EXHIBITS

from HEX hearing

CASE #: REZ2003-00018

CASE NAME: Veterans Park Rezoning

Attach a copy of this form to the top of packet of the exhibits & place exhibits in case file.

ARE THERE ANY BOARD EXHIBITS? ___YES ___NO

LOCATION OF BOARDS:

_____

If there are any board exhibits, attach another copy of this form to boards for identification purposes.

Post-it® eLabel 005 725 380

REZ2003-00018 VETERANS PARK



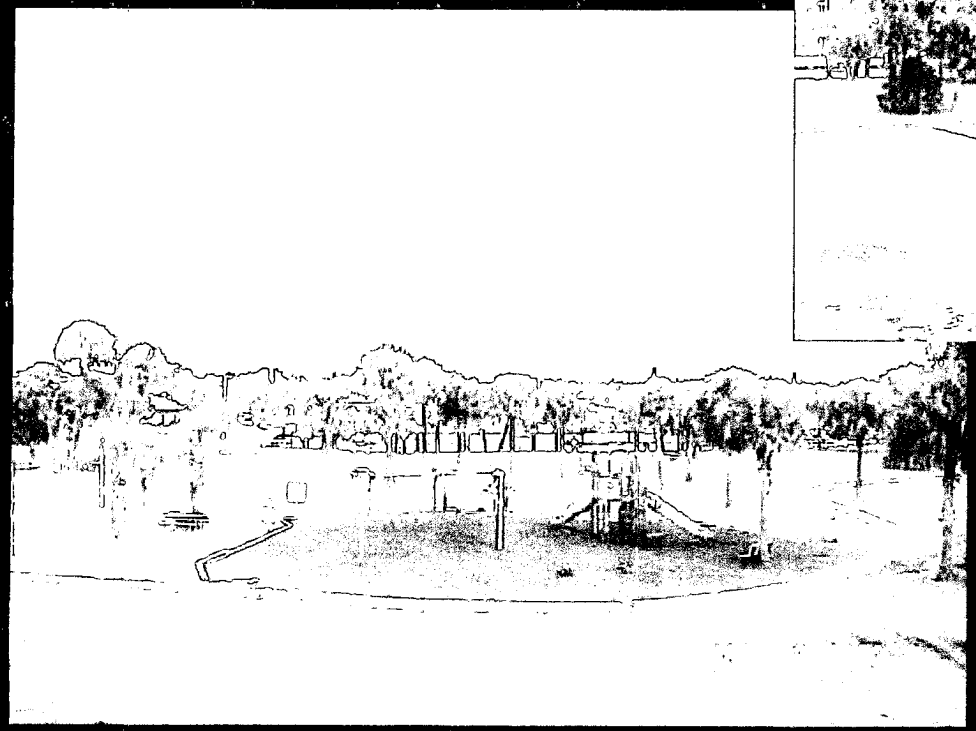
Staff photos by Tony Palermo, Senior Planner.
All photographs accurately portray conditions on the date above.

REZ2003-00018
EXHIBIT # 1
Staff

REZ2003-00018 VETERANS PARK

Facilities at Veterans Park.





REZ2003-00018 VETERANS PARK





Schools under construction next to Veterans Park.

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: REZ2002-00020
APPLICANT: LEE COUNTY GOVERNMENT, DIVISION OF PLANNING, in ref. to LAKES REGIONAL LIBRARY
HEARING DATE: OCTOBER 30, 2002

I. APPLICATION:

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

Filed by LEE COUNTY GOVERNMENT, DIVISION OF PLANNING, % PAUL O'CONNOR, P. O. Box 398, Ft. Myers, FL 33902 (Applicant/Agent); F.M. 15 LTD., % ARMANDO BERRIZ, 9994 31st Terrace, Miami, FL 33165 (Owner).

Request is to Rezone approximately 14 acres of land from the Agricultural (**AG-2**) district to Community Facilities (**CF-1**) district.

The subject property is located at 9590 Gladiolus Drive (Northwest corner of the intersection of Gladiolus and Bass Road), in S33-T45S-R24E, Lee County, FL. (District #3)

II. STAFF REPORT AND RECOMMENDATION: APPROVE

The Department of Community Development Staff Report was prepared by Kirk Crane. 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 AG-2 to CF-1 for the real estate described in Section IX. Legal Description.

IV. HEARING EXAMINER DISCUSSION:

This is a request to rezone a 14-acre parcel located on the north side of Gladiolus Drive at Bass Road from AG-2 to CF-1 (Community Facilities). The subject property is rectangularly shaped, with the shorter side fronting on Gladiolus Drive, an existing 2-laned arterial roadway. It is surrounded by a mixture of existing and approved residential planned developments and commercial planned developments on the east, south and north. The lands to the west are zoned AG-2 and are developed with a church. The property is designated Urban Community in the Lee Plan.

The Applicant intends to develop the 14-acre site with a 40,000-square-foot regional library, which they believe will be compatible with the existing and approved uses in the area. In this location, the library will have access to two roadways - Gladiolus Drive on the south and the Bass Road extension on the east. Gladiolus Drive is currently a 2-laned arterial, but is

REZ2003-00018
EXHIBIT # 1
Appl.

expected to be 4-laned from Summerlin Road to San Carlos Boulevard within the next four years. The Bass Road extension is not contained in any of the County's capital improvements plans, but it is anticipated that it will be constructed around 2010. The preliminary traffic assessment indicated that the library use would not have an adverse impact on the function or capacity of either of those roadways.

The subject property's access points are expected to be onto the Bass Road extension, because of the narrow frontage (495+ feet) on Gladiolus Drive and the potential for conflict with the Bass Road intersection, which does not align completely with the reserved right-of-way for the Bass Road extension. The Applicant understands that they will have to construct the Bass Road extension either to their northernmost access point or, possibly, to the northern boundary, when the library is completed. They stated they had no objections or concerns with that requirement.

The Applicant advised that they could not indicate the location or orientation of the library building or parking lots on the site, as they have not completed the site design. They do not anticipate completing the site design until closer to the date they determine for the commencement of construction. That date is unknown at this time.

Staff recommended approval of the requested rezoning, finding that the proposed use would be consistent with the intent of the Lee Plan and Land Development Code, and would be compatible and consistent with the existing and planned uses in the area. They agreed with Applicant that at least a portion of the Bass Road extension would be constructed to provide access to the subject property at the same time as the library. They noted that the proposed use would not adversely affect the level of service on the surrounding roadways, or be detrimental or injurious to the public health, safety and welfare.

