# Summary of Hearing Examiner Recommendation

# VINTAGE COMMERCE CENTER CPD by CLE FL RE Investment I LLC

Request:

Amend Lee County Zoning Resolution Z-05-019, Vintage Commerce Center Commercial Planned Development (CPD), to allow:

- 350,000 square feet of commercial/office/light industrial use;<sup>1</sup>
- 300 hotel/motel units; and
- 308 multiple-family dwelling units<sup>2</sup>

The request is premised on adoption of companion comprehensive plan amendments changing the property's Future Land Use designation and reallocating development acreage to accommodate proposed residential units.

Location:

9401 Alico Road

(North of Alico Road, East of Three Oaks Parkway)

Gateway/Airport Planning Community

(District 2)

Size:

33.95± Acres

Recommendation:

Approve, with conditions<sup>3</sup>

Deviations:

2

Conditions of Note:

Airport noise zone notification

Public Concerns:

None

<sup>&</sup>lt;sup>1</sup>The property is currently approved for 300,000 square feet.

<sup>&</sup>lt;sup>2</sup> The request proposes residential on a 14± acre parcel to yield 196 units. Applicant can maximize density to 308 units through bonus density. If residential use is sought, Applicant must reduce the 350,000 square feet by 200 square feet per dwelling unit.

<sup>&</sup>lt;sup>3</sup> Contingent on Board adoption of CPA2018-10012 and CPA2018-10013.

## **Hearing Examiner Remarks:**

The request is to amend a commercial planned development at the intersection of Alico Road and Three Oaks Parkway. The property abuts the southbound I-75 exit at Alico Road.

The property is already zoned CPD. The request adds 50,000 square feet of floor area and provides Applicant an opportunity to develop multi-family and hotel uses. Staff recommended approval of the request and deviations. There are companion Lee Plan amendments to re-classify the property to permit residential development. The Hearing Examiner's Recommendation is dependent upon Board adoption of these amendments.

Applicant objects to a Staff-proposed condition requiring notification to potential purchasers that site-related improvements may be required at the Three Oaks Parkway/Alico Road intersection. The disagreement hinges on two issues:

- whether intersection improvements are "site-related" such that the improvements would be the sole responsibility of the Applicant; and
- whether Applicant must disclose on plats and property owner association (POA) documents that potential owners will be required to equitably fund site-related transportation improvements.

#### Site-Related Improvements

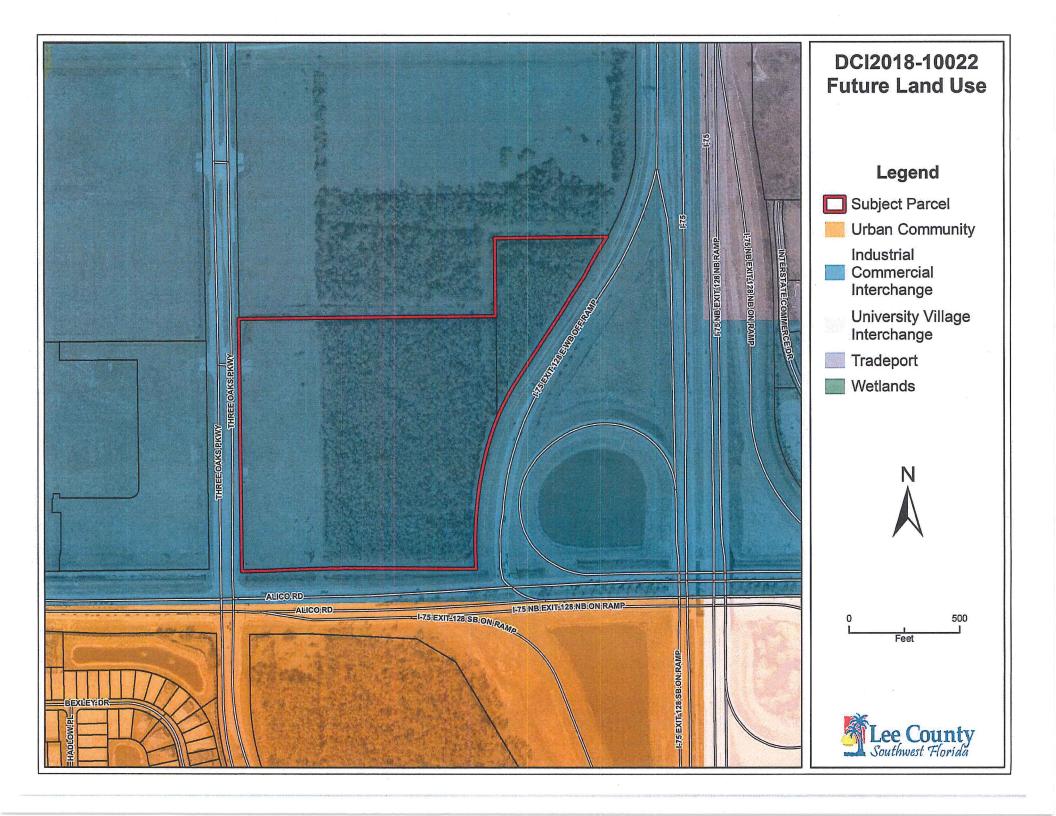
The parties acknowledged "site-related improvements" are determined during development order review. The LDC and Lee Plan clearly direct that is the appropriate time to identify necessary improvements based upon an actual development plan with known transportation impacts. The Hearing Examiner therefore finds it is premature to determine "site-related improvements" at the zoning stage.

