (Amended by Ordinance No. 94-30, 00-22)

The subject property is access from Gladiolus Drive, a six-lane arterial road, expected to be at a Level of Service "D" when this project is expected to be completed. Central water and sanitary sewer service are available with mains existing along Gladiolus Drive. Fire, EMS, and police protection is available in the area to serve this project. Staff is concerned about the height of the proposed batting cage netting and the potential impacts to the lands to the east. A proposed height of 135 feet for the batting cage netting is too high in staff's opinion. A height of 35 feet should be sufficient for this netting since these are typically enclosed with netting or walls along the sides and netting above acting as a roof. (It can be noted that the driving range found along Daniels Parkway in front of the Brookshire development and the range on Summerlin Road next to the Hampton Inn, both have netting height of 35 feet.) Staff also supports an increased buffer along Gladiolus Drive. This will reduce passerby distractions for drivers along Gladiolus Drive. The lighting and activities at this center can become a distraction to drivers and the public. Staff is proposing this increased buffer to reduce the potential for accidents related to the drivers distracted both at the intersection and those passing through on Gladiolus Drive.

POLICY 6.1.4: Commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities. (Amended by Ordinance No. 94-30, 00-22)

The proposed commercial development is consistent with this Policy and compatible with the adjoining uses. Adjoining this site to the south is another outdoor commercial recreational facility (Kastle Golf). To the north and west is Lakes Park, and to the south is a six lane, median divided road (Gladiolus Drive).

POLICY 6.1.7: Prohibit commercial developments from locating in such a way as to open new areas to premature, scattered, or strip development; but permit commercial development to infill on small parcels in areas where existing commercial development would make a residential use clearly unreasonable.

Approval of this request will not open up a new area to development, but will allow it to infill onto a parcel between a regional park and another outdoor commercial operation. This request is consistent with this Policy.

Neighborhood Compatibility

This neighborhood consists of vacant lands, commercial office development, and a County regional park. The proposed development, as conditioned, is compatible with this surrounding development. The closest residential unit is 850 to 900 feet to the east off of Old Gladiolus Drive (Parkside Condominiums). These existing residential units are separated from this site by an existing medical office development and Gladiolus Drive.

Environmental Issues

Environmental Sciences (ES) staff has reviewed the request and conducted a site inspection on October 1, 2003. The site is composed of mowed grassy areas and scattered concentrations of invasive exotic vegetation. No signs of protected species were observed. The proposed 30 percent open space and the buffers are consistent with Chapter 10 of the Land Development Code. ES staff has no issues with the approval of this request.

Transportation

Staff has reviewed the potential traffic impacts and Level of Service for Gladiolus Drive. Attachment D notes that Gladiolus Drive with and without this development will operate at a Level of Service "D".

Parks and Recreation

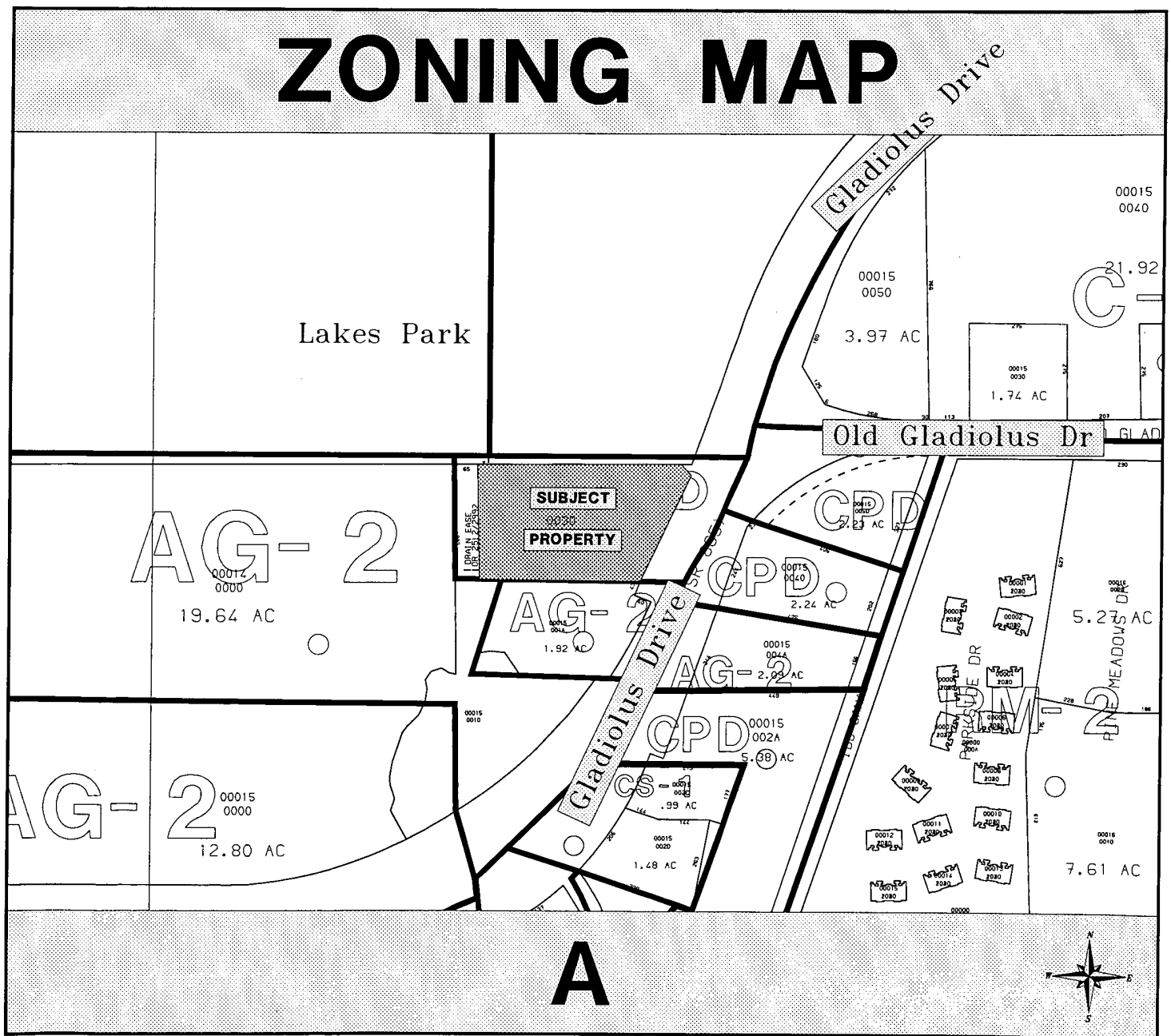
Attachment E is a copy of comments provided by the Department of Public Works related to the potential impacts of the proposed development on the adjoining regional park, Lakes Park.

IV. ATTACHMENTS:

- A. Map of surrounding zoning
- B. Applicant's supporting documentation
- C. Comments from Environmental Sciences
- D. Comments from Development Services
- E. Comments from Public Works

cc: Applicant
County Attorney
Zoning/DCI File

ZONING MAP



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

FENWAY FAMILY FUN CENTER @ LAKES PARK**NARRATIVE REGARDING ZONING REQUEST**

(Narrative to explain Guidelines for decision-making embodied in Section 34-373.(a)(5), compliance with design standards of Section 34-411., compliance with Lee Plan Sections 34-373.(a)(5) & 34-491., and explanation of the Surface Water Management Plan according to Section 34-373.(b)(1)).

EXHIBITS II-E-2, II-E-4, II-E-5, AND IV-E-2**PRINCIPALS:**

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS**ASSOCIATES:**

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

ATTACHMENT B

NARRATIVE STATEMENT FOR A REZONING TO MINOR COMMERCIAL PLANNED DEVELOPMENT

INTRODUCTION

The intent of this Application for Public Hearing is to rezone the subject parcel at 7350 Gladiolus Drive from a Commercial Planned Development (CPD) allowing a Convenience Food and Beverage Store with fuel pumps to a Minor Commercial Planned Development (CPD) limiting the uses to Recreation Facilities, Commercial, Groups I & III. The site is located on the southwest corner of Gladiolus Drive and Lakes Park entrance road. Lakes Park, a Lee County Regional Park lies to the northeast and Castle Golf miniature golf range is to the south.

The applicant feels that the rezoning will better serve to meet the existing and the expected demand for amusement and recreational facilities for the growing residential areas south of Cypress Lake Drive, west of I-75, north of Corkscrew Road, and east of the Sanibel Causeway. There are several commercial recreational facilities in the South Fort Myers area; however, they are limited to miniature golf (3), and ice skating rink (1). The proposed recreational facility provides activities that meld with the more passive recreation offered by the adjacent Lakes Park. The property to the north is zoned CF-2 for Lakes Park. The parcel to the south is zoned AG-2, but is developed as a miniature golf attraction. To the west is vacant AG-2 property. The parcels directly across Gladiolus Drive are zoned for Commercial Planned Developments.

The project is consistent with the overall vision of the Lee Plan and specifically implements several Lee Plan Goals, Objectives, and Policies. The principal goal of the Lee Plan implemented by this project is Goal 2: Growth Management. The Master Concept Plan exemplifies the Lee Plan Vision for 2020, complies with the future land use map, avoids impact and therefore protects important natural resources, adds to the economic base and utilizes existing facilities.

The Fenway Family Fun Center CPD calls for a total development of 3.92 acres more or less. A 8,900 S.F. building will accommodate a game arcade, three (3) private event rooms, a caretaker's unit/office, and restroom facilities. A small 1,500 S.F. service/maintenance building is also located on the site for storing & servicing the go-karts & bumper boats. Also, a 2,100 S.F. open building is proposed for a loading/unloading depot for the go-kart track. The remainder of the property will be developed with batting cages, bumper boats, go-cart track, kiddie go-kart track, kiddie merry-go-round, parking, drainage and landscaping to support the uses.

Although one (1) deviation for setbacks along two (2) roads and two (2) adjacent properties is being requested, it is the applicants intent to maintain a forty (40) foot setback between the commercial recreational devices and the vacant AG-2 land to the west.

This Narrative is intended to address the requirements of Sections 34-373.(a)(5), which reads as follows:

- (5) *A narrative explanation as to how the proposed development complies with the Lee Plan, the design standards set forth in Section 34-411., and the guidelines for decision-making embodied in Sections 34-145.(c)(2)a. and e. and 34-145.(d)(3).*
- (2) *Considerations. In reaching his decision, the hearing examiner must consider the following, whenever applicable:*
 - a. **Whether there exist changed or changing conditions that make approval of the request appropriate.** The changed conditions relate to the previous rezoning of this parcel, its proximity to Lakes Park and limited access. The previous zoning case requested a schedule of uses that included convenience food and beverage store, self-service fuel pumps and other commercial uses up to 29,999 S.F. Staff cited 28 convenience stores in the area, and the Department of Parks and Recreation objected to the sale of alcoholic beverages so close to the park. The area adjacent to Gladiolus Drive is developing a buffer zone of professional offices and limited commercial uses sheltering the existing residential areas against the traffic along this segment of Gladiolus Drive. The housing boom in the South Fort Myers Planning Community provides the need for recreational facilities for all ages. The proposed uses work well with the more natural park setting next door and the existing miniature golf facility immediately south of the parcel. The combination of existing and proposed family recreational opportunities within walking distance of each other provides a unique opportunity that will increase use of the Lakes Park facilities, as well as providing other forms of family recreation.

- e. **Whether the request is consistent with the goals, objectives, policies, and intent of the Lee Plan.** See Pages 7, 8, and 9.
- f. **Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.** The proposed use will be a commercial recreational facility geared toward families. No alcoholic beverages will be available, although food service will be an accessory to the principal use, and available only to patrons of the fun center. Appropriate setbacks, parking, lighting, and noise abatement will be provided in accordance with the Lee County Land Development Code.
- g. **Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.** The subject site is disturbed, having been cleared and regularly mowed by the owner. The site lies within an urban area. Water, sewer, and access are existing and available to the site.
- h. **Whether the request will be compatible with existing or planned uses.** The area is urban in nature. The uses proposed will be consistent with what already exists, a county park and a miniature golf course. There are four (4) commercial family recreation centers in South Fort Myers. Each is limited to one (1) type of recreation activity: a) Miniature golf or b) ice-skating. The Lakes Park, a Lee County Regional Park, provides walk – jog trails, bike paths, canoeing, and swimming and pavilions for gatherings. The street pattern allows for adequate traffic circulation to the site from Gladiolus Drive, and Lakes Park entrance road, a county maintained access road.
- i. **Whether the request will cause damage, hazard nuisance, or other detriment to persons or property.** The site has adequate access and there are no surrounding residential uses within 500 feet of the property boundaries at this time. The Fenway Family Fun Center will provide buffering and may provide fencing and gates for security, as well as aesthetics. Hours of operation will be 9:00 A.M. to 11:00 P.M. on weekends. The applicant has chosen to provide a 40 foot setback for amusement devices and parking along the western property line. This setback combined with the existing retention area to the west effectively buffer potential residences that may be developed in the future on the vacant AG-2 property to the west.

- j. **Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.** The uses will be limited to those listed in the Schedule of Uses. The uses will be subject to review by county staff for zoning compatibility; development services issues; environmental and land use planning concerns.

The application provided is the result of a meeting with zoning staff on February 13, 2003. The outcome of that discussion is the attached application for a Minor Commercial Planned Development rezoning for Recreation Facilities, Commercial, Groups I & III.

The information contained in this exhibit will clearly show evidence that the Fenway Family Fun Center rezoning request meets or exceeds all of the requirements of the Lee Plan and the Land Development Code for favorable consideration.

HISTORIC DEVELOPMENT TRENDS

The Fenway Family Fun Center is proposed on a 3.92 acre site at 7350 Gladiolus Drive and the entrance to Lakes Park. The site has a zoning history going back to May 3, 1993 when Resolution Z-93-014 was adopted permitting a Commercial Planned Development of 29,999 S.F. The uses included a convenience food and beverage store, fast food restaurant, and 24,999 S.F. of commercial recreation on a three (3) lot subdivision. The original CPD was vacated in 1998 and received a two (2) year extension in 1999 which expired in 2001. In 2001 a new CPD was applied for (Case Number DCI2001-00071) requesting a 20,000 S.F. of general office building, a convenience food and beverage store, with 24 vehicle fueling positions, and a carwash on two (2) lots.

The last rezoning case received a recommendation of denial by the Hearing Examiner and was remanded back to the Hearing Examiner by the Board of County Commissioners. The case file was still active on May 15, 2003 when Ms. Pamela E. Houck requested that a new master concept plan and attendant documents could be filed as an amendment. The request was denied with the determination that waivers could be given from certain requirements that have not changed since the last application. A request for waivers is attached to this application and a new application, for a Minor Commercial Planned Development is being requested.

Lee County Department of Parks and Recreation raised two (2) major issues in the previous zoning case (DCI2001-00071). They objected to any sale of alcohol so close to Lakes Park and they also objected to the use of the Lakes Park entrance road by a private facility. Fenway Family Fun Park does not intend to sell alcohol on their site.

Assistant County Attorney, Ms. Dawn Lehnert, addressed the access issue during the public hearing. The Board of County Commissioner accepted the right of access when it accepted the deed for property from the previous owner during the negotiation for improvements to Gladiolus Drive in 1993. It was also the Hearing Examiner's opinion that access to Lakes Park entrance road could not be denied to the property owner.

CHANGING CONDITIONS

The application to rezone the subject property is logical in the face of current and expected urban development trends. Emerging trends for the area of the subject site that serve to support the rezoning application include the following:

1. Traffic volumes along Gladiolus Drive and U.S. 41 continue to support commercial development. The nearest permanent count station 46 shows an increase from 39,900 in 2001 to 40,700 in 2002.
2. Surrounding active development is growing at a steady pace in this area. The proposed development would provide recreational activities to the large residential component of seasonal and long-term owners close by.
3. There is a need for recreational opportunities for various age groups. This proposed development will be an attraction for Lakes Park and vice versa.

THE FUTURE LAND USE MAP & PLANNING COMMUNITIES MAP

The area where the Fenway Family Fun Center site will be located is classified as Central Urban Land Use. The Central Urban Areas are characterized as the "urban core" of the county. This is the part of the county that is already heavily settled and which has or will have adequate public services to the site. The Fenway Family Fun Center is located southeast of the Caloosahatchee River in the South Fort Myers Planning Community. This Planning Community (Community Number 15) is extensively developed, especially in the portions along U.S. 41, Summerlin Road, and toward the City of Fort Myers.

The South Fort Myers Planning Community year 2020 Allocations show this area to be planned for 1849 acres of commercial development. Approximately 1,808 acres of commercial development are existing.

Fenway Family Fun Center site underscores the public policy commitment of the Lee Plan by virtue of its transportation linkage to Planning Community Numbers 14, 8, 6, 12, and 11 – Sanibel, Cape Coral, and Fort Myers, via Summerlin Road and McGregor Boulevard and the Midpoint Bridge – the subject site can be expected to additionally serve the recreational needs generated in those areas.

FUTURE LAND USE ELEMENT CONSISTENCY

The most important finding that relates to rezoning appropriateness and approval pertains to the project's consistency with the Lee Plan. The Lee County Land Development Code regulations state that the Hearing Examiner and the Board of County Commissioners are to consider whether the rezoning request is consistent with the goals, objectives, policies and intent of the Lee Plan. The Fenway Family Fun Center is consistent with the Lee Plan's Future Land Use Element in the following manner.

Policy 1.1.3: Central Urban – Located within one-half mile of three (3) major arterial roadways (Gladiolus Drive, U.S. 41, and Summerlin Road), the subject site represents a good fit to the vision for the Central Urban future land use category, offering the greatest range and highest levels of urban services. The proposed Fenway Family Fun Center implements Objective 2.1 by promoting a contiguous and compact growth pattern within an area already well served by infrastructure, and surrounded by existing and developing sites within a designated future urban area.

Objective 2.2: Development Timing. By taking advantage of existing public facilities that are in place to service the site, the approval of the Fenway Family Fun Center will advance the creation and infill of a compact and contiguous development pattern. The Project is well served in terms of availability, proximity and levels-of-service. The Project is consistent with Policy 2.2.1 and Policy 2.2.2. It will not burden an already overwhelmed facility, nor would it result in unreasonable development expectations. The proposed development is located within an area of existing development, and epitomizes compact and efficient growth patterns.

The subject site adheres to the limited access, clustering of activities and sharing access as traffic carrying protection measures called for in Policy 6.1.5 and will incorporate all such features feasible and desirable within the proposed development order plan.

Policy 4.1.1: The proposed development is designed to ensure that the land uses and structures are well integrated, properly oriented, and functionally related to the natural features of the site. The placement of uses within the development minimizes the expansion and construction of street and utility improvements.

Goal 11: Water, Sewer, Traffic, and Environmental Review Standards have all been met by virtue of connecting to existing public utility systems and avoidance of impacts on environmentally sensitive areas.

Policy 6.1.1

The proposed development will comply with the following:

- a. Traffic and Access impacts.
- b. Landscaping and detailed site planning.
- c. Screening and buffering.
- d. Availability and adequacy of services and facilities.
- e. Impact on adjacent land uses and surrounding neighborhoods.
- f. Proximity to other similar centers.
- g. Environmental considerations.

Policy 6.1.3

The proposed development consists of rezoning to Minor Commercial Planned Development. The proposed development will be designed and arranged in an integrated and cohesive unit in order to meet the following:

- Provide visual harmony and screening.
- Reduce dependence on the automobile by providing facilities within walking distance of Lakes Park and several residential neighborhoods along Gladiolus Drive and Summerlin Road.
- Promote pedestrian movement within the development and off-site.
- Avoid negative impacts on surrounding land uses and traffic circulation.

Policy 6.1.4

The proposed development is compatible with the adjacent existing and proposed uses, and has availability to all required public services and facilities. This facility meets all Lee County concurrency requirements.

Policy 6.1.5

The proposed development will be designed to protect the traffic-carrying capacity of adjacent roads and streets.

Policy 6.1.6

The proposed development will provide adequate and appropriate landscaping, open space, and buffering. The proposed development will be designed to enhance the appearance of structures and parking areas as well as blend with the character of the existing surrounding land uses.

Policy 6.1.9

There are no proposed educational facilities to be located near the proposed development.

COMMUNITY FACILITIES AND SERVICES

The Fenway Family Fun Center meets the requirements of the Potable Water Infrastructure by connecting to the public water system provided by Lee County Utilities, as required by Lee Plan Standard 11.1 with adequate existing level-of-service, implementing Lee Plan Policy 33.1.5.

The Sanitary Sewer Element of the Lee Plan is furthered by the proposed development in that it makes use of the public sewer system provided by Lee County Utilities, as required by Lee Plan Policy 11.2. An availability letter from Lee County Utilities is included as part of this application.

This project implements the Lee Plan Policies for surface water management by inclusion of a modern surface water management system consisting of onsite dry detention facilities meeting or exceeding all applicable regulations, as required by Goal 39.

The project maintains the minimum level-of-service required by The Lee Plan Policy 70.1.3 for potable water, sanitary sewer, solid waste, storm water management, and roadway facilities.

ENVIRONMENTAL RESOURCES

The Fenway Family Fun Center is located in an area indicated for flooding by Category 1 storm surge. Consequently, property flooding is a consideration for the project in the case of a tropical storm pushing water into the coastal areas adjacent to Gulf of Mexico and up to Hendry Creek. The finish floor elevation of the building will be a minimum of 11 feet N.G.V.D. in accordance with the FIRM Map designation in the "A-14" flood zone (source: FIRM Map 125124 0325 C, dated November 4, 1992). Elevations on the site average about 5.5 feet N.G.V.D. plus or minus. The property is comprised of Soil #69 – Matlacha Gravelly Fine Sand, (source: Soil Survey of Lee County, United States Department of Agriculture, Soil Conservation Service, dated 12/84 – most recent edition). This is not considered to be a hydric soil by Lee County. Hydric soils are those where flooding, or ponding is evident or may indicate wetland areas.

SURFACE WATER MANAGEMENT

Storm water will be handled by onsite dry detention facilities. The site may have two (2) or more acres of impervious area. Therefore, Lee County will require water quality and attenuation per South Florida Water Management District permitting.

SCHEDULE OF USES

Accessory Uses and Structures
Administrative Offices
Caretaker's Residence
Essential Services
Essential Service Facilities, Group I
Parking Lot, Accessory
Recreation Facilities, Commercial, Groups I & III
Restaurants, Group II
Signs in accordance with Chapter 30 of the Lee County Land Development Code
Storage: Indoor Only

SCHEDULE OF DEVIATIONS

A deviation from Section 34-2474.(b)(1) that states commercial outdoor sports / amusement parks, amusement devices and water slides shall not be located less than 50 feet or a distance equal to the height of structure of the device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property zoned RS, TF, TFC, RM, MH, or RPD or any existing residential uses to allow the following setbacks:

- A. 10 foot – South Property Line
- B. 25 foot – Lakes Park entrance road (North Property Line)
- C. 25 foot – Gladiolus Drive (East Property Line)
- D. 40 foot – West Property Line



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

EXHIBIT IV-J-1

Deviation and Justification for Deviation

A deviation from Section 34-2474.(b)(1) that states that commercial outdoor sports/amusement parks, amusement devices and water slides, shall be located not less than 50' or a distance equal to the height of structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100' from any adjacent property zoned RS, TF, TFC, RM, MH or RPD, or any existing residential use, to allow the following setbacks:

- a) 10' - South property line
- b) 25' - Lakes Park entrance road
- c) 25' - Gladiolus Drive
- d) 40' - West property line

Justification

This site will be limited by parcel area to specific amusement devices. The perimeter boundaries are adjacent to road rights-of-ways on the north and east. To the north across Lakes Park entrance road is Lakes Park, a 282 acre Lee County Regional Park. The park provides recreational activities in a natural setting including lakes, for swimming and canoeing, picnic facilities, walk, jog and bike paths, and a small gauge railroad.

To the east across the 200' right-of-way of Gladiolus Drive, are existing and proposed commercial/office sites. The nearest multi-family residence is approximately 800' away behind the buffer of commercially zoned property along the south side of Gladiolus Drive. The nearest single-family residence is over 1,000' away, also buffered from Gladiolus Drive by commercially zoned property.

To the south of the parcel is a miniature golf attraction, "Castle Golf", and vacant AG-2 property owned by Lee County. To the west is vacant AG-2 property owned by Lee County for drainage purposes and approximately 65' from the subject parcel's west boundary is a vacant AG-2 parcel of approximately $\pm$ 19 acres, which is under review for a Residential Planned Development under case number DCI2003-00059.

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

The reduced setbacks are justified as follows:

- a) 10' - South Property Line - The Castle Golf miniature golf facility is a similar outdoor commercial recreational facility. The applicant and Castle Golf's owner have discussed a proposed service drive to tie off the Castle Golf's entrance driveway. There will be approximately a minimum of 25' between the miniature golf course area on the Castle Golf site and the batting cages and the bumper boats on the Fenway Family Fun Center site.
- b) 25' - Lakes Park entrance road - The site boundary is approximately 210' from the nearest park facility (a picnic area). The parking lot and the go-kart track will be $\pm$ 240' from the picnic area, and $\pm$ 360' from the nearest Lakes Park structure. The park entrance will be buffered from the amusement devices by a parking lot and a 15' wide landscaped buffer along the north property line.
- c) 25' - Gladiolus Drive - The nearest commercial parcel is approximately $\pm$ 200' from the subject site's boundary, $\pm$ 500' from the nearest commercial building along Gladiolus Drive, and $\pm$ 800' to existing residential property. The perimeter of the subject property will be fenced and bermed with landscaped buffers.
- d) 40' - West Property Line - The vacant property to the west that is under review as a residential project, is separated from the perimeter of the subject site by 65' of land owned by Lee County. The land is used for drainage purposes. There is a 30' drainage easement on our site that is also being used for drainage by Lee County. These areas provide 95' of buffer to activity on the subject site. The 40' setback shown allows for open space and drainage on the site.

We feel the existing and the proposed separations provided on all sides of the property meet the intent of Section 34-2474.(b)(1), and the existing and proposed separations / setbacks will serve to reduce noise impact and light intrusion on adjacent properties.

PARKING CALCULATIONS

Recreation Facilities, Indoor:

Per Lee County Land Development Code, Zoning, Chapter 34, Article VII, Division 26, Section 34-2020.(4)o.2. All other indoor recreational facilities, including health clubs, not specifically listed: one (1) parking space for each 100 S.F. of total floor area.

Arcade – 6,000 S.F. X 1 space / 100 S.F. = 60 parking spaces

Recreation Facilities, Outdoor, Commercial:

Per Lee County Land Development Code, Zoning, Chapter 34, Article VII, Division 26, Section 34-2020.(4)p. Recreation facilities, outdoor, commercial, to be determined by the director if the use is not listed in this section.

Spectator Area for go-karts and bumper boats – six (6) spaces per 100 S.F.
200 S.F. X 6 spaces / 100 S.F. = 12 parking spaces

Parking Spaces Required = 72 parking spaces

Parking Spaces Provided = 81 parking spaces

Handicapped parking spaces required = 4 parking spaces

Handicapped parking spaces provided = 4 parking spaces

PROPERTY DEVELOPMENT REGULATIONS (CPD)

Minimum lot area	=	Total Parcel Area	
Minimum lot width	=	Total Parcel Width	
Minimum lot depth	=	Total Parcel Depth	
Structure setbacks	=	Gladiolus Drive	- 25'
		Lakes Park entrance road	- 25'
		Side Yard (South Property Line)	- 10'
		Rear Yard (West Property Line)	- 40'
Height	=	Buildings limited to no more than 35'	
		Batting Cages, supports, wall and nets limited to no more than 135'	
Maximum Coverage of Buildings	=	40%	
Minimum Open Space	=	30%	

OPEN SPACE CALCULATIONS

Total Area	=	170,618 S.F. (3.92 Ac.) (100.00%)
Open Space (Min.)	=	51,186 S.F. (1.18 Ac.) (30.00%)

GENERAL NOTES

1. The requested zoning is Minor Commercial Planned Development (CPD).
2. The requested maximum square footage is 12,500 square feet of gross floor area.
3. No variances, special exceptions, or special permits are being requested; however, one (1) deviation is being requested.
4. Stormwater Management will be handled by on-site dry detention facilities.
5. Site soil classification: Soil #69 – Matlacha Gravely Fine Sand, (USSCS, Soil Survey of Lee County, Florida).
6. There will be no blasting on site.
7. No alcoholic beverages will be distributed or consumed on site.
8. Boundary information is taken from a survey performed by Bean, Whitaker, Lutz & Kareh, Inc., dated May 28, 2003.
9. The project falls within Flood Zone "A-14", base flood elevation of 11.0 N.G.V.D., according to F.I.R.M. 125124 0325 C, dated November 4, 1992.
10. Development is located in the Iona-McGregor Fire District, 15961 McGregor Boulevard, Fort Myers, Florida 33908.
11. There will be no potential impact on ground and surface waters.
12. There are no apparent flowing wells on this parcel.
13. Coastal setback lines do not apply to this parcel.
14. There are no existing buildings or structures on this parcel.
15. Acceleration, deceleration and left turn lanes (if required) will be designed in accordance with Lee County Department of Transportation requirements, and will be constructed by the developer.

**MEMORANDUM
FROM
DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF ENVIRONMENTAL SCIENCES**

Date: December 18, 2003

To: Chip Block, Principal Planner
From: Gary Nychyk, Senior Environmental Planner *AGN*
Phone: (239)479-8323; FAX (239)479-8319
E-mail: nychykag@leegov.com

**RECEIVED
DEC 18 2003
ZONING**

Re: Fenway Family Fun Center CPD
Case: DCI2003-00062
STRAP: 35-45-24-00-00015.0030

The Division of Environmental Sciences (ES) staff have reviewed the requested application and conducted a site inspection on October 1, 2003. The site is composed of mowed grassy areas and scattered concentrations of invasive exotic vegetation including Brazilian pepper, melaleuca, Australian pine, and earleaf acacia. ES staff observed no signs of protected species.

The applicant has proposed 30 percent open space for this project and has provided buffers consistent with Chapter 10-416 of the Lee County Land Development Code. Therefore, ES staff has no issues with the approval of this request.

If there are any questions, please do not hesitate to contact me.

Fenway Family Fun Center CPD ES Staff Report
S:\ZONING\ZONREV\F-staff\FenwayFamilyFunCPD 12_03 stf

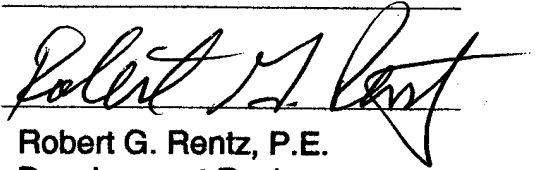
ATTACHMENT C

**MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION**

DATE: December 29, 2003

To: Alvin "Chip" Block, AICP
Principal Planner

FROM:


Robert G. Rentz, P.E.
Development Review
Engineer

RE: Fenway Family Fun Center
Case No. DCI2003-00062

The proposed project will consist of a 3.92 acre amusement park. Based on the ITE Trip Generation Report 6th Edition the project will generate 23 trips in the peak hour. The anticipated build out year is 2004.

Based on the 2002 Traffic Count Report issued by the Lee County Department of Transportation, the 2005 background peak hour, peak season, peak direction volume of flow on Gladiolus Dr. west of U.S.41 will be 2,137 vehicles per hour. At this volume, based on the Lee County D.O.T. link-specific service volumes, Gladiolus Dr. will operate at level of service "D". When the project traffic is added to this background traffic the level of service will remain at "D".

BGR

S:/WRITERS/RENTZRG/DCI200300062SUBSTANTIVETRAFFICCOMMENTS

ATTACHMENT D

MEMORANDUM
FROM THE
DEPARTMENT OF
PUBLIC WORKS

DATE: January 26, 2004

To: Chip Block, AICP
Principal Planner

FROM: Michael P. Pavese
Principal Planner

RE: FENWAY FAMILY FUN CENTER DCI2003-00062

Thank you for the opportunity to review the draft staff report and provide substantive comments regarding this request.

I have reviewed the Master Concept Plan (MCP) received November 26, 2003, submitted after the most recent sufficiency round. The concerns that were raised by Park Planning Manager David Berra in his letter dated October 6, 2003, are still relevant to this request. Specifically, the MCP fails to indicate proposed dry retention areas and water management areas. As stated in the aforementioned letter, the location of proposed water management areas could potentially affect the Lakes Park water management system and also could limit and/or restrict required buffer planting areas. Accordingly, Public Works staff recommends the following condition:

Water management facilities developed as part of this CPD must not adversely impact the existing water management facilities serving Lakes Park or preclude the development of the enhanced buffer as required along the Lakes Park entrance road.

Staff recommends the following increased buffer along the entrance to our park. This buffer must contain native species of trees and shrubs and must be consistent with the Lakes Park Master Plan currently being developed by WilsonMiller, Inc.

The developer must provide a minimum 20 foot wide buffer containing 5 trees (Florida #1 Standard) per 100 linear feet and a double staggered hedge row (100% native species) along the property line contiguous to the Lakes Park entrance road. The required trees must be a minimum of 14 feet tall overall and have a 6 to 8 foot wide spread at the time of planting.

Michael P. Pavese/mpp
C:\Documents and Settings\blockah\Local Settings\Temp\PWFenwa1.WPD

ATTACHMENT E

As noted by the applicant in their supporting documentation for this request, the location of this facility adjacent to Lakes Park will serve to attract park patrons as well as those persons specifically utilizing the amusement facility. Therefore, Public Works staff recommends the following condition for pedestrian access.

The developer must provide facilities to accommodate the safe access of pedestrians from Lakes Park to the proposed amusement facility as determined by the Director of Development Services at the time of local development order application. Staff would also encourage the developer to provide accommodations for pedestrian access from the subject property to the miniature golf development contiguous to the south of the subject property.

Due to the sensitive nature of commercial uses and ancillary uses adjacent to the passive recreational characteristics of public park facilities, staff recommends the following condition relating to project signage:

Prior to issuance of a sign permit, project signage must be approved by the Lee County Department of Public Works during the local permitting process.

Further, it should be noted that Public Works staff concurs with your recommendation to deny the requested deviation to reduce the minimum required amusement device setbacks from property under separate ownership. Staff would not support any such deviation from the boundaries of our Lakes Park facility.

Should you have any questions or require any additional information, please do not hesitate to contact me at 479-8762.

cc: Jim Lavender, Director, Department of Public Works
John Yarborough, Director, Parks and Recreation
Dave Berra, Parks and Recreation

INSTRUCTIONS

RECEIVED
JAN 27 2004
12:37 PM
COMMUNITY DEVELOPMENT

(Section C.1.c., Lee County Administrative Code AC 2-8) A zoning sign must be posted on the parcel subject to any zoning application for a minimum of ten (10) days in advance of the Hearing Examiner's Public Hearing and maintained through the Board of County Commissioners Hearing, if any. This sign will be provided by the Development Services Division in the following manner:

- Sign for case # DCI2003-00062 must be posted by January 27, 2004.
- The sign must be erected in full view of the public, not more than five (5) feet from the nearest street right-of-way or easement.
- The sign must be securely affixed by nails, staples or other means to a wood frame or to a wood panel and then fastened securely to a post, or other structure. The sign may not be affixed to a tree or other foliage.
- The applicant must make a good faith effort to maintain the sign in place, and readable condition until the requested action has been heard and a final decision rendered.
- If the sign is destroyed, lost, or rendered unreadable, the applicant must report the condition to the Development Services Division, and obtain duplicate copies of the sign from the Development Services Division.

The Division may require the applicant to erect additional signs where large parcels are involved with street frontages extending over considerable distances. If required, such additional signs must be placed not more than three hundred (300) feet apart.

When a parcel abuts more than one (1) street, the applicant must post signs along each street.

When a subject parcel does not front a public road, the applicant must post the sign at a point on a public road which leads to the property, and the sign must include a notation which generally indicates the distance and direction to the parcel boundaries and the dimensions of the parcel.

NOTE: AFTER THE SIGN HAS BEEN POSTED, THE AFFIDAVIT OF POSTING NOTICE, BELOW, SHOULD BE RETURNED NO LATER THAN THREE (3) WORKING DAYS BEFORE THE HEARING DATE TO LEE COUNTY DEVELOPMENT SERVICES DIVISION, 1500 Monroe Street, Fort Myers, FL 33901

(Return the completed Affidavit below to the Development Services Division as indicated in previous paragraph.)

AFFIDAVIT OF POSTING NOTICE

STATE OF FLORIDA
COUNTY OF LEE

BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED
WHO ON OATH SAYS THAT HE/SHE HAS POSTED PROPER NOTICE AS REQUIRED BY SECTION 34-236(b) OF THE
LEE COUNTY LAND DEVELOPMENT CODE ON THE PARCEL COVERED IN THE ZONING APPLICATION
REFERENCED BELOW:

R.M. Standerfer
SIGNATURE OF APPLICANT OR AGENT
R.M. STANDERFER
NAME (TYPED OR PRINTED)
13141 McGregor BLVD.
ST. OR PO BOX
FF MYERS, FL. 33919
CITY, STATE & ZIP

#DCI2003-00062/Fenway Family Fun Center 2/11/04 JLP

STATE OF FLORIDA
COUNTY OF LEE

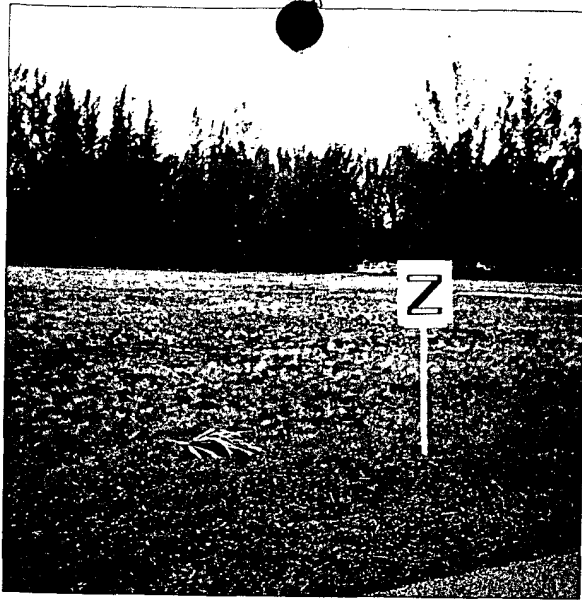
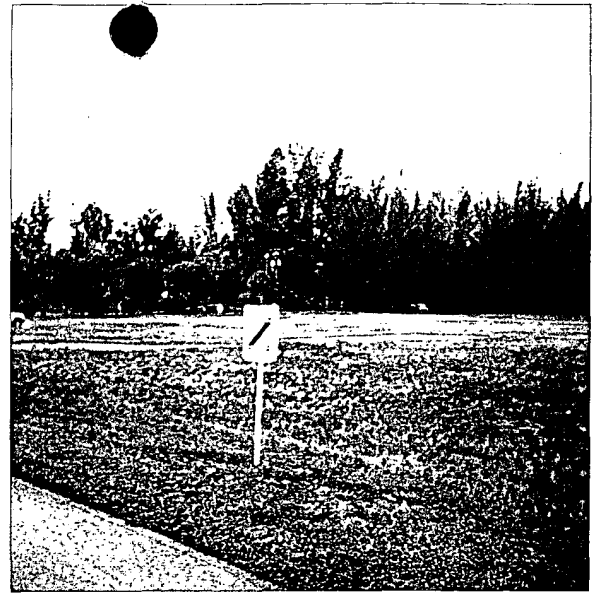
The foregoing instrument was sworn to and subscribed before me this 27 day of January, 2004, by R.M. Standerfer, personally known to me or who produced n/a as identification and who did/did not take an oath.