The undersigned Hearing Examiner concurs with Staff's analysis, findings and recommendation of approval, finding that the request meets the criteria for approval set out in LDC Section 34-145, and will be consistent with the intent and provisions of the Lee Plan and Land Development Code. The Hearing Examiner finds that the library is an appropriate use for the subject property and the area, and will not adversely affect the neighborhood or the public health, safety and welfare.

As this is a conventional rezoning, no conditions were recommended by Staff or the Hearing Examiner.

V. FINDINGS AND CONCLUSIONS:

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

A. That the Applicant has proved entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes or regulations.

B. That the request will meet or exceed all performance and locational standards set forth for the use allowed by the request.

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

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

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

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

G. 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:

1. Aerial photograph, Section 33, Township 45S, Range 24E, Sheet 114C, prepared by Photogrammetric Technologies, Inc., dated January 2002

2. Boundary Survey for Lakes Regional Library, dated 10/29/02, prepared by TKW Consulting Engineers, Inc.

STAFF'S EXHIBITS

1 Exhibit A; Property Description

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

APPLICANT'S EXHIBITS

1 Lee County Zoning Resolution number Z-00-018 (known as 99-08-240.03Z 01.01 and DCI1963997, Genstar Land Company Southeast, in ref. to Gladstyx)

2 Lee County Zoning Resolution number Z-02-005 (DCI2001-00042, Gladiolus Partners, LLC, in ref. to Monterey Lakes)

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

VII. PRESENTATION SUMMARY:

The Hearing Examiner explained the hearing process and placed all the participants under oath. Matt Noble, Lee County Division of Planning, introduced himself as the Applicant's representative, and indicated that Lee County is the contract purchaser of the subject property. The purpose of the acquisition is to accommodate an approximate 40,000-square-foot regional library facility, and the contract is contingent on the property being rezoned to accommodate the facility. The Board of County Commissioners (BOCC) approved the request for a County-initiated rezoning on August 27, 2002 and the Blue Sheet of that meeting is included as Attachment B of the Staff Report. The purpose of this hearing is to follow through with the BOCC directive to initiate the rezoning.

The subject property is located at the north west quadrant of Gladiolus Drive, an arterial roadway, and Bass Road, a major collector roadway. The site has access to major streets that service a wider region. The future extension of Bass Road is part of Lee County's 2020 Transportation Plan, but no improvements are currently scheduled within the Capital Improvement Program (CIP). Staff anticipates it to be included in the County work program after 2010.

The Hearing Examiner asked, if the improvements to Bass Road were not in the immediate work program, does Staff anticipate the immediate construction of this site to occur? Will it have direct access only to Gladiolus Drive at that point? Mr. Noble believed that issue would be worked out through the design of the facility and that the long-term access would be from Bass Road. However, that issue will be dealt with through the design of the facility, which hasn't been accomplished yet. Staff is aware that there is a probable need for right-of-way from the subject property and the facility will be designed with that issue in mind.

The Hearing Examiner asked, if the Bass Road extension went to the north property line, would the County be required to put in that portion of the roadway? Mr. Noble agreed that was a possibility, along with a couple of other circumstances where the County could build the first segment to access the library site, or extend it to the edge of the property. There are several scenarios that could occur, however, those are all future issues.

Continuing, Mr. Noble stated that the area is a relatively intense mixture of existing, as well as, future urban developments. Parker Lakes is immediately across from the Bass Road extension. The project known as Laguna Lakes is on the southeast corner and was previously approved under the name of Monterey Lakes. He believed those approvals demonstrate the urban nature of the area and he noted that the area is changing as development is occurring. There is also a project known as Gladstyx on the southwest quadrant of the intersection. He noted that the Gladstyx Resolution was labeled as Applicant's Exhibit 1 and the Monterey Lakes Resolution was labeled as Applicant's Exhibit 2.

The requested action is to rezone approximately 14 acres from Agricultural AG-2 to Community Facilities CF-1. The Planning Staff believes the request is consistent with the Lee Plan.

The subject property is located in the Urban Community future land use category. Lee Plan Policy 1.1.4 describes the community and the proposed request is consistent with Lee Plan Goal 2 regarding Growth Management.

Mr. Noble stated that the request is consistent with the Lee Plan, Goal 2.1, Development Location. The subject property is an in-fill site, when viewed in the context of the existing approvals and the future planned projects in the area.

Lee Plan Policy 2.1.3 provides that all land use categories permit the consideration of public uses and public buildings, and the proposed library is a public use facility.

Lee Plan Goal 44, Libraries, concludes that the proposed use of the property for a regional library will increase the level of library standards, moves the County closer to the stated goal, and is in support of Lee Plan Goal 44 and Lee Plan Objective 44.1., which develops the standards for the library Level of Service (LOS). The Planning Staff concurs with those conclusions.

Urban facilities are readily available to the site. Lee County Utilities has advised that potable water and sanitary sewer service is already available to the site. A 16-inch water main is located on the south side of Gladiolus Drive, and a 10-inch forced-main sewer line is located on the north side of Gladiolus Drive. The site is in close proximity to both those services.

Regarding transportation, Mr. Noble said the assumed impact from the regional library facility will not cause a Level of Service (LOS) issue on either Gladiolus Road or Bass Drive. The facility is projected to generate 243 net new trips during the peak hours. The Staff Report indicates that Bass Road will remain at LOS "C" after the project is operating. Gladiolus Drive is scheduled to be widened to four lanes in fiscal year 2004-2005. When this improvement is complete, Gladiolus Drive will operate at LOS "B."

The County contracted Boylan Environmental Consultants, Inc., to perform the environmental assessment of the property and a copy of that report is included in the Staff Report (Attachment E). This assessment confirms that the property is a former row-crop parcel that had been previously impacted with those activities, and is essentially a cleared former agricultural parcel. There are no wetlands on the site.

Mr. Noble stated that the Applicant is aware of the Bass Road extension issue, which will be dealt with through the specific design of the library that will happen at a later time, when further permitting and a Development Order (D.O.) are applied for. All development will essentially be in accordance with the Land Development Code (LDC).

The Applicant agrees with the Staff Report and recommends that the Hearing Examiner approve the request.

The Hearing Examiner stated her belief that the testimony gave a completion date of 2006 for the library and was concerned that the Bass Road extension date is much later. Mr. Noble said that he was currently unaware of any specific completion date for the library.

Mr. Noble said that the access to the site will be done in accordance with the LDC at the time of permitting. The issue of the Bass Road extension will be dealt with at that time, however, he noted that a temporary access is a possibility.