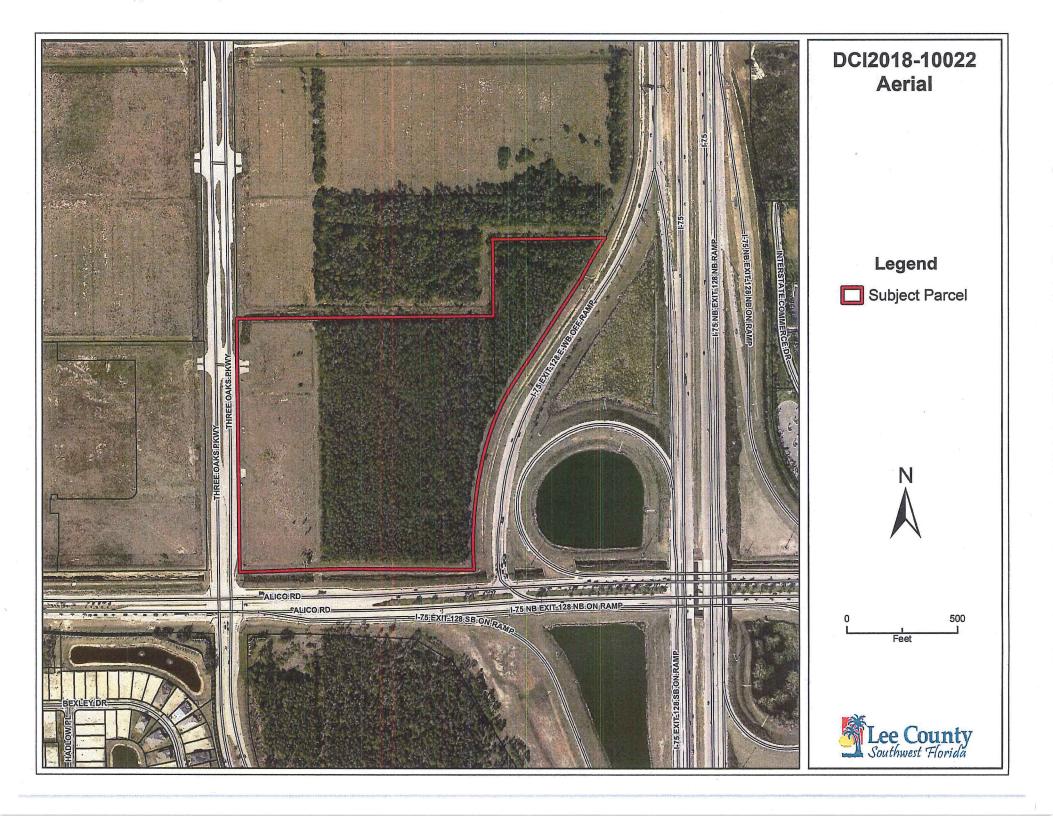
#### Disclosure

Staff's request for disclosure is premised on concerns that remnant parcels will bear a disproportionate burden of funding improvements that should be borne by all properties within the development.<sup>4</sup> The record reflects over 3.3 million square feet of floor area has been approved for this segment of Three Oaks Parkway; yet none of the other projects are held to this condition. Further, the request amends an *existing* CPD. Introducing a residential component will *reduce* traffic impacts. Accordingly, the Hearing Examiner recommends removal of the proposed condition.