Tracy N. Bean
Signature of Notary Public

Printed Name of Notary Public

My Commission Expires:
(Stamp with serial number)





LEE COUNTY

APPLICATION FOR PUBLIC HEARING FOR PLANNED DEVELOPMENT UNINCORPORATED AREAS ONLY

Applicant's Name: Bushwood Entertainment, LLC
Project Name: Ferway Family Fun Center @ Lakes Park
STRAP Number(s): 35-45-24-00-00015.0030



STAFF USE ONLY

Commissioner District: #5 Case Number: DCI2003-00062
Planning Community: SFM Date of Application: 9-18-03
Current Zoning: CPD Date found sufficient: _____
Land Use Classification(s): CENTRAL URBAN Date HEX Public Hearing: _____
Lee Plan Density Range: 10-40/acre Fee: \$4,000.00
Planner in charge: _____

TYPE OF APPLICATION

DCI 2003-00062

☐ DRI ☐ DCI - Major ☒ DCI - Minor
☐ PD - Existing Development ☐ PD - Amendment

LEE COUNTY
COMMUNITY DEVELOPMENT
P.O. BOX 398 (1500 MONROE STREET)
FORT MYERS, FLORIDA 33902
PHONE (941) 479-8585

DCI 2003-00062

GENERAL INSTRUCTIONS

- a. The applicant is responsible for the accuracy and completeness of this application. Any time delays or additional expenses necessitated due to the submittal of inaccurate or incomplete information will be the responsibility of the applicant.
- b. All information submitted with the application or submitted at the public hearing becomes part of the public record and will be a permanent part of the file.
- c. All applications must be submitted in person. Mailed-in applications will not be processed.
- d. All attachments and exhibits submitted must be of a size that will fit or conveniently fold to fit into a letter size (8 1/2" x 11") folder.
- e. The Department staff will review this application for compliance with requirements of the Lee County Land Development Code. If any deficiencies are noted, the applicant will be notified.
- f. All applicants must pay an application fee as set forth in the county External Fees and Charges Manual. (Administrative Code 3-10 Appendix C) **[34-202(a)(9) & 34-373(a)(1)]**

UPON WRITTEN REQUEST, THE DIRECTOR MAY MODIFY THE SUBMITTAL REQUIREMENTS CONTAINED IN THIS SECTION IF THE APPLICANT CLEARLY DEMONSTRATES THAT THE SUBMISSION WILL HAVE NO BEARING ON THE REVIEW AND PROCESSING OF THE APPLICATION. **THE REQUEST TO THE DIRECTOR MUST BE SUBMITTED PRIOR TO SUBMITTING THIS APPLICATION. MULTIPLE WAIVER REQUESTS MUST BE MADE ON INDIVIDUAL REQUEST FORMS INDICATING EACH SEPARATE REQUEST. THE DIRECTOR'S WRITTEN RESPONSE MUST ACCOMPANY THE APPLICATION SUBMITTED AND WILL BECOME A PART OF THE PERMANENT FILE. [34-202(a)]**

COMPLETING THE APPLICATION

1. Please respond to all questions.
 - ✓ = the question or statement is applicable and the exhibit, if required, is being submitted with the application.
 - NA = the question or statement does not apply to this application or to the property in question.
2. The total number of copies of each exhibit required is indicated in part vi and includes one original of each exhibit. **Please mark all original documents as "original" in either RED or BLUE ink.**
3. If more information is needed, refer to the Land Development Code section number at the end of the question.

SUPPLEMENTAL INFORMATION - PART I

- I.C.1. Where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or have designated an authorized representative. Exceptions to this are set forth in Section 34-201(a). **[Sec. 34-201(a)]**
- I.C.2. The list must contain the names and addresses of all owners of the subject property. See I.D.1
- I.D. Date property was acquired by present owner(s).
- I.D.1 & D.2. If the owner or buyer is an entity whose interest in the property is other than solely equity interest(s) which are regularly traded on an established commodities market in the United States or another Country, they are required to file a disclosure form. Complete Exhibit I-D-1 and attached to the application. If a disclosure form is not required, indicate "NA". **[Sec. 34-201(b)(1)a]**

PART I
APPLICANT/PROPERTY OWNERSHIP INFORMATION

A. Application Initiated By:

- A.1. Application is owner-initiated or applicant is authorized by a Covenant of Unified Control. A copy of the Covenant of Unified control is attached as **Exhibit I-A-1.** [34-202(b)(1)b.]
- A.2. Applicant has been authorized by the owner(s) to represent them for this action. A copy of the Notarized Authorization form is attached as **Exhibit I-A-2.** [34-202(b)(1)c.]
- A.3. XX Applicant is a contract purchaser/vendee. A copy of the Notarized Authorization form is attached as **Exhibit I-A-3.** [34-202(b)(1)d.]

B. Name of applicant:

Bushwood Entertainment, LLC

Mailing Address: Street

7570 Knightwing Circle

City:

Fort Myers

State:

FL

Zip:

33912

Phone Area Code:

239

Number:

482-6364

Ext:

N/A

Fax Area Code:

978

Number

336-0457

E-mail:

barrydfisher@comcast.net

C. Property Ownership

- C.1. Name of property owner(s) Mobil Oil Corporation c/o ExxonMobil Corporation

Mailing Address: Street:

P. O. Box 4973

City:

Houston

State:

TX

Zip:

77210

Phone Area Code:

N/A

Number:

N/A

Ext:

N/A

Fax Area Code:

N/A

Number

N/A

E-mail:

N/A

- C.2. N/A **Property owners list:** A list of all owners of the subject property and their mailing addresses, is attached as **Exhibit I-C-2.** [34-202(a)(5)]

- D. **Date property was acquired by present owner(s):** August 9, 2000

- D.1. N/A The owner(s) is/are required to file a disclosure form. The completed disclosure form is attached as **Exhibit I-D-1.** [34-202(b)(1)a]
- D.2. XX The property is subject to a sales contract or sales option and the contract purchaser(s) is/are required to file a disclosure form. The completed disclosure form is attached as **Exhibit I-D-2.** [34-202(b)(1)a]

E. Deed Restrictions:

- E.1. N/A Existing deed restrictions or other covenants on this property affect this request. A copy of the deed restrictions or other covenants is attached as **Exhibit I-E-1.** [34-202(b)(2)]
- E.2. N/A A narrative statement explaining how the restrictions may affect the request is attached as **Exhibit I-E-2.** [34-202(b)(2)]

DCI 2003-00062
PERMIT COUNTER

- 1.F.1. Authorized Agent:** The owner or authorized applicant may authorize one person (authorized agent) to act on his/her behalf. The person so designated will be the primary person the county will contact regarding notices of sufficiency, scheduling, etc. **[Sec. 34-202(b)(1)c.]**
- 1.F.2. Additional Agent(s):** The owner or authorized applicant may authorize other agencies who the county will be working with during the processing of the application. List the agent(s) name, mailing address, phone number, etc. If additional agents are authorized, please submit a separate sheet and attach it to this application. **[Sec. 34-202(b)(1)c.]**

F.1. Authorized Agent: This is the person who will receive all county-initiated correspondence regarding this application. [34-202(b)(1)c.]

Company Name: Bean, Whitaker, Lutz & Kareh, Inc.
Address: 13041 McGregor Boulevard Fort Myers, FL 33919
Contact Person: Ahmad R. Kareh, P.E., M.S.C.E. / Tracy N. Bean, AICP
Phone Number: 239-481-1331 Fax Number: 239-481-1073
E-mail: fnooffice@bwlk.net

F.2. Additional Agent(s): List the names of other authorized agents the county may contact concerning this application. [34-202(b)(1)c.]

F.2.a. Company Name: Bushwood Entertainment, LLC
Address: 7570 Knightwing Circle Fort Myers, FL 33912
Contact Person: Barry D. Fisher, Manager
Phone Number: 239-482-6364 Fax Number: 978-336-0457
E-mail: barrydfisher@comcast.net

F.2.b. Company Name: Bushwood Entertainment, LLC
Address: 11106 Lakeland Circle Fort Myers, FL 33913
Contact Person: Donald John Thiele, Manager
Phone Number: 239-768-3326 Fax Number: 509-461-3193
E-mail: djxxi@earthlink.net

F.2.c. Company Name: _____
Address: _____
Contact Person: _____
Phone Number: _____ Fax Number: _____
E-mail: _____

F.2.d. Company Name: _____
Address: _____
Contact Person: _____
Phone Number: _____ Fax Number: _____
E-mail: _____

RECEIVED
SEP 18 2003
PERMIT COUNTER

DCI 2003-00062

SUPPLEMENTAL INFORMATION - PART II

- II.B. If rezoning to more than one district, a separate legal description and a certified sketch of description must be provided for each classification requested.
- II.B.1. If the property does not consist solely of undivided lots within a platted subdivision recorded in the official plat books of Lee County, a complete legal description must be attached which is sufficiently detailed and legible so as to be able to locate said property on county maps or aerial photographs. The legal description must include the STRAP number(s).

If the application includes multiple contiguous parcels, the legal description must describe the perimeter boundary of the total area, and need not describe each individual parcel, except where different zoning requests are made on individual parcels.

If an electronic copy of the legal description is available, please provide it in either WORD or WORD PERFECT format.

- II.B.2. If the request is owner-initiated, a survey or a certified sketch of description as set out in chapter 61G 17-6.006, Florida Administrative Code must be submitted, unless the subject property consists of one or more undivided platted lots.

The Director has the right to reject any legal description which is not sufficiently detailed or legible so as to locate said property, and may require a certified survey or boundary-survey prepared by a surveyor meeting the minimum technical standards for land surveying in the state, as set out in chapter 61G 17-6, F. A.C. **Boundaries must be clearly marked with a heavy line. The boundary line must include the entire area to be developed. If the request is owner-initiated the Federal Emergency Management Agency flood zone and required finished floor elevation must be shown as well as the location of existing structures on the property.**

- II.C.1. If unknown, the address may be obtained from the Lee County E-911 Addressing Division at 335-1630.
- II.C.2.. Provide a brief narrative describing the general location of the property in reference to known major streets. For example, "Take U.S.41 south to Corkscrew Road; turn east on Corkscrew Road to Gator Road; turn north on Gator Road. Go approximately ½ miles to property."
- II.D.1. If the Planning Community in which the project is located is not known, please contact the Lee County Planning Division at (941) 479-8585.
- II.D.2. Submit a map, at a suitable scale, drawn on 8½ inch by 11 inch paper, depicting the subject property in relation to the surrounding neighborhood. The map must be sufficiently referenced to known major streets or other physical boundaries in the surrounding area so as to be clearly identifiable to the general public.
- II.D.3. Two copies of a list of property owners, and their mailing addresses, for all property within 500 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request.*
- II.D.4. Submit a map displaying all parcels of property within 500 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. This map must reference by number or other symbol the names on the property owners list. The applicant is responsible for the accuracy of the map.*

*NOTE: In those instances where fewer than 10 owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet.

- II.D.5. Two sets of mailing labels for all names and addresses indicated in II.D.3.**

**Note: Mailing labels and the property owners list may be obtained from the Lee County Property Appraisers Office at 2480 Thompson Street, Fort Myers 33901. Mailing Address is P.O. Box 1546 Fort Myers, FL. 33901. Phone Number (941) 339-6159.

**PART II
GENERAL INFORMATION**

A. Action Requested

XX **Rezoning from:** Minor CPD **TO:** Minor Commercial Planned Development (CPD)

N/A **Other - Provide specific details:** _____

B. Legal Description and Certified sketch of description:

B.1. XX Attached is a legible copy of the legal description labeled **Exhibit II-B-1.A.** [34-202(a)(1)]

XX Attached is an electronic copy of the legal description labeled **Exhibit II-B-1.B.**

B.2. XX Attached is a Certified sketch of description as set out in chapter 61G 17-6.006 FAC. labeled **Exhibit II-B-2.** [34-202(a)(2)]

B.3. N/A The property consists only of one or more undivided lots within a platted subdivision recorded in the Official Plat Books of Lee County. Attached is a copy of the Plat Book Page labeled **Exhibit II-B-3**, with the subject property clearly marked. [34-202(a)(2)]

B.4. **Subdivision Name:** N/A

Plat Book: - Page - Unit - Block - Lot(s) -

Section: 35 Township 45 Range 24

C. Property Location

C.1. **Project Street Address:** 7350 Gladiolus Drive Fort Myers, FL 33908

C.2. **General Location Of Property:** The subject property is located at the southwest corner of
Gladiolus Drive and Lakes Park entrance.

D. Notice Information

D.1. XX Planning Community(ies) in which located: South Fort Lee

D.2. XX Area Location Map: An area location map, 8 by 11 inches in size, is attached as **Exhibit II-D-2:**
[34-202(a)(4)]

D.3. XX A list of surrounding property owners is attached as **Exhibit II-D-3.** [34-202(a)(6)]

D.4. XX A map displaying all surrounding parcels attached as **Exhibit II-D-4.** [34-202(a)(7)]

D.5. XX Two copies of mailing labels attached as **Exhibit II-D-5.**

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- II.E.3. Submit a copy of any amendment being proposed to the Lee Plan by the applicant which may affect the subject property as well as the Planning Division's reference number for the amendment. Include a statement as to how the amendment will affect your property.
- II.E.4. Submit a narrative statement as to how the amendment will affect your property.
- II.F. List the section number and a brief title for all items for which a waiver was requested and approved by the Director. Attach a copy of the approved waiver(s).

SUPPLEMENTAL INFORMATION - PART III

All maps must be at the same scale as the master concept plan. If more than one of the following requirements is shown on the same set of maps or photos, please mark the document with all appropriate exhibition numbers.

- III.A.2. Indicate the zoning district designation and the current use (i.e. single-family residence, multiple-family, retail commercial, office, industrial, etc.) of all property within 500 feet of the subject parcel.
- III.B.1. Information on historical or archaeological sites may be obtained from the Florida Master Site File or the Lee County Historical Site Survey. If assistance is required, please contact Gloria Sajgo at (941) 479-8311.

E. The Lee Plan & Other Narrative Statements

- E.1. XX The Land Use Classification(s) is/are: Central Urban
- E.2. XX Attached as **Exhibit II-E-2**, is a narrative explanation as to how the proposed development complies with the Lee Plan. [34-373(a)(5)]
- E.3. N/A The attached proposed amendment to the Lee Plan may affect this property. The proposed amendments and a statement as to how the proposed amendment will affect the property is attached as **Exhibit II-E-3**.
- E.4. XX Attached as **Exhibit II-E-4**, is a narrative explanation as to how the proposed development complies with the Design Standards set forth in Section 34-411. [34-373(a)(5)]
- E.5. XX Attached as **Exhibit II-E-5**, is a narrative explanation as to how the proposed development complies with the guidelines for decision-making embodied in sections 34-145(c)(2)a and e., and 34-145(d)(3). [34-373(a)(5)]

F. Waivers from Application Submission Requirements

- XX The following waivers have been approved by the Director of Development Services. Copies of the approved waiver(s) are attached as **Exhibit II-F-1**.

Section Number

Name of Item

	See Attached Exhibit "A"

**PART III
EXISTING CONDITIONS**

A. Location, Zoning and Surrounding land uses.

- A.1. Waived Attached as **Exhibit III-A-1** is a map showing the location of the property to be developed in relation to arterial and collector streets as well as the location of existing easements and rights-of-way on or abutting the property. [34-373(a)(4)a.]
- A.2. Waived Attached as **Exhibit III-A-2** is a map or other depiction of the existing zoning and current land uses surrounding the tract or parcel to a distance of 500 feet. [34-373(a)(4)b.]
- A.3. Waived Attached as **Exhibit III-A-3** is an aerial photograph with the site clearly delineated. [34-373(a)(4)c.]

B. Archaeological/Historical

- B.1. N/A Attached as **Exhibit III-B-1** is a map indicating the nature and location of known or recorded historical or archaeological sites and the location of any part of the property that is located within level 1 or level 2 zones of archaeological sensitivity pursuant to chapter 22. The plan shows the outline of historic buildings and approximate extent of archaeological sites. [34-373(a)(4)f.]
- B.2. N/A Attached as **Exhibit III-B-2** is a description of proposed improvements that may impact archaeological or historical resources. [34-373(a)(4)f.]

SUPPLEMENTAL INFORMATION - PART III CONTINUED

III.C.1. & C.2. If uncertain, contact (941) 479-8331.

III.C.4. Include all wetlands (as defined in the Lee Plan Policy 77.1.(2); flow-ways, creek beds, sand dunes, and other unique land forms or listed species occupied habitat (Section 10-474 of the LDC).

Areas of encroachment by undesirable exotic (floral) species, the line of mean high water, jurisdictional boundaries of state and federal agencies, and Coastal Construction Setback Lines must be indicated on a map. If the site contains unique landforms or biological areas such as creek beds, sand dunes, coastal or interior hammocks, or old growth pine flatwoods, additional information may be required including wildlife and plant inventories and hydrologic details, in order to identify the highest quality biological communities and develop suitable conservation measures. Please contact the Lee County Division of Environmental Sciences at 335-2477 with any questions concerning this environmental assessment.

III.C.6. Vegetation and ground cover must be classified in accordance with the Florida Land Use and Cover Classification System (FLUCCS), with significant areas of rare/unique upland habitats as defined in the Lee Plan highlighted.

III.D.1. Submit a map or other depiction of the property in relation to existing and proposed public transit routes, as well as to bus stops, if located within the Lee Tran public transit service area. [Sec. 34-373(a)(4)e]

III.E.1 & E.2. Property Dimensions: If the parcel is irregularly shaped, indicate the average width and depth of the property. Indicate the length of property abutting any existing street rights-of-way or easements.

III.E.3. If property abuts more than one street, indicate frontage on each street.

C. **Drainage, Water Control and Environmental Issues**

- C.1. XX The property is within an Area of Special Flood Hazard as indicated in the Flood Insurance Rate Maps (FIRM)s.
- C.2. XX The minimum elevation required for the first habitable floor is + 11.0' NGVD (MSL)
- C.3. Waived Attached is **Exhibit III-C-3**, the Environmental Assessment Report required by Section 34-1573.
- C.4. Waived Environmentally sensitive lands on the subject property are delineated on the following maps.
- C.5. **Exhibit III-C-5:** Soils, classified in accordance with the USDA/SCS System;
- C.6. **Exhibit III-C-6:** Vegetation and ground cover in accordance with the FLUCCS.
- C.7. **Exhibit III-C-7:** Topography or a USGS quadrangle map showing the subject property.
- C.8. **Exhibit III-C-8:** Protected Species Survey (if applicable) as required by Section 10-473.

D. **Public Transit**

- D.1. NO Property is within the Lee Tran public transit service area.
- D.2. N/A **Exhibit III-D-1** shows the property in relation to existing and proposed public transit routes, including bus stops.

E. **Property Dimensions [34-202(a)(8)]**

- E.1 Width (average if irregular parcel) Avg. 342.27 Feet
- E.2 Depth (average if irregular parcel): Avg. 506.06 Feet
- E.3 Frontage on road or street: 356.60 Feet Street Name: Gladiolus Drive
- E.4 Total land area: 3.92 Acres or Square Feet 170,618 S.F.

F. **Land Area Calculations (Based on total property)**

F.1 Undevelopable Areas:

- | | |
|--|-------------|
| a. Existing natural and manmade waterbodies. | <u>0</u> |
| b. Freshwater wetland areas: | <u>0</u> |
| c. Other wetland areas: | <u>0</u> |
| d. Submerged land subject to tidal influence | <u>0</u> |
| e. Total (a + b + c + d): | <u>3.92</u> |

F.2 Remaining developable land (E.4 less F.1.e):

G. **Present Use of Property**

- G.1. N/A The property is not vacant. The owner or applicant's signature on this application indicates that the Owner agrees to either remove all existing buildings and structures, OR that the proposed use of the building or structure(s) will be in compliance with all applicable requirements of the Land Development Code. [34-202(b)(3)]
- G.2. XX Briefly describe current use of the property: Vacant Land - Zoned CPD

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**PART IV
PROPOSED DEVELOPMENT**

A. Copies of Master Concept Plan

- A.1. XX Attached are copies of **Exhibit IV-A-1** entitled "Proposed Master Concept Plan" drawn to scale on 24 inch by 36 inch medium. [34-373(a)(6)]
- A.2. XX Attached are copies of **Exhibit IV-A-2** entitled "Proposed Master Concept Plan" drawn to scale on 11 inch by 17 inch medium. [34-373(a)(6)]

B. Vehicular Ingress & Egress, Public Transit

- B.1. XX The master concept plan indicates the exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development. [34-373(a)(6)a]
- B.2. N/A The proposed development includes plans for subdividing. The master concept plan shows the general location of all proposed internal street rights-of-way or easements [34-373(a)(6)a]
- B.3. N/A The master concept plan indicates the general location from the proposed internal rights-of-way or easements into multiple-family, commercial and industrial lots. [34-373(a)(6)a]
- B.4. N/A Proposed access and public transit facilities have been indicated on the master concept plan as required by Sections 34-411(e) and 10-442. [34-373(a)(4)e]

C. Parks, Open Space and Indigenous areas.

- C.1. N/A The general location of proposed parks and recreation areas and facilities, has been shown and identified on the master concept plan. [34-373(a)(6)e]
- C.2. N/A The general location of indigenous areas to be preserved has been shown and identified on the master concept plan. [34-373(a)(6)e]
- C.3. N/A The development is a subdivision consisting solely of conventional single-family units on lots of no less than 6,500 square feet. [34-373(a)(6)f]
- C.4. XX Approximately 30 percent of the property will be open space. [34-373(a)(6)f]
- C.5. XX The minimum open space required by Section 10-329(f)(7) for commercial and industrial lots and outlots has been indicated on the master concept plan. [34-373(a)(6)f]

D. Buffers

- D.1. XX The master concept plan indicates the types and minimum widths of buffers proposed along the perimeter of the property as well as between the individual development areas where required. [34-373(a)(6)g]
- D.2. XX All buffer types shown refer to buffers described in Chapter 10 of the Land Development Code unless clearly noted otherwise. [34-373(a)(6)g]

E. Surface Water Management

- E.1. N/A The property is located within a flood plain or flow way and compensation for impacts to flood storage capacity or flow ways due to filling of the site will be made at the time of local development order or district permitting. [34-373(b)(1)]
- E.2. XX A written description of the proposed surface water master plan is submitted as **Exhibit E.2**.

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F. Excavations

- F.1. N/A The general location of excavations for on-site fill and wet retention have been indicated on the master concept plan. [34-373(a)(6)i]
- F.2. N/A Preliminary calculations for cuts and fills have been made and:
- F.3. N/A No excavated materials will be removed from the site.
- F.4. N/A Excavated materials to be removed from the site will comply with the definition of "surplus material" or will not exceed ten percent of the total material excavated.
- F.5. N/A Excavated materials to be removed from the premises exceed the definition of "surplus materials" or will exceed ten percent of the total material excavated. Calculations have been submitted as **Exhibit IV-F-5**. [34-373(a)(6)i]
- F.6. N/A This application includes "mining" as a requested use and a "general mining permit" has been requested in accordance with section 10-329(f)(7). [34-373(a)(6)i]

G. Subdivisions

- G.1. N/A The proposed development will be divided into lots or parcels. [34-373(a)(6)b]
- G.2. N/A The uses proposed for each lot or parcel have been indicated and keyed to the proposed list of uses submitted with the application. [34-373(a)(6)b]
- G.3. N/A The master concept plan indicates the general location, configuration, and approximate dimensions of the lots or parcels (including outparcels), lot coverage, and the minimum proposed setbacks for principal buildings. [34-373(a)(6)b]
- N/A Special property development regulations are proposed for this development and are set forth in Exhibit IV-G-4. To the extent a property development is not indicated in the exhibit, the regulations of the Land Development Code will be used.
- N/A The property development regulations for the CPD zoning district will be used. [34-373(a)(6)b]

H. Individual Development Areas [34-373(a)(6)c]

- H.1. XX The boundary of each individual development area within which buildings, parking or other uses will be located has been delineated on the master concept plan indicating:
- H.2. N/A Residential uses by type for each development area have been indicated (if applicable) including the maximum number of living units by type.
- H.3. N/A Development areas proposed for hotel or motel use have been indicated as well as the number of hotels/motels and the maximum number of rooms by size.
- H.4. N/A Development areas proposed to contain health care facilities have been indicated as well as the maximum number of beds.
- H.5. XX Commercial uses by type for each development area have been indicated (if applicable) including the maximum floor area proposed. Where the use includes outdoor areas for display or storage, the outdoor area has been indicated separately from the floor area.
- H.6. N/A Industrial uses by type for each development area have been indicated (if applicable) including the maximum floor area proposed. Where the use includes outdoor areas for display or storage, the outdoor area has been indicated separately from the floor area.
- H.7. N/A Parking under the building(s) is proposed and the number of parking spaces has been indicated.
- H.8. XX The total number of living stories has been indicated.
- H.9. XX The maximum height of the buildings, including parking stories, has been indicated.
- H.10. N/A The general location of service areas for delivery of goods or services has been delineated on the master concept plan.

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I Summary list of uses.

- I.1. XX A list of all uses, including types and number of units for residential, hotel/motel and assisted living facilities as well as square footage of each type of commercial and industrial use, proposed for the entire development is attached as **Exhibit IV-I-1**. [34-373(a)(8)]

J. Master list of deviations. [34-373(a)(6)]

- J.1. XX A list of all deviations requested as well as a written justification for the deviation, has been submitted as **Exhibit IV-J-1**.
- J.2. XX The proposed location for each requested deviation, keyed to the schedule of requested deviations (Exhibit IV-J-1), has been indicated on the master concept plan.
- J.3. XX Drawings demonstrating the effect of the requested deviations are submitted as **Exhibit IV-J-3**.
- J.4. N/A No deviations are requested.

K. Traffic Impact Statement [34-373(a)(7)]

- K.1. XX The Traffic Impact statement has been submitted as **Exhibit IV-K-1**.
- K.2. N/A The director has waived the requirement for this minor planned development. The signed waiver is attached hereto as **Exhibit I-F-1**.

L Phasing Plan

- L.1. N/A The project will be developed in phases OR the Traffic Impact Statement utilized phasing. A description of the phasing plan has been submitted as **Exhibit IV-L-1**. [34-376(b)(3)]

M. Special Concerns

- M.1. N/A This project includes a private port facility. Attached is a Hazardous Materials Emergency Plan labeled **Exhibit IV-M-1**. [34-202(b)(4)]
- M-2 N/A This project includes rezoning of a mobile home park. Attached as **Exhibit IV-M-2** is the information required by section 34-203(d). [34-203(d)].
- M-3 N/A This project includes a request to use Bonus Density units. Attached as **Exhibit IV-M-3** is information on the type of bonus density units to be used, the source of the bonus density units, and the effect on the overall project. [34-202(b)(5)]
- M-4 N/A The project is a Residential Planned Development located in either a Rural or Outer Island land use classification. Attached as **Exhibit IV-M-4** is the impact analysis. [34-442]
- M-5 N/A This project is subject to the airport hazard regulations. Attached is **Exhibit IV-M-5**. [34-1001]

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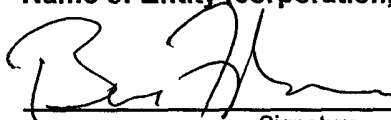
PART VII AFFIDAVIT A2

AFFIDAVIT FOR PUBLIC HEARING
APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.),
LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, * Barry Fisher, Manager, swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code.
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I am hereby authorizing the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Name of Entity (corporation, partnership, LLP, LC, etc) Bushwood Entertainment, LLC


Signature

Manager
(title of signatory)

Barry Fisher

(Type or printed name)

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STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 18 day of SEP 2003, at PERMIT COUNTER (date) by Barry Fisher, Manager (name of person providing oath or affirmation), who is personally known to me or who has produced Drivers License (type of identification) as identification.


Signature of person taking oath or affirmation

Notary Public
Title or rank

Judy P. Sholtis

Name typed, printed or stamped



Serial number, if any

***Notes:**

- If the applicant is a corporation, then it is usually executed by the corp. pres. or v. pres.
- If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should typically be signed by the Company's "Managing Member."
- If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.
- If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.
- If the applicant is a trustee, then they must include their title of "trustee."
- In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.

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**PART VI
SUBMITTAL REQUIREMENTS**

COPIES REQUIRED including 1 original					Exhibit #	Item
SUB	NR	DRI	DCI	MINOR		
X		12	11	11		Completed application [34-201(b) & 34-373(a)(1)]
N/A		3	3	3	I-A-1	Covenant Of Unified Control [34-202(b)(1)b & 34-373(a)(3)]
X		3	3	3	I-A-2, I-A-3	Authorization Form [34-201(a)(1)] & [34-202(b)(1)c]
N/A		2	2	2	I-C-2	Subject property owners list [34-202(a)(5)]
X		3	3	3	I-D-1, I-D-2	Disclosure Form [34-201(b)(1)a]
N/A		3	3	3	I-E-1	Deed Restrictions [34-202(b)(2)]
N/A		3	3	3	I-E-2	Deed Restrictions Narrative [34-202(b)(2)]
X		3	3	3	II-B-1-A	Legal Description [34-202(a)(1)]
X		1	1	1	II-B-1-B	Electronic version of legal description
X		3	3	3	II-B-2	Certified sketch of description [34-202(a)(2)]
N/A		3	3	3	II-B-3	Plat Book Page [34-202(a)(1)]
X		2	2	2	II-D-2	Area Location Map on 8 ½ by 11 paper [34-202(a)(4)]
X		2	2	2	II-D-3	Surrounding Property Owners List [34-202(a)(6)]
X		2	2	2	II-D-4	Surrounding parcels Map [34-202(a)(7)]
X		2	2	2	II-D-5	Mailing labels (sets)
X		12	11	11	II-E-2	Compliance with Lee Plan. [34-373(a)(5) & 34-491]
N/A		12	11	11	II-E-3	Lee Plan Amendment [34-373(a)(5) & 34-491]
X		3	3	3	II-E-4	Compliance with design standards of 34-411. [34-373(a)(5)]
X		3	3	3	II-E-5	Compliance with decision-making guidelines. [34-373(a)(5)]
X		12	11	11	III-A-1	Existing easements and r-o-w map. [34-373(a)(4)a.]
Waiver		12	11	11	III-A-2	Exist. zoning & current land use map/photo [34-373(a)(4)b]
X		3	3	3	III-A-3	Aerial photograph [34-373(a)(4)c]
N/A		3	3	3	III-B-1	Map of Historical & Archaeological sites [34-373(a)(4)f]
N/A		3	3	3	III-B-2	Possible impacts on Hist. & Arch. sites [34-373(a)(4)f]
Waiver		12	11	4	III-C-3	Environmental Assessment Report
Waiver		12	11	4	III-C-5	Soils [34-373(a)(4)d.i]
Waiver		12	11	4	III-C-6	Vegetation\ground cover [34-373(a)(4)d]
X		12	11	4	III-C-7	Topography. [34-373(a)(4)d.iv]
Waiver		4	4	-	III-C-8	Protected Species Survey (if applicable) [34-373(b)(2)]
N/A		12	11	4	III-D-1	Public transit routes map (if applicable) [34-373(a)(4)e.]
X		12	11	11	IV-A-1	Master Concept Plan 24 X 36 inches [34-373(a)(6)a.]
X		3	3	3	IV-A-2	Master Concept Plan 11 X 17 inches [34-373(a)(6)a.]
X		4	4	-	IV-E-2	Surface Water Management Plan [34-373(b)(1)]
N/A		4	4	4	IV-F-5	Excavation calculations [34-373(a)(6)i]
X		12	11	11	IV-I-1	Master List of uses for entire development [34-373(a)(8)]
X		12	11	11	IV-J-1	Program of deviations & justification [34-373(a)(9)]
X		12	11	11	IV-K-1	Program demonstrating deviations [34-373(a)(6)j]
X		4	4	4*	IV-K-1	Traffic Impact Statement [34-373(a)(7)]
N/A		12	11	11	IV-L-1	Program for phased development [34-373(b)(3)]
X		12	11	11	IV-M-1	Facilities for the development
N/A		4	4	4	IV-M-1	Fire, Mat Emer Plan [34-202(b)(4)]
N/A		4	4	4	IV-M-2	Mobile Home Park Information [34-203(d)]
N/A		4	4	4	IV-M-3	Bonus Density units 34-202(b)(5)
X		4	4	4	IV-M-4	Sanitary Sewer Facilities

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EXHIBIT "A"

List of Waivers

34-373.(a)(4)b.	Location map in relation to arterial and collector streets and existing easements and right-of-ways
34-373.(a)(4)c.	Existing zoning and current Land Uses Map
34-373.(a)(4)d.	Aerial Photograph with site delineated
34-373.(a)(4)e.i	Soils Map
34-373.(a)(4)e.ii.	FLUCCS Map
34-373.(a)(4)e.iii.	Rear Vegetation Map
34-373.(a)(4)e.iv.	Topographic Map
34-373.(a)(4)f.	FLUCCS Map
34-373.(a)(4)g.	Public Transit Map including nearest bus stops
34-373.(b)(2)	Protected Species Survey
34-1573.	Environmental Assessment Report

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PART V AFFIDAVIT A2

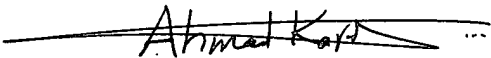
AFFIDAVIT FOR PUBLIC HEARING
APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED
COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, * Ahmad R. Kareh, P.E. as Vice-President of
Bean, Whitaker, Lutz & Kareh, Inc., swear or affirm under oath, that I am the ~~owner~~
the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I am hereby authorizing the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Bean, Whitaker, Lutz & Kareh, Inc.

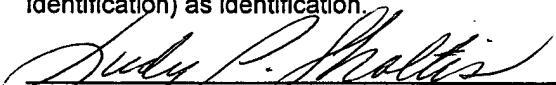
*Name of Entity (corporation, partnership, LLP, LC, etc)


Signature
Bean, Whitaker, Lutz & Kareh, Inc.
Vice-President
(title of signatory)
Authorized Agent

Ahmad R. Kareh, P.E.
(Type or printed name)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 10/01/03 (date)
by Ahmad R. Kareh, P.E. (name of person providing oath or affirmation), who is
personally known to me or who has produced N/A (type of
identification) as identification.

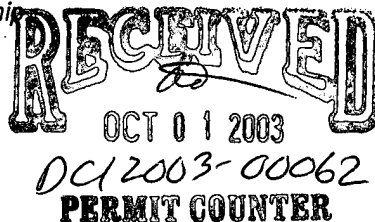

Signature of person taking oath or affirmation
. Notary Public
Title or rank

Judy P. Sholtis
Name typed, printed or stamped
DD 102185
Serial number, if any



*Notes:

- If the applicant is a corporation, then it is usually executed by the corp. pres. or v. pres.
- If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should typically be signed by the Company's "Managing Member."
- If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.
- If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.
- If the applicant is a trustee, then they must include their title of "trustee."
- In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.



From: Kara Stewart
To: Block, Alvin Chip; Mahler, Kelly
Date: 9/18/03 3:08PM
Subject: Re: Fenway Family Fun Center

Thank you Chip, I have forwarded to the counter. Kara

Kara Stewart
Central Permitting Supervisor
DCD - Development Services
stewartk@leegov.com
(239) 479-8373
(239) 479-8536

>>> Alvin Chip Block 09/18/03 02:05PM >>>

By copy of this response to Kara Stewart, you will be allowed to submit your application without the waiver(s) having been granted.

Please make sure that you do have the case reference number for the waiver that you have submitted so that staff can include a copy of any action with the zoning file once that action is completed.

If I can be of any further help, please let me know.

Alvin Block, AICP
Principal Planner
Department of Community Development
blockah@leegov.com
239-479-8371
239-479-8313 (fax)

>>> "Kelly Mahler" <fmooffice@bwlk.net> 09/18/03 01:53PM >>>
September 18, 2003

RE: Fenway Family Fun Center
BWLK Project Number 34186(03-14)

Dear Mr. Block:

We are submitting the rezoning package for the above referenced project this afternoon and have not received a response to the waivers that were previously submitted. Can you please respond to this e-mail at your earliest convenience so I may have an answer to give the clerk at the zoning counter at the time of submittal.

If you have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.
Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/km

RECEIVED
SEP 18 2003
PERMIT COUNTER

OCI 2003-00062

CC: Houck, Pam; zone counter

DCI 2003-00062



Case # DCI2003-00062

Jurisdiction : Lee County

Agent/Applicant : BEAN, WHITAKER, LUTZ & KAREH

Owner MOBIL OIL CORPORATION
P O BOX 4973
HOUSTON TX 77210

Description of Request

Following is a list of submittal requirements which were missing from your application received on 9/18/03

Thank you

We appreciate your submitting all required documents for the above referenced Planned Development application.

This document is for informational purposes only and is not intended to be construed as a finding of sufficiency or completeness of the application or documentation submitted.