The Hearing Examiner asked if this process is the same way any owner would be treated, if they came in and did not have direct access to a roadway? Mr. Noble affirmed that this case is similar to any other conventional zoning in that respect. The Hearing Examiner stated that she did not just want it said that the County wasn't receiving any special considerations, because the County was the Applicant. Mr. Noble assured the Hearing Examiner that the LDC provisions would be adhered to at the time of permitting.

Andy Getch, Lee County Department of Transportation (LCDOT), indicated that he was testifying on behalf of the Applicant. The Division of County Lands had requested that LCDOT prepare a very basic Traffic Impact Statement (TIS) for this project.

The Hearing Examiner stated that the information in the Staff Report indicated that Gladiolus Drive will be 4-laned between Winkler Road and Pine Ridge Road and asked if that was the section they were talking about? Mr. Getch replied that it was the part of Gladiolus Drive that is now two lanes, in between the 4-laned section west of Winkler Road and east of Pine Ridge Road.

The Hearing Examiner mentioned that they were both aware of the potential for a flyover within the next four or five years at the Summerlin intersection, and wanted to know if that would have any effect on the LOS or operation of this particular link of the roadway as it relates to this development. Mr. Getch said the consultant analysis shows some traffic possibly diverting over through this intersection, but not enough to make a major difference. Gladiolus Drive will have a LOS "B" with four lanes and Bass Road will have a LOS "C." The capacity of the infrastructure is sufficient to handle some additional cars that would be traveling west on Gladiolus Drive and south on Bass Road or vice-versa.

Next, Kirk Crane stated that he was a Planner with the Lee County Zoning Division and his resume was on file with the Hearing Examiner's Office. He asked to be, and was, accepted as an expert witness on land use zoning and planning matters.

The subject property is an approximate 14-acre parcel, the legal description of which was labeled as Staff's Exhibit 1. The property is located at what would be the northwest corner of Gladiolus Drive and Bass Road. Bass Road currently comes into Gladiolus Drive and forms a "T." They are both 2-laned roads and presently there is no extension [of Bass Road] north from Gladiolus Drive. If this site is developed, it is very likely that Bass Road will be extended at least as far north of Gladiolus Drive as to provide entrance to the proposed library on this site. However, it may not extend to the north end of the property, until later in time. There is an approximate 75-foot-wide road right-of-way reservation on the Parker Lakes project to the east, which is not indicated on the survey. Additional right-of-way would be required from the subject property if Bass Road was to be extended north.

Mr. Crane related that this Application is a conventional zoning request to change from AG-2 to CF-1. There are no deviations or variance requests associated with this application. The County will need to comply with LDC requirements that include connection and separation distances between intersections.

Currently, Gladiolus Drive is an arterial street and Bass Road is a major collector road, making this an intersection of a major collector and an arterial road. Any connection from Bass Road to the site would have to meet connection separation distances, as stated in the LDC.

Continuing, Mr. Crane said the property is a conventional rezoning district and the Applicant is requesting a rezoning to a CF-1 district. While the stated intent of the use of this property is the development of a 40,000-square-foot regional library facility, it could be used for any use permitted in the CF-1 district. Examples of these uses include parks and other public facilities and would not just be limited to a regional library. The clearly stated intent of the Applicant indicates the creation of a regional library facility. The size of the property should easily accommodate the 40,000-square-foot facility as well as the required parking and buffers. A design has not been prepared as yet to show this intent, but no deviations or variances have been requested and it will be held to the standards of the LDC.

The property is narrow and rectangularly shaped. If proper consideration is given in the design of the project, there should easily be enough area to provide a 40,000-square-foot building, an associated parking lot and the normal required buffers adjoining the streets.

Staff felt that this is an appropriate location for a regional facility. As pointed out earlier by Mr. Noble, the property is a cleared fallow farm field and there are no wetlands or any environmental constraints that have been identified. Referring to the aerial photograph, Mr.

Crane stated that it showed that much of the perimeter of the property was intensely vegetated.

There is much development around the subject property. Parker Lakes, a residential community and Parker Plaza supplying doctor-type offices, are located to the east. Laguna Lakes, previously known as Monterey Lakes, to the southeast, is being developed as a Mixed Use Planned Development (MPD). Immediately to the south is Community Commercial zoning (CC) and to the west is an existing church. To the north is an undeveloped portion of the Casa Del Mar Residential Planned Development (RPD). There has been a lot of activity in the area in recent rezoning applications.

Staff agreed with Mr. Noble that the proposal is consistent with the Lee Plan. It is Urban Community future land use and any of the future land use designations allow public facilities to be located in them. It is also an in-fill parcel in a rapidly developing area that creates a need for more public facilities, such as a library. This facility will be a great benefit to a number of people and will help achieve a number of goals and objectives within the Lee Plan, including increasing regional Library Services.

Mr. Crane stated that the major consideration was that Gladiolus Road is currently a 2-laned road and operating at LOS "C." Projected increased traffic, as referenced in the transportation section on page 4 of the Staff Report, shows that the 4-laning planned for fiscal year 2004-2005, will turn Gladiolus Drive into a LOS "F." It is programmed to be improved to a four-land road which will then increase from the current LOS "C" to LOS "B." Bass Road will operate at LOS "C" with or without this project. The number of new trips to be generated is stated in the transportation section of the Staff Report. The planned development of this site is for a 40,000-square-foot regional library and it will not affect the LOS on the adjoining streets.

Water and sewer facilities are available as indicated in Attachment C of the Staff Report. The property is in the center of an area that is rapidly being developed into a number of residential units.

Mr. Crane said that Staff believes that it meets the criteria for the required findings for approval of a conventional rezoning. The Applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan and will be required to comply with the LDC and other applicable codes and regulations. There are adequate existing infrastructure facilities and services available for any uses allowed under the proposed CF-1 zoning and it meets all performance and standards for development of the site under the proposed zoning district. Therefore, Staff recommends approval of this requested rezoning.

The Hearing Examiner stated that she did not see a problem with this request. Her first concern was the initial access to the property. But since this application will be processed in the same manner as any other project that requires adequate access, she has no major concerns.