Detailed recommendation follows

<sup>&</sup>lt;sup>4</sup> The Hearing Examiner recognizes this may be a valid policy concern. However, the appropriate action to address the concern is to amend the LDC to require such notification rather than impose a condition on a lone development.





# OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA HEARING EXAMINER RECOMMENDATION

**REZONING:** 

DCI2018-10022

Regarding:

VINTAGE COMMERCE CENTER CPD

Location:

9401 Alico Road

Gateway/Airport Planning Community

(District 2)

Hearing Date:
Continued Date:

November 22, 2019 December 19, 2019

## I. Request:

Amend Lee County Zoning Resolution Z-05-019, Vintage Commerce Center Commercial Planned Development (CPD), to allow:

- 350,000 square feet of commercial/office/light industrial use;
- 300 hotel/motel units; and
- 308 multiple-family dwelling units by reducing non-residential floor area by 200 square feet for each dwelling unit developed.

The property is legally described in Exhibit A.

### II. <u>Hearing Examiner Recommendation</u>:

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

#### III. Discussion:

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.<sup>5</sup> In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to amend the Vintage Commerce Park CPD.

In preparing a recommendation to the Board, the Hearing Examiner applies the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other County regulations to the testimony and evidence in the record. The Hearing Examiner may also take judicial notice of previous Board decisions in the

<sup>&</sup>lt;sup>5</sup> LDC 34-145(d)(4)a.

context of reviewing zoning requests and preparing recommendations to the Board. The record must include competent substantial evidence to support the recommendation.

The Hearing Examiner recommends approval of the request subject to conditions. Discussion supporting the recommendation follows below.

## Synopsis of Request and Zoning History

The 33.95± acre property is located immediately west of I-75 at the Alico Road exit. The property was zoned CPD in 2005 to permit 300,000 square feet of non-residential use. Applicant seeks to amend the CPD to add 50,000 square feet of floor area and allow multi-family residential and hotel uses to accommodate market demand.

Applicant is concurrently pursuing Lee Plan amendments to change the property's future land use designation.<sup>8</sup> This zoning request is subject to the Board's adoption of the companion Lee Plan amendments since the proposed residential use does not comply with the current future land use classification.

Staff recommended approval, with conditions.

#### **Zoning Review Criteria**

Before recommending approval for rezoning to the Board, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations or qualifies for deviations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Will provide access sufficient to support the proposed development intensity;
- E. The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- F. Will not adversely affect environmentally critical or sensitive areas and natural resources; and

<sup>&</sup>lt;sup>6</sup> Vintage Commerce Park CPD (Resolution Z-05-019).

<sup>&</sup>lt;sup>7</sup> Testimony of Mr. Intihar (Trans. pg. 8-12); Testimony of Mr. Mauer (Trans. pg. 229-232).

<sup>&</sup>lt;sup>8</sup> See Staff Report (Attachment M).

G. Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.<sup>9</sup>

If the request involves planned development zoning, such as amending a CPD, the Hearing Examiner must also find:

- H. The proposed use or mix of uses is appropriate at the proposed location;
- I. The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
- J. Each requested deviation: (1) enhances the achievement of the objectives of the planned development; and (2) preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.<sup>10</sup>

#### **Character of the Area**

The property is located at the northeast corner of Alico Road and Three Oaks Parkway, west of I-75. Vacant parcels surround the site. However, the record reflects properties along Three Oaks Parkway between Alico Road and the Fiddlesticks canal have cumulative zoning approvals to construct 3.3 million square feet of non-residential uses.<sup>11</sup> This area is experiencing significant growth given its proximity to the Southwest Florida International Airport, Gulf Coast Town Center, Florida Gulf Coast University, and emerging employment centers.<sup>12</sup>

### Lee Plan Consistency and Compatibility

All planned developments must be consistent with the Lee Plan.<sup>13</sup> Requests for rezoning must be compatible with existing or planned uses in the surrounding area.<sup>14</sup> Planned development parcels must be located to minimize the negative effects of the proposed uses on neighboring properties.<sup>15</sup>

The property is currently within the Gateway/Airport Planning Community and the Industrial Commercial Interchange future land use classification. However, Applicant is concurrently pursuing Lee Plan amendments to re-classify the

<sup>&</sup>lt;sup>9</sup> LDC 34-145(d)(4)(a)(1).