RECEIVED
SEP 18 2003

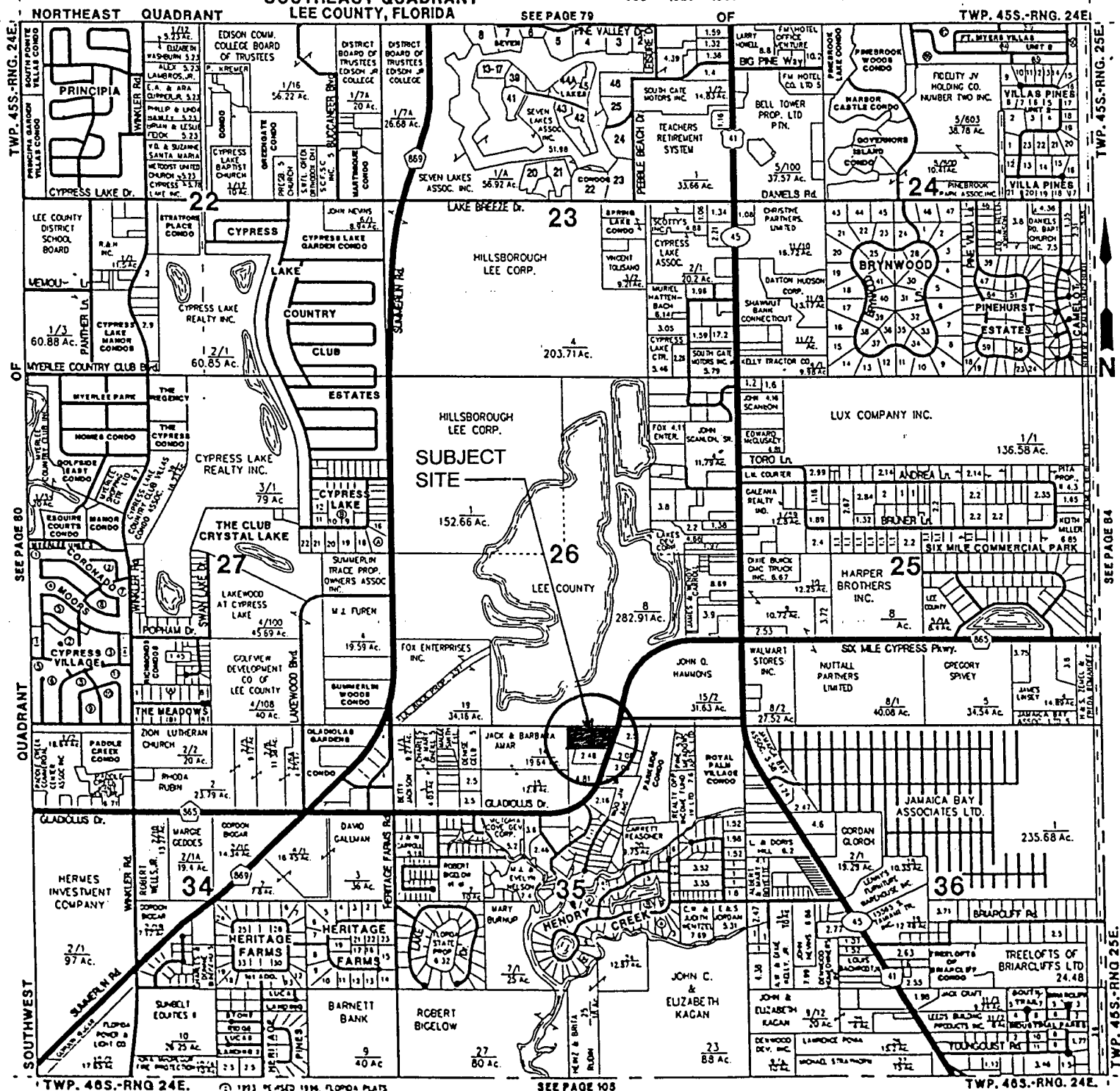
PERMIT COUNTER

DCI 2003-00062

TWP. 45S.-RNG. 24E.

SOUTHEAST QUADRANT
LEE COUNTY, FLORIDA

0 1 MILES 1/2
0 660 1320 1980 2640 1 FEET 5280



AREA LOCATION MAP

Fenway Family Fun Center

EXHIBIT II-D-2.

RECEIVED
SEP 18 2003

PERMIT COUNTER

OCI 2003-00062

SKETCH TO ACCOMPANY DESCRIPTION

LAKES PARK

OF A PARCEL OF LAND
LYING IN
SECTION 35, TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA.

P.O.C.
NORTHWEST CORNER
OF NORTHEAST 1/4
SECTION 35

JOINT USE ACCESS ROAD

N.89°08'58"E. 552.56'
(BEARING BASIS)

DRAINAGE CROSS-EASEMENT
O.R. 2563 PG. 659

"PARCEL 608"
TO LEE COUNTY
BY ORDER OF TAKING
O.R. 2512 PGS. 2992-3012

SUBJECT PARCEL

SOUTH LINE OF
N1/2 NW1/4 NW1/4 NE1/4
SECTION 35

GLADIOLUS DRIVE REALIGNMENT
(C.R. 865)
CENTERLINE SURVEY FOR GLADIOLUS REALIGNMENT
CENTERLINE CONSTRUCTION FOR GLADIOLUS REALIGNMENT
OLD R/W — N19°20'57"E
R/W — S19°17'57"W. 325.43'
80'
70.25'

*** THIS IS NOT A SURVEY ***
Bean, Whitaker, Lutz & Kareh, Inc.
SCOTT C. WHITAKER, P.S.M.
Florida Certificate No. 4324

BOUNDARY - FENWAY FAMILY FUN PARK

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4819)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5810 (239) 481-1331

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS,
AND RIGHTS-OF-WAY (WRITTEN AND UNWRITTEN, RECORDED
AND UNRECORDED).

BEARINGS ARE BASED ON THE RIGHT-OF-WAY MAPS FOR
GLADIOLUS DRIVE WITH THE NORTH LINE OF THE
NORTHEAST ONE QUARTER (NE 1/4) OF SECTION 35 AS
BEARING N89°08'58"E.

DATE	PROJECT NO.	SCALE	SHEET	FILE NO. (S-T-R)
7-28-03	34186	1"=100'	1 OF 1	35-45-24

**UNANIMOUS WRITTEN CONSENT
OF THE
MANAGEMENT COMMITTEE
OF
BUSHWOOD ENTERTAINMENT, LLC**

DATED AS OF SEPTEMBER 8, 2003

The undersigned, as all the members of the Management Committee of Bushwood Entertainment, LLC, a Florida limited liability company (the "Company"), unanimously agree, adopt, consent to, and order the following Company actions under the Florida Limited Liability Company Act (the "Act"):

WHEREAS, the Company has made application to the Lee County Department of Community Development, Division of Zoning & Development Services, of Lee County, Florida (the "County"), in connection with the development of its proposed project known as Fenway Family Fun Center (the "Project") on its property located in Lee County, Florida (the "Property"); and

WHEREAS, the Management Committee wishes to delegate full authority to each of Barry Fisher and Donald John Thiele to act on behalf of the Company to secure the approvals requested and to impose covenants and restrictions on the Property.

NOW, THEREFORE, the undersigned, being all the members of the Management Committee of the Company, hereby consent to, approve and authorize the following:

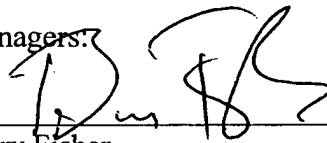
1. The undersigned, constituting all of the members of the Management Committee of the Company, do hereby ratify, confirm and approve the Public Hearing and Development Order Application for the Project (the "Application") pursuant to the Lee County Development Code, do hereby authorize the execution, delivery and performance by the Company of the Application, and do hereby authorize the execution, delivery and performance of the Application by the Authorized Representatives (hereinafter defined) for and on behalf of the Company.
2. Barry Fisher and Donald John Thiele, each a Manager of the Company, are hereby each designated to act alone as Authorized Representative of the Company, and each is hereby authorized to execute and deliver the Application, to secure the approvals requested therein, and to impose covenants and restrictions on the Property in connection therewith, and to take such other actions as may be necessary or appropriate in order to effectuate the execution and delivery of the Application by the Company and the approval thereof by the County.
3. The undersigned hereby certify that, as of the date hereof, they constitute all of the members of the Management Committee of the Company.

4. The Company's Managers are authorized and directed to furnish copies of the foregoing resolutions and to certify that such resolutions are in full force and effect and have not been rescinded or modified.

This Unanimous Written Consent of the Management Committee may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same instrument. The exchange of copies of this Unanimous Written Consent of the Management Committee and of signature pages by facsimile transmission shall constitute effective execution and delivery of this instrument as to the parties and may be used in lieu of the original Unanimous Written Consent of the Management Committee for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned have executed this Unanimous Written Consent of the Management Committee as of the date written above.

Managers:



Barry Fisher



Donald John Thiele

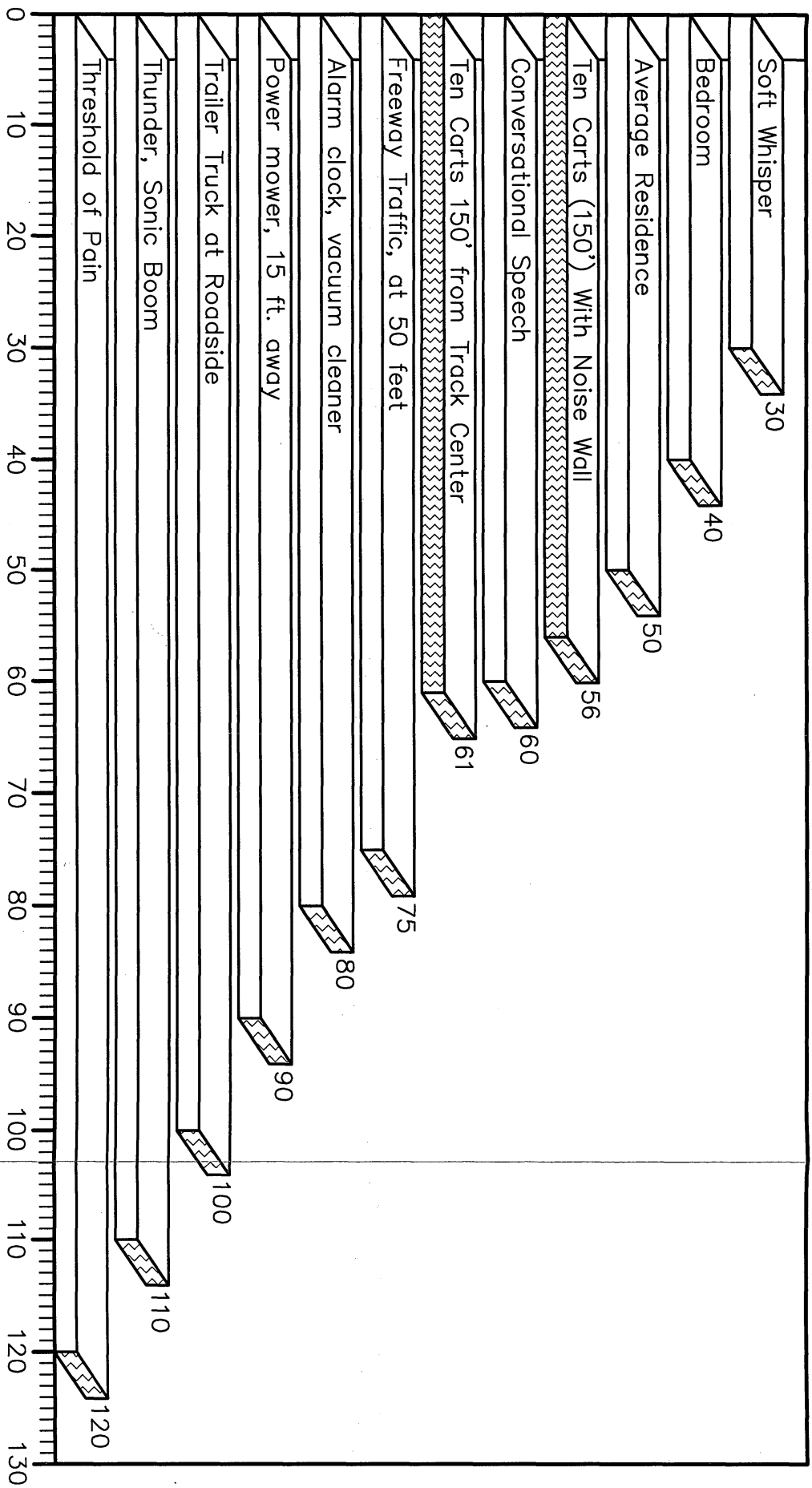
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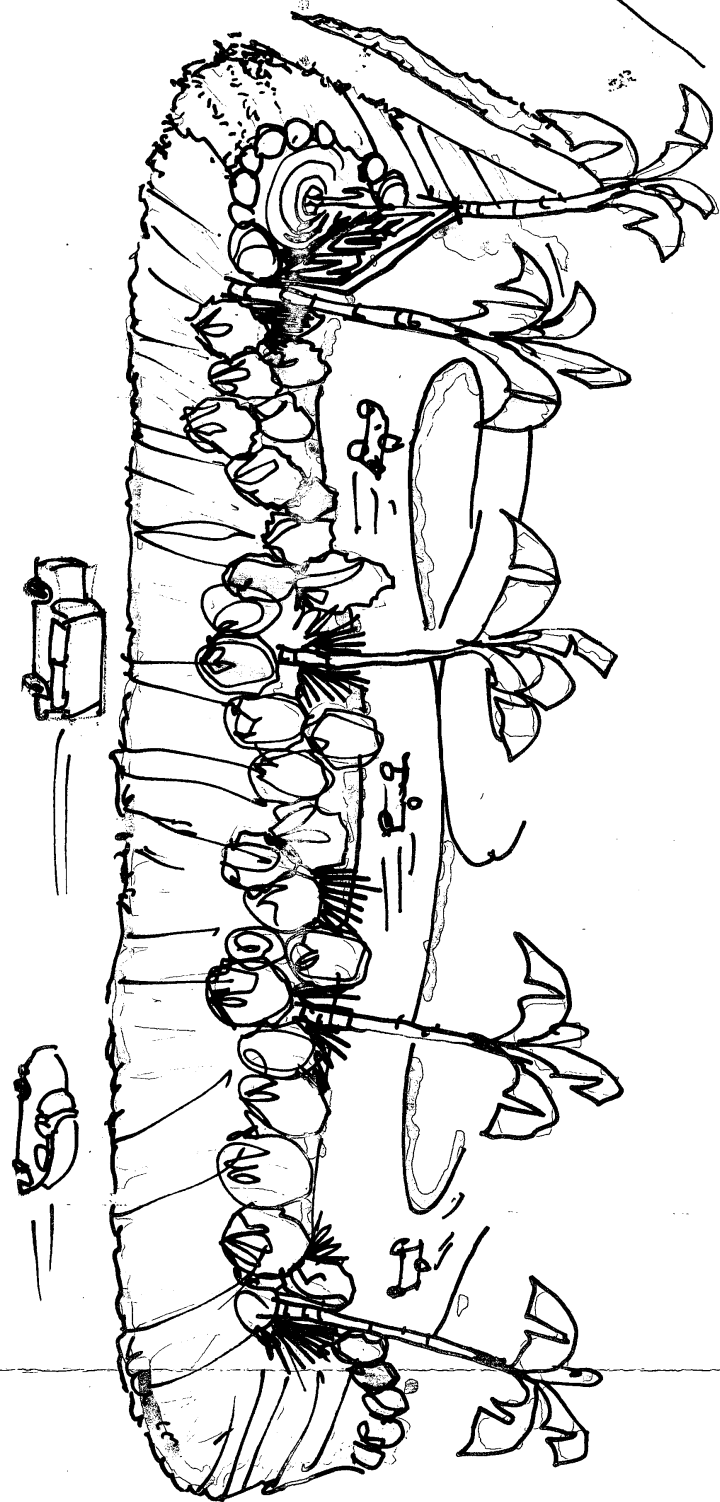
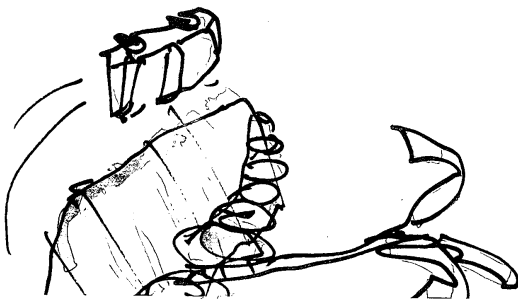
OCI 2003-00062

	<i>Recreational</i> Residential		Residential (210)		Medical Office (720)		Prev. Proposed Use	
	-	-	39 units		34,000 s.f.			
Average	354		436	123%	1,175	332%	2,550	(720%)
A.M.	8		37	462%	83	1038%	206	(2575%)
P.M.	23		46	200%	113	491%	248	(1078%)

COMMON NOISE SOURCES AND LEVELS



Sound Level Meter Reading. dB



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this ²⁸~~17~~ day of May, 2002 between EXXONMOBIL OIL CORPORATION, formerly known as Mobil Oil Corporation, a New York corporation ("Seller") and The Belvedere Group, Inc., a Massachusetts corporation ("Purchaser").

In consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

Section 1. Sale and Purchase. Seller agrees to sell, convey, and assign to Purchaser and Purchaser agrees to purchase from Seller that certain tract or parcel of land located at the approximate address of 7350 Gladiolus Drive, in the City of Fort Myers, State of Florida, which tract or parcel is more particularly described on Exhibit "A" attached hereto, together with all improvements, fixtures, equipment, and personal property, if any, located on or under the land (collectively, the "Property"); Seller reserves the right to revise the legal description attached as Exhibit "A" upon receipt of an acceptable survey and the title commitment referred to in Section 3. The Property shall specifically exclude any above ground environmental remediation equipment, which Seller shall remove after completion of its remediation activities, if any, pursuant to Section 7.

Section 2. Purchase Price. The price (the "Purchase Price") for the Property shall be One Million One Hundred Fifty Thousand and 00/100 U.S. Dollars (\$1,150,000.00 U.S.) which shall be payable all in cash at the closing of the purchase and sale of the Property (the "Closing") as provided in Section 4(b)(1)(i). On the Closing Date, (as hereinafter defined) and subject to the terms and conditions of this Agreement, Purchaser shall pay the Purchase Price to or for the account of Seller in the manner provided for herein, subject to the adjustments and prorations set forth in Section 4. Not later than 11:00 a.m. Eastern Time on the Closing Date, Purchaser shall effect a wire transfer of federal funds to the escrow account of Stewart Title Guaranty Company, Attn: Jackie Trainor (800-729-1906) (the "Title Company") in an amount equal to the sum of (i) the Purchase Price, and (ii) the net amount (if any) of the costs, expenses, prorations, and adjustments payable by Purchaser under this Agreement. The amount of the funds to be wired to the Title Company's escrow account shall be reduced by the Earnest Money (as hereinafter defined).

Section 3. Title and Survey Matters.

(a) Within fourteen (14) days of Seller's execution of this Agreement, Seller shall have, at its sole expense, ordered, received and delivered to Purchaser, an owner's title insurance commitment covering the Property (the "Title Commitment") from the Title Company. Not later than thirty (30) days prior to the end of the Inspection Period (as hereinafter defined), Purchaser, at its own cost and expense shall have ordered, received, reviewed and delivered to Seller and Title Company a survey of the Property. Simultaneously with such delivery to Seller, Purchaser shall notify Seller of such objections as Purchaser may have to anything contained on the survey or in the Title Commitment (the "Objections"). Any such item to which Purchaser does not object and any Objections waived by Purchaser shall be deemed to be a "Permitted Encumbrance". If there are Objections by Purchaser, Seller shall have the option, at its sole discretion, to satisfy them prior to the Closing Date. If Seller elects to attempt to satisfy the Objections, Seller shall so notify Purchaser within thirty (30) days after receipt of such Objections and shall use commercially reasonable efforts to attempt to cure such Objections prior to Closing, and the Closing Date may be extended, at Seller's option, in order to attempt to cure such Objections. If Seller elects not to satisfy such Objections, then Seller shall so notify Purchaser and Purchaser shall thereupon have a period of ten (10) days after receipt of Seller's notice that Seller elects not to cure such Objections to either (i) waive the Objections and accept such title as Seller is able to convey, and by such waiver of the Objections, Purchaser shall be deemed to have waived any and all claims and/or causes of action against Seller for damages or any other remedies for any and all defects in and/or exceptions to title to the Property or (ii) terminate this Agreement by giving notice to Seller on or before the end of such ten (10) day period, in which event the Earnest Money (as hereinafter defined) shall be returned to Purchaser and the parties hereto shall be released of further liability hereunder except as otherwise provided herein. In no event shall Seller have any obligation to commence litigation or to expend money to cure or remove any Objections. Purchaser's failure to exercise the right to terminate within the ten (10) day period shall constitute a waiver of Purchaser's right to terminate with respect to such title matters.

(b) Purchaser and Seller agree that the sale of the Property shall be subject to each and all of the following:

- 1) all laws, ordinances, statutes, orders, requirements and regulations to which the Property is subject, including, without limitation, all building, zoning and environmental laws and requirements;
- 2) any state of facts which a new or updated survey or physical inspection of the Property might disclose; and
- 3) the Permitted Encumbrances and any other covenant, encumbrance, restriction, matter or thing that would otherwise constitute an objection to title, but which is insurable by any title insurance company doing business in the locality of the Property at regular rates.

Section 4. Closing, Closing Adjustments, and Closing Costs

(a) The Closing shall occur on a day (the "Closing Date") which is mutually agreed upon in writing between Purchaser and Seller but is not later than 30 days after the later to occur of the End of the Inspection Period. The Closing will be concluded by an agent of the Title Company designated by Seller and located in the vicinity of the Property.

(b) At the Closing, the following (which are mutually concurrent conditions) shall occur:

(1) Purchaser shall deliver or cause to be delivered to Seller:

(i) Certified funds or bank cashier's check made payable to the Title Company or funds delivered by federal funds wire to the Title Company in the amount of the Purchase Price, due credit being given for the Earnest Money (as hereinafter defined) and other adjustments and prorations as provided hereinafter;

(ii) Evidence reasonably satisfactory to Seller and Title Company that the person executing the closing documents on behalf of Purchaser has full right, power, and authority to do so; and

(iii) An executed Closing Statement (hereinafter defined).

(2) Seller shall deliver to Purchaser the following:

(i) A statutory special warranty deed (a statutory quit claim deed) (the "Deed"), in the form attached hereto as Exhibit "E", subject to those matters set forth in Section 3 hereof and which Deed shall contain the following restrictive covenants: *As part of the consideration for this conveyance, the Purchaser for itself, its successors and assigns, covenants and agrees that neither the Property herein conveyed nor any part thereof shall at any time within a period of twenty (20) years from the date of this deed be used for the storage and sale of gasoline, diesel, other motor fuels, lubricants or other petroleum products, or convenience store products, nor shall the Property nor any part thereof at any time from the date of this deed forward be used for residential, hospital or primarily medical clinic uses, child care, playground, non-vocational school or agricultural uses nor shall the Property nor any portion thereof be used for the construction or installation of basements or any water wells for drinking or irrigation purposes; that this covenant shall survive delivery of this deed; that this covenant and agreement shall run with the land herein conveyed and that a similar restrictive covenant shall be inserted in any deed or lease or other instrument conveying or demising the Property herein conveyed or any part thereof for whatever balance of time remains on the period of the restriction created hereby; and*

(ii) An executed Closing Statement

The delivery to the Title Company of the Purchase Price, the executed Deed, and all other documents and instruments required to be delivered by either party to the other by the terms of this Agreement shall be deemed to be a good and sufficient tender of performance of the terms hereof. No later than forty-eight (48) hours prior to Closing, each party shall forward to the Title Company, the instruments required from such party by Section 4(b), except the Purchase Price, which may be tendered on the date of Closing.

After the receipt of the certified or cashier's check or federal funds wire and immediately after the recordation of the Deed (as hereinafter defined) described in Section 4(b) above, (i) the Title Company shall disburse to Seller an amount equal to the Purchase Price (including the Earnest Money if held by the Title Company) reduced by the net amount of the costs, expenses, prorations and adjustments payable by Seller under this Agreement; (ii) the Title Company shall deliver to Purchaser all other documents and instruments received by it which, in accordance with the terms of this Agreement, are to be delivered by Seller to Purchaser at the Closing; and (iii) the Title Company shall deliver to Seller all other documents and instruments received by it which, in accordance with the terms of this Agreement, are to be delivered by Purchaser to Seller at Closing. Notwithstanding anything to the contrary in this Agreement, the Title Company shall not record the Deed until such time as it is prepared to disburse to Seller on the Closing Date the amount specified in Section 2.

(c) Closing Adjustments and Prorations.

(1) For purposes of the prorations and adjustments to be made hereunder, Purchaser shall be deemed to own the Property, and therefore be responsible for any operating expenses occurring after the Closing Date. The Closing Date shall be a day of income and expenses of Seller. Any apportionment and prorations which are not expressly provided for in this Section 4(c) shall be made in accordance with the customary practice in the state in which the Property is located. Seller and Purchaser shall cause the Title Company to prepare with information provided by Seller and Purchaser a schedule of prorations before the Closing Date (the "Closing Statement"). Any net adjustment in favor of Purchaser shall be credited against the Purchaser Price at Closing and any net adjustment in favor of Seller shall be credited to the Seller at Closing and the amount due from Purchaser to Seller to complete the Closing shall be increased thereby.

(2) There is no income or rent anticipated to be available for pro-rating at Closing.

(3) All real estate taxes incurred in connection with the ownership, management and operation of the Property shall be prorated between Seller and Purchaser in accordance with the provisions of this Section 4(c). All non-delinquent real estate taxes assessed against the Property shall be prorated between Seller and Purchaser on an accrual basis, based upon the actual current tax bill. If the most recent tax bill received by Seller before the Closing Date is not the actual current tax bill, then Seller and Purchaser shall prorate the real estate taxes at Closing

by applying the tax rate indicated on the most recent tax bill received by Seller to the latest assessed valuation of the Property. All real estate taxes which accrue on or before the Closing Date shall be the obligation of Seller and all real estate taxes which accrue after the Closing Date shall be the obligation of Purchaser. If after the Closing Date, any additional or supplemental real estate taxes are assessed against the Property by reason of back assessments, corrections of previous tax bills, or other events occurring before the Closing Date (other than those triggered by any action by Purchaser to obtain zoning modifications, permits or other governmental actions or consents), Seller and Purchaser shall re-prorate the real estate taxes upon receipt of bills for such additional or supplemental real estate taxes. Any refunds of real estate taxes received by Purchaser or Seller after the Closing Date for any period which includes the Closing Date shall be first applied to the costs of obtaining the refund, then paid to any tenants who are entitled to the same, and the balance if any, shall be paid to Seller for periods prior to and inclusive of the Closing Date and to Purchaser for periods commencing after the Closing Date.

(4) Seller shall not assign to Purchaser any deposits which Seller has with any utility or service company servicing the Property. Purchaser shall arrange with such companies to have accounts opened in Purchaser's name beginning on the Closing Date.

(5) Purchaser shall be responsible for obtaining insurance coverage for the Property on the Closing Date and for all risk of loss after the Closing Date.

Closing adjustments shall be conclusive and binding on Purchaser and Seller, and Seller and Purchaser hereby waive any right to contest after the Closing Date any prorations, apportionments, or adjustments to be made pursuant to this Section 4(c) except with respect to additional or supplemental real estate taxes, rebates, or other adjustments to real estate taxes due to back assessments, corrections to prior tax bills or real estate tax appeals or contests, as heretofore provided in this Section 4(c).

(d) All recording charges payable in connection with the recording of the Deed (whether imposed in the form of documentary stamps or otherwise) shall be paid by Seller. Purchaser shall pay for the cost of any survey, one-half of any escrow fees, , and shall pay the costs of any endorsements to the owner's title insurance policy. Seller will pay one-half (1/2) of any escrow fee, all recordation and transfer taxes imposed in connection with the recordation of the Deed and the transfer of the Property, and any costs of an owner's title insurance policy in the amount of the Purchase Price. Each party shall pay its own legal fees and other expenses incurred by it in connection with the Closing.

Section 5. Earnest Money Deposit

(a) Purchaser has previously delivered to Seller Twenty Five Thousand and 00/100 U.S. Dollars (\$25,000.00 U.S.) as earnest money ("Earnest Money") in consideration for this Agreement, which amount will be non-refundable except in the event Seller defaults under the terms of this Agreement or in the event Purchaser is permitted to terminate this Agreement

pursuant to express provisions therefor and Purchaser so elects to terminate. The Earnest Money shall not bear interest.

Section 6. Purchaser's Inspection Rights.

(a) Purchaser, at its expense, shall have the right to enter the Property for a period of forty five (45) days from the date of Seller's execution of this Agreement (the "Inspection Period") to inspect the Property and may perform tests to determine the environmental condition of the Property and its suitability for Purchaser's development. In the event that prior to the forty fifth (45th) day after the date of Seller's execution of this Agreement, Purchaser determines, in its sole discretion, that the Property is not suitable for Purchaser's development, Purchaser shall so notify Seller, in writing, by not later than the forty fifth (45th) day after the date of Seller's execution of this Agreement and upon receipt of such notice by Seller, and absent any default by Purchaser hereunder, Seller shall return, or cause to be returned, to Purchaser the Earnest Money. Upon return of such Earnest Money to Purchaser, Seller shall have no further obligations to Purchaser. In the event Purchaser determines that the Property is not suitable for Purchaser's development, but Purchaser fails to so notify Seller in writing by not later than the forty fifth (45th) day after the date of Seller's execution of this Agreement, then Purchaser's right to terminate this Agreement under this Section 6 shall be void and of no further force and effect and Purchaser shall proceed to Closing in accordance with the terms of this Agreement. Said forty fifth (45th) day is sometimes hereinafter referred to as the "End of the Inspection Period". Purchaser, prior to entering the Property for intrusive testing including, but not limited to environmental testing, shall give Seller five (5) days advance notice of the inspection, shall schedule the time of the inspection with Seller (which time shall be subject to Seller's approval) and shall obtain Seller's prior written consent as to specific work to be performed including the manner and scope of such work. Non-intrusive testing shall not require any previous notice or scope of work. In addition to the scope of work, Purchaser shall give Seller notice of any tests that Purchaser intends to undertake and the dates set therefor (such dates to be mutually acceptable to Seller and Purchaser) so that Seller may have the opportunity to be present and to split test samples; provided, however, that the cost of testing Seller's split sample shall be borne by Seller. Any tests shall be conducted in a manner so as not to permanently or materially damage the Property or interfere with Seller's remediation activities on the Property. If Purchaser desires to obtain test samples from Seller's existing remediation or monitoring wells, if any, Purchaser shall notify Seller in writing at least ten (10) days prior to obtaining such samples so that Seller may have its environmental consultant available to supervise the testing in order to prevent contamination of the existing wells. If any damage is caused to the Property or any equipment or improvements as a result of the actions or inactions of Purchaser or Purchaser's agents, Purchaser shall be responsible for payment to Seller to repair and restore the same to its former condition. Purchaser shall be responsible to Seller for, and shall indemnify, defend and hold Seller harmless from and against any and all losses, claims, damages, liabilities and causes of action (including, without limitation, reasonable attorney's fees) (but not consequential or incidental damages) arising from Purchaser's or Purchaser's agents' entry, use, or occupancy of the Property. If the aforementioned damages or losses are the result of joint negligence of Seller

and Purchaser or of Seller, or willful misconduct of Seller and Purchaser (which term, for purposes of this indemnification, shall include Seller's and Purchaser's employees, contractors and agents), Purchaser's duty of indemnification shall be in proportion to its allocable share of such joint negligence or willful misconduct. This indemnity shall survive the Closing or termination of this Agreement. Purchaser shall furnish Seller with a copy of each report setting forth the results of any test performed by Purchaser within ten (10) days after Purchaser's receipt. Purchaser shall not submit a copy of any such report to any Governmental Agency unless specifically required by applicable law; and if so required, Purchaser shall simultaneously provide to Seller a copy of any information submitted to such agency.

(b) Purchaser acknowledges that Purchaser has (or, prior to Closing, will have had) the opportunity to independently and personally inspect the Property (including, without limitation, the environmental condition of the Property), and that Purchaser has entered into this Agreement based upon this right of inspection. It is expressly agreed and understood that Seller has made no representation or warranty as to the condition of any of the Property or its suitability or usefulness for any particular purpose. Seller shall deliver to Purchaser, within fifteen (15) days of Seller's execution of this Agreement, any environmental reports Seller may be in possession of at its place of business in Fairfax, Virginia relating to this Property. Purchaser agrees that the Property is to be sold to and accepted by Purchaser "AS IS" AND "WHERE IS", WITH ALL FAULTS, IF ANY, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITION OF THE PROPERTY AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. Seller does not make any representation or warranty regarding any aspect of any report or other document regarding the Property delivered to Purchaser relating to the physical or economic condition of the Property (including, without limitation any report concerning the environmental condition of the Property). Seller does not and shall not make any representation or warranty as to the accuracy or completeness of any such report or document, its preparation, or any information upon which it is based. Any reliance on any report or document or any information contained therein shall be at Purchaser's risk. Seller hereby advises Purchaser to conduct its own investigation to determine the accuracy of any report delivered to Purchaser and to determine the condition of the Property. In confirmation whereof, as a condition to Purchaser's receipt of any environmental reports or other reports or information regarding the Property, Purchaser has executed and delivered the Environmental Report Release attached as Exhibit "D" hereto.

Section 7. Purchaser's Release and Indemnity.

(a) In addition to Purchaser's indemnification obligation in Section 6, Purchaser shall be responsible for, and shall defend (with counsel acceptable to Seller) and indemnify Seller from and against any loss, claim, damage or liability, to include property damage and personal injury and to include any claim made under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), asserted by any third party or public authority arising out of, in connection with, or in relation to any surface or subsurface

contamination of the Property which may occur on the Property after the Closing Date unless caused by the sole negligence or willful misconduct of Seller. If such property damage, personal injury or loss results from the joint negligence or willful misconduct of Seller and Purchaser, Purchaser's duty of indemnification shall be in proportion to its allocable share of such joint negligence or willful misconduct.

(b) Purchaser, for itself, its heirs, legal representatives, successors, and assigns, as applicable, does hereby release, hold harmless and forever discharge Seller, its representatives, successors, and assigns, from any and all claims, demands, liabilities (including fines and civil penalties) or causes of action at law or in equity (including, without limitation, any statutory causes of action including CERCLA and RCRA) for injury (including death), destruction, loss or damage of any kind or character to the person or property of Purchaser and its employees, agents, servants, and representatives, arising out of or in relation to the environmental condition of the Property, including, any surface or any subsurface contamination of the Property.

Section 8. Remedies. If this transaction is not closed due to the default or nonperformance of Purchaser, then Seller may terminate this Agreement and retain the Earnest Money, which sum will be considered liquidated damages for Purchaser's default. Retention of the Earnest Money is not intended to limit in any way any indemnification obligation which by the terms hereof survives the termination of this Agreement. The parties agree that it would be extremely difficult to accurately determine the amount of damages suffered by Seller as a result of Purchaser's default on its obligation to purchase the Property and that the Earnest Money constitutes a fair, reasonable and customary estimate of damages resulting from such failure by Purchaser to acquire the Property. If this transaction is not closed due to the default or nonperformance by Seller, then Purchaser may, as its exclusive remedy, terminate this Agreement, in which event Purchaser shall be entitled to return of the Earnest Money, and actual third party expenses incurred by Purchaser in relation to this Agreement, not to exceed \$25,000.00 US. If either party terminates this Agreement pursuant to a right to do so expressly provided in this Agreement, then neither Seller nor Purchaser shall have any further obligation or liability under this Agreement from and after the effective date of termination, except as expressly provided herein.

Section 9. Commissions. Purchaser warrants that Purchaser has dealt with no broker or finder other than David Hunt of Rawlings Realty ("Broker") in connection with this transaction. Seller warrants that Seller has dealt with no broker or finder other than Robert Klein of Trammell Crow Company ("Listing Agent"). Seller will pay to Listing Agent a commission pursuant to a separate agreement between Seller and Listing Agent. Seller will not pay any commission directly to Broker. Any payment to Broker shall be made pursuant to a separate agreement between Broker and Listing Agent or Purchaser. Except as expressly set forth in this Section 9, Seller and Purchaser agree to indemnify and hold harmless each other from all loss, cost, and expense associated with any claim for commission by any real estate broker or brokerage firm based upon the respective acts of each.

Section 10. Assigns. This Agreement shall bind and inure to the benefit of the parties only. This Agreement may not be assigned without the prior written consent of Seller. So long as Purchaser has not breached its obligations under this Agreement, Seller's consent will not be reasonably withheld to an assignment of this Agreement by Purchaser to a third party ("Purchaser's Assign") provided that Seller is able to reasonably determine that (i) Purchaser's Assign has the financial capacity to undertake and perform the obligations of Purchaser under this Agreement, (ii) the Purchaser's Assign assumes the obligations of Purchaser under this Agreement, (iii) Purchaser remains obligated to Seller to fulfill the obligations of Purchaser under this Agreement following such assignment in the event such assignee breaches its obligations under this Agreement. If Purchaser wants title to the Property to be conveyed to persons or entities other than the named Purchaser, Purchaser shall designate the persons or entities on Exhibit "B" attached hereto; provided, however, completion of Exhibit "B" by Purchaser shall not constitute Seller's consent to conveyance of title to the persons or entities so designated.

Section 11. Notices. Any notice required or permitted to be delivered under this Agreement shall be in writing and shall be deemed to be delivered (a) whether or not actually received, three (3) days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, (b) when received, if delivered personally or sent by a nationally recognized overnight carrier, (c) when received, if given by transmittal over electronic transmitting devices such as facsimile or telecopy machine provided that the sender receives and retains written confirmation of receipt, all charges prepaid addressed to the Seller or Purchaser, as the case may be, at the address set forth below or at such other address as such party may designate by written notice to the other.

If to Seller, to: ExxonMobil Oil Corporation
Real Estate Department
3225 Gallows Road
Room 5W907
Fairfax, VA 22037
Attn: Fuels Marketing Real Estate Manager
Telecopy: 703-846-1439

If to Purchaser, to: The Belvedere Group, Inc.
5130 Wisteria Drive
Easton, PA 18045
Attn: Barry Fisher
610-258-6631
Telecopy: 918-336-0457
Email: bfisher1@ptd.net

Section 12. Entire Agreement. This Agreement contains the entire agreement between Seller and Purchaser concerning the sale of the Property, and no statement, agreement, representation, or understanding shall be binding on either party unless it is contained in this Agreement. No modification of this Agreement shall be binding on either party unless in writing and signed by the party to be bound.

Section 13. Miscellaneous.