The Hearing Examiner inquired if there was a deadline for the contract. Mr. Noble advised he believed it to be the end of January 2003. If the date for the expiration of the contract is not as believed, Mr. Noble was instructed to notify the Hearing Examiner's Office as soon as possible. The Hearing Examiner indicated that she would conduct a site visit prior to rendering her recommendation to the BOCC, and the hearing was closed.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Andy Getch, Lee County Department of Transportation, P. O. Box 398, Ft. Myers, FL 33902

2. Matt Noble, Lee County Division of Planning, P. O. Box 398, Ft. Myers, FL 33902

ADDITIONAL COUNTY STAFF:

1. John Fredyma, Assistant County Attorney, P. O. Box 398, Ft. Myers, FL 33902-0398

PUBLIC PARTICIPATION:

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

For: NONE

Against: NONE

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. Joseph & Ann Evans, 15060 Bridgeway Lane #807, Fort Myers, FL 33919

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 21st day of November, 2002. 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

EXHIBIT "A"

REZ2002-00020
PROPERTY DESCRIPTION

THE EASTERLY 3/4 OF THE EAST ½ , OF THE NORTHEAST 1/4, OF THE NORTHWEST 1/4 , OF SECTION 33, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LESS ROAD RIGHT- OF- WAY.

FURTHER BOUNDED AND DESCRIBED AS FOLLOWS :

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF THE EAST ONE HALF (E ½) OF THE NORTHEAST ONE QUARTER (NE 1/4) OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SECTION 33, TOWNSHIP 45 SOUTH, RANGE 24 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A CONCRETE MONUMENT MARKING THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SAID SECTION 33, THENCE N.88°51'39"W. ALONG THE NORTH LINE OF SAID FRACTION FOR 497.80 FEET, THENCE S.00°04'31"E. FOR 1228.22 FEET TO AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF GLADIOLUS DRIVE (S.R # 865 - 100 FEET WIDE); THENCE S.89°55'31"E. ALONG SAID RIGHT-OF-WAY FOR 496.87 FEET TO AN INTERSECTION WITH EAST LINE OF SAID NORTHWEST ONE QUARTER (NW 1/4) THENCE N.00°02'13"W. ALONG SAID EAST LINE FOR 1218.97 FEET TO THE **POINT OF BEGINNING.**

SAID PARCEL CONTAINS 13.97 ACRES MORE OR LESS.

SAID PARCEL SUBJECT TO FORMER IONA DRAINAGE DISTRICT CANAL C-2 OVER AND ACROSS THE NORTHERLY 30.00 FEET.

ALSO SUBJECT ANY AND ALL EASEMENTS, RESTRICTIONS AND RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

Applicant's Legal Checked by

PENDING PROVISION OF SURVEY FORTHCOMING

LEE COUNTY, FLORIDA
DEVELOPMENT SERVICES DIVISION
STAFF REPORT

TYPE OF CASE: CONVENTIONAL ZONING DISTRICT

CASE NUMBER: REZ2002-00020

HEARING EXAMINER DATE: October 30, 2002

I. APPLICATION SUMMARY:

A. Applicant: Lee County Government, in ref. to Lakes Regional Library

B. Request: Rezone from Agricultural (**AG-2**) district to Community Facilities (**CF-1**) district, of approximately 14 acres of land

C. Location: The subject property is located at 9590 Gladiolus Drive (Northwest corner of the intersection of Gladiolus and Bass Road), in S33-T45S-R24E, Lee County, FL. (District #3)

D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property:

Future Land Use Plan Designation:	**Urban Community**
Zoned:	Agricultural (**AG-2**) district
Undeveloped:	Fallow crop land (vacant)

E. Surrounding Land Use:

Existing Zoning & Land Use	Future Land Use Map
North: **RPD** / Vacant planned multiple-family residential portion of Casa Del Mar Planned Development	**Urban Community**
East: Right-of-way for Bass Road (not improved) then **PUD** / Office Park (Parker Plaza) and Condominiums in Parker Lakes Planned Development	**Urban Community**
South: Gladiolus Drive then **CC** / Vacant Southeast: Laguna Lakes planned development (site cleared) / **MPD**	**Urban Community**
West: **AG-2** / Iona Hope Episcopal Church	**Urban Community**

F. Size of Property: 14± acres

II. **RECOMMENDATION**:

Staff recommends **APPROVAL** of the Applicant's request for rezoning from Agricultural (**AG-2**) district to Community Facilities (**CF-1**) district.

Findings and Conclusions:

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

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.

2. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development.

3. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

4. The requested zoning district:

   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) (when applicable) will not adversely affect environmentally critical areas and natural resources.

III. **BACKGROUND AND ANALYSIS**:

Introduction/Synopsis

The subject property is an approximately 14 acre vacant (fallow crop land) property located at the northwest corner of Gladiolus Drive and Bass Road. The applicant is requesting that the property be rezoned to Community Facilities (**CF-1**) district with the stated intent of developing the planned Lakes Regional Library. The library is projected to be an approximately 40,000 square foot facility and will meet all Lee County Land Development Code (LDC) requirements at the time of development.

Gladiolus Drive is an arterial and Bass Road is a planned major collector street. Access to the subject property is proposed to be from a northern extension of Bass Road which will be adequate as reflected in the Traffic Impact Statement that was submitted for the subject application. As a regional facility, the subject property is adequately located to provide adequate access, identifiable location, and location to serve a large number of residents. Additional right-of-way requirements for the widening of Gladiolus Drive, the improvement of

Bass Road north of the intersection, and the intersection have been identified and will be considered in the design of the proposed facility.

The proposed regional library will help Lee County meet the stated goal and measurable objective standards of the Lee County Comprehensive Plan (Lee Plan) for library service to residents of the region.

Lee Plan Considerations

The subject property is located in the **Urban Community** Future Land Use designation. Policy 1.1.4: of the Lee County Comprehensive Plan (Lee Plan) provide distinctly urban areas characterized with a range of urban services. A regional library is an important urban service that will serve a large area and is consistent with the **Urban Community** Future Land Use designation.

> ***POLICY 1.1.4:*** *The Urban Community areas are areas outside of Fort Myers and Cape Coral that are characterized by a mixture of relatively intense commercial and residential uses. Included among them, for example, are parts of Lehigh Acres, San Carlos Park, Fort Myers Beach, South Fort Myers, Bonita Springs, Pine Island, and Gasparilla Island. Although the Urban Communities have a distinctly urban character, they should be developed at slightly lower densities. As the vacant portions of these communities are urbanized, they will need to maintain their existing bases of urban services and expand and strengthen them accordingly. As in the Central Urban area, predominant land uses in the Urban Communities will be residential, commercial, public and quasi-public, and limited light industry (see Policy 7.1.6). Standard density ranges from one dwelling unit per acre (1 du/acre) to six dwelling units per acre (6 du/acre), with a maximum of ten dwelling units per acre (10 du/acre). (Amended by Ordinance No. 94-30)*

The proposed use of the property for a regional library will increase the level of library standards closer to the stated goal in support of Goal 44 of the Lee Plan and Objective 44.1, that develops standards for level of service.