<sup>&</sup>lt;sup>10</sup> LDC 34-145(d)(4)(a)(2).

<sup>&</sup>lt;sup>11</sup> See testimony of Mr. Treesh (Trans. pg. 51, 56-57).

<sup>&</sup>lt;sup>12</sup> See Applicant's Ex. 1 (slide 14-17).

<sup>13</sup> LDC 34-411(a).

<sup>&</sup>lt;sup>14</sup> LDC 34-145(d)(4)(a).

<sup>&</sup>lt;sup>15</sup> LDC 34-411(c) and (i).

<sup>&</sup>lt;sup>16</sup> Lee Plan Map 1.

<u>property to General Interchange</u> to permit residential development on the property.<sup>17</sup> The Board transmitted the amendments on September 18, 2019.<sup>18</sup>

General Interchange areas permit a broad range of uses given their location, market attractions, and desire for flexibility. Tourist and general commercial, light industrial, and multi-family dwelling units are permitted under this category. The property is suitable for the proposed development program given its unique position at the intersection of two arterial roadways adjacent to I-75.21

The standard density range for General Interchange properties is 8 to 14 units per acre, with a <u>maximum density of 22 units per acre</u>. <sup>22</sup> <u>Applicant intends to maximize density on 14± acres of the site through the Pine Island Transfer of Density program</u>. <sup>23</sup> Since the request contemplates residential use, <u>the zoning amendment cannot be approved unless the Board adopts the companion Lee Plan amendments</u>.

The Board previously found the Vintage Commerce Park CPD compatible with the surrounding area and in compliance with the Lee Plan.<sup>24</sup> No changes have occurred to alter this finding. The request satisfies Lee Plan directives to direct high-density development near employment and shopping centers.<sup>25</sup> Adding a residential component within the CPD serves as infill development to promote a compact growth pattern and contain urban sprawl.<sup>26</sup>

### **Transportation/Traffic**

Planned developments must have access to existing or proposed roads with sufficient capacity to support the proposed intensity.<sup>27</sup> Expected impacts on transportation facilities resulting from the rezoning must be addressed by existing regulations or conditions of approval.<sup>28</sup>

<u>The property fronts two arterial roadways</u> – Three Oaks Parkway and Alico Road. Three Oaks Parkway is a county-maintained arterial while Alico Road is a statemaintained arterial.<sup>29</sup>

<sup>&</sup>lt;sup>17</sup> Applicant's Ex. 1 (slide 5), CPA2018-10012 and CPA2018-10013. The companion Lee Plan amendment case ensures sufficient acreage can accommodate proposed uses within the appropriate development community.

<sup>&</sup>lt;sup>18</sup> See Staff Report (pg. 1).

<sup>&</sup>lt;sup>19</sup> Lee Plan Policy 1.3.2.

<sup>20</sup> Id.

<sup>&</sup>lt;sup>21</sup> Three Oaks Parkway is a county-maintained arterial road; Alico Road is a state-maintained arterial.

<sup>&</sup>lt;sup>22</sup> Lee Plan Policy 1.3.2.

<sup>&</sup>lt;sup>23</sup> Applicant's Ex. 1 (slide 22). Maximum density on 14 acres yields a total of 308 units.

<sup>&</sup>lt;sup>24</sup> Z-05-019.

<sup>&</sup>lt;sup>25</sup> Lee Plan Policy 5.1.3.

<sup>&</sup>lt;sup>26</sup> Lee Plan Objective 2.1, 2.2; See Staff Report (Attachment D).

<sup>&</sup>lt;sup>27</sup> LDC 34-145(d)(4)(a)(1)(d); 34-411(d)(1).

<sup>&</sup>lt;sup>28</sup> LDC 34-145(d)(4)(a)(1)(e); 34-411(d)(2).

<sup>&</sup>lt;sup>29</sup> See Staff Report (pg. 7, Attachment D).