- (a) Time is of the essence of the closing of this Agreement.
- (b) The Exhibits attached to this Agreement are incorporated herein by this reference.
- (c) The provisions of Sections 1, 4(c), 4(d), 6, 7, 9, 10, 13(c) and (d), 14, 15, 17, 18, 19, 20, 21 and the provisions of paragraphs 1 and 2 of Exhibit "C" shall survive the Closing of this transaction and the delivery of the Deed or with respect to the provisions of Sections 6, 9, 10, 14, 15, 17, 18, 19, 20, 21, and of this Section 13(c) and the provisions of paragraph 2(a) of Exhibit "C", the termination of this Agreement prior to Closing hereunder. Purchaser's agreements in Sections 7 and the provisions of paragraph 1 and 2(c) of Exhibit "C" shall constitute covenants running with the land, shall be binding upon, and except as expressly provided otherwise, shall inure to the benefit of the parties, their subsidiaries, affiliates, legal representatives, heirs, successors and permitted assigns, as applicable, and provisions substantially similar to such agreements shall be included in the Deed, which will be executed by both Seller and Purchaser.
- (d) Purchaser will accommodate Seller in effecting a tax-deferred exchange under Internal Revenue Code Section 1031. If Seller elects to effect a tax-deferred exchange, Purchaser agrees to execute additional escrow instructions, documents, agreements, or instructions to effect the exchange, provided that Purchaser shall incur no additional costs, expenses, or liabilities in this transaction as a result of or connected with the exchange.
- (e) Prior to Closing, risk of loss with regard to the Property by reason of casualty (except as provided below) shall be borne by Seller, and after Closing will be borne by Purchaser. If, prior to Closing, all or a substantial portion of the Property is materially damaged by fire or other casualty, then Purchaser shall have the option, which must be exercised by Purchaser within fifteen (15) days after receipt of written notice from Seller advising of such casualty, to terminate this Agreement or proceed in accordance with the other terms and provisions of this Agreement. In the case of a casualty, if Purchaser elects to proceed to Closing, there shall be no adjustment of the Purchase Price and no assignment of any insurance proceeds.
- (f) Purchaser acknowledges that Purchaser has had the opportunity to independently and personally inspect the public records relative to public projects which may impact the Property by reason of condemnation or otherwise, and that Purchaser has entered into this Agreement based upon this right of inspection. Upon request by Purchaser, Seller shall use

reasonable efforts to provide copies of correspondence, notices, plans, and other materials received or prepared in anticipation of a proposed taking; provided, however, Seller's failure to provide copies of such materials to Purchaser shall not be deemed to be or be a breach of or default under this Agreement. Seller does not make any representation or warranty regarding any aspect of any such materials regarding the Property delivered to Purchaser relating to the physical or economic condition of the Property and in accordance with this paragraph. Seller does not and shall not make any representation or warranty as to the accuracy or completeness of any such materials, its preparation, or any information upon which it is based. Any reliance on any such materials or any information contained therein shall be at Purchaser's risk. Seller hereby advises Purchaser to conduct its own investigation to determine the condition and configuration of the Property as a result of the proposed taking. If Seller is contacted by any third party or Governmental Authority prior to Closing, Seller shall not enter into any agreements or make any commitments with such condemning authority in connection with a proposed taking without the prior written consent of Buyer. If there shall be taken by the exercise of the power of eminent domain during the term of this Contract any part of the Property which is the subject of this Agreement, and Closing does occur, upon such occurrence, all sums awarded or agreed upon between Seller and the condemning authority for the taking of the interest of Seller, whether as damages or as compensation or reimbursement, shall be the property of Purchaser. At Closing, Seller shall assign to Purchaser any and all right, claim or interest, including all proceeds, whether by way of compensation, damages, or reimbursement, otherwise payable to Seller by reason of such taking. Purchaser affirms that the purchase price of this property takes into account all the potential losses, problems, uncertainties, delays, and impacts of the condemnation, and that Seller makes no guarantees that Purchaser will be offered just compensation or will eventually succeed in obtaining just compensation for the part taken and damages to the remainder, if any, in its dealings with the condemning authority.

(g) This Agreement will be effective as of the date entered below the signature of the last party to execute this Agreement.

Section 14. Third Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to confer upon or to give to any person, firm or corporation other than the parties hereto any right, remedy, or claim under or by reason of this Agreement. All terms and conditions in this Agreement shall be for the sole and exclusive benefit of the parties hereto.

Section 15. Further Assurances. Purchaser and Seller each agree to execute and deliver to the other such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants and conditions of this Agreement.

Section 16. Purchaser's Authority. Purchaser hereby represents and warrants to Seller that the following statements are true and correct as of the date hereof and shall be true and correct as of the Closing Date:

- (a) Purchaser has the full right, power and authority and has taken all requisite action to enter into this Agreement, to purchase the Property and to carry out its obligations as set forth hereunder.
- (b) Unless otherwise provided herein, no consent or approval of any person, entity or governmental agency or authority is required with respect to the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the transaction contemplated hereby or the performance by Purchaser of its obligations hereunder.
- (c) There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any debtor relief laws filed by Purchaser or against Purchaser.

Section 17. Confidentiality. Except as may reasonably be required in connection with the consummation of the transactions contemplated hereby, each party shall keep confidential the details of the transactions contemplated hereby and all documents and other information provided the other party, and will not identify the Purchaser or Seller of the Property without the prior consent of the other. Each party shall instruct all of its employees, officers, affiliates, professionals and others engaged by it in connection with the transactions contemplated hereby to abide by the foregoing confidentiality provisions.

Section 18. Governing law and Limitation Date. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located. Purchaser and Seller agree that any claim or litigation arising out of this Agreement or the transaction contemplated hereby, shall be brought in the courts of the state in which the Property is located or in the United States District Courts located in the state in which the Property is located, Seller and Purchaser consenting to the venue of such courts.

Section 19. No Waiver. Except as otherwise provided in this Agreement, failure by Purchaser or Seller to insist upon or enforce any rights herein shall not constitute a waiver thereof.

Section 20. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any persons or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 21. Waiver of Jury Trial. Seller and Purchaser waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter arising out of or in any way connected with this Agreement.

Section 22. Legal Fees. Reasonable legal fees incurred as a result of any dispute or legal proceeding will be paid by the losing party to the prevailing party.

Section 23. Headings and Section References. The Section Headings, Section References, and the table of contents preceding the terms of this Agreement are inserted as a matter of convenience for reference only, and do not affect the scope or intent of this Agreement. Any references to "Articles", "Sections", "Subsections", "Exhibits", "Riders" and "Addenda" are to Articles, Sections, Subsections, Exhibits, Riders and Addenda "of this Agreement".

Section 24. Rules of Construction. The provisions of this Agreement are to be construed as a whole according to their common meaning to achieve the objectives and purposes of this Agreement. Each of the parties represents that it and its respective counsel have reviewed this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement as both Seller and Purchaser are considered to have equal bargaining power.

Section 25. Counterparts. This Agreement may be executed in any number of counterparts and either Party hereto may execute any such counterpart, each of which when executed by both parties and delivered shall be deemed to be an original. It shall not be necessary in making proof of this Agreement or any counterparts hereof to produce or account for any of the other counterparts.

Section 26. Seller's Authority. Seller has the full right, power and authority and has taken all requisite action to enter into this Agreement, to sell the Property and to carry out its obligations as herein set forth.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first above written.

EXXONMOBIL OIL CORPORATION
"SELLER"

By: [Signature]
Name: D.J. Fisher
Title: Agent and Attorney-in-Fact

Date executed: May 28, 2003

The Belvedere Group, Inc., a Massachusetts
corporation
"PURCHASER"

By: [Signature]
Name: Barry Fisher
Title: President

Date executed: May 5, 2003

The undersigned executes this Agreement solely for the purpose of evidencing its agreement to perform its obligations as set forth in the foregoing and annexed Agreement, it being understood and agreed that the undersigned shall have no liability for the performance by Seller or Purchaser of their obligations under this Purchase and Sale Agreement.

STEWART TITLE GUARANTY COMPANY

OCI 2003-00062 By: [Signature]
Name: J. HAYES
Title: TRANSACTION COORDINATOR

Date executed: 5/28, 2003

Schedule of Exhibits:

- Exhibit "A" - Property Description
- Exhibit "B" - Purchaser Information Sheet
- Exhibit "C" - Rider to Purchase and Sale Agreement
- Exhibit "D" - Environmental Report Release
- Exhibit "E" - Form of Deed

RECEIVED
SEP 18 2003
PERMIT COUNTER

EXHIBIT "A"

PROPERTY DESCRIPTION

7350 Gladiolus Drive, Fort Myers, Florida, or which tract or parcel is more particularly described from information based upon Survey supplied by Purchaser, as per this Agreement, and Title Commitment as supplied and approved by Seller.

RECEIVED
SEP 18 2003

PERMIT COUNTER

DCI 2003-00062

RG **D.J.F.**

EXHIBIT "B"

PURCHASER INFORMATION SHEET

The following information is to be supplied for consideration by Seller. If accepted, Seller will use the information in preparing the closing documentation.

1. Purchaser desires that title to the Property be conveyed to the following person(s) or entity (the name or names of such person(s) or of such entity should be typed or printed. If title will be held by a legal entity other than an individual or individuals, the full legal title must be listed with correct spelling, abbreviation (if appropriate) and punctuation):

Bushwood Entertainment LLC

2. The person or entity listed above which will hold title to the Property is a(n) (circle one):

- A. individual or individuals
- B. individual or individuals doing business under an assumed name
- C. trustee
- D. corporation
- E. general partnership
- F. limited partnership
- G. other (please specify): Limited Liability Company

3. If title will be held by an individual, list marital status (married or single) and, if married, list full name of spouse. If title is to be held in the name of both spouses, be sure to include both names under paragraph 1 above: N/A

4. The complete address of the person or entity which will hold title to the Property is (include zip code): 5130 Wisteria Dr., Easton, PA 18045

5. If title will be held by a corporation, list the state of incorporation:

Florida

6. If title will be held by a proprietorship doing business under an assumed name, list the name of the

owners(s): N/A

7. Please check the appropriate line:

☐ The Property will be used by an individual or individuals, purchasing the Property for personal, family, household or agricultural purposes.

☒ The Property will be used by Purchaser for business purposes other than agricultural purposes.

8. Purchaser's Taxpayer Identification Number

56-2349834

9. Purchaser's Daytime Telephone Number

(610) 258-6631

EXHIBIT "C"

RIDER TO PURCHASE AND SALE AGREEMENT

Between The Belvedere Group, Inc., and ExxonMobil Oil Corporation.

1. As part of the consideration for this conveyance, the Purchaser for itself, its successors and assigns, covenants and agrees that neither the Property herein conveyed nor any part thereof shall at any time within a period of twenty (20) years from the date of this conveyance be used for the storage and sale of gasoline, diesel, other motor fuels, lubricants or other petroleum products, or convenience store products, nor shall the Property nor any part thereof at any time from the date of this conveyance forward be used for residential, hospital or primarily medical clinic uses, child care, playground, non-vocational school or agricultural uses nor shall the Property nor any portion thereof be used for the construction or installation of basements or any water wells for drinking or irrigation purposes; that this covenant shall survive delivery of the deed; that this covenant and agreement shall run with the land herein conveyed and that a similar restrictive covenant shall be inserted in any deed or lease or other instrument conveying or demising the Property herein conveyed or any part thereof for whatever balance of time remains on the period of the restriction created hereby.

2. (a). The Property contains, or may contain, buildings or fixtures constructed prior to 1981. Purchaser acknowledges that it is aware of, and familiar with, Occupational Safety and Health Administration Department of Labor, Rules relating to or regarding asbestos including 29 CFR Parts 1910 and particularly including Part 1926, 59 Fed. Reg. 40964 et. seq. (1994) as same may have been corrected or amended ("Rules"). Under the standards established by such Rules, certain material is presumed to be asbestos-containing unless tested by the methods prescribed by the Rules and found to be non-asbestos containing. The buildings or fixtures located upon the Property may contain at least some material which was installed prior to 1981 and which, under the Rules, is presumed to contain asbestos. Seller has conducted no tests or investigations that either confirm or negate such presumption. Purchaser acknowledges and affirms that it has had ample opportunity to inspect any buildings and fixtures located upon the Property and to conduct such tests or investigations as the Purchaser deems necessary or desirable to ascertain whether asbestos is present on the Property.

(b). Among other things, the Rules also require that under certain circumstances, building owners must maintain written records of information communicated or received concerning the identification, location and quantity of asbestos and presumed asbestos containing materials and must transfer such records to successive owners of such buildings.

(c). In addition to the indemnity contained in Section 9 of the Agreement, "Purchaser's Release and Indemnity", Purchaser shall be responsible for, and defend (with counsel acceptable

to Seller) and indemnify Seller from and against any loss, claim, damage or liability, to include property damage and personal injury in any way arising out of the presence of asbestos or asbestos containing material located in or on the Property, asserted by any third party or public authority after the Closing Date. Furthermore, Purchaser, for itself, its heirs, legal representatives, successors and assigns, as applicable, does hereby release, hold harmless and forever discharge Seller, its representatives, successors and assigns, from any and all claims, demands, liabilities (including fines and civil penalties) or causes of action at law or in equity (including, without limitation, any causes of action under the Rules) for injury (including death), destruction, loss or damage of any kind or character to the person or property of Purchaser and its employees, agents, servants, and representatives, arising out of or in relation to any presence of asbestos or asbestos containing material located in, or on the Property. This subparagraph (c) shall survive the Closing of this transaction and delivery of the Deed.

3. Purchaser's obligation to go to Closing hereunder is expressly contingent upon Purchaser's ability to obtain, prior to the End of the Approvals Period any (as hereinafter defined) governmental approval as to changes or modifications in use or zoning or modification to any existing land use restriction.

Upon the expiration of the Inspection Period, Purchaser shall have 180 days to apply for all licenses, permits and other authorizations needed to construct, maintain and operate its facility on the Property and to construct and maintain all access that Purchaser desires (the "Approvals Period"). The facility will be of the type, layout and capacity (with equipment and signage) desired by Purchaser for a family recreation facility and all other products and services desired by Purchaser (the "Facility"). Purchaser shall provide to Seller at the time of submission of the same to the Governmental Authorities having jurisdiction over such licenses, permits and other authorizations copies of all applications, permits and other materials submitted to such Governmental Authorities.

Purchaser shall use its best efforts to acquire the required licenses, permits or other authorizations for the Facility, those efforts, including, but not be limited to, efforts to obtain relief from building or zoning restrictions. Purchaser shall be solely responsible for the costs of making application for those licenses, permits or other authorizations.

If the licenses, permits and authorizations required by Purchaser for the Facility are not obtained, issued, transferred and delivered to Purchaser during the Approvals Period, Purchaser shall elect, by a date not later than one (1) day prior to the End of the Approvals Period in a writing delivered to Seller, to either (i) withdraw all applications for permits, approvals or authorizations submitted to Governmental Authorities with respect to the Property, terminate this Agreement and receive a return of the Earnest Money, in which event neither party hereto shall have any further obligation to the other under this Agreement except as otherwise provided herein or (ii) extend the Approvals Period by exercising either one or both of two (2) extensions of thirty (30) days each on the condition that they have submitted for but not yet received all permits, licenses

and approvals required by Purchaser for its intended use of the Property as a family recreation facility. To exercise said extension(s), Purchaser shall notify Seller in writing and include payment by certified or cashier's check in the amount of five thousand and 00/100 US dollars (\$5,000.00 US) ("Extension Payment") payable to Seller for each extension, non-refundable but applicable at Closing. Purchaser shall copy Seller on all applications for permits and approvals and shall promptly notify Seller if an application for approval is rejected or denied. In the event Purchaser is denied any or all permits, licenses and approvals Purchaser requires following either or both extension(s), upon written notification by Purchaser to Seller, this Agreement will be terminated and all Earnest Money will be returned to Purchaser, but Seller will retain the Extension Payment. Additionally should Purchaser elect to terminate or in the event of a mutual termination, upon written request from Seller, Purchaser shall assign to Seller all pending applications. In the event Purchaser fails to so notify Seller by a date not later than one (1) day prior to the End of the Approvals Period of Purchaser's election, Purchaser shall be deemed to have terminated this Agreement, Purchaser shall withdraw all applications for permits, approvals or authorizations submitted to Governmental Authorities with respect to the Property and shall receive a return of the Earnest Money, following which neither party hereto shall have any further obligation to the other hereunder except as otherwise provided herein.

EXHIBIT "D"

ENVIRONMENTAL REPORT RELEASE

Upon the full execution of the Purchase and Sale Agreement, ExxonMobil Oil Corporation ("ExxonMobil"), formerly known as Mobil Oil Corporation, will provide to Purchaser, free of charge, the environmental investigation reports for the above referenced property prepared by ExxonMobil's consultants (all such reports being referred to as the "Reports"). ExxonMobil does not make any representation or warranty whatsoever, express or implied, regarding any aspect of the Report(s), including but not limited to, the accuracy or completeness of any Reports, preparation of any Reports, or any information upon which any of the Reports are based. ExxonMobil has not performed any independent analysis of any aspect of any of the Reports. Any reliance by the undersigned Purchaser on the Reports, or any information therein shall be at Purchaser's own risk. Purchaser should conduct its own independent investigation to determine the accuracy of the Reports and the condition of the property.

The Report (s) are intended for ExxonMobil's private internal use. By signing this Release below, Purchaser for itself, its agents, successors and assigns agrees not to show or provide the Reports to any person or governmental agency other than Purchaser's employees, any lending institutions, consultants, or legal advisors that are directly involved in Purchaser's purchase of the property, unless ExxonMobil consents thereto in writing; provided, however, that each such party receiving any one or more of the Reports must be given a copy of this Release and must agree in writing to comply with the terms hereof. ExxonMobil reserves the exclusive right to negotiate with any third party or governmental authority regarding testing and/or remediation efforts for any investigation or remedial work performed by ExxonMobil which a third party or governmental authority may require.

The Belvedere Group, Inc.,
[Signature]

Date: May 5, 2003

RECEIVED
SEP 18 2003

PERMIT COUNTER

OCI 2003-00062

[Signature]
D.J.F.

EXHIBIT "E"

PROPOSED FORM OF DEED

RECORD AND RETURN TO:

-SPACE ABOVE THIS LINE FOR RECORDER'S USE -

SPECIAL WARRANTY DEED

STATE OF FLORIDA

§

§

COUNTY OF _____ §

KNOW ALL MEN BY THESE PRESENTS:

THAT EXXONMOBIL OIL CORPORATION, formerly known as Mobil Oil Corporation, a New York corporation, having an office at 3225 Gallows Road, Fairfax, VA 22037-0001 ("Grantor") for and in consideration of the sum of _____

AND NO/100 DOLLARS (\$_____) cash to it in hand paid by
(NAME OF GRANTEE(S)), (ADDRESS AND ZIP CODE)

_____, ("Grantee") the receipt of which is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, and CONVEY unto Grantee, subject to the further provisions of this Deed, all that certain tract or parcel of land (the "Property") in the (City/Town/Village/etc.) of _____, County of _____, State of Florida, being more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.

This conveyance is made by Grantor and accepted by Grantee subject to Grantor's right to re-enter as described herein and all valid and subsisting easements, rights-of-way, conditions, covenants, restrictions, reservations and exceptions of record, including all building and zoning ordinances, laws, regulations and restrictions by municipal or other governmental authority applicable to the Property and all matters apparent from an inspection of the Property, or which a current, accurate survey of the Property would disclose (including but not limited to encroachments, overlaps or boundary line disputes) collectively the "Permitted Encumbrances".

This conveyance is made by Grantor and accepted by Grantee subject to the restrictions that as part of the consideration for this conveyance, the Purchaser for itself, its successors and

assigns, covenants and agrees that neither the Property herein conveyed nor any part thereof shall at any time within a period of twenty (20) years from the Effective Date of this conveyance be used for the storage and sale of gasoline, diesel, other motor fuels, lubricants or other petroleum products, or convenience store products, nor shall the Property nor any part thereof at any time from the Effective Date of this conveyance forward be used for residential, hospital or primarily medical clinic uses, child care, playground, non-vocational school or agricultural uses nor shall the Property nor any portion thereof be used for the construction or installation of basements or any water wells for drinking or irrigation purposes; that this covenant shall survive delivery of the deed; that this covenant and agreement shall run with the land herein conveyed and that a similar restrictive covenant shall be inserted in any deed or lease or other instrument conveying or demising the Property herein conveyed or any part thereof for whatever balance of time remains on the period of the restriction created hereby.

In addition, Grantee shall be responsible for, and defend (with counsel acceptable to Grantor) and indemnify Grantor from and against any loss, claim, damage or liability, to include property damage and personal injury in any way arising out of the presence of asbestos or asbestos containing material located in or on the Property, asserted by any third party or public authority after the Effective Date. Furthermore, Grantee, for itself, its heirs, legal representatives, successors and assigns, as applicable, does hereby release, hold harmless and forever discharge Grantor, its representatives, successors and assigns, from any and all claims, demands, liabilities (including fines and civil penalties) or causes of action at law or in equity (including, without limitation, any causes of action under the Rules) for injury (including death), destruction, loss or damage of any kind or character to the person or property of Grantee and its employees, agents, servants, and representatives, arising out of or in relation to any presence of asbestos or asbestos containing material located in, or on the Property.

As further consideration for this conveyance, Grantee, for itself, its heirs, legal representatives, successors and assigns, as applicable, hereby releases, holds harmless, and forever discharges Grantor, its representatives, successors and assigns, from any and all claims, demands, liabilities (including fines and civil penalties) or causes of action at law or in equity including, without limitation, any statutory causes of action, including the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") for injury (including death), destruction, loss or damage of any kind or character to the person or property of Grantee (and any subsequent owner of the Property, as applicable) and the employees, agents, servants and representatives of such parties arising out of or in relation to the environmental condition of the Property, including any surface or any subsurface contamination of the Property.

As further consideration for this conveyance, Grantee shall be responsible for, and shall defend (with counsel acceptable to Grantor) and indemnify Grantor, its heirs, legal representatives, successors and assigns from and against any loss, claim, damage or liability to include property damage and personal injury and to include any claim made under CERCLA and

RCRA, asserted by any third party or public authority, arising out of or in relation to any surface or subsurface contamination of the Property which may occur on the Property after Effective Date, unless caused by the sole negligence of Grantor. If such property damage, personal injury, or loss results from the joint negligence or willful misconduct of Grantor and the owner of the Property, the Property owner's duty of indemnification shall be in proportion to its allocable share of such joint negligence or willful misconduct.

The conditions, covenants and other provisions set out in this Deed shall be covenants running with the land and shall be binding upon and (except as expressly provided otherwise) shall inure to the benefit of the parties, their subsidiaries, affiliates, legal representatives, heirs, successors and assigns as applicable.

Ad valorem taxes and special assessments, if any, against the Property for the year in which the Effective Date occurs will be pro-rated between Grantor and Grantee as of the Effective Date, and Grantee hereby assumes and agrees to pay same.

TO HAVE AND TO HOLD the Property, together with the appurtenances, estate, title and interest thereto, unto Grantee, Grantee's successors, heirs and assigns, forever, subject to the provisions hereof, and in lieu of all other warranties, express or implied, Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend the title to the Property unto Grantee, Grantee's successors, heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to the Permitted Encumbrances.

IN WITNESS WHEREOF, Grantor has signed this deed this _____ day of _____, 200__, but EFFECTIVE as of this _ day of _____, 200__, ("Effective Date").

(CORPORATE SEAL)

GRANTOR:

CORPORATION

EXXONMOBIL

OIL

Attest:

By: _____

By: _____

Name: _____

Name: _____

Title: Assistant Secretary

Title: Vice President

Signed, sealed and delivered in the presence of:

WITNESS:

Print Name: _____

Address: _____

WITNESS:

Print Name: _____

Address: _____

COMMONWEALTH OF VIRGINIA

§

~~D.J.F.~~ C04

COUNTY OF FAIRFAX

§
§

Before me the undersigned authority, this day personally appeared _____
_____ and _____, to me well known and known to me to be a Vice
President and Assistant Secretary, respectively, of the corporation named in the foregoing
instrument, and they severally acknowledged to and before me that they executed said instrument
on behalf of and in the name of said corporation as such officers; that the seal affixed to said
instrument is the corporate seal of said corporation and that it was affixed thereto by due and
regular corporate authority; that they are duly authorized by said corporation to execute said
instrument and that said instrument is the free act and deed of said corporation. They are
personally known to me or have produced _____
as identification and did/did not take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this
the ____ day of _____, 200__.

Print Name: _____
Notary Public, Commonwealth of Virginia
My Commission Expires: _____

MODIFY THE FOLLOWING TO FIT THE ACTUAL ENTITY, IE. CORPORATION, LLC, INDIVIDUAL, THEN DELETE THIS NOTE

GRANTEE:

NAME OF PURCHASER

Attest:

By: _____

Name: _____

Title: _____

By: Barry Fisher

Name: Barry Fisher

Title: President

Signed, sealed and delivered in the presence of:

WITNESS:

Print Name: _____

Address: _____

WITNESS:

Print Name: _____

Address: _____

2003-00062
RECEIVED
SEP 18 2003
PERMIT COUNTER

D.J.F.

MODIFY THE FOLLOWING TO FIT THE ACTUAL ENTITY, IE. CORPORATION, LLC, INDIVIDUAL, AND ITEMS IN GREEN, THEN DELETE THIS NOTE

STATE OF FLORIDA §
 §
COUNTY OF _____§

Before me the undersigned authority, this day personally appeared _____
_____ and _____, to me well known and known to me to be a _____
_____ and _____, respectively, of the
corporation named in the foregoing instrument, and they severally acknowledged to and before
me that they executed said instrument on behalf of and in the name of said corporation as such
officers; that the seal affixed to said instrument is the corporate seal of said corporation and that
it was affixed thereto by due and regular corporate authority; that they are duly authorized by said
corporation to execute said instrument and that said instrument is the free act and deed of said
corporation. They are personally known to me or have produced _____
_____ as identification and did/did not take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this
the ____ day of _____, 200__.

Print Name: _____
Notary Public, State of Florida

My Commission Expires: _____

DCI 2003-00062

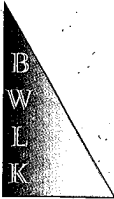
D.J.F. *[Signature]*

EXHIBIT "A" TO SPECIAL WARRANTY DEED FROM
EXXONMOBIL OIL CORPORATION TO

D.J.F.

BT

10/1



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

November 17, 2003

Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

RECEIVED
NOV 26 2003

PERMIT COUNTER

RE: Fenway Family Fun Center @ Lakes Park
DCI2003-00062 / PDS Application (Minor PD)
BWLK Project Number 34186(03-14).

Dear Mr. Block:

Enclosed herewith are eleven (11) copies of the revised Master Concept Plan and the related attachments for the above referenced project for your review and approval. The following are chronological responses to the comments as listed in your letter dated October 6, 2003:

Comment 9c: *Zoning and Land Use Map. A map or other depiction of the existing zoning and current land uses (i.e. single family residence, multiple-family building, retail commercial, office building, etc.) surrounding the tract or parcel to a distance of 500 feet. [34-373(a)(4)c.]*

Please note on the Master Concept Plan for the property to the west the fact that there is a pending request for Residential Planned Development zoning (DCI2003-00059).

Response 9c: **See the revised Master Concept Plan reflecting the required notation.**

Comment 12: *Scale of Plans/Required Information. The Master Concept Plan must be clearly legible and drawn at a scale sufficient to adequately show and identify the following information: [34-373(a)(6)]*

Please refer to the following.

DCI 2003-00062

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

November 17, 2003
Mr. Alvin "Chip" C. Block, AICP
Page two

Comment 12b: *Vehicular Access. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development. [34-373(a)(6)b.]*

Please provide the exact location of the access point into this development from an acceptable reference point.

Response 12b: **See the revised Master Concept Plan reflecting the required distance.**

Comment 12d: *Other Master Concept Plan Parcel Requirements. Where the subject property is to be divided into lots or parcels, the Master Concept Plan must indicate the following: [34-373(a)(6)c.]*

Please refer to the following.

Comment 12d4: *Uses. The proposed use of each lot or parcel (including outparcels) keyed to the list of proposed uses submitted with the application. If the property development regulations for a specific zoning district will be used, reference to the specific district will be sufficient. [34-373(a)(6)c.]*

Please make sure that the Plan indicates where each of the requested uses will be located within the proposed development.

Response 12d4: **See the revised Master Concept Plan reflecting more detailed information regarding the proposed uses within the subject property.**

Comment 12e: *Development Areas. Individual development areas (i.e. residential, retail, office, manufacturing, mixed use-listed, etc.) must be identified with detail showing the following: [34-373(a)(6)d.]*

Please refer to the following.

November 17, 2003
Mr. Alvin "Chip" C. Block, AICP
Page three

Comment 12e6: *Commercial/Industrial. If commercial or industrial is proposed, the type(s) and the total floor area of each type. [34-373(a)(6)d.vi.]*

Please review you Exhibit IV-I-1, the Master Concept Plan, and your Narrative to make sure that the total gross floor area proposed in this application is consistent. Make any necessary changes and resubmit the required material.

Response 12e6: **Please see the revised Exhibit IV-I-1, the Narrative, and the Master Concept Plan to reflect the same total square footage.**

Comment 12f): *Service Areas. The general location of service areas for delivery of goods or services must be shown for all developments that are not residential subdivisions. [34-373(a)(6)e.]*

Please revise the Master Concept Plan to show the service areas as required by this Section.

Response 12f): **Please see the revised Master Concept Plan clarifying the service area location.**

Comment 14: *Schedule of Uses. A schedule of uses keyed to the Master Concept Plan as well as a summary for the entire property must be provided including the following: [34-373(a)(8)]*

Please remove the Schedule of Uses from the Master Concept Plan and submit these on a separate sheet of paper. The Land Development Code does not require the Schedule to be on the Plan.

As you revise this, please review the use of Food and Beverage Service, limited as a permitted use and make sure that this is the use the applicant wants to have as part of this development.

Response 14: **Please see the separately attached revised Schedule of Uses. We agree with your observation, and we think the best use should be Restaurants, Group II and not a Food and Beverage Service, limited.**

November 17, 2003
Mr. Alvin "Chip" C. Block, AICP
Page four

Comment 15: *Schedule of Deviations. A schedule of deviations and a written justification for each deviation requested as part of the Master Concept Plan must be submitted. The location of each requested deviation must be indicated on the Master Concept Plan. [34-373(a)(9)]*

Please review item a) on the second page of the justification for the requested deviation. This indicates that a pedestrian access between this property and the miniature golf course to the west has been discussed. If this is being committed to, then the Plan should be revised to show the location of the proposed access.

Response 15: **See the revised "Deviation and Justification for Deviation" language.**

Comment 21: *Miscellaneous Items.*

There is a separate existing zoning application on file for this property, DCI2001-00071. Before staff can proceed with the application for Fenway Family Fun Center, DCI2001-00071 must be withdrawn by the applicant.

Please remove General Notes 4, 5, 6, 8, 9, 10, 11, and 12. These notes are not required to be on the Master Concept Plan by the Lee County Land Development. The other notes provide some information required as part of the planned development and can remain for now.

Please remove the Special Note from the Master Concept Plan. This note is not required to be on the proposed Master Concept Plan by the Lee County Land Development Code.

Please remove the Schedule of Uses from the Master Concept Plan since the Land Development Code does not require this information on the Plan.

November 17, 2003
Mr. Alvin "Chip" C. Block, AICP
Page five

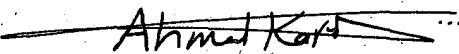
Response 21: Please see the revised Master Concept Plan where General Notes 4, 5, 6, 8, 9, 10, 11, & 12, the Special Note, and the Schedule of Uses have been deleted. The same information is submitted on separate sheets.

The withdrawal of Case DCI2001-00071 is forthcoming.

We trust the information provided herewith is sufficient for your approval. If you have any questions or need additional information, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.


Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

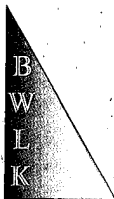
Enclosures

cc: Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosures
Mr. Donald J. Thiele, Manager, Bushwood Entertainment, LLC w/enclosures

RECEIVED
NOV 26 2003

PERMIT COUNTER

DCI 2003-00062



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

FENWAY FAMILY FUN CENTER @ LAKES PARK

NARRATIVE REGARDING ZONING REQUEST

(Narrative to explain Guidelines for decision-making embodied in Section 34-373.(a)(5), compliance with design standards of Section 34-411., compliance with Lee Plan Sections 34-373.(a)(5) & 34-491., and explanation of the Surface Water Management Plan according to Section 34-373.(b)(1)).

EXHIBITS II-E-2, II-E-4, II-E-5, AND IV-E-2

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



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ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

NARRATIVE STATEMENT FOR A REZONING TO MINOR COMMERCIAL PLANNED DEVELOPMENT

INTRODUCTION

The intent of this Application for Public Hearing is to rezone the subject parcel at 7350 Gladiolus Drive from a Commercial Planned Development (CPD) allowing a Convenience Food and Beverage Store with fuel pumps to a Minor Commercial Planned Development (CPD) limiting the uses to Recreation Facilities, Commercial, Groups I & III. The site is located on the southwest corner of Gladiolus Drive and Lakes Park entrance road. Lakes Park, a Lee County Regional Park lies to the northeast and Castle Golf miniature golf range is to the south.

The applicant feels that the rezoning will better serve to meet the existing and the expected demand for amusement and recreational facilities for the growing residential areas south of Cypress Lake Drive, west of I-75, north of Corkscrew Road, and east of the Sanibel Causeway. There are several commercial recreational facilities in the South Fort Myers area; however, they are limited to miniature golf (3), and ice skating rink (1). The proposed recreational facility provides activities that meld with the more passive recreation offered by the adjacent Lakes Park. The property to the north is zoned CF-2 for Lakes Park. The parcel to the south is zoned AG-2, but is developed as a miniature golf attraction. To the west is vacant AG-2 property. The parcels directly across Gladiolus Drive are zoned for Commercial Planned Developments.

The project is consistent with the overall vision of the Lee Plan and specifically implements several Lee Plan Goals, Objectives, and Policies. The principal goal of the Lee Plan implemented by this project is Goal 2: Growth Management. The Master Concept Plan exemplifies the Lee Plan Vision for 2020, complies with the future land use map, avoids impact and therefore protects important natural resources, adds to the economic base and utilizes existing facilities.

The Fenway Family Fun Center CPD calls for a total development of 3.92 acres more or less. A 8,900 S.F. building will accommodate a game arcade, three (3) private event rooms, a caretaker's unit/office, and restroom facilities. A small 1,500 S.F. service/maintenance building is also located on the site for storing & servicing the go-karts & bumper boats. Also, a 2,100 S.F. open building is proposed for a loading/unloading depot for the go-kart track. The remainder of the property will be developed with batting cages, bumper boats, go-cart track, kiddie go-kart track, kiddie merry-go-round, parking, drainage and landscaping to support the uses.

Although one (1) deviation for setbacks along two (2) roads and two (2) adjacent properties is being requested, it is the applicants intent to maintain a forty (40) foot setback between the commercial recreational devices and the vacant AG-2 land to the west.

This Narrative is intended to address the requirements of Sections 34-373.(a)(5), which reads as follows:

- (5) *A narrative explanation as to how the proposed development complies with the Lee Plan, the design standards set forth in Section 34-411., and the guidelines for decision-making embodied in Sections 34-145.(c)(2)a. and e. and 34-145.(d)(3).*
- (2) *Considerations. In reaching his decision, the hearing examiner must consider the following, whenever applicable:*
 - a. **Whether there exist changed or changing conditions that make approval of the request appropriate.** The changed conditions relate to the previous rezoning of this parcel, its proximity to Lakes Park and limited access. The previous zoning case requested a schedule of uses that included convenience food and beverage store, self-service fuel pumps and other commercial uses up to 29,999 S.F. Staff cited 28 convenience stores in the area, and the Department of Parks and Recreation objected to the sale of alcoholic beverages so close to the park. The area adjacent to Gladiolus Drive is developing a buffer zone of professional offices and limited commercial uses sheltering the existing residential areas against the traffic along this segment of Gladiolus Drive. The housing boom in the South Fort Myers Planning Community provides the need for recreational facilities for all ages. The proposed uses work well with the more natural park setting next door and the existing miniature golf facility immediately south of the parcel. The combination of existing and proposed family recreational opportunities within walking distance of each other provides a unique opportunity that will increase use of the Lakes Park facilities, as well as providing other forms of family recreation.

- e. **Whether the request is consistent with the goals, objectives, policies, and intent of the Lee Plan.** See Pages 7, 8, and 9.
- f. **Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.** The proposed use will be a commercial recreational facility geared toward families. No alcoholic beverages will be available, although food service will be an accessory to the principal use, and available only to patrons of the fun center. Appropriate setbacks, parking, lighting, and noise abatement will be provided in accordance with the Lee County Land Development Code.
- g. **Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.** The subject site is disturbed, having been cleared and regularly mowed by the owner. The site lies within an urban area. Water, sewer, and access are existing and available to the site.
- h. **Whether the request will be compatible with existing or planned uses.** The area is urban in nature. The uses proposed will be consistent with what already exists, a county park and a miniature golf course. There are four (4) commercial family recreation centers in South Fort Myers. Each is limited to one (1) type of recreation activity: a) Miniature golf or b) ice-skating. The Lakes Park, a Lee County Regional Park, provides walk – jog trails, bike paths, canoeing, and swimming and pavilions for gatherings. The street pattern allows for adequate traffic circulation to the site from Gladiolus Drive, and Lakes Park entrance road, a county maintained access road.
- i. **Whether the request will cause damage, hazard nuisance, or other detriment to persons or property.** The site has adequate access and there are no surrounding residential uses within 500 feet of the property boundaries at this time. The Fenway Family Fun Center will provide buffering and may provide fencing and gates for security, as well as aesthetics. Hours of operation will be 9:00 A.M. to 11:00 P.M. on weekends. The applicant has chosen to provide a 40 foot setback for amusement devices and parking along the western property line. This setback combined with the existing retention area to the west effectively buffer potential residences that may be developed in the future on the vacant AG-2 property to the west.

- j. **Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.** The uses will be limited to those listed in the Schedule of Uses. The uses will be subject to review by county staff for zoning compatibility; development services issues; environmental and land use planning concerns.

The application provided is the result of a meeting with zoning staff on February 13, 2003. The outcome of that discussion is the attached application for a Minor Commercial Planned Development rezoning for Recreation Facilities, Commercial, Groups I & III.

The information contained in this exhibit will clearly show evidence that the Fenway Family Fun Center rezoning request meets or exceeds all of the requirements of the Lee Plan and the Land Development Code for favorable consideration.