> ***GOAL 44: LIBRARIES.*** *To increase the availability of information services throughout Lee County by increasing the size and quality of the Lee County library system and by ensuring that library services are provided in a manner that is responsive to the needs of the community and of specific targeted constituencies.*
>
> > ***OBJECTIVE 44.1: STANDARDS.*** *Raise the non-regulatory standards for building and collection size to meet the following Florida Library Association standards by the year 2010:*
> >
> > *Level C collection size of 2.8 items per capita (permanent residents); and*
> >
> > *Minimum building size level of .6 square feet per capita (permanent residents). (Amended by Ordinance No. 94-30)*

Neighborhood Compatibility and Surrounding Zoning

The subject property is at the intersection of an arterial, Gladiolus Drive, and a major collector, Bass Road. It will be afforded access from major streets that service the region. Adjoining

property to the north is zoned Residential Planned Development (**RPD**) district and is a vacant part of the Casa Del Mar development that is planned for Multiple-Family Residential use. Property east of Bass Road, east of the subject property, is zoned Planned Unit Development (**PUD**) and is developed with Parker Plaza, an office park along Gladiolus Drive and with condominiums in the Parker Lakes development, north of the plaza. Property south of the subject property, across Gladiolus Drive, is zoned Community Commercial (**CC**) district and is vacant. Property at the southeast corner of Gladiolus Drive and Bass Road is zoned Mixed Use Planned Development (**MPD**). It has been cleared and is planned for residential uses in the Laguna Lakes development. Adjoining property to the west is zoned Agricultural (**AG-2**) district and is developed with the Iona Hope Episcopal Church. The subject property is located in a rapidly developing area with large planned developments in the vicinity. The proposed community facility use of the property is compatible with existing and planned uses in the vicinity.

Environmental Considerations

The subject property is undeveloped and has been used for row crops, but is now vacant. No wetlands were observed on the site. A field investigation by an environmental consultant did not identify any vegetative community types in which protected wildlife species would reside nor were any observed. Site development will comply with Lee County Land Development Code requirements. A copy of the environmental assessment is Attachment "E" to this staff report.

Transportation

The proposed rezoning to Community Facilities (**CF-1**) district for the stated purpose of using the property for an approximately 40,000 square foot regional library is consistent with the Lee County Comprehensive Plan **Urban Community** Future Land Use designation. The proposed library is projected to generate 243 net new trips during the peak hour. The projected build out year is 2005. Based on the 2001 Traffic Count Report issued by the Lee County Department of Transportation, the 2005 background peak hour, peak season, peak direction volume of flow will be 423 vehicles per hour. At this volume, based on the Lee County Department of Transportation (DOT) generalized peak hour directional service volumes for urbanized areas, Bass Road will provide level of service "C". When the peak hour directional project traffic is added to this background traffic volume, Bass Road will remain at level of service "C". The 2005 background peak hour, peak season, peak direction volume of flow on Gladiolus Drive will be 1,187 vehicles per hour. At this volume, Gladiolus Drive will operate at level of service "F" in 2005 with or without the project traffic. However, Gladiolus Drive is scheduled to be four laned in FY 2004/2005. When this is done, Gladiolus Drive will operate at level of service "B" with or without the project traffic. (Attachment "D" to staff report, Memorandum from Development Review Engineer).

Conclusion

The proposed rezone from Agricultural (**AG-2**) district to Community Facilities (**CF-1**) district, of approximately 14 acres of land, is appropriate and meets the standards for approval of a conventional rezoning. The requested **CF-1** is consistent with the **Urban Community** Future Land Use designation and will allow development of a proposed regional library and/or other community facilities allowed in the zoning district. The property is of sufficient size to accommodate the proposed uses. The proposed use of the property will meet requirements of the Land Development Code (LDC). The development of a community facility on the subject property is an appropriate location that is at the intersection of an arterial and major collector street where adequate access can be established. Urban services are programmed to be

provided that will be adequate to serve the permitted uses. The uses permitted in the requested **CF-1** zoning will allow facilities that are needed and further the goals and objectives of the Lee Plan. Staff, therefore, recommends **APPROVAL** of the rezone of the subject property from Agricultural (**AG-2**) district to Community Facilities (**CF-1**) district.

IV. **ATTACHMENTS**:

A. Map of surrounding zoning
B. Lee County Board of County Commissioners Agenda Item Summary (Blue Sheet) (2 pages)
C. Applicant's Narrative Statement, labeled "Exhibit IV-D" with narrative statement guideline from application form (2 pages)
D. Memorandum from Development Review Engineer, dated October 14, 2002 (1 page)
E. Environmental Assessment, "Lakes Regional Library Site No. 3609, Strap No. 33-45-24-00-00001.0010", prepared by Boylan Environmental Consultants, Inc., stamped "Received, September 26, 2002, County Lands" and "Received, October 1, 2002, Community Development/Public Works Center, Second Floor" (6 pages)
F. Photographs of property, submitted by staff (8 photographs)

V. EXHIBIT

A. STRAP: The applicant indicates the STRAP number is: 33-45-24-00-00001.0010

B. Legal Description (not available at time of staff report preparation, to be provided by applicant at or prior to Hearing Examiner Public Hearing)

cc: Applicant
County Attorney
Zoning File

LEE COUNTY
HEARING EXAMINER
03 DEC 11 AM 9:29

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: December 9, 2003

TO: Diana Parker
Chief Hearing Examiner

FROM:
Joan C. Henry
Assistant County Attorney

RE: County Initiated Zoning
REZ2003-00018 Veterans Park Rezoning
REZ2003-00016 Estero Community Park

Pursuant to your request at the hearings for the above referenced matters, attached please find a Complaint filed against Lee County regarding the rezoning of Bowditch Point. One of the allegations in the Complaint was that the property should not have gone through a conventional rezoning to CF-3 but rather as a Community Facilities Planned District (CFPD). The Circuit Court found that the procedure followed by the County in obtaining the zoning met existing zoning criteria. Therefore the County was correct in rezoning the County owned property to CF-3 rather than the CFPD.

I have obtained the litigation files from our storage facility, should you request any additional information or would like to see additional pleadings in this matter. Based on this information, I remain of the opinion the County may initiate zoning of its property in these cases for conventional rezoning to facilitate these park projects. Please let me know if you have any questions or require any additional information.