The project has direct access to Three Oaks Parkway via one right-in/right-out drive and one full access drive.<sup>30</sup> The project does not propose a direct access point on Alico Road.<sup>31</sup>

Applicant evaluated the project traffic impacts based upon a "worst case" development program of 350,000 square feet of retail commercial and 300 hotel rooms.<sup>32</sup> Residential uses were not considered as they generate less traffic than retail.<sup>33</sup>

If approved, all affected roadway links except Alico Road between Three Oaks Parkway and I-75 will operate within acceptable levels of service (LOS).<sup>34</sup> This segment of Alico Road is projected to operate at a failing LOS even without project traffic.<sup>35</sup>

Significant attention at hearing centered on staff's proposed condition requiring a disclosure to future owners that the county may require site-related improvements prior to development. Staff and Applicant disagreed as to the extent of improvements required and the appropriateness of a notification provision. Specifically, the parties disagreed that intersection improvements at Three Oaks Parkway and Alico Road are "site-related" under the LDC and Lee Plan.

<u>It is premature to determine "site-related improvements" at the zoning stage</u>. <sup>36</sup> The Lee Plan and LDC identify the development order stage as the time to consider transportation impacts based upon a known development plan. <sup>37</sup> The parties acknowledged this to be the case. <sup>38</sup>

Staff testified the primary aim of the condition is to notify future owners that transportation improvements may be required prior to development approval.<sup>39</sup> Staff asserted properties are left vacant when developers learn they must bear the total cost of road improvements that should have been borne by the entire

<sup>31</sup> Applicant's original submittal did propose a direct access point to Alico Road. However, Applicant modified its request and MCP prior to hearing to remove that access point. See Applicant's Ex. 2.

<sup>30</sup> Id.

<sup>&</sup>lt;sup>32</sup> See Staff Report (Attachment D); Testimony of Mr. Treesh (Trans. pg. 42-43).

<sup>&</sup>lt;sup>33</sup> *Id.* Traffic is also mitigated if residential is developed as Applicant must reduce the project's overall square footage by 200 square feet per dwelling unit. See Staff Report; Proposed Condition 1.

<sup>&</sup>lt;sup>34</sup> See Staff Report (Attachments D & J).

<sup>&</sup>lt;sup>35</sup> Staff Report (Attachment D, pg. 18); Testimony of Mr. Treesh (Trans. pg. 141-42).

<sup>&</sup>lt;sup>36</sup> Lee Plan Objective 39.1, Policy 39.1.1. Site related improvements include capital improvements and right-of-way dedications for "direct access" to the development. Direct access improvements include site driveways and roads, median cuts made necessary by those driveways and roads, right-turn/left-turn and deceleration/acceleration lanes serving those driveways and roads, traffic control measures for those driveways and roads, and roads/intersection improvements whose primary purpose at the time of construction is to provide access to the development. See, Lee Plan Glossary.

<sup>&</sup>lt;sup>37</sup> Lee Plan Policy 2.2.2, 39.1.1; LDC 10-286.

<sup>&</sup>lt;sup>38</sup> Testimony of Mr. Evans (Trans. pg. 163-64, 166-67, 175, 179-81, 188-89, 193-94), Mr. Arnold (Trans. pg. 31-33), Mr. Treesh (Trans. pg. 52 (*citing* Lee Co. Admin. Code 11-4)); Mr. Jansen (Trans. pg. 212). <sup>39</sup> Testimony of Mr. Block (Trans. pg. 122), Mr. Evans (pg. 203).

development.<sup>40</sup> The proposed condition attempts to address this by imposing notification requirements akin to LDC requirements for airport noise zones.<sup>41</sup>

Staff could not identify another zoning case where this type of notification was required. As Notably, none of the projects along Three Oaks Parkway north of Alico Road contain a similar condition. Moreover, the LDC does not require notification for transportation improvements.