HISTORIC DEVELOPMENT TRENDS

The Fenway Family Fun Center is proposed on a 3.92 acre site at 7350 Gladiolus Drive and the entrance to Lakes Park. The site has a zoning history going back to May 3, 1993 when Resolution Z-93-014 was adopted permitting a Commercial Planned Development of 29,999 S.F. The uses included a convenience food and beverage store, fast food restaurant, and 24,999 S.F. of commercial recreation on a three (3) lot subdivision. The original CPD was vacated in 1998 and received a two (2) year extension in 1999 which expired in 2001. In 2001 a new CPD was applied for (Case Number DCI2001-00071) requesting a 20,000 S.F. of general office building, a convenience food and beverage store, with 24 vehicle fueling positions, and a carwash on two (2) lots.

The last rezoning case received a recommendation of denial by the Hearing Examiner and was remanded back to the Hearing Examiner by the Board of County Commissioners. The case file was still active on May 15, 2003 when Ms. Pamela E. Houck requested that a new master concept plan and attendant documents could be filed as an amendment. The request was denied with the determination that waivers could be given from certain requirements that have not changed since the last application. A request for waivers is attached to this application and a new application, for a Minor Commercial Planned Development is being requested.

Lee County Department of Parks and Recreation raised two (2) major issues in the previous zoning case (DCI2001-00071). They objected to any sale of alcohol so close to Lakes Park and they also objected to the use of the Lakes Park entrance road by a private facility. Fenway Family Fun Park does not intend to sell alcohol on their site.

Assistant County Attorney, Ms. Dawn Lehnert, addressed the access issue during the public hearing. The Board of County Commissioner accepted the right of access when it accepted the deed for property from the previous owner during the negotiation for improvements to Gladiolus Drive in 1993. It was also the Hearing Examiner's opinion that access to Lakes Park entrance road could not be denied to the property owner.

CHANGING CONDITIONS

The application to rezone the subject property is logical in the face of current and expected urban development trends. Emerging trends for the area of the subject site that serve to support the rezoning application include the following:

1. Traffic volumes along Gladiolus Drive and U.S. 41 continue to support commercial development. The nearest permanent count station 46 shows an increase from 39,900 in 2001 to 40,700 in 2002.
2. Surrounding active development is growing at a steady pace in this area. The proposed development would provide recreational activities to the large residential component of seasonal and long-term owners close by.
3. There is a need for recreational opportunities for various age groups. This proposed development will be an attraction for Lakes Park and vice versa.

THE FUTURE LAND USE MAP & PLANNING COMMUNITIES MAP

The area where the Fenway Family Fun Center site will be located is classified as Central Urban Land Use. The Central Urban Areas are characterized as the "urban core" of the county. This is the part of the county that is already heavily settled and which has or will have adequate public services to the site. The Fenway Family Fun Center is located southeast of the Caloosahatchee River in the South Fort Myers Planning Community. This Planning Community (Community Number 15) is extensively developed, especially in the portions along U.S. 41, Summerlin Road, and toward the City of Fort Myers.

The South Fort Myers Planning Community year 2020 Allocations show this area to be planned for 1849 acres of commercial development. Approximately 1,808 acres of commercial development are existing.

Fenway Family Fun Center site underscores the public policy commitment of the Lee Plan by virtue of its transportation linkage to Planning Community Numbers 14, 8, 6, 12, and 11 – Sanibel, Cape Coral, and Fort Myers, via Summerlin Road and McGregor Boulevard and the Midpoint Bridge – the subject site can be expected to additionally serve the recreational needs generated in those areas.

FUTURE LAND USE ELEMENT CONSISTENCY

The most important finding that relates to rezoning appropriateness and approval pertains to the project's consistency with the Lee Plan. The Lee County Land Development Code regulations state that the Hearing Examiner and the Board of County Commissioners are to consider whether the rezoning request is consistent with the goals, objectives, policies and intent of the Lee Plan. The Fenway Family Fun Center is consistent with the Lee Plan's Future Land Use Element in the following manner.

Policy 1.1.3: Central Urban – Located within one-half mile of three (3) major arterial roadways (Gladiolus Drive, U.S. 41, and Summerlin Road), the subject site represents a good fit to the vision for the Central Urban future land use category, offering the greatest range and highest levels of urban services. The proposed Fenway Family Fun Center implements Objective 2.1 by promoting a contiguous and compact growth pattern within an area already well served by infrastructure, and surrounded by existing and developing sites within a designated future urban area.

Objective 2.2: Development Timing. By taking advantage of existing public facilities that are in place to service the site, the approval of the Fenway Family Fun Center will advance the creation and infill of a compact and contiguous development pattern. The Project is well served in terms of availability, proximity and levels-of-service. The Project is consistent with Policy 2.2.1 and Policy 2.2.2. It will not burden an already overwhelmed facility, nor would it result in unreasonable development expectations. The proposed development is located within an area of existing development, and epitomizes compact and efficient growth patterns.

The subject site adheres to the limited access, clustering of activities and sharing access as traffic carrying protection measures called for in Policy 6.1.5 and will incorporate all such features feasible and desirable within the proposed development order plan.

Policy 4.1.1: The proposed development is designed to ensure that the land uses and structures are well integrated, properly oriented, and functionally related to the natural features of the site. The placement of uses within the development minimizes the expansion and construction of street and utility improvements.

Goal 11: Water, Sewer, Traffic, and Environmental Review Standards have all been met by virtue of connecting to existing public utility systems and avoidance of impacts on environmentally sensitive areas.

Policy 6.1.1

The proposed development will comply with the following:

- a. Traffic and Access impacts.
- b. Landscaping and detailed site planning.
- c. Screening and buffering.
- d. Availability and adequacy of services and facilities.
- e. Impact on adjacent land uses and surrounding neighborhoods.
- f. Proximity to other similar centers.
- g. Environmental considerations.

Policy 6.1.3

The proposed development consists of rezoning to Minor Commercial Planned Development. The proposed development will be designed and arranged in an integrated and cohesive unit in order to meet the following:

- Provide visual harmony and screening.
- Reduce dependence on the automobile by providing facilities within walking distance of Lakes Park and several residential neighborhoods along Gladiolus Drive and Summerlin Road.
- Promote pedestrian movement within the development and off-site.
- Avoid negative impacts on surrounding land uses and traffic circulation.

Policy 6.1.4

The proposed development is compatible with the adjacent existing and proposed uses, and has availability to all required public services and facilities. This facility meets all Lee County concurrency requirements.

Policy 6.1.5

The proposed development will be designed to protect the traffic-carrying capacity of adjacent roads and streets.

Policy 6.1.6

The proposed development will provide adequate and appropriate landscaping, open space, and buffering. The proposed development will be designed to enhance the appearance of structures and parking areas as well as blend with the character of the existing surrounding land uses.

Policy 6.1.9

There are no proposed educational facilities to be located near the proposed development.

COMMUNITY FACILITIES AND SERVICES

The Fenway Family Fun Center meets the requirements of the Potable Water Infrastructure by connecting to the public water system provided by Lee County Utilities, as required by Lee Plan Standard 11.1 with adequate existing level-of-service, implementing Lee Plan Policy 33.1.5.

The Sanitary Sewer Element of the Lee Plan is furthered by the proposed development in that it makes use of the public sewer system provided by Lee County Utilities, as required by Lee Plan Policy 11.2. An availability letter from Lee County Utilities is included as part of this application.

This project implements the Lee Plan Policies for surface water management by inclusion of a modern surface water management system consisting of onsite dry detention facilities meeting or exceeding all applicable regulations, as required by Goal 39.

The project maintains the minimum level-of-service required by The Lee Plan Policy 70.1.3 for potable water, sanitary sewer, solid waste, storm water management, and roadway facilities.

ENVIRONMENTAL RESOURCES

The Fenway Family Fun Center is located in an area indicated for flooding by Category 1 storm surge. Consequently, property flooding is a consideration for the project in the case of a tropical storm pushing water into the coastal areas adjacent to Gulf of Mexico and up to Hendry Creek. The finish floor elevation of the building will be a minimum of 11 feet N.G.V.D. in accordance with the FIRM Map designation in the "A-14" flood zone (source: FIRM Map 125124 0325 C, dated November 4, 1992). Elevations on the site average about 5.5 feet N.G.V.D. plus or minus. The property is comprised of Soil #69 – Matlacha Gravelly Fine Sand, (source: Soil Survey of Lee County, United States Department of Agriculture, Soil Conservation Service, dated 12/84 – most recent edition). This is not considered to be a hydric soil by Lee County. Hydric soils are those where flooding, or ponding is evident or may indicate wetland areas.

SURFACE WATER MANAGEMENT

Storm water will be handled by onsite dry detention facilities. The site may have two (2) or more acres of impervious area. Therefore, Lee County will require water quality and attenuation per South Florida Water Management District permitting.



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

EXHIBIT IV-J-1

Deviation and Justification for Deviation

A deviation from Section 34-2474. (b)(1) that states that commercial outdoor sports/amusement parks, amusement devices and water slides, shall be located not less than 50' or a distance equal to the height of structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100' from any adjacent property zoned RS, TF, TFC, RM, MH or RPD, or any existing residential use, to allow the following setbacks:

- a) 10' - South property line
- b) 25' - Lakes Park entrance road
- c) 25' - Gladiolus Drive
- d) 40' - West property line

Justification

This site will be limited by parcel area to specific amusement devices. The perimeter boundaries are adjacent to road rights-of-ways on the north and east. To the north across Lakes Park entrance road is Lakes Park, a 282 acre Lee County Regional Park. The park provides recreational activities in a natural setting including lakes, for swimming and canoeing, picnic facilities, walk, jog and bike paths, and a small gauge railroad.

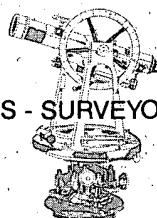
To the east across the 200' right-of-way of Gladiolus Drive, are existing and proposed commercial/office sites. The nearest multi-family residence is approximately 800' away behind the buffer of commercially zoned property along the south side of Gladiolus Drive. The nearest single-family residence is over 1,000' away, also buffered from Gladiolus Drive by commercially zoned property.

To the south of the parcel is a miniature golf attraction, "Castle Golf", and vacant AG-2 property owned by Lee County. To the west is vacant AG-2 property owned by Lee County for drainage purposes and approximately 65' from the subject parcel's west boundary is a vacant AG-2 parcel of approximately $\pm$ 19 acres, which is under review for a Residential Planned Development under case number DC12003-00059.

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

The reduced setbacks are justified as follows:

- a) 10' - South Property Line - The Castle Golf miniature golf facility is a similar outdoor commercial recreational facility. The applicant and Castle Golf's owner have discussed a proposed service drive to tie off the Castle Golf's entrance driveway. There will be approximately a minimum of 25' between the miniature golf course area on the Castle Golf site and the batting cages and the bumper boats on the Fenway Family Fun Center site.
- b) 25' - Lakes Park entrance road - The site boundary is approximately 210' from the nearest park facility (a picnic area). The parking lot and the go-kart track will be $\pm$ 240' from the picnic area, and $\pm$ 360' from the nearest Lakes Park structure. The park entrance will be buffered from the amusement devices by a parking lot and a 15' wide landscaped buffer along the north property line.
- c) 25' - Gladiolus Drive - The nearest commercial parcel is approximately $\pm$ 200' from the subject site's boundary, $\pm$ 500' from the nearest commercial building along Gladiolus Drive, and $\pm$ 800' to existing residential property. The perimeter of the subject property will be fenced and bermed with landscaped buffers.
- d) 40' - West Property Line - The vacant property to the west that is under review as a residential project, is separated from the perimeter of the subject site by 65' of land owned by Lee County. The land is used for drainage purposes. There is a 30' drainage easement on our site that is also being used for drainage by Lee County. These areas provide 95' of buffer to activity on the subject site. The 40' setback shown allows for open space and drainage on the site.

We feel the existing and the proposed separations provided on all sides of the property meet the intent of Section 34-2474.(b)(1), and the existing and proposed separations / setbacks will serve to reduce noise impact and light intrusion on adjacent properties.

SCHEDULE OF USES

Accessory Uses and Structures
Administrative Offices
Caretaker's Residence
Essential Services
Essential Service Facilities, Group I
Parking Lot, Accessory
Recreation Facilities, Commercial, Groups I & III
Restaurants, Group II
Signs in accordance with Chapter 30 of the Lee County Land Development Code
Storage: Indoor Only

SCHEDULE OF DEVIATIONS

A deviation from Section 34-2474.(b)(1) that states commercial outdoor sports / amusement parks, amusement devices and water slides shall not be located less than 50 feet or a distance equal to the height of structure of the device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property zoned RS, TF, TFC, RM, MH, or RPD or any existing residential uses to allow the following setbacks:

- A. 10 foot – South Property Line
- B. 25 foot – Lakes Park entrance road (North Property Line)
- C. 25 foot – Gladiolus Drive (East Property Line)
- D. 40 foot – West Property Line

PARKING CALCULATIONS

Recreation Facilities, Indoor:

Per Lee County Land Development Code, Zoning, Chapter 34, Article VII, Division 26, Section 34-2020.(4)o.2. All other indoor recreational facilities, including health clubs, not specifically listed: one (1) parking space for each 100 S.F. of total floor area.

Arcade – 6,000 S.F. X 1 space / 100 S.F. = 60 parking spaces.

Recreation Facilities, Outdoor, Commercial:

Per Lee County Land Development Code, Zoning, Chapter 34, Article VII, Division 26, Section 34-2020.(4)p. Recreation facilities, outdoor, commercial, to be determined by the director if the use is not listed in this section.

Spectator Area for go-karts and bumper boats – six (6) spaces per 100 S.F.
200 S.F. X 6 spaces / 100 S.F. = 12 parking spaces

Parking Spaces Required = 72 parking spaces

Parking Spaces Provided = 81 parking spaces

Handicapped parking spaces required = 4 parking spaces

Handicapped parking spaces provided = 4 parking spaces

PROPERTY DEVELOPMENT REGULATIONS (CPD)

Minimum lot area	=	Total Parcel Area	
Minimum lot width	=	Total Parcel Width	
Minimum lot depth	=	Total Parcel Depth	
Structure setbacks	=	Gladiolus Drive	- 25'
		Lakes Park entrance road	- 25'
		Side Yard (South Property Line)	- 10'
		Rear Yard (West Property Line)	- 40'
Height	=	Buildings limited to no more than 35'	
		Batting Cages, supports, wall and nets limited to no more than 135'	
Maximum Coverage of Buildings	=	40%	
Minimum Open Space	=	30%	

OPEN SPACE CALCULATIONS

Total Area	=	170,618 S.F. (3.92 Ac.) (100.00%)
Open Space (Min.)	=	51,186 S.F. (1.18 Ac.) (30.00%)

GENERAL NOTES

1. The requested zoning is Minor Commercial Planned Development (CPD).
2. The requested maximum square footage is 12,500 square feet of gross floor area.
3. No variances, special exceptions, or special permits are being requested; however, one (1) deviation is being requested.
4. Stormwater Management will be handled by on-site dry detention facilities.
5. Site soil classification: Soil #69 – Matlacha Gravely Fine Sand, (USSCS, Soil Survey of Lee County, Florida).
6. There will be no blasting on site.
7. No alcoholic beverages will be distributed or consumed on site.
8. Boundary information is taken from a survey performed by Bean, Whitaker, Lutz & Kareh, Inc., dated May 28, 2003.
9. The project falls within Flood Zone "A-14", base flood elevation of 11.0 N.G.V.D., according to F.I.R.M. 125124 0325 C, dated November 4, 1992.
10. Development is located in the Iona-McGregor Fire District, 15961 McGregor Boulevard, Fort Myers, Florida 33908.
11. There will be no potential impact on ground and surface waters.
12. There are no apparent flowing wells on this parcel.
13. Coastal setback lines do not apply to this parcel.
14. There are no existing buildings or structures on this parcel.
15. Acceleration, deceleration and left turn lanes (if required) will be designed in accordance with Lee County Department of Transportation requirements, and will be constructed by the developer.



REQUEST FOR PUBLIC HEARING SUBMITTAL REQUIREMENT WAIVER

Upon written request, the director may modify the submittal requirements for Public Hearings where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file.

APPLICATION FOR WAIVER OF SUBMITTAL ITEMS REQUIRED FOR PUBLIC HEARING

- ☒ Public Hearing - General Requirements (34-202)
☐ Public Hearing - Additional requirements for:
☐ Development of Regional Impact (34-203(a))
☒ Planned Developments (34-203(b))
☐ Rezoning other than Planned Developments (34-203 (c))
☐ Mobile Home Park (34-203(d))
☐ Special Exception (34-203(e))
☐ Variances (34-203(f))

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PERMIT COUNTER

PLEASE PRINT OR TYPE:

001 2003-00062

STRAP Number: 35-45-24-00-00015.0030
Name of Project: Fenway Family Fun Center @ Lakes Park
Name of Applicant*: Bean, Whitaker, Lutz & Kareh, Inc. Ahmad R. Kareh, P.E. (Authorized Agent)
Street Address: 13041 McGregor Boulevard
City: Fort Myers State: FL Zip: 33919
Phone #: 239-481-1331 Fax #: 239-481-1073 E-mail: fmooffice@bwk.net

* If applicant is not the owner, a letter of authorization from the owner must be submitted.

SPECIFIC SECTION(S) AND REQUIREMENT(S) FOR WHICH A WAIVER IS SOUGHT:

Section Number	Requirement
#1	see attached Exhibit "A"
#2	
#3	
#4	
#5	
#6	
#7	
#8	
#9	

LEE COUNTY
COMMUNITY DEVELOPMENT
P.O. BOX 398 (1500 MONROE STREET)
FORT MYERS, FLORIDA 33902
PHONE (941) 479-8585

SCOPE OF PROJECT AND REASON(s) FOR REQUEST

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver should be approved. Use additional sheets if necessary.

(Please print or type)

see attached explanation from applicant

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

Signature of Applicant:

Directors Decision: X Request Approved Request Denied

Comments:

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DCI 2003-00062

Signature:

Paula H. Over

Date:

10/15/03

SCOPE OF PROJECT AND REASON(S) FOR REQUEST

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver should be approved. Use additional sheets if necessary.

(Please print or type)

The subject project encompasses a change of use from a previous Planned Development Zoning Case, DCI2001-00071. The previous case was remanded to the Hearing Examiner by the Board of County Commissioners, but the owner / applicant, Mobil Oil Corporation, did not follow through. The case remains active.

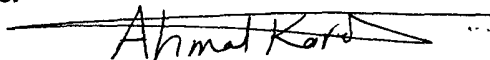
The Bushwood Entertainment, LLC is the contract purchaser and intends to file a new public hearing application for a Planned Development Zoning to allow commercial recreation. The waivers requested relate to the existing conditions on the site that have not changed since being reviewed by staff in the previous case. A pre-application meeting was held with county staff on February 13, 2003. It was suggested at that meeting that we provide a new application and request the waivers listed.

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DCI 2003-00062

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.



Signature of Applicant: Ahmad R. Kareh, P.E., M.S.C.E., Vice-President / As Authorized Agent
Bean, Whitaker, Lutz & Kareh, Inc.

Directors Decision: _____ **Request Approved** _____ **Request Denied**

Comments:

Signature: _____ **Date:** _____

EXHIBIT "A"

List of Waivers

34-373.(a)(4)b.	Location map in relation to arterial and collector streets and existing easements and right-of-ways
34-373.(a)(4)c.	Existing zoning and current Land Uses Map
34-373.(a)(4)d.	Aerial Photograph with site delineated
34-373.(a)(4)e.i	Soils Map
34-373.(a)(4)e.ii.	FLUCCS Map
34-373.(a)(4)e.iii.	Rear Vegetation Map
34-373.(a)(4)e.iv.	Topographic Map
34-373.(a)(4)f.	FLUCCS Map
34-373.(a)(4)g.	Public Transit Map including nearest bus stops
34-373.(b)(2)	Protected Species Survey
34-1573.	Environmental Assessment Report

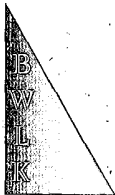
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FENWAY FAMILY FUN CENTER @ LAKES PARK

NARRATIVE REGARDING ZONING REQUEST

(Narrative to explain Guidelines for decision-making embodied in Section 34-373.(a)(5), compliance with design standards of Section 34-411., compliance with Lee Plan Sections 34-373.(a)(5) & 34-491., and explanation of the Surface Water Management Plan according to Section 34-373.(b)(1)).

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PERMIT COUNTER

OCI 2003-00062

EXHIBITS II-E-2, II-E-4, II-E-5, AND IV-E-2

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

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STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDOLF A. NORMAN, PE

NARRATIVE STATEMENT FOR A REZONING TO MINOR COMMERCIAL PLANNED DEVELOPMENT

INTRODUCTION

The intent of this Application for Public Hearing is to rezone the subject parcel at 7350 Gladiolus Drive from a Commercial Planned Development (CPD) allowing a Convenience Food and Beverage Store with fuel pumps to a Minor Commercial Planned Development (CPD) limiting the uses to Recreation Facilities, Commercial, Groups I & III. The site is located on the southwest corner of Gladiolus Drive and Lakes Park entrance road. Lakes Park, a Lee County Regional Park lies to the northeast and Castle Golf miniature golf range is to the south.

The applicant feels that the rezoning will better serve to meet the existing and the expected demand for amusement and recreational facilities for the growing residential areas south of Cypress Lake Drive, west of I-75, north of Corkscrew Road, and east of the Sanibel Causeway. There are several commercial recreational facilities in the South Fort Myers area; however, they are limited to miniature golf (3), and ice skating rink (1). The proposed recreational facility provides activities that meld with the more passive recreation offered by the adjacent Lakes Park. The property to the north is zoned CF-2 for Lakes Park. The parcel to the south is zoned AG-2, but is developed as a miniature golf attraction. To the west is vacant AG-2 property. The parcels directly across Gladiolus Drive are zoned for Commercial Planned Developments.

The project is consistent with the overall vision of the Lee Plan and specifically implements several Lee Plan Goals, Objectives, and Policies. The principal goal of the Lee Plan implemented by this project is Goal 2: Growth Management. The Master Concept Plan exemplifies the Lee Plan Vision for 2020, complies with the future land use map, avoids impact and therefore protects important natural resources, adds to the economic base and utilizes existing facilities.

The Fenway Family Fun Center CPD calls for a total development of 3.92 acres more or less. A 6,300 S.F. building will accommodate a game arcade, three (3) private event rooms, a caretaker's unit/office, and restroom facilities. A small service/maintenance building is also located on the site for storing & servicing the go-karts & bumper boats. The remainder of the property will be developed with batting cages, bumper boats, a go-cart track, parking, drainage and landscaping to support the uses.

Although one (1) deviation for setbacks along two (2) roads and two (2) adjacent properties is being requested, it is the applicants intent to maintain a forty (40) foot setback between the commercial recreational devices and the vacant AG-2 land to the west.

This Narrative is intended to address the requirements of Sections 34-373.(a)(5), which reads as follows:

- (5) *A narrative explanation as to how the proposed development complies with the Lee Plan, the design standards set forth in Section 34-411., and the guidelines for decision-making embodied in Sections 34-145.(c)(2)a. and e. and 34-145.(d)(3).*
- (2) *Considerations. In reaching his decision, the hearing examiner must consider the following, whenever applicable:*
 - a. **Whether there exist changed or changing conditions that make approval of the request appropriate.** The changed conditions relate to the previous rezoning of this parcel, its proximity to Lakes Park and limited access. The previous zoning case requested a schedule of uses that included convenience food and beverage store, self-service fuel pumps and other commercial uses up to 29,999 S.F. Staff cited 28 convenience stores in the area, and the Department of Parks and Recreation objected to the sale of alcoholic beverages so close to the park. The area adjacent to Gladiolus Drive is developing a buffer zone of professional offices and limited commercial uses sheltering the existing residential areas against the traffic along this segment of Gladiolus Drive. The housing boom in the South Fort Myers Planning Community provides the need for recreational facilities for all ages. The proposed uses work well with the more natural park setting next door and the existing miniature golf facility immediately south of the parcel. The combination of existing and proposed family recreational opportunities within walking distance of each other provides a unique opportunity that will increase use of the Lakes Park facilities, as well as providing other forms of family recreation.
 - e. **Whether the request is consistent with the goals, objectives, policies, and intent of the Lee Plan.** See Pages 7, 8, and 9.
 - f. **Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.** The proposed use will be a commercial recreational facility geared toward families. No alcoholic beverages will be available, although food service will be an accessory to the principal use, and available only to patrons of the fun center.

Appropriate setbacks, parking, lighting, and noise abatement will be provided in accordance with the Lee County Land Development Code.

- g. **Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.** The subject site is disturbed, having been cleared and regularly mowed by the owner. The site lies within an urban area. Water, sewer, and access are existing and available to the site.
- h. **Whether the request will be compatible with existing or planned uses.** The area is urban in nature. The uses proposed will be consistent with what already exists, a county park and a miniature golf course. There are four (4) commercial family recreation centers in South Fort Myers. Each is limited to one (1) type of recreation activity: a) Miniature golf or b) ice-skating. The Lakes Park, a Lee County Regional Park, provides walk – jog trails, bike paths, canoeing, and swimming and pavilions for gatherings. The street pattern allows for adequate traffic circulation to the site from Gladiolus Drive, and Lakes Park entrance road, a county maintained access road.
- i. **Whether the request will cause damage, hazard nuisance, or other detriment to persons or property.** The site has adequate access and there are no surrounding residential uses within 500 feet of the property boundaries at this time. The Fenway Family Fun Center will provide buffering and may provide fencing and gates for security, as well as aesthetics. Hours of operation will be 9:00 A.M. to 11:00 P.M. on weekends. The applicant has chosen to provide a 40 foot setback for amusement devices and parking along the western property line. This setback combined with the existing retention area to the west effectively buffer potential residences that may be developed in the future on the vacant AG-2 property to the west.
- j. **Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.** The uses will be limited to those listed in the Schedule of Uses. The uses will be subject to review by county staff for zoning compatibility; development services issues; environmental and land use planning concerns.

The application provided is the result of a meeting with zoning staff on February 13, 2003. The outcome of that discussion is the attached application for a Minor Commercial Planned Development rezoning for Recreation Facilities, Commercial, Groups I & III.

The information contained in this exhibit will clearly show evidence that the Fenway Family Fun Center rezoning request meets or exceeds all of the requirements of the Lee Plan and the Land Development Code for favorable consideration.

HISTORIC DEVELOPMENT TRENDS

The Fenway Family Fun Center is proposed on a 3.92 acre site at 7350 Gladiolus Drive and the entrance to Lakes Park. The site has a zoning history going back to May 3, 1993 when Resolution Z-93-014 was adopted permitting a Commercial Planned Development of 29,999 S.F. The uses included a convenience food and beverage store, fast food restaurant, and 24,999 S.F. of commercial recreation on a three (3) lot subdivision. The original CPD was vacated in 1998 and received a two (2) year extension in 1999 which expired in 2001. In 2001 a new CPD was applied for (Case Number DCI2001-00071) requesting a 20,000 S.F. of general office building, a convenience food and beverage store, with 24 vehicle fueling positions, and a carwash on two (2) lots.

The last rezoning case received a recommendation of denial by the Hearing Examiner and was remanded back to the Hearing Examiner by the Board of County Commissioners. The case file was still active on May 15, 2003 when Ms. Pamela E. Houck, that a new master concept plan and attendant documents could be filed as an amendment. The request was denied with the determination that waivers could be given from certain requirements that have not changed since the last application. A request for waivers is attached to this application and a new application, for a Minor Commercial Planned Development is being requested.

Lee County Department of Parks and Recreation raised two (2) major issues in the previous zoning case (DCI2001-00071). They objected to any sale of alcohol so close to Lakes Park and they also objected to the use of the Lakes Park entrance road by a private facility. Fenway Family Fun Park does not intend to sell alcohol on their site.

Assistant County Attorney, Ms. Dawn Lehnert, addressed the access issue during the public hearing. The Board of County Commissioner accepted the right of access when it accepted the deed for property from the previous owner during the negotiation for improvements to Gladiolus Drive in 1993. It was also the Hearing Examiner's opinion that access to Lakes Park entrance road could not be denied to the property owner.

CHANGING CONDITIONS

The application to rezone the subject property is logical in the face of current and expected urban development trends. Emerging trends for the area of the subject site that serve to support the rezoning application include the following:

1. Traffic volumes along Gladiolus Drive and U.S. 41 continue to support commercial development. The nearest permanent count station 46 shows an increase from 39,900 in 2001 to 40,700 in 2002.
2. Surrounding active development is growing at a steady pace in this area. The proposed development would provide recreational activities to the large residential component of seasonal and long-term owners close by.
3. There is a need for recreational opportunities for various age groups. This proposed development will be an attraction for Lakes Park and vice versa.

THE FUTURE LAND USE MAP & PLANNING COMMUNITIES MAP

The area where the Fenway Family Fun Center site will be located is classified as Central Urban Land Use. The Central Urban Areas are characterized as the "urban core" of the county. This is the part of the county that is already heavily settled and which has or will have adequate public services to the site. The Fenway Family Fun Center is located southeast of the Caloosahatchee River in the South Fort Myers Planning Community. This Planning Community (Community Number 15) is extensively developed, especially in the portions along U.S. 41, Summerlin Road, and toward the City of Fort Myers.

The South Fort Myers Planning Community year 2020 Allocations show this area to be planned for 1849 acres of commercial development. Approximately 1,808 acres of commercial development are existing.

Fenway Family Fun Center site underscores the public policy commitment of the Lee Plan by virtue of its transportation linkage to Planning Community Numbers 14, 8, 6, 12, and 11 – Sanibel, Cape Coral, and Fort Myers, via Summerlin Road and McGregor Boulevard and the Midpoint Bridge – the subject site can be expected to additionally serve the recreational needs generated in those areas.

FUTURE LAND USE ELEMENT CONSISTENCY

The most important finding that relates to rezoning appropriateness and approval pertains to the project's consistency with the Lee Plan. The Lee County Land Development Code regulations state that the Hearing Examiner and the Board of County Commissioners are to consider whether the rezoning request is consistent with the goals, objectives, policies and intent of the Lee Plan. The Fenway Family Fun Center is consistent with the Lee Plan's Future Land Use Element in the following manner.

Policy 1.1.3: Central Urban – Located within one-half mile of three (3) major arterial roadways (Gladiolus Drive, U.S. 41, and Summerlin Road), the subject site represents a good fit to the vision for the Central Urban future land use category, offering the greatest range and highest levels of urban services. The proposed Fenway Family Fun Center implements Objective 2.1 by promoting a contiguous and compact growth pattern within an area already well served by infrastructure, and surrounded by existing and developing sites within a designated future urban area.

Objective 2.2: Development Timing. By taking advantage of existing public facilities that are in place to service the site, the approval of the Fenway Family Fun Center will advance the creation and infill of a compact and contiguous development pattern. The Project is well served in terms of availability, proximity and levels-of-service. The Project is consistent with Policy 2.2.1 and Policy 2.2.2. It will not burden an already overwhelmed facility, nor would it result in unreasonable development expectations. The proposed development is located within an area of existing development, and epitomizes compact and efficient growth patterns.

The subject site adheres to the limited access, clustering of activities and sharing access as traffic carrying protection measures called for in Policy 6.1.5 and will incorporate all such features feasible and desirable within the proposed development order plan.

Policy 4.1.1: The proposed development is designed to ensure that the land uses and structures are well integrated, properly oriented, and functionally related to the natural features of the site. The placement of uses within the development minimizes the expansion and construction of street and utility improvements.

Goal 11: Water, Sewer, Traffic, and Environmental Review Standards have all been met by virtue of connecting to existing public utility systems and avoidance of impacts on environmentally sensitive areas.

Policy 6.1.1

The proposed development will comply with the following:

- a. Traffic and Access impacts.
- b. Landscaping and detailed site planning.
- c. Screening and buffering.
- d. Availability and adequacy of services and facilities.
- e. Impact on adjacent land uses and surrounding neighborhoods.
- f. Proximity to other similar centers.
- g. Environmental considerations.

Policy 6.1.3

The proposed development consists of rezoning to Minor Commercial Planned Development. The proposed development will be designed and arranged in an integrated and cohesive unit in order to meet the following:

- Provide visual harmony and screening.
- Reduce dependence on the automobile by providing facilities within walking distance of Lakes Park and several residential neighborhoods along Gladiolus Drive and Summerlin Road.
- Promote pedestrian movement within the development and off-site.
- Avoid negative impacts on surrounding land uses and traffic circulation.

Policy 6.1.4

The proposed development is compatible with the adjacent existing and proposed uses, and has availability to all required public services and facilities. This facility meets all Lee County concurrency requirements.

Policy 6.1.5

The proposed development will be designed to protect the traffic-carrying capacity of adjacent roads and streets.

Policy 6.1.6

The proposed development will provide adequate and appropriate landscaping, open space, and buffering. The proposed development will be designed to enhance the appearance of structures and parking areas as well as blend with the character of the existing surrounding land uses.

Policy 6.1.9

There are no proposed educational facilities to be located near the proposed development.

COMMUNITY FACILITIES AND SERVICES

The Fenway Family Fun Center meets the requirements of the Potable Water Infrastructure by connecting to the public water system provided by Lee County Utilities, as required by Lee Plan Standard 11.1 with adequate existing level-of-service, implementing Lee Plan Policy 33.1.5.

The Sanitary Sewer Element of the Lee Plan is furthered by the proposed development in that it makes use of the public sewer system provided by Lee County Utilities, as required by Lee Plan Policy 11.2. An availability letter from Lee County Utilities is included as part of this application.

This project implements the Lee Plan Policies for surface water management by inclusion of a modern surface water management system consisting of onsite dry detention facilities meeting or exceeding all applicable regulations, as required by Goal 39.

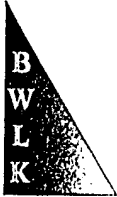
The project maintains the minimum level-of-service required by The Lee Plan Policy 70.1.3 for potable water, sanitary sewer, solid waste, storm water management, and roadway facilities.

ENVIRONMENTAL RESOURCES

The Fenway Family Fun Center is located in an area indicated for flooding by Category 1 storm surge. Consequently, property flooding is a consideration for the project in the case of a tropical storm pushing water into the coastal areas adjacent to Gulf of Mexico and up to Hendry Creek. The finish floor elevation of the building will be a minimum of 11 feet N.G.V.D. in accordance with the FIRM Map designation in the "A-14" flood zone (source: FIRM Map 125124 0325 C, dated November 4, 1992). Elevations on the site average about 5.5 feet N.G.V.D. plus or minus. The property is comprised of Soil #69 – Matlacha Gravelly Fine Sand, (source: Soil Survey of Lee County, United States Department of Agriculture, Soil Conservation Service, dated 12/84 – most recent edition). This is not considered to be a hydric soil by Lee County. Hydric soils are those where flooding, or ponding is evident or may indicate wetland areas.

SURFACE WATER MANAGEMENT

Storm water will be handled by onsite dry detention facilities. The site may have two (2) or more acres of impervious area. Therefore, Lee County will require water quality and attenuation per South Florida Water Management District permitting.



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

August 18, 2003

Ms. Pamela E. Houck, Director
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

RE: Fenway Family Fun Center @ Lakes Park
Prior Case Number DCI2001-00071
BWLK Project Number 34186(03-14)

Dear Ms. Houck:

We are preparing to submit a Minor Commercial Planned Development application for a 3.92 acre parcel located at 7350 Gladiolus Drive, Fort Myers, Florida 33908.

At the pre-hearing meeting on February 13, 2003, Mr. Alvin "Chip" C. Block, Principal Planner suggested withdrawing the previously submitted application, and to request the needed waivers to expedite the process.

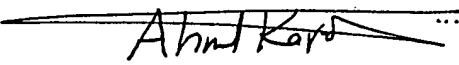
The following item is attached for your review:

1. Original signed "Request for Public Hearing Submittal Requirement Waiver".

If you should have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.


Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

Enclosure

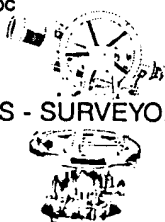
cc: Mr. Barry Fisher, Member, Bushwood Entertainment, LLC w/enclosure
Mr. D. J. Thiele, Managing Member, Bushwood Entertainment, LLC w/enclosure

34186(03-14)\REQUEST FOR WAIVERS 08-18-03.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



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SEP 18 2003

PERMIT COUNTER

DCI 2003-00062

ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDOLF A. NORMAN, PE



REQUEST FOR PUBLIC HEARING SUBMITTAL REQUIREMENT WAIVER

Upon written request, the director may modify the submittal requirements for Public Hearings where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file.

APPLICATION FOR WAIVER OF SUBMITTAL ITEMS REQUIRED FOR PUBLIC HEARING

Public Hearing - General Requirements (34-202)
Public Hearing - Additional requirements for:
Development of Regional Impact (34-203(a))
☒ Planned Developments (34-203(b))
Rezoning other than Planned Developments (34-203 (c))
Mobile Home Park (34-203(d))
Special Exception (34-203(e))
Variances (34-203(f))

PLEASE PRINT OR TYPE:

STRAP Number: 35-45-24-00-00015.0030
Name of Project: Fenway Family Fun Center @ Lakes Park
Bean, Whitaker, Lutz & Kareh, Inc.
Name of Applicant*: Ahmad R. Kareh, P.E., M.S.C.E., Vice-President / As Authorized Agent
Street Address: 13041 McGregor Boulevard
City: Fort Myers State: FL Zip: 33919
Phone #: 239-481-1331 Fax #: 239-481-1073 E-mail: fmooffice@bwk.net

* If applicant is not the owner, a letter of authorization from the owner must be submitted.

SPECIFIC SECTION(S) AND REQUIREMENT(S) FOR WHICH A WAIVER IS SOUGHT:

Section Number	Requirement
	See attached Exhibit "A"

Over

LEE COUNTY
COMMUNITY DEVELOPMENT
P.O. BOX 398 (1500 MONROE STREET)
FORT MYERS, FLORIDA 33902
PHONE (941) 479-8585

OCI

2003-00062

SCOPE OF PROJECT AND REASON(S) FOR REQUEST

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver should be approved. Use additional sheets if necessary.

(Please print or type)

The subject project encompasses a change of use from a previous Planned Development Zoning Case, DCI2001-00071. The previous case was remanded to the Hearing Examiner by the Board of County Commissioners, but the owner / applicant, Mobil Oil Corporation, did not follow through. The case remains active.

The Bushwood Entertainment, LLC is the contract purchaser and intends to file a new public hearing application for a Planned Development Zoning to allow commercial recreation. The waivers requested relate to the existing conditions on the site that have not changed since being reviewed by staff in the previous case. A pre-application meeting was held with county staff on February 13, 2003. It was suggested at that meeting that we provide a new application and request the waivers listed.