JCH/la
Enclosure

cc: Tim Jones, Chief Assistant County Attorney
Mary Gibbs, Director, Community Development
Pam Houck, Director, Zoning Division
Matt Noble, Senior Planner, Planning Division
Michael Pavese, Principal Planner, Public Works
Nettie Richardson, Senior Planner, Zoning Division
Tony Palermo, Senior Planner, Zoning Division
Nicole Dishman, Planner, Planning Division

APPLICANT'S EXHIBIT
#2
REZ2003-00018

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

LEE COUNTY
HEARING EXAMINER
03 DEC 11 AM 9:29

NORTH BEACH RESIDENTS ASSOCIATION, INC., PETER LISICH, CINDY SUPPA, LAWRENCE A. RAIMONDI and CARLETON RYFFEL

Plaintiffs,

Case No. 97-7767 CA-LG

vs.

LEE COUNTY FLORIDA, a political subdivision of the State of Florida

Defendant.
_____/

FINAL JUDGMENT

THIS MATTER having come on before this Court as a non-jury trial and the parties having presented witnesses and exhibits for the Court's consideration and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. North Beach Residents Association, Inc. lacks standing to bring this action.

2. The procedure followed by Lee County in obtaining approvals for the proposed parking lot, which is the subject matter of the Complaint, meets the existing zoning criteria.

3. The City of Fort Myers Beach is a necessary party to this proceeding, although not necessary for the rendering of this decision.

4. The promises made by Lee County do not rise to the level that can estop the County from the action that they are proposing, that is, the construction of a parking lot containing 72 parking spaces.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida this 30 day of June, 2000.

/S/ LYNN GERALD, JR.

Lynn Gerald, Jr.,
Circuit Court Judge

Copies to:
Kenneth A. Jones, Esq.
Thomas L. Wright, Esq.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA-CIVIL ACTION

RECEIVED
OCT 8 1997
COMMISSIONER
ANDREW W. COY

NORTH BEACH RESIDENTS ASSOCIATION, INC.

Plaintiffs,

vs.

CASE NO. 97-7767 CA LG

LEE COUNTY FLORIDA, a political subdivision of the State of Florida,

Defendants.
_____/

SUMMONS

THE STATE OF FLORIDA: To Each Sheriff of the State.

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint on Defendant:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS, by serving its Chairman
ANDREW COY
2120 Main Street
Ft. Myers, FL

Each Defendant is required to serve written defenses to the Complaint or Petition on Plaintiffs' attorney:

KENNETH A. JONES
ROETZEL & ANDRESS, LPA
2080 McGregor Boulevard, Third Floor
Fort Myers, Florida 33901

within 20 days after service of this summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint.

Charlie Green
CLERK OF COURT

DATED: Oct 7, 1997

BY: _____
Deputy Clerk

CIRCUIT COURT SEAL LEE COUNTY, FLORIDA

C:\Melinda\N Beach Res\SUMMONS.wpd

1:50 pm
10-8-97
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95-810

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY FLORIDA

NORTH BEACH RESIDENTS ASSOCIATION, INC., PETER LISICH, CINDY SUPPA, LAWRENCE A. RAIMONDI and CARLETON RYFFEL

Plaintiff,

v. Case No. 97-1767 CALG

LEE COUNTY FLORIDA, a political subdivision of the State of Florida

Defendents

COMPLAINT

Come now the Plaintiffs, NORTH BEACH RESIDENTS ASSOCIATION, INC., PETER LISICH, CINDY SUPPA, LAWRENCE A. RAIMONDI and CARLETON RYFFEL, by and through their undersigned attorneys and hereby sue the Defendant, LEE COUNTY, and allege as follows:

GENERAL ALLEGATIONS

1. Plaintiffs, PETER LISICH, CINDY SUPPA, LAWRENCE A. RAIMONDI and CARLETON RYFFEL, are property owners and/or residents living within the city limits of the Town of Fort Myers Beach.

2. The Plaintiff, NORTH BEACH RESIDENTS ASSOCIATION, INC., is a Florida corporation, whose members are composed of property owners and residents of Estero Island concerned with the development of Fort Myers Beach and, in particular, Bowditch Point.

3. The Defendant, LEE COUNTY, is a political subdivision of the State of Florida and the owner of property referred to herein as "Bowditch Point".

4. On or about August 1, 1990 the Defendant, through its Board of County Commissioners, authorized the filing of a request to rezone certain property located at the north end of Estero Island at the terminus of Estero Boulevard, a two lane road. The address of such property was listed as 50 Estero Boulevard. The property zoned is approximately 17 acres in size and is commonly referred to and will be referred to herein as "Bowditch Point".

5. Bowditch Point is currently located within the municipal boundaries of the Town of Fort Myers Beach. At the time of the rezoning which is the subject of this Complaint, the property was located within the unincorporated area of Lee County, the Town of Fort Myers Beach having not been incorporated.

6. The application for such rezoning was filed requesting that the zoning of Bowditch Point be changed from RM-2 (Residential Multiple Family) to CF-3 (Community Facilities). The application for rezoning was filed on behalf of the Defendant by Alan Whitworth, Principal Planner with Lee County.

7. The request for rezoning was to permit the use of Bowditch Point as a regional park.

8. A significant issue of great concern to the residents and property owners on the north end of Estero Island was the traffic impact of Bowditch Point's use as a regional park.

9. At the time Bowditch Point was rezoned, the Defendant, through it's employees, agents and representatives gave certain assurances and made certain representations to the

Hearing Examiner and the public regarding the use of the property and in particular regarding the number of parking spaces which would be available for use by the public on the property.

10. As part of the processing of the application for rezoning, the Defendant's employees (staff) reviewed the application and made certain representations which were set forth in their analysis (staff recommendation).

11. As part of the planning process leading up to the above described rezoning request the Defendant, on December 13, 1989, granted conceptual approval to a development plan. Other than a provision for handicap parking spaces, the approved plan provided no parking for the general public. The plan specified 15 total parking spaces, including 8 handicap, 3 lifeguard, 2 staff personnel and 2 maintenance. The granting of such conceptual approval was made a part of the record upon which the rezoning request was considered by incorporation into the staff recommendation.

12. As part of the planning process leading up to the above described rezoning request the Defendant, on October 10, 1990, established the parking requirements for Bowditch Point to be 12 parking spaces. The establishment of such parking requirements was made a part of the record upon which the rezoning request was considered by incorporation into the staff recommendation.

13. Pursuant to the regulations applicable to zoning requests of this nature, public hearings were held on December 4, 1990 before the Lee County Hearing Examiner, Robert F. Split.

14. During such hearings, sworn testimony was elicited from the Defendants

representatives and other interested parties.