The appropriate avenue to require such notification would be to amend the LDC rather than impose a condition on a particular project. <u>Accordingly, the Hearing Examiner recommends removal of the proposed condition</u>.<sup>44</sup>

Applicant provided adequate evidence to demonstrate the request provides sufficient access to support the proposed development.<sup>45</sup> Expected impacts on transportation facilities will be addressed by LDC regulations.<sup>46</sup>

#### **Environmental and Natural Resources**

Planned development design should reflect creative use of the open space requirement.<sup>47</sup> The developer must protect, preserve, or not unnecessarily destroy or alter natural features of the site.<sup>48</sup>

Proposed conditions ensure the project meets LDC open space requirements.<sup>49</sup> There are no wetlands or protected species identified on the site.<sup>50</sup>

#### <u>Urban Services</u>

Urban services are the services, facilities, capital improvements, and infrastructure necessary to support development at urban levels of density and intensity.<sup>51</sup> The Lee Plan requires an evaluation of the availability of urban services during the rezoning process.<sup>52</sup>

<sup>&</sup>lt;sup>40</sup> Testimony of Mr. Evans (Trans. pg. 152). The Hearing Examiner recognizes this is a valid policy concern.

<sup>&</sup>lt;sup>41</sup> LDC 34-1104; Condition 3.

<sup>&</sup>lt;sup>42</sup> Testimony of Mr. Evans (Trans. pg. 176-77).

<sup>&</sup>lt;sup>43</sup> Testimony of Mr. Treesh (Trans. pg. 56); Applicant's Ex. 1 (slide 39).

<sup>&</sup>lt;sup>44</sup> The proposed condition was modified several times and can be found in various iterations in the record. See Staff Report (Attachment C, Condition 3e), Staff's Ex. 2 & 7 (Ex. A Condition 6 & Ex. B Condition 6).

<sup>&</sup>lt;sup>45</sup> LDC 34-145(d)(4)(a)(1)(d).

<sup>&</sup>lt;sup>46</sup> LDC 34-145(d)(4)(a)(1)(e).

<sup>&</sup>lt;sup>47</sup> LDC 34-411(h).

<sup>&</sup>lt;sup>48</sup> LDC 34-411(g).

<sup>&</sup>lt;sup>49</sup> See Staff Report (pg. 8, Attachment N); Condition 2(b).

<sup>&</sup>lt;sup>50</sup> *Id.*; Testimony of Mr. King (Trans. pg. 40).

<sup>&</sup>lt;sup>51</sup> Urban services include public water and sewer, paved streets, parks and recreation facilities, urban levels of police, fire and emergency services, urban surface water management, schools, employment, industrial and commercial centers, institutional, public, or administrative facilities, and community facilities.

<sup>&</sup>lt;sup>52</sup> Lee Plan Policy 2.2.1.

<u>The project constitutes infill development</u>. <u>A host of urban services and infrastructure are available to serve the property</u> including roads, potable water, sanitary sewer, police, fire, and emergency medical services.<sup>53</sup>

#### **Deviations**

"Deviations" are departures from land development regulations. <sup>54</sup> Applicant proposes two deviations. Both were approved in the original Vintage Commerce Park CPD. <sup>55</sup> Applicant withdrew a third deviation request at hearing. <sup>56</sup>

Staff supports the requested deviations.<sup>57</sup>

#### **Conditions**

Conditions may be applied to planned developments to address unique aspects of the property in the protection of a bona fide public interest.<sup>58</sup>

The amended CPD is subject to seven conditions of approval. The conditions reasonably relate to the impacts anticipated from the project.<sup>59</sup>

A small portion of the property sits within Airport Noise Zone C.<sup>60</sup> The LDC requires strict notification language as a condition of approval for amendments to planned developments within this noise zone.<sup>61</sup> Proposed Condition 3 satisfies this requirement.

Condition 4 requires interconnectivity with the property to the north, currently identified as the Alico Crossings Center CPD.<sup>62</sup> In addition, the proposed condition allows for administrative adjustment to the location of the interconnection upon mutual consent of the landowners.

Conditions 6 and 7 restate LDC provisions. The Hearing Examiner disfavors redundancy in conditions that recite standards already imposed by the LDC. Staff's recommended transportation condition is not recommended by the Hearing

<sup>53</sup> See Staff Report (pg. 6-7); Applicant's Ex. 1 (slide 12).

<sup>&</sup>lt;sup>54</sup> LDC 34-2; LDC 34-377(a)(4).

<sup>&</sup>lt;sup>55</sup> Z-05-019. Six deviations are enumerated in the zoning resolution, but two were withdrawn at hearing. Deviation 1 remains unchanged, including the condition of approval. Deviation 2 is identical to Deviation 5 approved under Z-05-019.