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

Ahmad R. Kareh

Signature of Applicant: Ahmad R. Kareh, P.E., M.S.C.E., Vice-President / As Authorized Agent
Bean, Whitaker, Lutz & Kareh, Inc.

Directors Decision: _____ Request Approved

Comments:

Request Denied
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SEP 18 2003

PERMIT COUNTER
DCI 2003-00062

Signature: _____ Date: _____

EXHIBIT "A"

List of Waivers

34-373.(a)(4)b.	Location map in relation to arterial and collector streets and existing easements and right-of-ways
34-373.(a)(4)c.	Existing zoning and current Land Uses Map
34-373.(a)(4)d.	Aerial Photograph with site delineated
34-373.(a)(4)e.i	Soils Map
34-373.(a)(4)e.ii.	FLUCCS Map
34-373.(a)(4)e.iii.	Rear Vegetation Map
34-373.(a)(4)e.iv.	Topographic Map
34-373.(a)(4)f.	FLUCCS Map
34-373.(a)(4)g.	Public Transit Map including nearest bus stops
34-373.(b)(2)	Protected Species Survey
34-1573.	Environmental Assessment Report

LEGEND:

C.F. = Commercial Facility
 M.F.D. = Multi-Family Dwelling
 M.O. = Medical Office
 R.F. = Recreational Facility
 S.F.D. = Single Family Dwelling
 V = Vacant

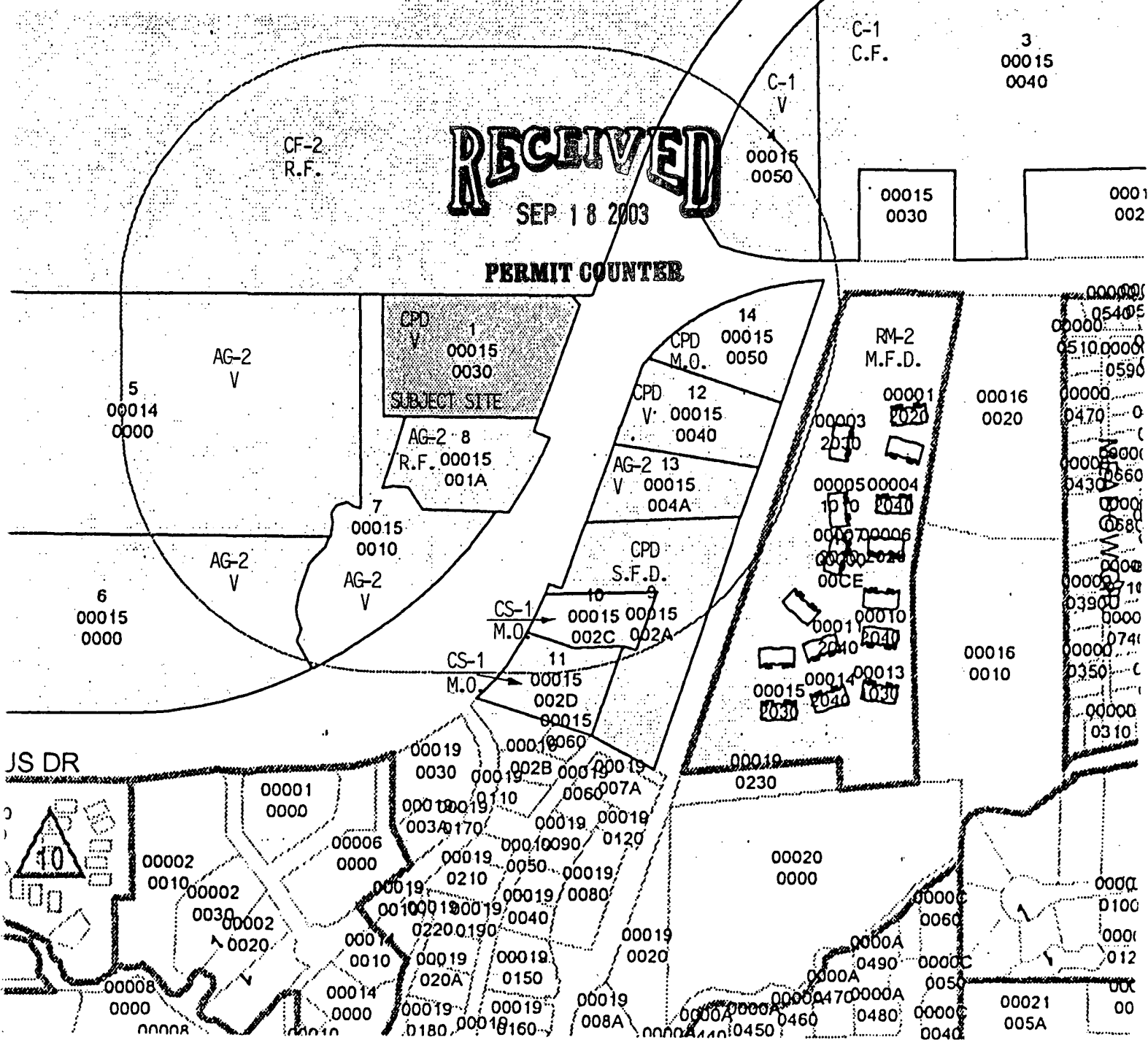


**EXHIBIT III-C-4
ENVIRONMENTAL ISSUES**

A. Topography: Describe the range of surface elevations of the property:

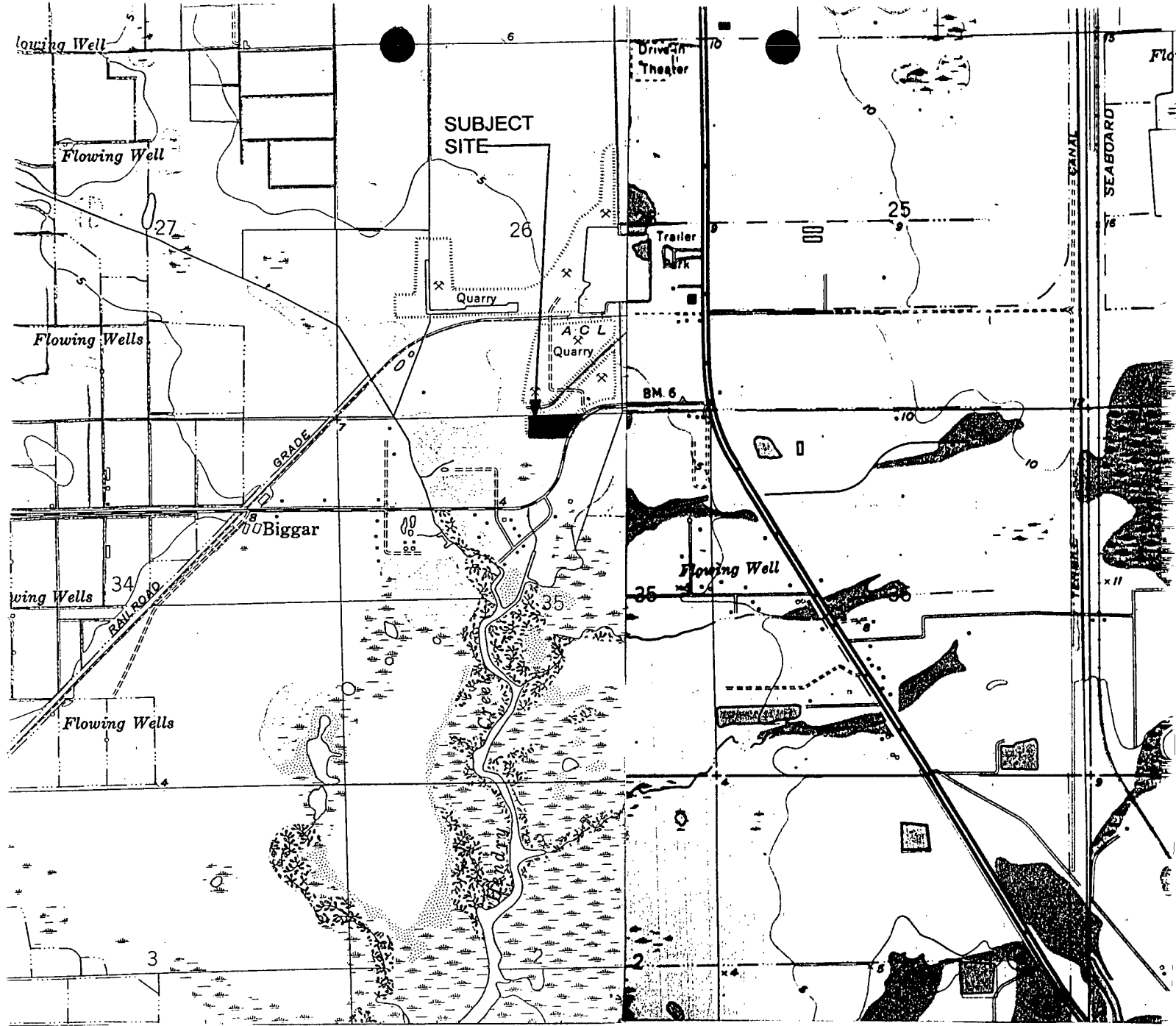
+ 4.6 to 6.0 N.G.V.D.

The existing ditch along the western property has invert elevation between 1.7 and 2.9 N.G.V.D.

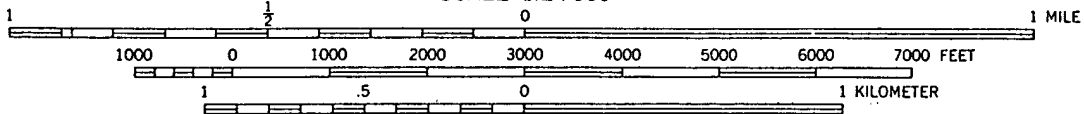
B. Sensitive Lands: Identify any environmentally sensitive lands, including, but not limited to, wetlands (as defined in the Lee Plan), flowways, creek beds, sand dunes, other unique land forms [see Lee Plan Policy 77.1.1 (2)] or listed species occupied habitat (see Sec. 10-4730 of the Land Development Code).

There are no environmentally sensitive lands on the site. The site is disturbed by previous clearing, and regular maintenance mowing.

Continued



SCALE 1:24 000



CONTOUR INTERVAL 5 FEET

DATUM IS MEAN SEA LEVEL

DEPTH CURVES AND SOUNDINGS IN FEET—DATUM IS MEAN LOW WATER

SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER

THE MEAN RANGE OF TIDE IS APPROXIMATELY 1 FOOT

RECEIVED
SEP 18 2003

TRUE NORTH
MAGNETIC NORTH
APPROXIMATE MEAN
DECLINATION, 1958



FORT MYERS SW, FLA.

N2630—W8152.5/7.5

1958

EXHIBIT III-C-7.

PERMIT COUNTER
ROAD CLASSIFICATION

Medium-duty _____ Light-duty _____
Unimproved dirt =====

○ State Route

DCI 2003-00062

SCHEDULE OF USES

Accessory Uses and Structures
Administrative Offices
Caretaker's Residence
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I
Food and Beverage Service, limited
Parking Lot, Accessory
Recreation Facilities, Commercial, Groups I & III
Signs in accordance with Chapter 30 of the Lee County Land Development Code
Storage: Indoor Only

SCHEDULE OF DEVIATIONS

A deviation from Section 34-2474.(b)(1) that states commercial outdoor sports / amusement parks, amusement devices and water slides shall not be located less than 50 feet or a distance equal to the height of structure of the device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property zoned RS, TF, TFC, RM, MH, or RPD or any existing residential uses to allow the following setbacks:

- A. 10 foot – South Property Line
- B. 25 foot – Lakes Park entrance road (North Property Line)
- C. 25 foot – Gladiolus Drive (East Property Line)
- D. 40 foot – West Property Line

PARKING CALCULATIONS

Recreation Facilities, Indoor:

Per Lee County Land Development Code, Zoning, Chapter 34, Article VII, Division 26, Section 34-2020.(4)o.2. All other indoor recreational facilities, including health clubs, not specifically listed: one (1) parking space for each 100 S.F. of total floor area.

Arcade – 4,800 S.F. X 1 space / 100 S.F. = 48 parking spaces

Recreation Facilities, Outdoor, Commercial:

Per Lee County Land Development Code, Zoning, Chapter 34, Article VII, Division 26, Section 34-2020.(4)p. Recreation facilities, outdoor, commercial, to be determined by the director if the use is not listed in this section.

Bleacher Seating (70 seats) – one (1) space per three (3) seats
70 seats X 1 space / 3 seats = 24 parking spaces

Spectator Area for go-karts and bumper boats – six (6) spaces per 100 S.F.
200 S.F. X 6 spaces / 100 S.F. = 12 parking spaces

Parking Spaces Required = 84 parking spaces
Parking Spaces Provided = 84 parking spaces

Handicapped parking spaces required = 4 parking spaces
Handicapped parking spaces provided = 4 parking spaces

PROPERTY DEVELOPMENT REGULATIONS (CPD)

Minimum lot area	=	Total Parcel Area	
Minimum lot width	=	Total Parcel Width	
Minimum lot depth	=	Total Parcel Depth	
Structure setbacks	=	Gladiolus Drive	- 25'
		Lakes Park entrance road	- 25'
		Side Yard (South Property Line)	- 10'
		Rear Yard (West Property Line)	- 40'
Height	=	Buildings limited to no more than 35'	
		Batting Cages, supports, wall and nets limited to no more than 135'	
Maximum Coverage of Buildings	=	40%	
Minimum Open Space	=	30%	

OPEN SPACE CALCULATIONS

Total Area	=	170,618 S.F. (3.92 Ac.) (100.00%)
Open Space (Min.)	=	51,186 S.F. (1.18 Ac.) (30.00%)

GENERAL NOTES

1. The requested zoning is Minor Commercial Planned Development (CPD).
2. The requested maximum square footage is 9,890 square feet of gross floor area.
3. No variances, special exceptions, or special permits are being requested; however, one (1) deviation is being requested.
4. Boundary information is taken from a survey performed by Bean, Whitaker, Lutz & Kareh, Inc., dated May 28, 2003.
5. The project falls within Flood Zone "A-14", base flood elevation of 11.0 N.G.V.D., according to F.I.R.M. 125124 0325 C, dated November 4, 1992.
6. Development is located in the Iona-McGregor Fire District, 15961 McGregor Boulevard, Fort Myers, Florida 33908.
7. Stormwater Management will be handled by on-site dry detention facilities.
8. There will be no potential impact on ground and surface waters.
9. There are no apparent flowing wells on this parcel.
10. Coastal setback lines do not apply to this parcel.
11. There are no existing buildings or structures on this parcel.
12. Acceleration, deceleration and left turn lanes (if required) will be designed in accordance with Lee County Department of Transportation requirements, and will be constructed by the developer.
13. Site soil classification: Soil #69 – Matlacha Gravely Fine Sand, (USSCS, Soil Survey of Lee County, Florida).
14. There will be no blasting on site.
15. No alcoholic beverages will be distributed or consumed on site.

EXHIBIT IV-I-1

MASTER LIST OF USES FOR ENTIRE DEVELOPMENT

N/A A. Residential Uses		Type	Habitable stories	Height	Total Number of Units
A..1.	Single Family				
A. 2.	Zero lot line				
A..3.	Mobile Homes				
A..4.	Recreational Vehicles				
A..5.	Duplex/Two Family				
A..6.	Townhouses				
A. 7.	Multiple Family	1 - 3 stories			
A. 8.	Multiple Family	4 - 6 stories			
A. 9.	Multiple Family	7 or more			
A. 10	TOTAL UNITS				

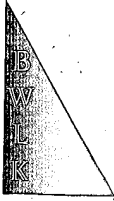
N/A B. Assisted Living Facilities		Type	Habitable Stories	Height	Total Number of Beds
B.1.	Dependent Living Units				
B.2.	Independent Living Units				
B.3.	TOTAL UNITS				

N/A C. Hotels/Motels		Room Size	Habitable Stories	Height	Number of Rental Units
C.1.	< 425 sq. ft.				
C.2.	426-725 sq. ft.				
C.3.	725 < sq. ft.				
C.4.	TOTAL UNITS				

D. Commercial		Habitable Stories	Height	Total Floor area
D.1.	Medical			Sq. Ft.
D.2.	General Office			Sq. Ft.
D.3.	Retail			Sq. Ft.
D.4.	Other (Commercial Recreation)	two (2)	35' Max.	7,550 Sq. Ft.
D.5.	TOTAL FLOOR AREA	two (2)		7,550 Sq. Ft.

N/A E. Industrial		Habitable Stories	Height	Total Floor area
E.1.	Under Roof			
E.2.	Not under Roof	NA		
E.3.	TOTAL FLOOR AREA			

N/A F. Mining		Depth	Acres
F.1.	Area to be excavated	NA	



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

EXHIBIT IV-J-1

Deviation and Justification for Deviation

A deviation from Section 34-2474.(b)(1) that states that commercial outdoor sports/amusement parks, amusement devices and water slides, shall be located not less than 50' or a distance equal to the height of structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100' from any adjacent property zoned RS, TF, TFC, RM, MH or RPD, or any existing residential use, to allow the following setbacks:

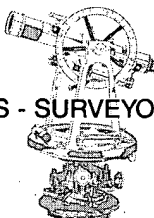
- a) 10' - South property line
- b) 25' - Lakes Park entrance road
- c) 25' - Gladiolus Drive
- d) 40' - West property line

Justification

This site will be limited by parcel area to specific amusement devices. The perimeter boundaries are adjacent to road rights-of-ways on the north and east. To the north across Lakes Park entrance road is Lakes Park, a 282 acre Lee County Regional Park. The park provides recreational activities in a natural setting including lakes, of swimming and canoeing, picnic facilities, walk, jog and bike paths, and a small gauge railroad.

To the east across the 200' right-of-way of Gladiolus Drive, are existing and proposed commercial/office sites. The nearest multi-family residence is approximately 800' away behind the buffer of commercially zoned property along the south side of Gladiolus Drive. The nearest single-family residence is over 1,000' away, also buffered from Gladiolus Drive by commercially zoned property.

To the south of the parcel is a miniature golf attraction, "Castle Golf", and vacant AG-2 property owned by Lee County. To the west is vacant AG-2 property owned by Lee County for drainage purposes and approximately $\pm 70'$ from the subject parcel's west boundary is a vacant AG-2 parcel of approximately ± 19 acres.



PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, P.E., MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

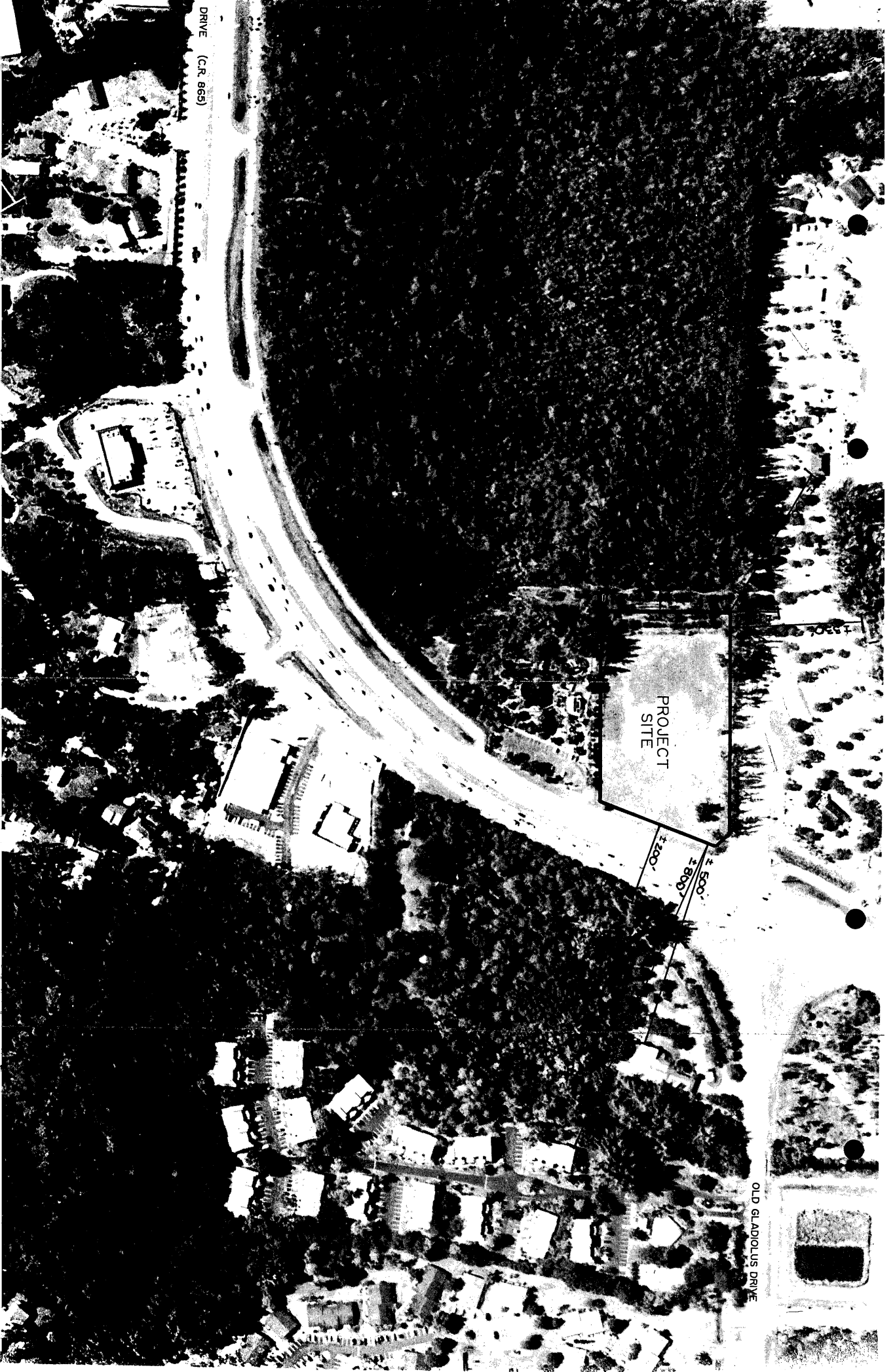
ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDOLF A. NORMAN, PE

The reduced setbacks are justified as follows:

- a) 10' - South Property Line - The Castle Golf miniature golf facility is a similar outdoor commercial recreational facility. The applicant and Castle Golf's owner have discussed pedestrian access between the two projects. There will be approximately 25' between the miniature golf course area on the Castle Golf site and the batting cages and go-cart track on the Fenway Family Fun Center site.
- b) 25' - Lakes Park entrance road - The site boundary is approximately 210' from the nearest park facility (a picnic area). The parking lot and arcade building will be $\pm 240'$ from the picnic area, and $\pm 360'$ from the nearest Lakes Park structure. The park entrance will be buffered from the amusement devices by a parking lot and a 15' wide landscaped buffer along the north property line.
- c) 25' - Gladiolus Drive - The nearest commercial parcel is approximately $\pm 200'$ from the subject site's boundary, $\pm 500'$ from the nearest commercial building along Gladiolus Drive, and $\pm 800'$ to existing residential property. The perimeter of the subject property will be fenced and bermed with landscaped buffers.
- d) 40' - West Property Line - The vacant property to the west that could potentially be developed as a residential project, is separated from the perimeter of the subject site by 65' of land owned by Lee County. The land is used for drainage purposes. There is a 30' drainage easement on our site that is also being used for drainage by Lee County. These areas provide 95' of buffer to activity on the subject site. The 40' setback shown allows for open space and drainage on the site.

We feel the existing and the proposed separations provided on all sides of the property meet the intent of Section 34-2474.(b)(1), and the existing and proposed separations / setbacks will serve to reduce noise impact and light intrusion on adjacent properties.



PROJECT
SITE

± 500
± 800
± 200

OLD GLADIOLUS DRIVE

DRIVE (C.R. 865)

EXHIBIT IV-M
FACILITIES FOR THE DEVELOPMENT
(Instructions on back side of page)

1. Fire District: South Trail Fire Protection & Rescue Service District
2. Estimated daily consumption of potable water:
- 2.a. _____ Residential units: _____ gpd
- 2.b. _____ Mobile Home units: _____ gpd
- 2.c. _____ Rec. Vehicle units: _____ gpd
- 2.d. XX Commercial: 1,770 gpd Based on 354 customers & 5 G.P.D. / customer
- 2.e. _____ Industrial: _____ gpd
3. Source of Potable Water: Lee County Utilities
- 3.a. XX Agreement with the utility company is attached as **Exhibit IV-M-3.**
4. Source of Non-Potable Water _____
5. Estimated daily production of wastewater:
- 5.a. _____ Residential units: _____ gpd
- 5.b. _____ Mobile Home units: _____ gpd
- 5.c. _____ Rec. Vehicle units: _____ gpd
- 5.d. XX Commercial: 1,416 gpd Based on 80% of water consumption
- 5.e. _____ Industrial: _____ gpd
6. _____ Special effluent is anticipated. See **Exhibit IV-M-4.**
7. Source of sanitary sewer service: Lee County Utilities
- 7.a. XX Agreement with the utility company is attached as **Exhibit IV-M-7.**
- 7.b. _____ A private on-site disposal facility will be used. See **Exhibit IV-M-4.**
- 7.c. _____ Individual sewage disposal systems will be used.
- 7.d.. _____ Spray irrigation will be used. See **Exhibit IV-M-4.**



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

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

Bob Janes
District One

August 11, 2003

Douglas R. St. Cerny
District Two

Tracy Bean
Bean, Whitaker, Lutz and Kareh, Inc.
13041 McGregor Blvd.
Fort Myers, Fl. 33919

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

RECEIVED
AUG 12 2003

**RE: POTABLE WATER AND WASTEWATER AVAILABILITY
FENWAY FAMILY FUN CENTER @ LAKES PARK
7350 GLADIOLUS DRIVE, 35-45-24-00-00015.0030**

Dear Ms. Bean:

Potable water lines and waste-water lines are in operation in the vicinity of the proposed project mentioned above. However, in order to provide service to the subject parcels, developer funded system enhancements such as line extensions will be required.

Your firm has indicated that this project will consist of 1 commercial unit, with an estimated flow demand of approximately 2,990 gallons per day. Lee County Utilities presently has sufficient capacity to provide potable water and sanitary sewer service as estimated above.

Availability of potable water and sanitary sewer service is contingent upon final acceptance of the infrastructure to be constructed by the developer. Upon completion and final acceptance of this project, potable water service will be provided through our Green Meadows Water Treatment Plant and Sanitary sewer service will be provided by our Fiesta Village Wastewater Treatment Plant. The Lee County Utilities' Operations Manual requires the project engineer to perform hydraulic computations to determine what impact this project will have on our existing system.

This letter should not be construed as a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate connection fees, a signed request for service and/or an executed service agreement, and the approval of all State and local regulatory agencies.

This Letter Of Availability Of Potable Water And/OR Waste-Water Service Is To Be Utilized For Zoning application Purposes For This Project Only. Individual Letters Of Availability Will Be Required For The Purpose Of Obtaining Building Permits.

Sincerely,

LEE COUNTY UTILITIES

Mary McCormic
Senior Engineering Tech.

RECEIVED
SEP 18 2003

PERMIT COUNTER

OCI 2003-00062

VIA FACSIMILE
Original Mailed

S:\UTILS\Eng\MMML\LETTERS\OTHER\ZONING - 7350 GLADIOLUS DRIVE.doc

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

SANITARY SEWER FACILITIES

- A. **Special Effluent:** If special effluent is anticipated, please specify what it is and what strategies will be used to deal with its' special characteristics:

N/A

- B. **Private On-site Facilities:** If a private on-site wastewater treatment and disposal facility is proposed, please provide a detailed description of the system including:

1. **Method and degree of treatment:**

N/A

2. **Quality of the effluent:**

N/A

3. **Expected life of the facility:**

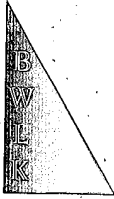
N/A

4. **Who will operate and maintain the internal collection and treatment facilities:**

N/A

5. **Receiving bodies or other means of effluent disposal:**

N/A



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

FENWAY FAMILY FUN CENTER @ LAKES PARK

TRAFFIC IMPACT STATEMENT AND TRAFFIC IMPACT MITIGATION PLAN

BASED ON THE INSTITUTE OF TRANSPORTATION ENGINEERS, TRIP GENERATION MANUAL, 6TH EDITION, VOLUME 1 OF 3, WHICH IS CURRENTLY USED TO ESTIMATE TRAFFIC VOLUME, THIS DEVELOPMENT WILL LIE UNDER LAND USE CODE NO. 435, WHICH REPRESENTS MULTI PURPOSE RECREATIONAL FACILITY.

TRAFFIC GENERATION:

T = TOTAL TRIP ENDS

X = NUMBER OF AREAS

MULTIPURPOSE RECREATIONAL FACILITY ACREAGE = 3.92 ACRES; X = 3.92

AVERAGE WEEKDAY VEHICLE TRIP ENDS:

T = 90.38 (X) = 354

(50% ENTERING TRIPS, 50% EXITING TRIPS)

(177 ENTERING TRIPS, 177 EXITING TRIPS)

WEEKDAY PEAK HOUR OF ADJACENT STREET TRAFFIC 7-9 AM:

T = 1.92 (X) = 8

(DIRECTIONAL DISTRIBUTION IS NOT AVAILABLE)

WEEKDAY PEAK HOUR OF ADJACENT STREET TRAFFIC 4-6 PM:

T = 5.77 (X) = 23

(DIRECTIONAL DISTRIBUTION IS NOT AVAILABLE)

AVERAGE SATURDAY VEHICLE TRIP ENDS:

T = 97.60 (X) = 383

(50% ENTERING TRIPS, 50% EXITING TRIPS)

(192 ENTERING TRIPS, 191 EXITING TRIPS)

SATURDAY PEAK HOUR OF GENERATOR:

T = 12.26 (X) = 48

(DIRECTIONAL DISTRIBUTION IS NOT AVAILABLE)

PRINCIPALS:

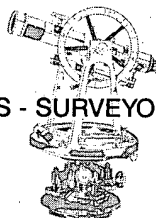
WILLIAM E. BEAN, PSM, CHAIRMAN

SCOTT C. WHITAKER, PSM, PRESIDENT

JOSEPH L. LUTZ, PSM

AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP

CHARLES D. KNIGHT, PSM

W. BRITT POMEROY, JR., PSM

STEPHEN H. SKORUPSKI, PSM

JAMES A. HESSLER, PSM

JEFFREY P. GAGNON, PSM

RUDOLF A. NORMAN, PE

AVERAGE SUNDAY VEHICLE TRIPS ENDS:

T = 81.49 (X) = 319

(50% ENTERING TRIPS, 50% EXITING TRIPS)
(160 ENTERING TRIPS, 159 EXITING TRIPS)

SUNDAY PEAK HOUR OF GENERATOR:

T = 9.38 (X) = 37

(DIRECTIONAL DISTRIBUTION IS NOT AVAILABLE)

TRIP GENERATION SUMMARY

	<u>TRIP ENDS</u>	<u>ENTERING TRIPS</u>	<u>EXITING TRIPS</u>
AVERAGE WEEKDAY TRIP ENDS	354	177	177
AVERAGE SATURDAY TRIP ENDS	383	192	191
AVERAGE SUNDAY TRIP ENDS	319	160	159
WEEKDAY PEAK HOUR, 7-9 AM	8	-	-
WEEKDAY PEAK HOUR, 4-6 PM	23	-	-
SATURDAY PEAK HOUR	48	-	-
SUNDAY PEAK HOUR	37	-	-

RESULTS:

THE HIGHEST WEEKDAY PEAK HOUR ADJACENT STREET TRIP COUNT IS 23 TRIP ENDS. THIS VALUE IS LESS THAN 300 AND WARRANTS A "TRAFFIC IMPACT STATEMENT PROVIDING INFORMATION REGARDING THE DEVELOPMENT'S TRAFFIC GENERATION AND IMPACTS AT THE DEVELOPMENT'S ACCESS POINTS ONTO THE ADJACENT STREET SYSTEM", AND NOT AN ASSESSMENT OF THE "IMPACT ON THE SURROUNDING ROAD SYSTEM" ACCORDING TO SECTION 10-286. OF THE LEE COUNTY LAND DEVELOPMENT CODE.

TRAFFIC DISTRIBUTION:

- A. ASSUMING THAT PEAK TRIPS ARE SPLIT EVENLY BETWEEN ENTERING AND EXITING TRIPS.
- B. ASSUMING 100% OF THE ENTERING TRIPS ARE LEFT TURN TRIPS.
- C. ASSUMING 100% OF THE EXITING TRIPS ARE RIGHT TURN TRIPS.

HENCE:

ACCESS POINT (LAKES PARK ENTRANCE ROAD):

ENTERING TRIPS = 12 (0 RIGHT TURN TRIPS, 12 LEFT TURN TRIPS)

EXITING TRIPS = 12 (12 RIGHT TURN TRIPS, 0 LEFT TURN TRIPS)

TURN LANE ANALYSIS USING AC-11-4 TURN LANE POLICY:

ACCESS POINT ALONG LAKES PARK ENTRANCE ROAD (NO POSTED SPEED LIMIT,
ASSUME 30 MPH)

WARRANT

IV. DECELERATION AND LEFT TURN LANES

C. LOCAL STREET (2 OF FOLLOWING)

1. POSTED SPEED LIMIT: = OR > 30 MPH
& PEAK HOUR LEFT TURNING MOVEMENTS =
12 < 60
2. NUMBER OF LEFT TURNING MOVEMENTS
(b) NUMBER OF LEFT TURNING MOVEMENTS
FROM THE LOCAL STREET = 12 < 60, AND
THE MAXIMUM OPPOSING THROUGH
TRAFFIC << 500
3. AVAILABLE SIGHT DISTANCE IS IN EXCESS OF
200.00 FEET
4. ACCESS CONTROL
5. TRAFFIC CONTROL

N

N

N

N

N/A

N

D. SEPARATE LEFT TURN LANES

LOCAL STREET (2 OF FOLLOWING)

- (a) POSTED SPEED LIMIT: = OR > 30 MPH
- (b) NUMBER OF LEFT TURNING MOVEMENTS
FROM ACCESS DRIVE = 0 < 90
- (c) TRAFFIC CONTROL

Y

N

N

V. DECELERATION AND RIGHT TURN LANES

C. LOCAL STREET (2 OF FOLLOWING)

1. POSTED SPEED LIMIT: = OR > 30 MPH
2. NUMBER OF RIGHT TURNING MOVEMENTS FROM
LOCAL STREET = 0 < 60
3. AVAILABLE SIGHT DISTANCE IS IN EXCESS OF
200.00 FEET
4. TRAFFIC CONTROL

Y

N

N

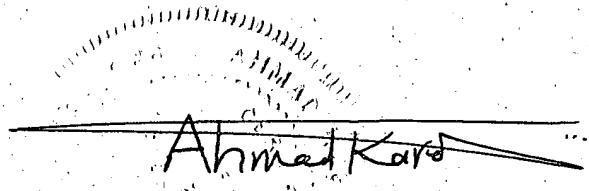
N

- D. SEPARATE RIGHT TURN LANES
3. LOCAL STREET (2 OF FOLLOWING)
- | | | |
|-----|---|---|
| (a) | POSTED SPEED LIMIT: = OR > 30 MPH | Y |
| (b) | NUMBER OF RIGHT TURNING MOVEMENTS
FROM ACCESS DRIVE = 12 < 120 | N |
| (c) | TRAFFIC CONTROL | N |

THE RESULTS OF THE TURN LANE ANALYSIS USING AC-11-4 TURN LANE POLICY DO NOT WARRANT DECELERATION FOR LEFT AND RIGHT TURN LANES, OR SEPARATE LEFT / RIGHT TURN LANES. STANDARD DRIVEWAY FROM THE PROJECT WILL BE CONSTRUCTED.

LINK ANALYSIS:

GLADIOLUS DIVE: ACCORDING TO THE 2002 LEE COUNTY CONCURRENCY MANAGEMENT REPORT, THE ESTIMATED 2002 100TH HIGHEST PEAK DIRECTIONAL FLOW ALONG GLADIOLUS DRIVE BETWEEN SUMMERLIN ROAD AND U.S. 41 = 2,104 V.P.H. BASED UPON THE 2002 LEE COUNTY TRAFFIC COUNT REPORT, THE YEARLY GROWTH RATE OF GLADIOLUS DRIVE EAST OF U.S. 41 IS NOT DETERMINED. WE WILL USE A 1% GROWTH RATE. BASED UPON THE COMPLETION OF THIS DEVELOPMENT IN 2004, THE PROJECTED 2005 DIRECTIONAL PEAK SEASON, PEAK HOUR VOLUME IS 2,168 V.P.H., WHICH CORRESPONDS TO L.O.S. "D" ACCORDING TO THE 2002 LEE COUNTY CONCURRENCY MANAGEMENT REPORT. WITH THE ADDITIONAL TRAFFIC GENERATED BY THE PROPOSED DEVELOPMENT, THE PROJECT DIRECTIONAL PEAK SEASON, PEAK HOUR VOLUME IS $2,168 + 12 =$ 2,180 V.P.H., OR L.O.S. "D". THEREFORE, NO ADDITIONAL IMPROVEMENTS TO GLADIOLUS DRIVE ARE REQUIRED.