15. Defendant's employee, agent and representative at the public hearing was Richard Walker.

16. In response to an inquiry by the Hearing Examiner as to where the general public would park, the Defendant's employee, agent and representative, Richard Walker, responded that "in the design the Board specified that the on-site/off-street parking would be limited to 12 spaces."

17. Richard Walker, in his sworn testimony, advised the Hearing Examiner that the general public would not park at the Bowditch Point Park but would arrive by bicycle, walking and trolley. He also testified that in the design the Board of County Commissioners had specified that the on-site/off-street parking would be limited to 12 spaces. He further testified that the general public would be using remote parking and discussed trolley service available from Summerlin Square, parking lots scheduled to be constructed on San Carlos Island and the possibility of a UMTA funded parking garage in the Snug Harbor area.

18. In addition, the Defendant, its employees, agents and representatives (referring to the limitation of the number of parking spaces to twelve (12)) stated, as part of the record upon which the rezoning request was considered, that "[t]hat action should help allieviate (sic) concerns about increased traffic since the intent is to rely on remote parking spaces."

19. The Defendant, its employees, agents and representatives also offered a finding that the proposed zoning district was consistent with the "intensities" of the Lee County Comprehensive Plan.

20. Based upon the staff report, the testimony and exhibits presented, including the matters set forth above, the Hearing Examiner recommended approval of the rezoning request and made, inter alia, the following findings:

A. That the requested rezoning will not cause a nuisance or other determent to persons or property.

B. That the requested rezoning does not place an undue burden on existing transportation facilities.

21. On about January 14, 1991, after consideration of record made before the Hearing Examiner, the Defendant rezoned the Bowditch Point property to the CF-3 zoning classification.

22. Thereafter, the Defendant developed Bowditch Point Regional Park which included, inter alia, the construction of twelve (12) parking spaces.

23. On or about September 9, 1997 the Defendant approved an expansion of the parking facilities at Bowditch Point Regional Park from the twelve (12) spaces upon which the zoning was originally approved to seventy (70) spaces and also approved funding for the construction thereof.

24. In spite of having represented to both the public and the Hearing Examiner in sworn testimony that the parking spaces would be limited to twelve (12), the Defendant is proceeding with increasing the number of parking spaces almost sixfold and has failed and refused to file an application to rezone Bowditch Point to CFPD which would require holding public hearings on the increase in intensity.

25. If Bowditch Point Regional Park were properly zoned CFPD as required by the

Lee County Zoning Regulations the increase in parking spaces would have mandated public hearings to change the number of parking spaces from twelve (12) to seventy (70).

COUNT ONE
DECLARATORY JUDGMENT AND SUPPLEMENTAL RELIEF

26. This is an action for Declaratory Judgment and supplemental relief.

27. The allegations set forth in paragraphs 1 through 25 are incorporated herein by reference as though fully set forth.

28. At the time of the filing of the rezoning application and at the time the Defendant approved the rezoning request, the CF-3 zoning district did not permit a 17 acre regional park such as Bowditch Point.

29. As set forth below, at least two different regulations require that the Bowditch Point property be zoned CFPD (Community Facilities Planned District) in order for it to be used as a 17 acre regional park.

30. Pursuant to the provisions of Section 800.02B.2.c., Lee County Zoning Regulations, any development which meets one of the thresholds as a Development of County Impact (DCI) "shall be zoned only to a Planned Development classification...". The CF-3 zoning classification is <u>not</u> a Planned Development classification.

31. The thresholds for DCI's are set forth in Section 800.02.B., Lee County Zoning Regulations and provide as follows:

B. DEVELOPMENT OF COUNTY IMPACT (PLANNED DEVELOPMENT)

1. Thresholds

A Development of County Impact (DCI) shall be any owner-initiated

request for a rezoning or Special Exception that could result in:

g. an institutional, public or quasi-public development or activity on five (5) or more acres of land; or

i. any other development required to apply for Planned Development Zoning as set forth in Section(s) ... 451(CFPD)...

32. Since Bowditch Point is a public development or activity on five (5) or more acres of land and thus meets one of the thresholds for a DCI, Section 800.02B.2.c., Lee County Zoning Regulations, mandates a Planned Development classification. The only applicable Planned Development classification permitting a regional park in excess of five (5) acres is the CFPD.

33. Section 451 B., Lee County Zoning Ordinance, referenced in the zoning regulation quoted above, also required that the Bowditch Point property be zoned to CFPD in order to use it as a regional park and provides as follows:

B. USES REQUIRING CFPD ZONING

...the following uses developed subsequent to August 1, 1986 shall not be permitted unless specifically requested and approved as a CFPD district.

PARKS, Public (df) and Private (df) - Groups I, II and III (Section 1001.32) exceeding five (5) acres in land area

34. Section 1001.32, Lee County Zoning Regulations, defines a Group II park as including regional parks. Bowditch Park is a regional park.

35. Since Bowditch Point is a Group II (regional park) exceeding five (5) acres in land area Section 451 B., Lee County Zoning Ordinance, mandates that a CFPD zoning classification be required.

36. Instead, as set forth above, the Defendant rezoned the Bowditch Point property to a CF-3 classification, which is not a Planned Development classification.

37. As a result of the facts alleged above, a dispute has arisen between the Plaintiffs and the Defendant.

38. It is the position of the Plaintiffs that the uses being made of the Bowditch Point property are improper as being in violation of the applicable Zoning Regulations as the CF-3 zoning does not permit the use of the property as a regional park in excess of five (5) acres.

39. It is the position of the Defendant that the uses being made of the Bowditch Point property are proper, not violative of the applicable Zoning Regulations and that the CF-3 zoning permits the use of the property as a regional park in excess of five (5) acres.

40. As a result of the above the Plaintiffs are in doubt as to their rights under the applicable land use regulations of the Town of Fort Myers Beach and Lee County.

Wherefore, Plaintiffs hereby respectfully request that the court enter a Declaratory Judgment as follows:

A. Declaring that the CF-3 zoning classification does not permit the use of the Bowditch Point property as a regional park in excess of five (5) acres.

B. Declaring that the proposed change in the number of parking spaces requires that the property be rezoned to CFPD pursuant to the current regulations.

C. Ordering the Defendant to apply for a rezoning of the Bowditch Point property to a zoning classification which will permit the uses being made of the property.

D. Enjoining the Defendant from taking any action which change, modify or in anyway

increase the intensity of uses being made of the Bowditch Point Regional Park, including but not limited to increasing the number of parking spaces at the park, until such time as the park has received a proper zoning classification.