AHMAD R. KAREH, P.E., M.S.C.E.
FLORIDA REGISTRATION NUMBER 43324

SEPTEMBER 15, 2003

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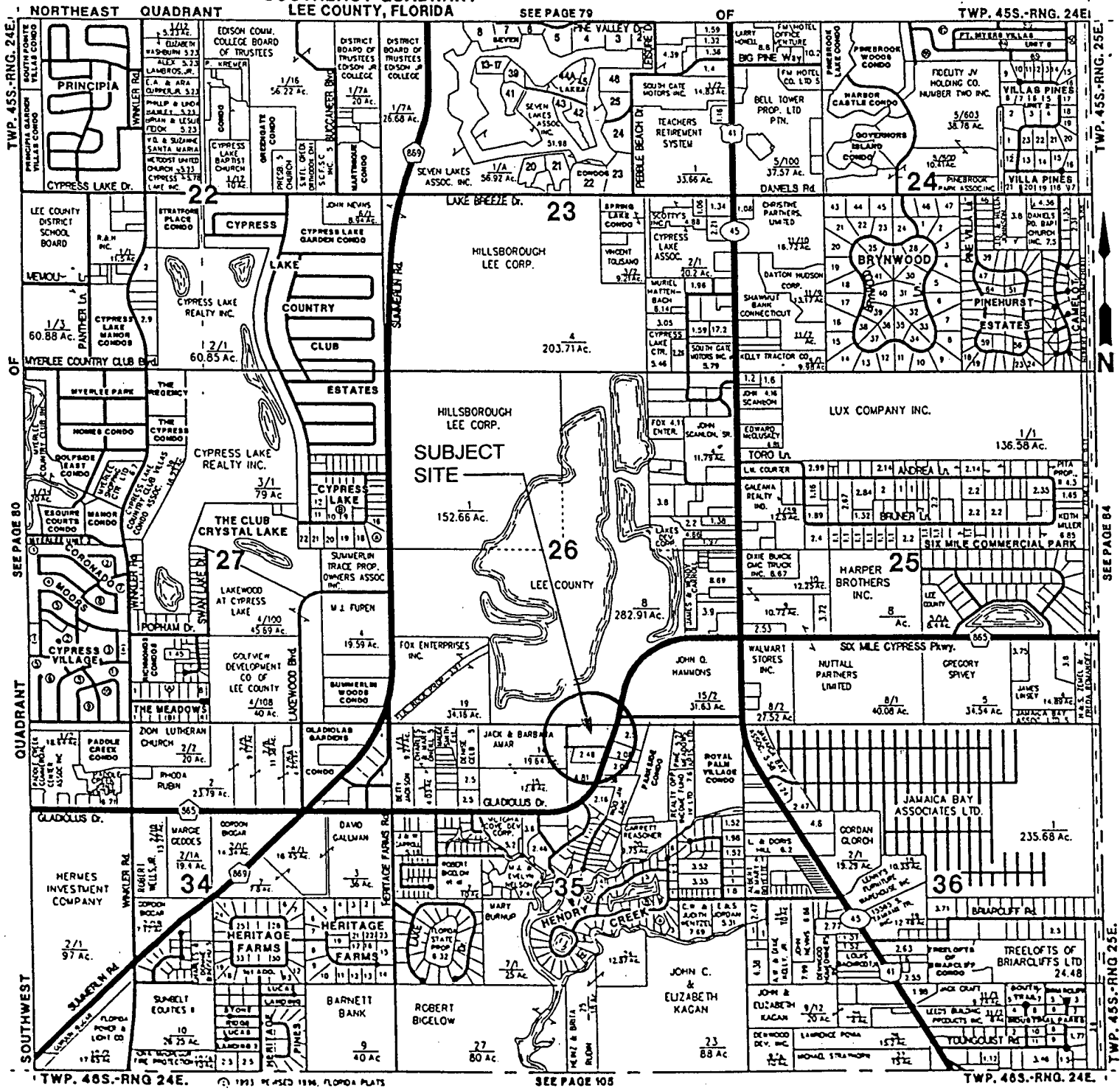
PERMIT COUNTER

4
OCI 2003-00062

TWP. 45S.-RNG. 24E.

SOUTHEAST QUADRANT
LEE COUNTY, FLORIDA

0 1 MILES 1 1/2
0 660 1320 1980 2640 3300
[FEET] 5280



AREA LOCATION MAP

Fenway Family Fun Center

EXHIBIT II-D-2.

DCI

2003-00062

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EXHIBIT IV-I-1

MASTER LIST OF USES FOR ENTIRE DEVELOPMENT

N/A A. Residential Uses					
	Type	Habitable stories	Height	Total Number of Units	
A..1.	Single Family				
A. 2.	Zero lot line				
A..3.	Mobile Homes				
A..4.	Recreational Vehicles				
A..5.	Duplex/Two Family				
A..6.	Townhouses				
A. 7.	Multiple Family	1 - 3 stories			
A. 8.	Multiple Family	4 - 6 stories			
A. 9.	Multiple Family	7 or more			
A.10	TOTAL UNITS				

N/A B. Assisted Living Facilities				
	Type	Habitable Stories	Height	Total Number of Beds
B.1.	Dependent Living Units			
B.2.	Independent Living Units			
B.3.	TOTAL UNITS			

N/A C. Hotels/Motels				
	Room Size	Habitable Stories	Height	Number of Rental Units
C.1.	< 425 sq. ft.			
C.2.	426-725 sq. ft.			
C.3.	725 < sq. ft.			
C.4.	TOTAL UNITS			

D. Commercial				Total Floor area	
		Habitable Stories	Height		Sq. Ft.
D.1.	Medical				
D.2.	General Office				
D.3.	Retail				
D.4.	Other (Commercial Recreation)	two (2)	35' Max.	12,500	Sq. Ft.
D.5.	TOTAL FLOOR AREA	two (2)		12,500	Sq. Ft.

N/A E. Industrial				
		Habitable Stories	Height	Total Floor area
E.1.	Under Roof			
E.2.	Not under Roof	NA		
E.3.	TOTAL FLOOR AREA			

N/A F. Mining				
			Depth	Acres
F.1.	Area to be excavated	NA		

**EXHIBIT I-D-1 or I-D-2
DISCLOSURE OF INTEREST FORM FOR:**

STRAP NO. 35-45-24-00-00015.0030 **CASE NO.** _____

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage of Ownership
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and Office	Percentage of Stock
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

4. If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(over)

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address, & Office(if applicable)	Percentage of Stock
Bushwood Entertainment, L.L.C.	
Barry Fisher, Manager	50%
D.J. Thiele, Manager	50%

Date of Contract: _____

6. If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name and Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest shall be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

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SEP 18 2003

Signature: _____

Barry Fisher
(Applicant)

Barry Fisher, Manager

(Printed or typed name of applicant)

Bushwood Entertainment, L.L.C.

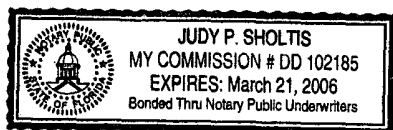
PERMIT COUNTER

STATE OF FLORIDA

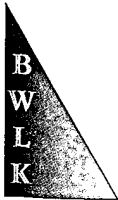
COUNTY OF LEE

OCI 2003-00062

The foregoing instrument was acknowledged before me this 13th day of September 2003,
by Barry Fisher, Manager who is personally known to me or who has
produced Drivers License as identification.



Judy P. Sholtis
Signature of Notary Public



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land
Lying in
Section 35, Township 45 South, Range 24 East
Lee County, Florida
(Remaining Parcel Boundary)

A parcel of land situated in the State of Florida, County of Lee, Section 35, Township 45 South, Range 24 East, being a part of a parcel of land recorded in Official Record Book 1635 at Page 1728, Public Records, and further described as follows:

Starting at the northwest corner of the Northeast One Quarter (NE 1/4) of said Section 35; thence N89°08'58"E along the north line of said fraction for 65.00 feet to the Point of Beginning of the following described parcel; thence continue N89°08'58"E along the north line of said fraction for 552.56 feet to a concrete monument (stamped LB 4919) marking the current right-of-way line of Gladiolus Drive (C.R. 865); thence S43°13'35"E along said right-of-way line for 31.17 feet to a concrete monument (stamped LB 4919); thence S19°17'57"W along said right-of-way line for 325.43 feet to a concrete monument (stamped LB 4919) on the south line of the North One Half (N 1/2) of the Northwest One Quarter (NW 1/4) of the Northwest One Quarter (NW 1/4) of the Northeast One Quarter (NE 1/4) of said Section 35; thence S89°13'33"W along said fractional line for 459.56 feet to the east line of Parcel 60b as described in that certain Order of Taking recorded in Official Record Book 2512 at Pages 2992 through 3012, inclusive; thence N01°10'59"W along the easterly line of said Parcel 60b for 327.93 feet to the Point of Beginning.

Containing 3.92 acres, more or less.

Bearings are based on the right-of-way maps for Gladiolus Drive with the north line of the Northeast One Quarter (NE 1/4) of Section 35 as bearing N89°08'58"E.

Subject to a drainage easement over and across the westerly 30.00 feet thereof.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

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SEP 18 2003

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

34186DESC1

PERMIT COUNTER
8/1/03


Scott C. Whitaker, P.S.M. 4324

OCI 2003-00062

PRINCIPALS

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDOLF A. NORMAN, PE

LETTER OF AUTHORIZATION

TO LEE COUNTY COMMUNITY DEVELOPMENT

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as Ferway Family Fun Center and legally described in exhibit A attached hereto.

The property described herein is the subject of an application for zoning or development. We hereby designate Bean Whitaker Lutz & Kareh, Inc as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.



Owner* (signature)

Barry Fisher

Printed Name

Manager

Bushwood Entertainment, LLC

Owner* (signature)

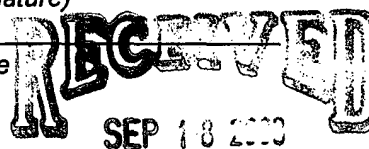
Printed Name

Owner* (signature)

Printed Name

Owner* (signature)

Printed Name



STATE OF FLORIDA
COUNTY OF LEE

PERMIT COUNTER

Sworn to (or affirmed) and subscribed before me this 13th day of September, 2003, by

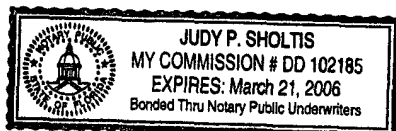
Barry Fisher

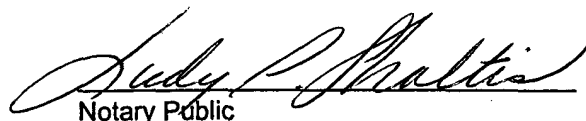
, who is personally known to me or who has produced

Driver's License

as identification.

(SEAL)




Notary Public

Judy P. Sholtis

(Name typed, printed or stamped)

*If more than one owner then all owners must sign. See explanation on back.

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUBSTANTIVE REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 12/23/2003

Joan Henry, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
Kathy Badcock, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning

PROJECT NAME: FENWAY FAMILY FUN CENTER @

CASE #: DCI2003-00062

INFORMATION SUMMARY:

To update your file
☒ _X_ Review and forward substantive comments **ASAP**.

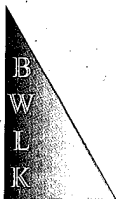
RESPONSE REQUIRED BY: 01/02/2004

Additional Comments:

cc: DCI planner/working file
DCI Zone File

Distributed by: Jessica M Smith

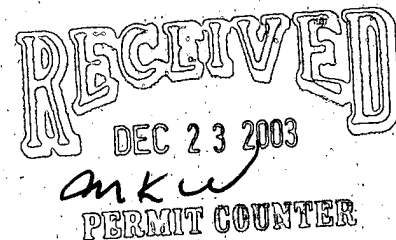
Date: 12/23/2003



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

December 23, 2003



Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

RE: Fenway Family Fun Center @ Lakes Park
DCI2003-00062 / Minor CPD
BWLK Project Number 34186(03-14)

Dear Mr. Block:

This letter is written to confirm that the wording of the formal request, as stated in your December 17, 2003 letter, is satisfactory with one exception. The total buildings square footage is 12,500 S.F. and not 7,550 S.F. Also, we would like to reserve the right for a formal pre-hearing until we receive and review the staff report.

In addition, enclosed herewith are five (5) copies of the reduced Master Concept Plan for your use.

If you should have any questions regarding the above matter, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.

Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

Enclosures

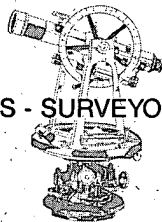
cc: Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosure
Mr. Donald J. Thiele, Manager, Bushwood Entertainment, LLC w/enclosure

34186(03-14)\FORMAL REQUEST APPROVAL 12-23-03.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

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W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

**MEMORANDUM
FROM
DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF ENVIRONMENTAL SCIENCES**

Date: December 18, 2003

To: Chip Block, Principal Planner
From: Gary Nychyk, Senior Environmental Planner *AGN*
Phone: (239)479-8323; FAX (239)479-8319
E-mail: nychykag@leegov.com

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DEC 18 2003

ZONING

Re: Fenway Family Fun Center CPD
Case: DCI2003-00062
STRAP: 35-45-24-00-00015.0030

The Division of Environmental Sciences (ES) staff have reviewed the requested application and conducted a site inspection on October 1, 2003. The site is composed of mowed grassy areas and scattered concentrations of invasive exotic vegetation including Brazilian pepper, melaleuca, Australian pine, and earleaf acacia. ES staff observed no signs of protected species.

The applicant has proposed 30 percent open space for this project and has provided buffers consistent with Chapter 10-416 of the Lee County Land Development Code. Therefore, ES staff has no issues with the approval of this request.

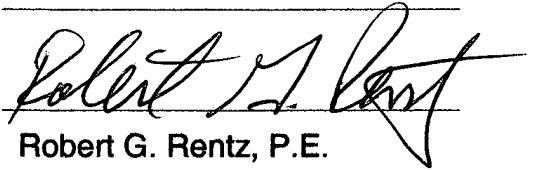
If there are any questions, please do not hesitate to contact me.

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION

DATE: December 29, 2003

To: Alvin "Chip" Block, AICP
Principal Planner

FROM:


Robert G. Rentz, P.E.
Development Review
Engineer

RE: **Fenway Family Fun Center**
Case No. DCI2003-00062

The proposed project will consist of a 3.92 acre amusement park. Based on the ITE Trip Generation Report 6th Edition the project will generate 23 trips in the peak hour. The anticipated build out year is 2004.

Based on the 2002 Traffic Count Report issued by the Lee County Department of Transportation, the 2005 background peak hour, peak season, peak direction volume of flow on Gladiolus Dr. west of U.S.41 will be 2,137 vehicles per hour. At this volume, based on the Lee County D.O.T. link-specific service volumes, Gladiolus Dr. will operate at level of service "D". When the project traffic is added to this background traffic the level of service will remain at "D".

BGR

S:/WRITERS/RENTZRG/DCI200300062SUBSTANTIVETRAFFICCOMMENTS

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION

DATE: January 27, 2004

TO: File - DCI2003-00062 **FROM:** Jamie Princing
Secretary, Internal Services

RE: Notice of Public Hearing - February 11, 2004 **HEX**

I, Jamie Princing, Secretary, Internal Services, Development Services Division, do hereby certify that I have mailed notices to the adjacent property owners on the above referenced date, in the attached style, pursuant to the list marked and attached hereto and made a part of this certification.

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

CASE NUMBER: DCI2003-00062

CASE NAME: FENWAY FAMILY FUN CENTER @

REQUEST: Rezone 3.92 acres from Commercial Planned Development to Commercial Planned Development to allow development of up to 12,500 square feet of building area with a maximum building height of 35 feet (and 135 feet for batting cage supports, wall and net). Uses proposed include coin operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service. Blasting is not a proposed development activity for this project.

LOCATION: The subject property is located at 7350 Gladiolus Drive (SW corner of Gladiolus Dr. & Lakes Park entrance), in S35 (Section)-T45 (Township)S-R24 (Range)E, Lee County, Florida.

SIZE OF PROPERTY: 3.92 Acres ±

STAFF REPORT: Direct inquiries to Alvin Block, AICP, Principal Planner, at 239-479-8371, at the Department of Community Development, 1500 Monroe St., Ft. Myers, FL 33901.

PROPERTY OWNER'S REPRESENTATIVE: MR. AHMAD R KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
239-481-1331

Notice is hereby given that the Lee County Hearing Examiner will hold a public hearing at 1:00 p.m. on February 11, 2004, on the above case. The public hearing will be held in the Hearing Examiner's Meeting Room, 1500 Monroe St., Ft. Myers, FL 33901.

You must appear in person, or through counsel, or an authorized agent and provide testimony, legal argument or other evidence at the hearing to become a participant with the right to address the Board of County Commissioners.

After the Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the Board of County Commissioners who will review the recommendation and make a final decision.

If you do not appear before the Hearing Examiner, by law, you will not be allowed to appear before the Board of County Commissioners at the final hearing in this case.

Copies of the staff report will be available two weeks prior to the hearing. The file may be reviewed at the Development Services Division, 1500 Monroe St., Fort Myers, FL 33901. Call 239/479-8585 for additional information.

In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. If you are in need of a reasonable accommodation, please contact Jamie Prining at 239/479-8585.

DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

35-45-24-00-00015.0030
MOBIL OIL CORPORATION
C/O EXXON MOBIL CORPORATION
P O BOX 4973
HOUSTON, TX 77210

26-45-24-00-00015.0040
LOWES HOME CENTERS INC
ATTN: LEGAL DEPT
HWY 268 E
N WILKESBORO, NC 28656

35-45-24-00-00014.0000
AMAR JACK + BARBARA
4825 GRIFFIN BLVD
FT MYERS, FL 33908

35-45-24-00-00015.0010
LEE COUNTY
P O BOX 398
FT MYERS, FL 33902

35-45-24-00-00015.002A
JUNG WOO JIN
3950 WILSON AVE SW
CEDAR RAPIDS, IA 52404

35-45-24-00-00015.002D
CIU GLADIOLUS LAND GROUP LLC
12011 ROSEMOUNT DR
FT MYERS, FL 33913

35-45-24-00-00015.004A
FOX MORRIS B CO-TR
ELLIS STEPHEN D CO-TR
4020 DEL PRADO BLVD
CAPE CORAL, FL 33904

35-45-24-06-00000.00CE
PARKSIDE CONDO
15190 PARKSIDE DR SW
FT MYERS, FL 33908

Mobil Oil Corporation
c/o ExxonMobil Corporation
PO Box 4973
Houston, TX 77210

Donald John Thiele, Manager
Bushwood Entertainment, LLC
11106 Lakeland Circle
Ft. Myers, FL 33913

26-45-24-00-00008.0000
LEE COUNTY
C/O PARKS & REC.
P O BOX 398
FT MYERS, FL 33902

26-45-24-00-00015.0050
GLADIOLUS COMMERCIAL LLC
12486 RIVERSIDE
FORT MYERS, FL 33919

35-45-24-00-00015.0000
AMAR JACK + BARBARA
4825 GRIFFIN BLVD
FT MYERS, FL 33908

35-45-24-00-00015.001A
THOMPSON LAWRENCE G
7400 GLADIOLUS DR
FT MYERS, FL 33908

35-45-24-00-00015.002C
GLADIOLUS SURGERY LAND
1342 COLONIAL BLVD STE C19
FORT MYERS, FL 33907

35-45-24-00-00015.0040
REALTOR ASSOCIATION OF GREATER
2840 WINKLER AV
FORT MYERS, FL 33916

35-45-24-00-00015.0050
21ST CENTURY ONCOLOGY INC
1850 BOY SCOUT DR #102
FT MYERS, FL 33907

Barry D. Fisher, Manager
Bushwood Entertainment, LLC
7570 Knightwing Circle
Ft. Myers, FL 33912

Ahmad R. Kareh, P.E. M.S.C.E. / Tracy Bean, AICP
Bean, Whitaker, Lutz & Kareh, Inc.
13041 McGregor Blvd.
Ft. Myers, FL 33919

William B. Horner
Lee County Port Authority
16000 Chamberlaine Pkwy Ste 861
Ft. Myers, FL 33913-8899

(*South Ft. Myers)

2003-00062

**MEMORANDUM
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

RECEIVED
MAR 05 2004

COMMUNITY DEVELOPMENT
REC'D SECOND FLOOR

DATE: March 5, 2004

TO: Board of County Commissioners

**FROM: Diana M. Parker/Salvatore Territo
County Hearing Examiners**

RE: Hearing Examiner Recommendation

Enclosed you will find the following Hearing Examiner Recommendation:

HEARING DATE: February 11, 2004

**DCI2003-00062 BUSHWOOD ENTERTAINMENT, LLC, in reference to
FENWAY FAMILY FUN CENTER AT LAKES PARK**

The above referenced Hearing Examiner Recommendation has been rendered as of this date. The Development Services Division has advised that the BOCC Zoning Hearing is tentatively scheduled for **Monday, March 29, 2004**. Development Services will forward a copy of the Recommendation to the Board prior to that time in the pink zoning notebooks.

If you have any procedural questions, please let our office know.

cc: Tim Jones / Asst. Co. Atty.
Billie Jacoby / Community Development
Andy Getch / LCDOT
Sue Noe / Economic Development

DCI2003-00062
Donna Marie Collins / Asst. Co. Atty.
Matt Noble / Community Development
Chip Block / Community Development

**BILLIE JACOBY
COMMUNITY DEVELOPMENT**

MEMORANDUM
From The
Department Of
Community Development
Development Services Division

Date: March 16, 2004

To: DCI2003-00062

From: Jessica Smith

RE: Notice of Public Hearing - March 29, 2004 BCC
Lee County Board of County Commissioners Meeting

I, Jessica Smith, Administrative Assistant, Development Services Division, do hereby certify that I have mailed **notices to the participants** in regard to the above referenced meeting, in the attached style, pursuant to the list marked and attached hereto and made a part of the certification.

NOTICE TO PARTICIPANT

CASE NUMBER: DCI2003-00062

NAME: Bushwood Entertainment, LLC in ref. to Fenway Family Fun Center @ Lakes Park

REQUEST: Request is to rezone 3.92 acres from Commercial Planned Development (CPD) to Commercial Planned Development (CPD) to allow development of up to 12,500 square feet of building area with a maximum building height of 35 feet (and 40 feet for batting cage supports, wall and net). Uses proposed include coin-operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service. Blasting is not a proposed development activity for this project.

LOCATION: The subject property is located at 7350 Gladiolus Drive (SW corner of Gladiolus Dr. & Lakes Park entrance) in S35-T45S-R4E, Lee County, FL.

PROPERTY OWNER'S REPRESENTATIVE: Mr. Ahmad R. Kareh, Ms. Tracy Bean
Bean, Whitaker, Lutz & Kareh, Inc.
481-1073

Notice is hereby given that the Lee County Board of Commissioners will hold a public hearing at 9:30 a.m. on March 29, 2004, to review the written recommendation made by the Hearing Examiner and make a final decision in the above-referenced case. This hearing will be held in the Commissioners' Meeting Room, 2120 Main St., Ft. Myers, FL.

The law states that, as a participant, you have the right to appear and address the Board on this case. However, the law strictly limits all testimony before the Board to statements challenging the correctness of findings and conclusions contained in the record, or statements alleging the discovery of relevant new evidence which was not known by the speaker at the time of the Hearing Examiner's hearing and not otherwise disclosed in the record. Statements will be limited to five (5) minutes or as the Board may otherwise allow.

Additional copies of the Hearing Examiner's recommendation may be obtained or the file reviewed at the Zoning Division, 1500 Monroe St., Ft. Myers, FL. Call 479-8585 additional information.

In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. If you are in need of a reasonable accommodation, please contact Jessica Smith at 479-8585.

DEPARTMENT OF COMMUNITY DEVELOPMENT
Zoning Division

Bean, Whitaker, Lutz & Kareh, Inc.
Mr. Ahmad R. Kareh/Ms. Tracy Bean
13041 McGregor Blvd.
Fort Myers, FL 33919

Bushwood Entertainment, LLC
7570 Knightwing Circle
Fort Myers, FL 33912

Mobil Oil Corporation
c/o Exxon Mobil Corporation
P.O. Box 4973
Houston, TX 77210

Bushwood Entertainment, LLC
Mr. Barry D. Fisher
7570 Knightwing Circle
Fort Myers, FL 33912

Bushwood Entertainment, LLC
Mr. Donald John Thiele
7570 Knightwing Circle
Fort Myers, FL 33912

Marian Haney
15051-1 Parkside Drive
Fort Myers, FL 33908

Wayne Sether
15101 Parkside Drive, #4
Fort Myers, Florida 33908

Larry Thompson
7400 Gladiolus Drive
Fort Myers, Florida 33908

Chip Block

FILE

STOP All above are for DCI2003-
00062 ONLY

Mr. Daniel DeLisi, AICP
Barraco and Associates
2271 McGregor Blvd.
Fort Myers, FL 33902

Avalon Communities, Inc.
8750-12 Gladiolus Drive
Fort Myers, FL 33908

Kenneth Weiner A Tr & Russell
Wayne G TR
4291 Fulton Circle
Fort Myers, FL 33905

Ms. Kate English Paves Law Firm
1833 Hendry Street
Fort Myers, FL 33902

Mr. Ken Passarella
Passarella and Associates, Inc.
9110 College Pointe Court
Ft. Myers, FL 33919

Janeanne Archiabile
8621 Belle Meade Drive
Ft. Myers, Florida 33908

Connie Paul
16425 Rainbow Meadows Court
Ft. Myers, Florida 33908

Lea Ann Reeves
8591 Belle Meade Drive
Ft. Myers, Florida 33908

Wayne G. Russell
4291 Fulton Circle
Ft. Myers, Florida 33905

Thomas Simon
8551 Belle Meade Drive
Ft. Myers, Florida 33908

Jeff Laurien

FILE

STOP all are for DCI2003-00015



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: 479-8585

Bob Janes
District One

March 10, 2004

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

Bean, Whitaker, Lutz & Kareh, Inc.
Mr. Ahmad R. Kareh/Ms. Tracy Bean
13041 McGregor Blvd.
Fort Myers, FL 33919

**Re: Agenda Schedule for Bushwood Entertainment, LLC in ref. to Fenway Family Fun Center @ Lakes Park
Case No. DCI2003-00062**

Dear Mr. Kareh & Ms. Bean:

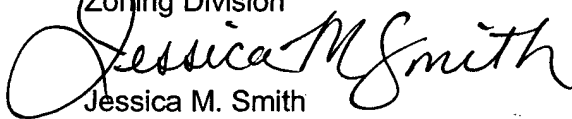
Your zoning request has been scheduled before the Board of County Commissioners to take final action after reviewing the Hearing Examiner's recommendation.

DATE & TIME: March 29, 2004, Meeting commences at 9:30 a.m.

LOCATION: Commissioners' Meeting Room
2120 Main Street
Ft. Myers, Florida

Call if you have any questions.

DEPARTMENT OF COMMUNITY DEVELOPMENT
Zoning Division


Jessica M. Smith
Administrative Assistant

cc: Bushwood Entertainment, LLC
Mobil Oil Corporation c/o Exxon Mobil Corporation
Bushwood Entertainment, LLC Mr. Barry D. Fisher
Bushwood Entertainment, LLC Mr. Donald John Thiele
Alvin "Chip" Block, AICP, Principal Planner
Zoning File

U:\200403\DCI20030.006\2\DCI2003-00062 APPLICANT LTR.WPD

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: 479-8585

Bob Janes
District One

January 12, 2004

Douglas R. St. Cemy
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

Mr. Ahmad R. Kareh/Ms. Tracy Bean
Bean, Whitaker, Lutz & Kareh, Inc.
13041 McGregor Blvd.
Fort Myers, FL 33919

Re: Agenda Schedule for Fenway Family Fun Center @ Lakes Park
Case No. DCI2003-00062

Dear Mr. Ahmad R. Kareh/Ms. Tracy Bean:

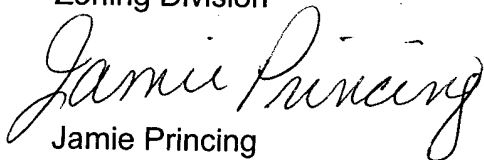
Your zoning request has been scheduled before the Hearing Examiner on February 11, 2004, at 1:00 p.m. The hearing will be conducted in the Hearing Examiner Meeting Room, 1500 Monroe St., Ft. Myers, FL.

Be advised all exhibits presented to Hearing Examiner will be retained for the records. The Hearing Examiner encourages the applicant to provide reduced copies of these exhibits for the record as an alternative to a full size copy.

Your zoning sign will be ready for pickup any time after January 14, 2004, at the drive-thru window at 1500 Monroe St., Ft. Myers, FL. This sign must be posted in accordance with Department procedures no later than January 27, 2004, and is to remain posted until final decision is rendered.

Call if you have any questions.

DEPARTMENT OF COMMUNITY DEVELOPMENT
Zoning Division



Jamie Princing
Administrative Assistant

cc: Bushwood Entertainment, LLC
Mobil Oil Corporation
Bushwood Entertainment, LLC
Alvin "Chip" Block, AICP, Principal Planner
Zoning File

S:\CASES\Agendas\2004\02-11-04\Applicantletter.wpd

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

MEMORANDUM
FROM THE
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING DIVISION

DATE: February 26, 2004

TO: Ms. Diana M. Parker
Lee County Hearing Examiner

FROM: Alvin Block, AICP *Alvin Block*
Principal Planner

RE: DCI2003-00062, FENWAY FAMILY FUN CENTER AT LAKES PARK

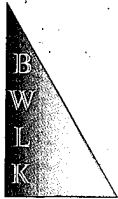
At the completion of the public hearing, the Hearing Examiner left the case open to allow the submission of new language for Condition 8.

Staff and the applicant have reached an agreement on this language, which is as follows:

8. The developer must provide a minimum 20 foot wide buffer containing 5 trees (Florida #1 Standard) per 100 linear feet and a double staggered hedge row (100% native species) along the property line contiguous to the Lakes Park entrance road. The required trees must be a minimum of 14 feet tall from grade overall and have a 6 to 8 foot wide spread at the time of planting. The number of trees may be reduced at the time of local development order for this project, if Lee County Parks and Recreation determines that improvements planned along the entrance road negate the need for the trees to buffer the park from this development.

Staff has confirmed by phone with the applicant's agent, Mr Ahmad Kareh, that this language is acceptable. By copy of this correspondence to the applicant's agent, staff requests that they confirm (via a facsimile response) to the Hearing Examiner's offices (479-8106) that this wording is acceptable.

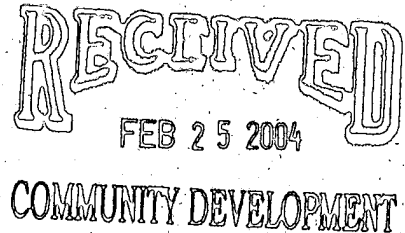
cc: Mr. Ahmad Kareh, applicant's agent
Donna Marie Collins, Assistant County Attorney



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

February 25, 2004



Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

RE: Fenway Family Fun Center @ Lakes Park
DCI2003-00062
BWLK Project Number 34186(03-14)

Dear Mr. Block:

In accordance with the direction from the Hearing Examiner regarding the order for the continuance of the above referenced case, we are providing the following information:

We agree with the original wording of Condition #8 as written in your January 26, 2004 staff report. This same wording was also recommended by Mr. Michael P. Pavese, Principal Planner with the Department of Public Works in his January 26, 2004 memorandum attached to the staff report.

We would like to see language included that if the Lakes Park Master Plan should be adopted before construction of the Fenway Family Fun Center, the developer of the Fenway Family Fun Center may reduce the number of trees planted along the property line contiguous to Lakes Park entrance road so that the total requirement of trees to be planted in Condition #8 is met by the sum of trees planted by Lakes Park with the Fenway Family Fun Center providing the difference.

If you should have any questions regarding any of the above, please do not hesitate to call me.

Sincerely,

BEAN, WHITAKER, LUTZ & KAREH, INC.

Tracy N. Bean, AICP
Zoning & Land Use Coordinator

Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

TNB/ARK/js

cc: Mr. Donald J. Thiele, Manager, Bushwood Entertainment, LLC
Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC

34186(03-14)\ZONING RESOLUTION PROPOSED CONDITION #8 02-25-04.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

Cape Cod Hurricanes
AAU Baseball
C/o Jack DeGroff
29 Surrey Lane
Harwich, Ma
CCHurricanes@comcast.net
(508)-432-8864



To Whom It May Concern,

I have been a patron of Grand Slam Entertainment in Harwichport for over 15 years and would like to voice my approval of the operation and the constructive attributes for the children and athletes in our area. As a long time coach of various youth sports here in Harwich and Cape Cod, I can solidly state that D.J. Thiele and the baseball facility at Grand Slam has not only helped individual players with hitting skills but whole teams and groups as well. We have been fortunate on many occasions to be able to utilize the facility for practices when the local fields were too wet, or to build a players confidence when they are having trouble relying on their own ability. The discounted programs for teams and individuals make for economical and effective training for the teams and players in the area.

What's more, we have raised thousands of dollars at Grand Slam with baseball hit-a-thons and car washes that were all provided to our groups for free from Grand Slam. The local community support from this facility has been overwhelming and they always donate their time and facility whenever we are in need.

If you are considering a facility like this, operated by the same manager, I highly recommend that you approve such a worthwhile and positive business that will surely be a wonderful addition to your community

Thank you,

Jack DeGroff
Cape Cod Hurricanes
General Manager

ROUGH RIDER BASEBALL

2004

**HARWICH HIGH SCHOOL
OAK STREET, HARWICH, MA. 02645**

**Fred Thacher – Head Coach
Bob Warner – Assistant Coach**

Peter Gonnella – Junior Varsity Coach

February 4, 2004

To whom it may concern,

D.J. Theile operated an entertainment business called "The Grand Slam" in Harwich, Ma. It quickly became a very popular place for our youth to go. First, D.J. operated a very clean, safe environment and parents felt very at ease with the set up. Secondly, D.J. Theile really cared about the children his business attracted. D.J. a former student from Harwich, never lost touch with the youth of the town. I believe it would be impossible to go to "The Grand Slam" and not find D.J. talking baseball, hitting or just listening to the young players talk about how their teams were doing. In appreciation, every team in the area sent team pictures for his wall and his wall was covered.

D.J. went out of his way to hire young people, baseball and softball players from the town to work for him, knowing it gave them an opportunity to sharpen their skills while at work. Everyone wanted a job at "The Grand Slam." He also offered his facility to little league teams, softball teams and high school teams at such a deal it had to be a financial loss for D.J. Theile. I know because I'm the high school coach and he offered hitting cages to our team to help us out on wet days.

D.J.'s business was something all people of all ages waited for to open in the spring. It was a class operation operated by a classy young man, D.J. Theile. "The Grand Slam" offered so much to the Harwich community and it's youth. A business like this will certainly be a highlight in any community.

Sincerely,

Fred Thacher
Fred Thacher, Coach

February 10, 2004

Mr. D.J. Thiele
Fenway Family Fun Center

Dear D. J.:

This letter is in reference to your planned project adjacent to Lakes Park. As we have discussed, we look forward to working with you. Although I can't make a formal recommendation for your project, it does appear to be compatible use for the property. The Family Fun Center seems to support the same "family atmosphere" which we enjoy at Lakes Park.

Best of luck . . . and we look forward to working with you.

Sincerely,

John Yarbrough

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUBSTANTIVE REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 03/23/2004

Donna Marie Collins, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
Kathy Babcock, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning

PROJECT NAME: Fenway Family Fun Center @ Lakes Park

CASE #: DCI2003-00062

INFORMATION SUMMARY:

To update your file
☒ Review and forward substantive comments **ASAP**.

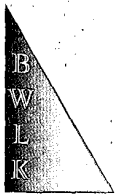
RESPONSE REQUIRED BY: 04/02/2004

Additional Comments:

cc: DCI planner/working file
DCI Zone File

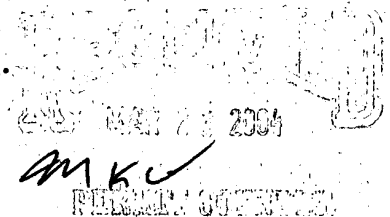
Distributed by: Billie Jacoby

Date: 03/24/2004



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073



March 22, 2004

Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

Re: Fenway Family Fun Center @ Lakes Park
Zoning Case Number DCI2003-00062
Resolution Number Z-04-011
BWLK Project Number 34186(03-14)

Dear Mr. Block:

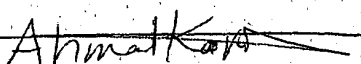
Per Assistant County Attorney, Ms. Donna Marie Collins' request, we have reviewed the draft resolution and the legal description & sketch submitted with the zoning application for the above referenced project. We find them to accurately reflect the Hearing Examiner's recommendation, and describe the property to be rezoned respectively.

In addition, both the "General Notes" and the "Property Development Regulations" have been removed from the Master Concept Plan. Eleven (11) full size prints, and eleven (11) 11" x 17" reductions are included herewith with a revision date as requested.

If you should have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.


Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

Enclosures

cc: Mr. Donald John Thiele, Manager, Bushwood Entertainment, LLC w/enclosures
Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosures
Ms. Donna Marie Collins, Esquire, Assistant County Attorney, Lee County Attorney's Office
w/enclosures

34186(03-14)VATTY REV.MCP REQ 03-22-04.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUBSTANTIVE REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 04/02/2004

Joan Henry, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
Kathy Babcock, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning

PROJECT NAME: FENWAY FAMILY FUN CENTER @

CASE #: DCI2003-00062

INFORMATION SUMMARY:

To update your file
☒ Review and forward substantive comments **ASAP**.

RESPONSE REQUIRED BY: 04/12/2004

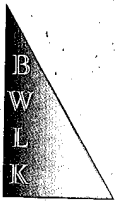
Additional Comments:

Please review the attached plan to determine if it accurately reflects the approval by the BoCC on March 29, 2004 in accordance with LDC 34-377(b)(6)"

cc: DCI planner/working file
DCI Zone File

Distributed by: Jessica M Smith

Date: 04/02/2004



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

March 31, 2004

Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

RECEIVED
APR 02 2004

PERMIT COUNTER

Re: Fenway Family Fun Center @ Lakes Park
Zoning Case Number DCI2003-00062
Resolution Number Z-04-011
BWLK Project Number 34186(03-14)

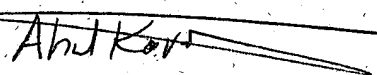
Dear Mr. Block:

Per your request, attached herewith are the revised eleven (11) full size prints, and eleven (11) 11" x 17" reductions for the above referenced project.

If you should have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.


Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

DCI 2003-00062

ARK/js

Enclosures

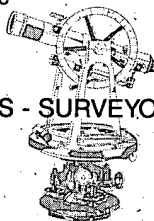
cc: Mr. Donald John Thiele, Manager, Bushwood Entertainment, LLC w/enclosures
Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosures
Ms. Donna Marie Collins, Esquire, Assistant County Attorney, Lee County Attorney's Office
w/enclosures

34186(03-14)\ATTY 2ND REV MCP REQ 03-31-04.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUBSTANTIVE REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 04/08/2004

Donna Marie Collins, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
Kathy Babcock, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning

PROJECT NAME: FENWAY FAMILY FUN CENTER @

CASE #: DCI2003-00062

INFORMATION SUMMARY:

To update your file
X Review and forward substantive comments **ASAP**.

RESPONSE REQUIRED BY: 04/16/2004

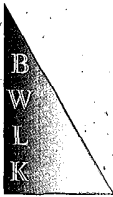
Additional Comments:

Please review the attached plan to determine if it accurately reflects the approval by the BoCC on March 29, 2004 in accordance with LDC 34-377(b)(6)

cc: DCI planner/working file
DCI Zone File

Distributed by: Jessica M Smith

Date: 04/09/2004



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

April 7, 2004

Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

RE: Fenway Family Fun Center @ Lakes Park
Zoning Case Number DCI2003-00062
Resolution Number Z-04-011
BWLK Project Number 34186(03-14)

Dear Mr. Block:

Per our recent conversation, attached herewith are the revised eleven (11) full size prints, and eleven (11) 11" x 17" reductions for the above referenced project.

If you should have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.

Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

Enclosures

cc: Mr. Donald John Thiele, Manager, Bushwood Entertainment, LLC w/enclosures
Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosures
Ms. Donna Marie Collins, Esquire, Assistant County Attorney, Lee County Attorney's Office
w/enclosures

DCI 2003-00062

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APR 08 2004

PERMIT COUNTER

34186(03-14)ATTY 3RD REV MCP REQ 04-07-04.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
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STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

RECEIVED
MINUTES OFFICE
2004 APR 21 AM 10:17

DATE: April 15, 2004

TO: Christine Berry

Executive Assistant to
Commissioner John E. Albion

FROM:

J. Henry
Joan C. Henry
Assistant County Attorney

RE: **BOCC ZONING RESOLUTION FROM THE MARCH 29, 2004 MEETING**
ZONING RESOLUTION: Z-04-011 (FENWAY FAMILY FUN CENTER)

Attached is the original resolution adopted by the Board at the March 29, 2004 zoning meeting. This resolution has been reviewed and approved as to form and is ready for the Chairman's signature. After the Chairman signs the resolution, please forward it to the Minutes Department for attestation and further processing.

Thank you for your assistance with respect to the above. Should you have any questions, please do not hesitate to contact me.

JCH/tmv
Attachment

cc: Billie Jacoby, DCD, Zoning
Lisa Pierce, Minutes Department

✓ 04/21/2004
(Signature)

COMM. DEV./
PLANNING & CONTR.
101 COR.

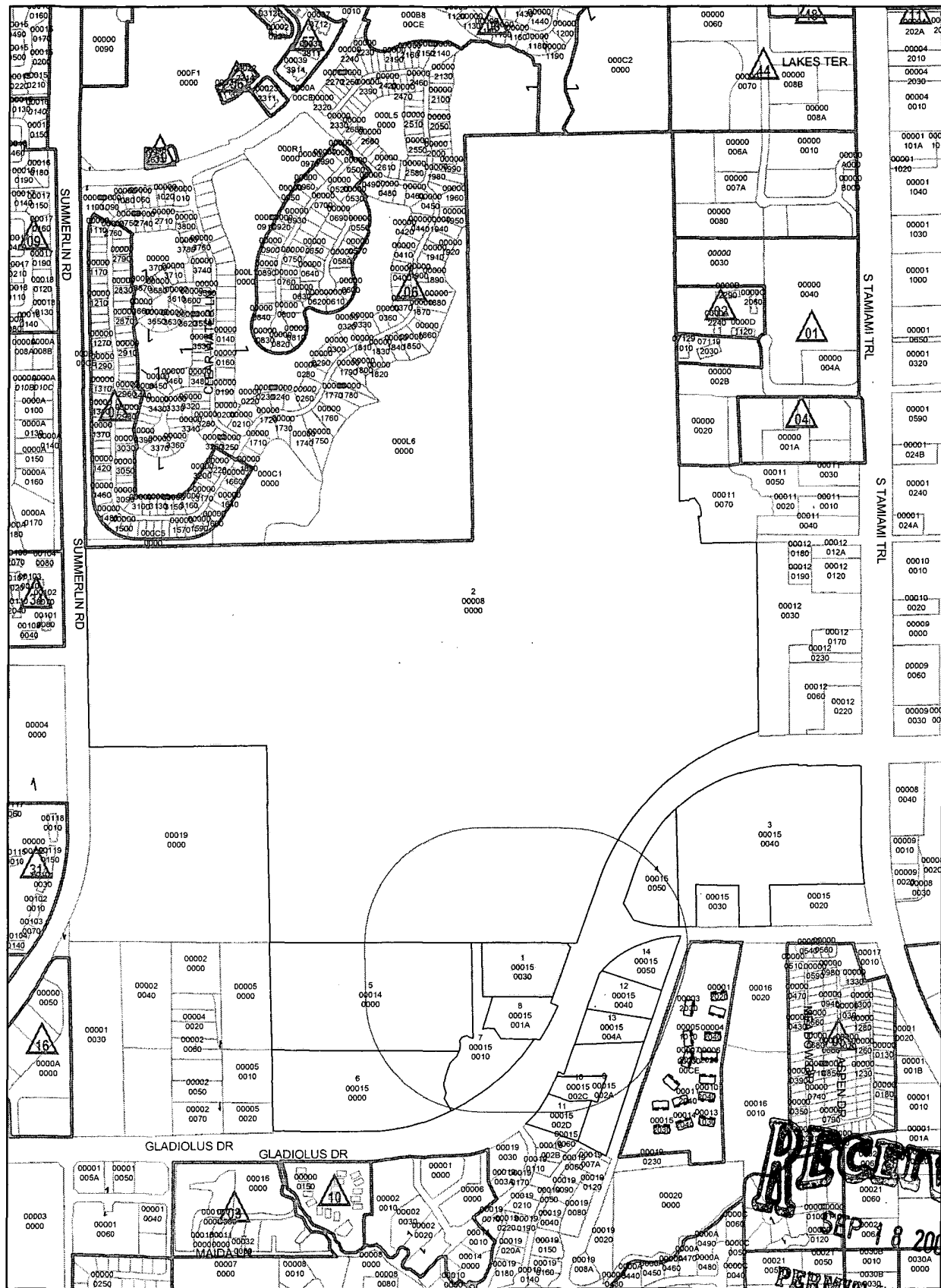
04 APR 22 PM 12:39

LEE COUNTY
RECEIVED

VARIANCE REPORT

6/23/2003

Subject Parcels : 1 Affected Parcels : 14 Buffer Distance : 750 ft



35-45-24-00-00015.0030

1,000 500 0

1,000 Feet

RECEIVED
SEP 8 2003
PERMIT DIVISION
OCI 2003-00062

Bushwood Entertainment, LLC.

7570 Knightwing Circle □ Fort Myers □ Florida 33912

□ Tel 239-482-6364 □ Fax 978-336-0457

September 10, 2003

Lee County Department of Community Development
Division of Zoning & Development Services
P.O. Box 398
Fort Myers, Florida 33902-0398

Re: Fenway Family Fun Center CPD
Bushwood Entertainment, LLC
Public Hearing & Development Order Application

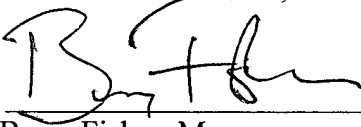
To Whom It May Concern:

In reference to the proposed project known as Fenway Family Fun Center, please know that Bushwood Entertainment, LLC, a Florida Limited Liability Company, and the applicant for forthcoming Public Hearing and Development Order application has been set up with the intent that each of Mr. Barry Fisher and Donald John Thiele, each a Manager of the Company, has full authority to secure approvals requested and to impose covenants and restrictions on the referenced property as the result of any action approved by the county in accordance with Public Hearing and Development Order application and the Lee County land Development Code.

Sincerely,

Bushwood Entertainment, LLC

By:


Barry Fisher, Manager

RECEIVED
SEP 18 2003

PERMIT COUNTER

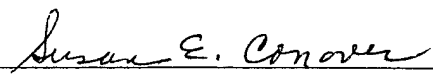
STATE OF FLORIDA)
)
COUNTY OF LEE)

OCI 2003-00062

The foregoing instrument was acknowledged before me this 11 day of September 2003, by Barry Fisher, as Manager of Bushwood Entertainment, LLC, □ who is personally known to me or ☒ who has produced Davis License as identification.



Susan E. Conover
Commission #DD198220
Expires: Mar 30, 2007
Bonded Thru
Atlantic Bonding Co., Inc.


NOTARY PUBLIC

ExxonMobil
Fuels Marketing Company
3225 Gallows Road
Fairfax, Virginia 22037-0001

August 14, 2003

ExxonMobil
Fuels Marketing

The Belvedere Group, Inc.
5130 Wisteria Drive
Easton, PA 18045
Attn: Barry Fisher

RE: Prospective Purchase and Sale Agreement for site 02-01G -7350 Gladiolus Drive, Fort Myers, Florida, between ExxonMobil Oil Corporation ("Seller") and The Belvedere Group, Inc. ("Purchaser")

Mr. Fisher:

Reference is made to your desire to file permits for changes in zoning and uses with the City of Fort Myers, Florida in anticipation of your development of the above referenced site.

As you know under our pending Purchase and Sale Agreement for this Property, Purchaser has no right to encumber this Property prior to Closing. You are requesting that ExxonMobil Oil Corporation give permission to you to file application to facilitate your intended use of the Property post-Closing. This permission is being granted under the following express conditions and reservations:

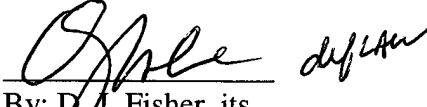
1. Permission hereby granted is to facilitate your application(s) but shall not be binding upon ExxonMobil Oil Corporation and does not constitute an undertaking or agreement by ExxonMobil Oil Corporation as Owner to undertake the applied for use nor constitute any agreement restricting current usage or our rights as owner.
2. This permission is revokable at any time by ExxonMobil Oil Corporation.
3. You agree that you will promptly withdraw all pending applications at such time as you elect to terminate the underlying Purchase and Sale Agreement and/or said agreement is terminated in accordance with its terms.
4. You will not enter into any agreement(s) or condition use of the Property as part of the application process other than in the context of your ultimate ownership of the Property with same expressly conditioned upon your purchase of the Property and effective only post-Closing.
5. You are not authorized to incur any charges on behalf of ExxonMobil Oil Corporation and you agree to indemnify and hold ExxonMobil Oil Corporation harmless

from any and all claims arising out of the permission hereby granted and/or your activities undertaken relative to applications/ permitting of the Property.

Please indicate your agreement and acceptance of the terms of this authorization by signing and returning a duplicate original of this letter.

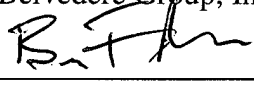
Sincerely yours,

ExxonMobil Oil Corporation, a
New York Corporation


By: D. J. Fisher, its
Attorney-In-Fact

Seen and agreed to this
31st day of August, 2003

The Belvedere Group, Inc., a Massachusetts corporation

By: 

Its: President

RECEIVED
SEP 18 2003

PERMIT COUNTER

DCI 2003-00062



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

September 15, 2003

Ms. Pamela E. Houck, Director
Division of Zoning
Lee County Department of Community Development
P. O. Box 398
Fort Myers, FL 33902-0398

RECEIVED
SEP 18 2003

PERMIT COUNTER

RE: Fenway Family Fun Center @ Lakes Park
3.92 Acre Parcel
Section 35, Township 45 South, Range 24 East
BWLK Project Number 34186(03-14)

OCI 2003-00062

Dear Ms. Houck:

Enclosed herewith is an Application for a Public Hearing for a Minor Commercial Planned Development for the above referenced project located at 7350 Gladiolus Drive, Fort Myers, Florida.

The applicant proposes to develop a $\pm$ 3.92 acre parcel for a commercial recreational facility. The rezoning from minor CPD to minor CPD will allow for the development of this recreational facility.

One (1) deviation is requested. The Schedule of Uses allows a very limited list of uses, which will support the main recreational use.

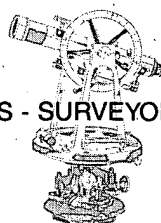
The following items are included for your review:

1. A check for the review fee for minor planned development in the amount of \$4,000.00, electronic version of the legal description, and two (2) sets of mailing labels.
2. Eleven (11) copies of the application and all required exhibits/attachments.
3. Eleven (11) sets of the Master Concept Plan, Boundary & Topographic Survey, and an Aerial Photograph.

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
JAMES A. HESSLER, PSM
JEFFREY P. GAGNON, PSM
RUDOLF A. NORMAN, PE

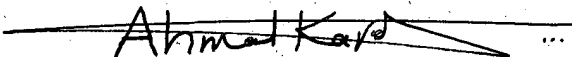
September 15, 2003
Ms. Pamela E. Houck, Director
Page two

In addition, please note that some items are not included, since a "Request for Public Hearing Submittal Requirement Waiver" was submitted on August 18, 2003. These items were submitted with the prior zoning case package (Case Number DCI2001-00071).

If you should have any questions, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.



Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

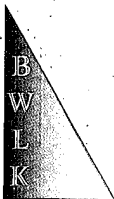
Enclosures

cc: Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosures
Mr. Donald John Thiele, Manager, Bushwood Entertainment, LLC w/enclosures

DCI 2003-00062

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SEP 18 2003

PERMIT COUNTER

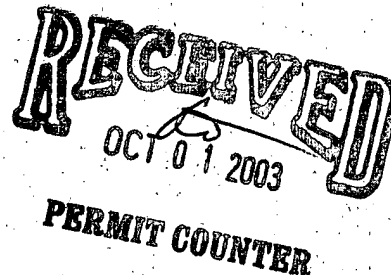


Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

October 1, 2003

Mr. Alvin "Chip" C. Block, AICP
Principal Planner
Division of Zoning
Lee County Department of Community Development
P. O. Box 398
Fort Myers, FL 33902-0398



RE: Fenway Family Fun Center @ Lakes Park
DCI2003-00062
BWLK Project Number 34186(03-14)

Dear Mr. Block:

Per your letter dated September 26, 2003, attached herewith "Affidavit for Public Hearing" replacing all prior submitted letters of authorization.

If you should have any questions, please do not hesitate to call me.

Very truly yours,

BEAN, WHITAKER, LUTZ & KAREH, INC.

Ahmad R. Kareh, P.E., M.S.C.E.
Vice-President

ARK/js

Enclosure

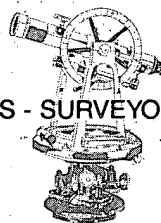
cc: Mr. Barry D. Fisher, Manager, Bushwood Entertainment, LLC w/enclosure
Mr. Donald John Thiele, Manager, Bushwood Entertainment, LLC w/enclosure

34186(03-14)\UPDATED AFFIDAVIT FOR PUBLIC HEARING 10-01-03.doc

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

TRACY N. BEAN, AICP
CHARLES D. KNIGHT, PSM
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUBSTANTIVE REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 12/17/2003

Joan Henry, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
Kathy Badcock, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning

PROJECT NAME: FENWAY FAMILY FUN CENTER @

CASE #: DCI2003-00062

INFORMATION SUMMARY:

To update your file
☒ Review and forward substantive comments **ASAP**.

RESPONSE REQUIRED BY: 12/29/03

Additional Comments:

cc: DCI planner/working file
DCI Zone File

Distributed by: Jodi M Payne

Date: 12/17/2003



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: 239-479-8371

Bob Janes
District One

Douglas R. St. Cemy
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yeager
County Attorney

Diana M. Parker
County Hearing
Examiner

December 17, 2003

MR. AHMAD R. KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
13041-1 MCGREGOR BLVD.
SUITE 1
FT. MYERS, FL 33919

Re: FENWAY FAMILY FUN CENTER @
DCI2003-00062 - PDS Application (Minor PD)

Dear MR. AHMAD R. KAREH, P.E. :

The Zoning Division has reviewed the information provided and supplemented for the rezoning request referenced above. The application is now sufficient and the formal request has been drafted from your application as follows:

Request to rezone 3.92 acres from Commercial Planned Development to Commercial Planned Development to allow development of up to 7,550 square feet of building area with a maximum building height of 35 feet (and 135 feet for batting cage supports, wall and net). Uses proposed include coin operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service. Blasting is not a proposed development activity for this project.

NOTE: If approved, the Master Concept Plan (available for inspection at 1500 Monroe St., in Ft. Myers) may deviate from certain Land Development Code (LDC) standards.

Please review this language carefully, and notify me in writing by December 31, 2003 whether or not this wording is satisfactory. Staff's substantive comments, along with the staff report, are being prepared. This request has been tentatively scheduled for public hearing before the Lee County Hearing Examiner on February 11, 2004. However, please note that this is a tentative date that is subject to change and that Lee County will be held harmless for any potential delay in effectuating compliance with the tentative hearing date.

MR. AHMAD KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
RE: FENWAY FAMILY FUN CENTER @
DCI2003-00062
December 17, 2003
Page 2

You may schedule or waive a formal pre-hearing conference to discuss substantive issues. Contact me if you have any questions or if you would like to meet informally prior to the public hearings.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT
Zoning Division



Alvin Block, AICP
Principal Planner

copy w/o attachments

Pamela Houck, Division Director
Joan Henry, Assistant County Attorney
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Roland Ottolini, Natural Resources
Andy Getch, LCDOT
Kathy Badcock, Lee County School District
Billie Jacoby, DCD Admin
DCI Zoning File
DCI Working File



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: 239-479-8371

Bob Janes
District One

Douglas R. St. Cemy
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yeager
County Attorney

Diana M. Parker
County Hearing
Examiner

October 6, 2003

MR. AHMAD R. KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
13041-1 MCGREGOR BLVD.
SUITE 1
FT. MYERS, FL 33919

Re: FENWAY FAMILY FUN CENTER @
DCI2003-00062 - PDS Application (Minor PD)

Dear MR. AHMAD R. KAREH, P.E. :

The Zoning Division has reviewed the information provided for the above zoning application. The Land Development Code requires additional information for the application to be sufficient. Please respond to each requirement not satisfied on the attached sufficiency checklists. For your assistance, we have enclosed any additional memoranda from the various Lee County reviewing agencies.

If you do not provide the requested supplements or corrections within 60 calendar days of this letter, the Code requires that this application be considered withdrawn. Please feel free to contact me or the staff reviewers if you have any questions.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT
Zoning Division

Alvin Block, AICP
Principal Planner

MR. AHMAD R. KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
RE: FENWAY FAMILY FUN CENTER @
DCI2003-00062
October 6, 2003
Page 2

cc: Pamela Houck, Division Director
Paul O'Connor, Planning
Joan Henry, Assistant County Attorney
Kim Trebatoski, Environmental Sciences
Roland Ottolini, Natural Resources
Andy Getch, LCDOT
Billie Jacoby, DCD Admin
Don Blackburn, Development Review
DCI Zoning File
DCI Working File

MR. AHMAD R. KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
RE: FENWAY FAMILY FUN CENTER @
DCI2003-00062
October 6, 2003
Page 3

**Lee County Sufficiency Checklist for Planned Developments,
Amendments, and Existing Developments Requesting Planned
Development Zoning**

9c) Zoning and Land Use Map. A map or other depiction of the existing zoning and current land uses (i.e. single family residence, multiple-family building, retail commercial, office building, etc.) surrounding the tract or parcel to a distance of 500 feet. [34-373(a)(4)c.]

Please note on the Master Concept Plan for the property to the west the fact that there is a pending request for Residential Planned Development zoning (DCI2003-00059).

12) Scale of Plans/Required Information. The Master Concept Plan must be clearly legible and drawn at a scale sufficient to adequately show and identify the following information: [34-373(a)(6)]

Please refer to the following.

12b) Vehicular Access. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development. [34-373(a)(6)b.]

Please provide the exact location of the access point into this development from an acceptable reference point.

12d) Other Master Concept Plan Parcel Requirements. Where the subject property is to be divided into lots or parcels, the Master Concept Plan must indicate the following: [34-373(a)(6)c.]

Please refer to the following.

12d4) Uses. The proposed use of each lot or parcel (including outparcels) keyed to the list of proposed uses submitted with the application. If the property development regulations for a specific zoning district will be used, reference to the specific district will be sufficient. [34-373(a)(6)c.]

Please make sure that the Plan indicates where each of the requested uses will be located within the proposed development.

12e) Development Areas. Individual development areas (i.e. residential, retail, office, manufacturing, mixed use-listed, etc.) must be identified with detail showing the following: [34-373(a)(6)d.]

Please refer to the following.

MR. AHMAD R. KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
RE: FENWAY FAMILY FUN CENTER @
DCI2003-00062
October 6, 2003
Page 4

12e6) Commercial/Industrial. If commercial or industrial is proposed, the type(s) and the total floor area of each type. [34-373(a)(6)d.vi.]

Please review your Exhibit IV-I-1, the Master Concept Plan, and your Narrative to make sure that the total gross floor area proposed in this application is consistent. Make any necessary changes and resubmit the required material.

12f) Service Areas. The general location of service areas for delivery of goods or services must be shown for all developments that are not residential subdivisions. [34-373(a)(6)e.]

Please revise the Master Concept Plan to show the service areas as required by this Section.

14) Schedule of Uses. A schedule of uses keyed to the Master Concept Plan as well as a summary for the entire property must be provided including the following: [34-373(a)(8)]

Please remove the Schedule of Uses from the Master Concept Plan and submit these on a separate sheet of paper. The Land Development Code does not require the Schedule to be on the Plan.

As you revise this, please review the use of Food and Beverage Service, limited as a permitted use and make sure that this is the use the applicant wants to have as part of this development.

15) Schedule of Deviations. A schedule of deviations and a written justification for each deviation requested as part of the master Concept Plan must be submitted. The location of each requested deviation must be indicated on the Master Concept Plan. [34-373(a)(9)]

Please review item a) on the second page of the justification for the requested deviation. This indicates that a pedestrian access between this property and the miniature golf course to the west has been discussed. If this is being committed to, then the Plan should be revised to show the location of the proposed access.

20) Contact. The Zoning Planner may be contacted regarding any questions on the Planned Development Sufficiency Checklist.

You may contact Chip Block at 239-479-8371 if you have any questions about this portion of the checklist.

MR. AHMAD R. KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
RE: FENWAY FAMILY FUN CENTER @
DCI2003-00062
October 6, 2003
Page 5

21) Miscellaneous Items.

There is a separate existing zoning application on file for this property, DCI2001-00071. Before staff can proceed with the application for Fenway Family Fun Center, DCI2001-00071 must be withdrawn by the applicant.

Please remove General Notes 4, 5, 6, 8, 9, 10, 11, and 12. These notes are not required to be on the Master Concept Plan by the Lee County Land Development. The other notes provide some information required as part of the planned development and can remain for now.

Please remove the Special Note from the Master Concept Plan. This note is not required to be on the proposed Master Concept Plan by the Lee County Land Development Code.

Please remove the Schedule of Uses from the Master Concept Plan since the Land Development Code does not require this information on the Plan.

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUFFICIENCY REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 11/26/2003

Joan Henry, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
William G. Moore, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning
John Yarbrough, Parks (then to be forwarded to Mike Pavese)

*** REVIEWERS - remember permit plan checklists should now be used.**

PROJECT NAME: Bushwood Entertainment, LLC in
ref. to Fenway Family Fun Center @ Lakes Park

CASE #: DCI2003-00062

INFORMATION SUMMARY:

RESUBMITTAL

To update your file
X Review and forward sufficiency
questions or make finding of
sufficiency

RESPONSE REQUIRED BY: 12/12/03

Additional Comments:

(DCI) Lee County LDC Section 34-373(d)(1).
Sufficiency and Completeness

No hearing will be scheduled for an application for a Planned Development until the application has been found sufficient. All applications for Planned Developments will be deemed sufficient unless a letter advising the applicant of any insufficiencies has been mailed within fifteen (15) working days of submittal of the application. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within fifteen (15) working days of the date of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in Section 34-373.

cc: DCI planner/working file
DCI Zone File

Distributed by: Becky Tatlock

Date: 12/01/2003

ZONING DIVISION
LEE COUNTY
PLANNED DEVELOPMENT SUFFICIENCY REVIEW
TRANSMITTAL SHEET

TO: Distribution

FROM: Alvin Block, AICP

DATE: 09/19/2003

Joan Henry, Asst. County Attorney
TIS Reviewer - Bob Rentz
DS Reviewer - Don Blackburn
Paul O'Connor, Planning
Kim Trebatoski, Environmental Sciences
Andy Getch, LCDOT
Stephanie Keyes, Lee County School District
Roland Ottolini, Natural Resources
Jerry Murphy, Zoning

*** REVIEWERS - remember permit plan checklists should now be used.**

PROJECT NAME: Fenway Family Fun Center @ Lakes Park

CASE #: DCI2003-00062

INFORMATION SUMMARY:

NEW SUBMITTAL

- ☐ To update your file
☒ Review and forward sufficiency
questions or make finding of
sufficiency

RESPONSE REQUIRED BY: 10/03/2003

Additional Comments:

(DCI) Lee County LDC Section 34-373(d)(1).

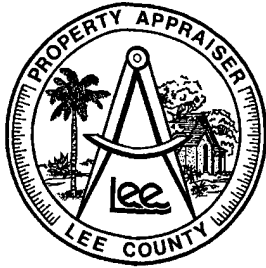
Sufficiency and Completeness

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cc: DCI planner/working file
DCI Zone File

Distributed by: Becky Tatlock

Date: 09/22/2003



Lee County Property Appraiser

Kenneth M. Wilkinson, C.F.A.

GIS Department / Map Room

Phone: (239) 339-6159 • Fax: (239) 339-6139 • eMail: MapRoom@LeePA.org

VARIANCE REPORT

Date of Report: June 23, 2003
Buffer Distance: 750 ft
Parcels Affected: 14
Subject Parcel: 35-45-24-00-00015.0030

DCI 2003-00062

OWNER NAME AND ADDRESS

MOBIL OIL CORPORATION
 C/O EXXON MOBIL CORPORATION
 P O BOX 4973
 HOUSTON TX 77210

STRAP AND LOCATION

35-45-24-00-00015.0030
 7350 GLADIOLUS DR
 FORT MYERS FL 33908

LEGAL DESCRIPTION

PAR IN N1/2 OF NW1/4 OF NE
 1/4 OR 3169 PG 1 LES R/W
 OR 2481/3120

Map Index

1

LEE COUNTY
 C/O PARKS & REC.
 P O BOX 398
 FT MYERS FL 33902

26-45-24-00-00008.0000
 7330 GLADIOLUS DR
 FORT MYERS FL 33907

W1/2 OF NE1/4 + PT DESC OR
 1761 PG 4481 + SW1/4 LESS
 SW1/4 +R/W+ OR 1307 PG 680

2

LOWES HOME CENTERS INC
 ATTN: LEGAL DEPT
 HWY 268 E
 N WILKESBORO NC 28656

26-45-24-00-00015.0040
 7001 GLADIOLUS DR
 FORT MYERS FL 33912

PAR IN S 1/2 OF SE 1/4
 DESC OR 2824
 PG 2290

3

GLADIOLUS COMMERCIAL LLC
 12486 RIVERSIDE
 FORT MYERS FL 33919

26-45-24-00-00015.0050
 7331 GLADIOLUS DR
 FORT MYERS FL 33907

PAR IN S 1/2 OF SE 1/4
 DESC OR 2824
 PG 2290

4

AMAR JACK + BARBARA
 4825 GRIFFIN BLVD
 FT MYERS FL 33908

35-45-24-00-00014.0000
 7210 CONGDON RD
 FORT MYERS FL 33907

N 1/2 OF NE 1/4 OF NW 1/4.
 LESS OR 2488/862

5

AMAR JACK + BARBARA
 4825 GRIFFIN BLVD
 FT MYERS FL 33908

35-45-24-00-00015.0000
 7650 GLADIOLUS DR
 FORT MYERS FL 33908

S 1/2 OF THE NE 1/4 OF THE
 NW 1/4 LESS ROAD R/W'S
 LESS OR 2488/862

6

LEE COUNTY
 P O BOX 398
 FT MYERS FL 33902

35-45-24-00-00015.0010
 7410 GLADIOLUS DR
 FORT MYERS FL 33908

PARL IN NW 1/4 OF NE 1/4 +
 PAR DESC ORS 2518/3165 +
 2488/862 LESS OR 1807/4278
 OR 1948/380 + OR 2143/3047

7

THOMPSON LAWRENCE G
 7400 GLADIOLUS DR
 FT MYERS FL 33908

35-45-24-00-00015.001A
 7400 GLADIOLUS DR
 FORT MYERS FL 33908

PAR IN NW1/4 OF NE1/4 W OF
 GLADIOLUS DR OR 1948/380
 LES R/W OR 2518/3165

8

JUNG WOO JIN
 3950 WILSON AVE SW
 CEDAR RAPIDS IA 52404

35-45-24-00-00015.002A
 7401 GLADIOLUS DR
 FORT MYERS FL 33908

PARL IN W 1/2 OF N E 1/4
 SEC 35 TWP 45 R 24 DESC IN
 OR 886 PG 0658

9

GLADIOLUS SURGERY LAND
 1342 COLONIAL BLVD STE C19
 FORT MYERS FL 33907

35-45-24-00-00015.002C
 7431 GLADIOLUS DR
 FORT MYERS FL 33908

PARL IN NW 1/4 OF NE 1/4
 AS DESC IN OR 3469 PG 720

10

CIU GLADIOLUS LAND GROUP LLC
 12011 ROSEMOUNT DR
 FT MYERS FL 33913

35-45-24-00-00015.002D
 7451 GLADIOLUS DR
 FORT MYERS FL 33908

PARL IN NW 1/4 OF NE 1/4
 AS DESC IN OR 3401 PG 3544

11

REALTOR ASSOCIATION OF GREATER
 2840 WINKLER AV
 FORT MYERS FL 33916

35-45-24-00-00015.0040
 7361 GLADIOLUS DR
 FORT MYERS FL 33908

PARL IN NW 1/4 OF NE 1/4
 DESC IN OR 1896 PG 438
 LESS OR 1911 PG 2504

12

FOX MORRIS B CO-TR
 ELLIS STEPHEN D CO-TR
 4020 DEL PRADO BLVD
 CAPE CORAL FL 33904

35-45-24-00-00015.004A
 7381 GLADIOLUS DR
 FORT MYERS FL 33908

PARL IN NW1/4 OF NE1/4
 DESC OR 1911 PG 2504

13

OWNER NAME AND ADDRESS

21ST CENTURY ONCOLOGY INC
1850 BOY SCOUT DR #102
FT MYERS FL 33907

STRAP AND LOCATION

35-45-24-00-00015.0050
7341 GLADIOLUS DR
FORT MYERS FL 33908

LEGAL DESCRIPTION

BEG 75 FT W OF NE COR OF
NW 1/4 OF NE 1/4 TH S 327
FT M/L ALG W LI OF DRG.

Map Index

14

PARKSIDE CONDO
15190 PARKSIDE DR SW
FT MYERS FL 33908

35-45-24-06-00000.00CE
COMMON ELEMENT
FORT MYERS FL 33908

PARKSIDE CONDO
COMMON AREA
DESC OR BK 1777 PG 1223

15

15 RECORDS PRINTED



LEE COUNTY
SOUTHWEST FLORIDA

**COURTESY NOTICE
OF RECEIPT OF ZONING APPLICATION**

Date: September 24, 2003

Case Number: DCI2003-00062

Case Name: Fenway Family Fun Center @ Lakes Park

Request: Request to rezone 3.92 acres from Commercial Planned Development to Commercial Planned Development to allow development of up to 7,550 square feet of building area with a maximum building height of 35 feet (and 135 feet for batting cage supports, wall and net). Uses proposed include coin operated amusement establishments, go-cart track, bumper boats, batting cages, and limited food and beverage service.

Location: 7350 Gladiolus Drive (SW corner of Gladiolus Dr. & Lakes Park entrance)

Location Map: SEE REVERSE

PROPERTY OWNER'S REPRESENTATIVE: MR. AHMAD R KAREH, P.E.
BEAN, WHITAKER, LUTZ & KAREH
239-481-1331

Lee County Planner: Alvin Block, AICP
239-479-8371

The file may be reviewed Monday through Friday between the hours of 7:30 a.m. and 4:30 p.m. at the Lee County Development Services Division, 1500 Monroe St., Fort Myers, FL 33901. Call 239/479-8585 for additional information.

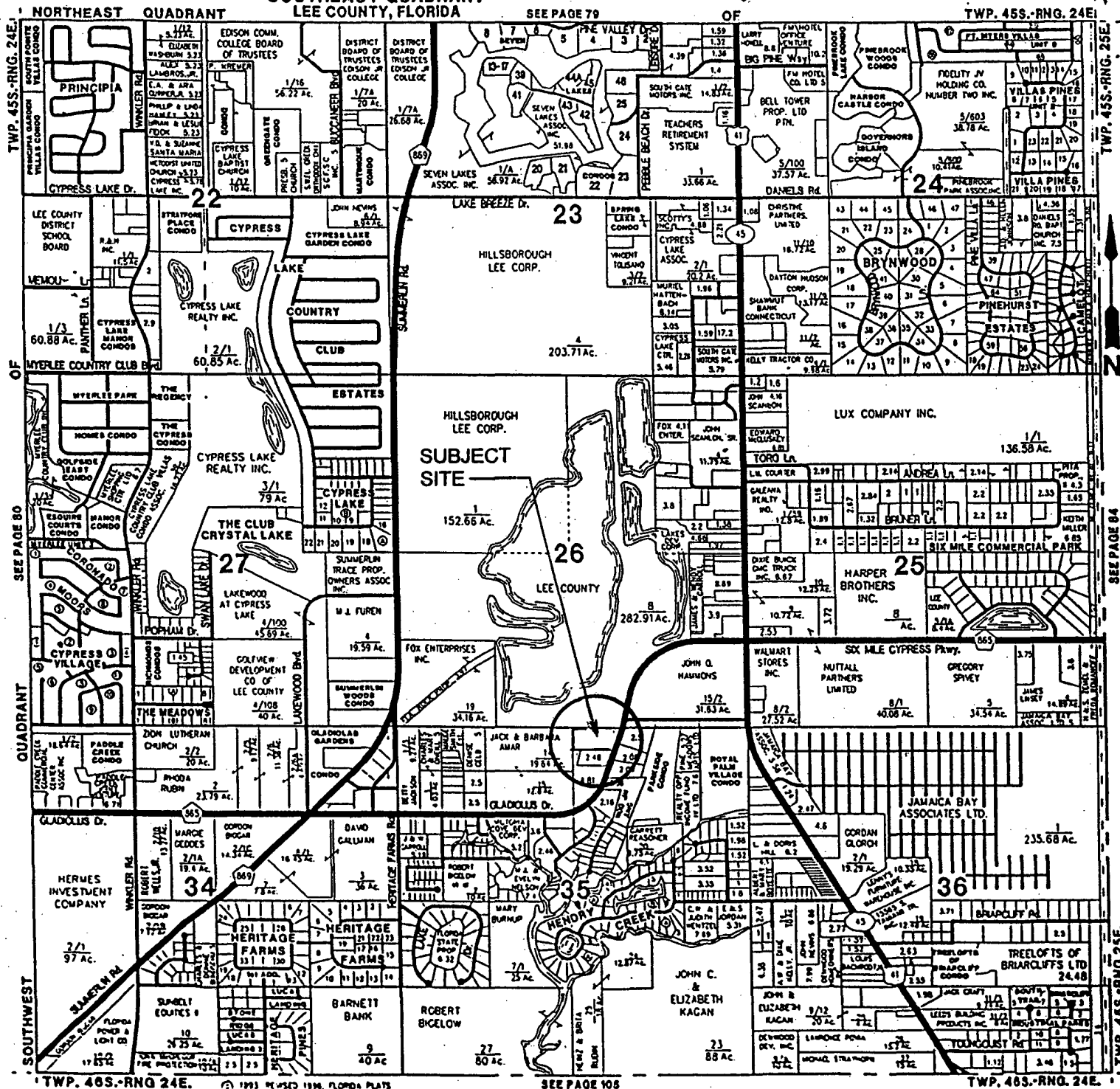
This is a courtesy notice. A public hearing date has not yet been set. You will receive another notice once the hearing date and time have been established.

RAT

TWP. 45S.-RNG. 24E.

SOUTHEAST QUADRANT
LEE COUNTY, FLORIDA

0 1 MILES 1/2
0 660 1320 1980 2640 1 FEET 6280



AREA LOCATION MAP

Fenway Family Fun Center

EXHIBIT II-D-2.

RECEIVED
SEP 18 2003

PERMIT COUNTER

OCI 2003-00062

35-45-24-00-00015.0030
MOBIL OIL CORPORATION
C/O EXXON MOBIL CORPORATION
P O BOX 4973
HOUSTON, TX 77210

26-45-24-00-00015.0040
LOWES HOME CENTERS INC
ATTN: LEGAL DEPT
HWY 268 E
N WILKESBORO, NC 28656

35-45-24-00-00014.0000
AMAR JACK + BARBARA
4825 GRIFFIN BLVD
FT MYERS, FL 33908

35-45-24-00-00015.0010
LEE COUNTY
P O BOX 398
FT MYERS, FL 33902

35-45-24-00-00015.002A
JUNG WOO JIN
3950 WILSON AVE SW
CEDAR RAPIDS, IA 52404

35-45-24-00-00015.002D
CIU GLADIOLUS LAND GROUP LLC
12011 ROSEMOUNT DR
FT MYERS, FL 33913

35-45-24-00-00015.004A
FOX MORRIS B CO-TR
ELLIS STEPHEN D CO-TR
4020 DEL PRADO BLVD
CAPE CORAL, FL 33904

35-45-24-06-00000.00CE
PARKSIDE CONDO
15190 PARKSIDE DR SW
FT MYERS, FL 33908

Mobil Oil Corporation
c/o ExxonMobil Corporation
PO Box 4973
Houston, TX 77210

Donald John Thiele, Manager
Bushwood Entertainment, LLC
11106 Lakeland Circle
Ft. Myers, FL 33913

26-45-24-00-00008.0000
LEE COUNTY
C/O PARKS & REC.
P O BOX 398
FT MYERS, FL 33902

26-45-24-00-00015.0050
GLADIOLUS COMMERCIAL LLC
12486 RIVERSIDE
FORT MYERS, FL 33919

35-45-24-00-00015.0000
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REALTOR ASSOCIATION OF GREATER
2840 WINKLER AV
FORT MYERS, FL 33916

35-45-24-00-00015.0050
21ST CENTURY ONCOLOGY INC
1850 BOY SCOUT DR #102
FT MYERS, FL 33907

Barry D. Fisher, Manager
Bushwood Entertainment, LLC
7570 Knightwing Circle
Ft. Myers, FL 33912

Ahmad R. Kareh, P.E. M.S.C.E. / Tracy Bean, AICP
Bean, Whitaker, Lutz & Kareh, Inc.
13041 McGregor Blvd.
Ft. Myers, FL 33919

William B. Horner
Lee County Port Authority
16000 Chamberlin Pkwy. Ste 8671
Ft. Myers, FL 33913-8899

(*South Ft. Myers)