E. Taxing costs of this action against the defendant.

F. Granting such other relief as the court may deem appropriate.

COUNT TWO
ESTOPPEL

39. This is an action for injunctive relief.

40. The allegations set forth in paragraphs 1 through 25 are incorporated herein by reference as though fully set forth.

41. Plaintiffs and others, in reliance on the assurances and representations of the Defendant, its employees, agents and representatives that the number of parking spaces would be limited to only twelve (12) spaces refrained from opposing the rezoning of the Bowditch Point property.

42. The Hearing Examiner, in reliance on the actions of the Defendant, its employees, agents and representatives and their assurances and representations that the number of parking spaces would be limited to only twelve (12) spaces, recommended to the Defendant that the zoning be approved.

43. Had the Plaintiffs not been misled by the assurances and representations of the Defendant, its employees, agents and representatives, significant opposition to the rezoning of Bowditch Point would have been forthcoming.

44. The assurances and representations given by the Defendant, it's employees, agents and representatives that the number of parking spaces would be limited to twelve (12) was relied upon by the Hearing Examiner and incorporated into the record and his recommendation and was, in part, conditioned upon such assurances.

45. It would be inequitable to permit the Defendant to now breach the assurances and representations given to the public, the Hearing Examiner and the Plaintiffs by increasing the number of parking spaces without providing an opportunity for the public and the Plaintiffs to voice their opposition in a public hearing and to provide the Hearing Examiner with an opportunity to evaluate the effect of the increased parking on his recommendation.

46. Because of the impact of the increased parking and resulting traffic on the Plaintiffs and their property, they will be irreparable harmed unless injunctive relief is granted by this court.

47. The Plaintiffs are without adequate remedy at law.

Wherefore, Plaintiffs respectfully request that this court enter a Final Judgment against the Defendant as follows:

A. Enjoining the Defendant from taking any action which would increase the intensity of uses being made of the Bowditch Point Regional Park, including but not limited to increasing the number of parking spaces at the park, until such time as the park has received a proper zoning classification.

B. Taxing costs of this action against the defendant.

C. Granting such other relief as the court may deem appropriate.

COUNT THREE
DECLARATORY JUDGMENT AND SUPPLEMENTAL RELIEF
JURISDICTION

48. This is an action for Declaratory Judgment and supplemental relief.

49. The allegation contained in paragraphs 1 through 25 are incorporated herein by reference as though fully set forth herein.

50. A dispute has arisen between the Plaintiffs and the Defendant based upon the facts alleged above.

51. It is the position of the Plaintiffs that the proper zoning for the Bowditch Point Regional Park should have been CFPD and that had the property been properly zoned the increase in intensity resulting from the addition of sixfold the number of parking spaces would have required a public hearing.

52. Had a public hearing been held, such a hearing would have been before the appropriate Town of Fort Myers body.

53. The effect of the Defendant approving the increase in intensity by increasing the number of parking spaces sixfold is to usurp the authority of the Town of Fort Myers Beach by granting to themselves approvals which are solely within the jurisdiction of the Town of Fort Myers Beach. As a result, the Defendant was without jurisdiction to grant such an approval.

54. It is the position of the Plaintiffs that any request for an increase in the intensity of the development by increasing the parking sixfold would require a public hearing before the Town of Fort Myers Beach pursuant to their applicable land use regulations.

55. It is the position of the Defendant that the CF-3 zoning is the proper zoning and that no public hearing is required to increase the number of parking spaces sixfold, whether before the Town of Fort Myers Beach or Lee County.

56. As a result of the above the Plaintiffs are in doubt as to their rights under the applicable land use regulations of the Town of Fort Myers Beach and Lee County.

57. Because of the impact of the increased parking and resulting traffic on the Plaintiffs and their property, they will be irreparable harmed unless injunctive relief is granted by this court.

58. The Plaintiffs are without adequate remedy at law.

Wherefore, Plaintiffs hereby respectfully request that the court enter a Declaratory Judgment as follows:

A. Declaring that the action taken by the Defendant approving the sixfold increase in parking spaces at the Bowditch Point Regional Park to be beyond their jurisdiction and therefore null and void.

B. Enjoining the Defendant from taking any action which would increase the intensity of uses being made of the Bowditch Point Regional Park, including but not limited to increasing the number of parking spaces at the park, until such time as a public hearing has been held by the Town of Fort Myers Beach approving the increase.

C. Taxing costs of this action against the defendant.

D. Granting such other relief as the court may deem appropriate.

COUNT FOUR
DECLARATORY JUDGMENT AND SUPPLEMENTAL RELIEF

59. This is an action for Declaratory Judgment and supplemental relief.

60. The allegation contained in paragraphs 1 through 25 are incorporated herein by reference as though fully set forth herein.

61. A dispute has arisen between the Plaintiffs and the Defendant based upon the facts alleged above.

62. It is the position of the Plaintiffs that, even with the improper CF-3 zoning classification, the increase in parking spaces would require a rezoning of the Bowditch Point property to PD classification under the zoning regulations of the Town of Fort Myers Beach.

63. Specifically, it is the Plaintiffs position that the placement of additional parking facilities at the 17 acre Bowditch Point Regional Park triggers the provisions of Note (2), Section 34-813, Zoning Regulations of the Town of Fort Myers Beach, which require a rezoning of the Bowditch Point property to a PD classification.

64. It is the position of the Defendant that the placement of the additional parking spaces at the Bowditch Point Regional Park does not require a rezoning of the property.

65. As a result of the above the Plaintiffs are in doubt as to their rights under the applicable land use regulations of the Town of Fort Myers Beach and Lee County.

66. Because of the impact of the increased parking and resulting traffic on the Plaintiffs and their property, and because the Defendants actions would constitute a violation of the zoning regulations of the Town of Fort Myers Beach, the Plaintiffs will be irreparable harmed unless injunctive relief is granted by this court.

67. The Plaintiffs are without adequate remedy at law.

Wherefore, Plaintiffs hereby respectfully request that the court enter a Declaratory Judgment as follows:

A. Declaring that the placement of additional parking spaces at the Bowditch Point Regional Park requires a rezoning of the property to a PD classification.

B. Enjoining the Defendant from taking any action which would increase the intensity of uses being made of the Bowditch Point Regional Park, including but not limited to increasing the number of parking spaces at the park, until such time as a public hearing has been held by the Town of Fort Myers Beach rezoning the property to a PD classification.

C. Taxing costs of this action against the defendant.

D. Granting such other relief as the court may deem appropriate.

ROETZEL & ANDRESS
2080 McGregor Boulevard, Third Floor
Fort Myers, Fl 33901
Telephone: (941) 337-3850

By:_____
KENNETH A. JONES
Florida Bar No. 0200158