<sup>&</sup>lt;sup>56</sup> Testimony of Mr. Arnold (Trans. pg. 94).

<sup>&</sup>lt;sup>57</sup> Testimony of Mr. Block (Trans. pg. 104).

<sup>&</sup>lt;sup>58</sup> LDC 34-932(b) provides conditions may be applied to address unique aspects of the parcel to protect a bona fide public interest. LDC 34-936(a) requires conditions of approval in the zoning resolution be incorporated into covenants, restrictions and rules of operation binding on the developer, his successors and heirs, tenants-in-fee, or leasehold.

<sup>&</sup>lt;sup>59</sup> LDC 34-83(b)(4)(a)(3); LDC 34-932.

<sup>60</sup> See Applicant's Ex. 10.

<sup>61</sup> LDC 34-1104(b)(2)(a).

<sup>&</sup>lt;sup>62</sup> See Memorandum from Mr. Block dated Dec. 16, 2019 (Staff's proposed condition 5).

Examiner because identifying site-related improvements is premature at the zoning stage. Conditions 6 and 7 place future owners on notice that the project must meet LDC transportation standards prior to development.

The recommended conditions and deviations represent a codification of prior development approvals. The Hearing Examiner revised the proposed wording of conditions and deviations to improve clarity.<sup>63</sup>

#### **Public**

Two members of the public spoke at the hearing.<sup>64</sup> They did not object to the request.<sup>65</sup>

#### Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation that the requested amendment to the Vintage Commerce Center CPD meets approval criteria of the LDC, contingent upon adoption of companion Lee Plan amendments. Should the amendments not be adopted, the Hearing Examiner recommends approval of the request without addition of the residential component.

#### IV. Findings and Conclusions:

The Hearing Examiner makes the following findings and conclusions based on the testimony and evidence in the record:

- A. As conditioned herein, the proposed amendment to the Vintage Commerce Center CPD:
- 1. Complies with the Lee Plan. See, Lee Plan Vision Statement Paragraph 10 (Gateway/Airport Planning Community), Lee Plan Goals 2, 4, 5, 6, 7, Objectives 1.3, 2.1, 2.2, 4.1, 5.1, 47.2 and Policies 1.3.2, 2.2.1, 5.1.2, 5.1.5, 6.1.1, 6.1.3, 6.1.4, 6.1.5, 6.1.7, 7.1.1, 7.1.2, 7.1.9, 47.2.1, 135.1.9; Lee Plan Maps 1, 16.
- 2. Complies with the LDC and other County regulations. See, LDC Chapters 10 and 34;
- 3. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.3.2, 2.1.1, 2.1.2, 2.2.1, 5.1.5; LDC 34-411(c), (i), and (j).
- 4. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goals 77, Objectives 4.1, 77.1, and LDC 34-411(h).

<sup>63</sup> LDC 34-932.

<sup>&</sup>lt;sup>64</sup> Mr. Mauer is the realtor associated with the property. Mr. Freeman owns property proximate to the site.

<sup>&</sup>lt;sup>65</sup> Mr. Freeman did object to staff's proposed transportation condition. (Trans. pg. 229).

- 5. Will be served by urban services. *See,* Lee Plan Glossary, Maps 6, 7, Goal 2; Objectives 2.1, 2.2, 4.1, 53.1, 56.1; Policies 2.2.1, 5.1.3, and Standards 4.1.1 and 4.1.2; LDC 34-411(d).
- B. The Master Concept Plan reflects sufficient access to support the intensity of development. In addition, County regulations and conditions of approval will address expected impacts to transportation facilities. *See,* Lee Plan Goal 39, Objective 39.1; LDC 34-411(d).
- C. The proposed mix of uses is appropriate at the proposed location. *See,* Lee Plan Policies 1.3.2, 2.1.1, 5.1.3, 5.1.5.
- D. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See, LDC Chapters 10 and 34.
- E. As conditioned herein, the deviations:
  - 1. Enhance the objectives of the planned development; and
- 2. Promote the intent of the LDC to protect the public health, safety and welfare. See, 34-377(b)(4).

Date of Recommendation: February 28, 2020.

Amanda L. Rivera

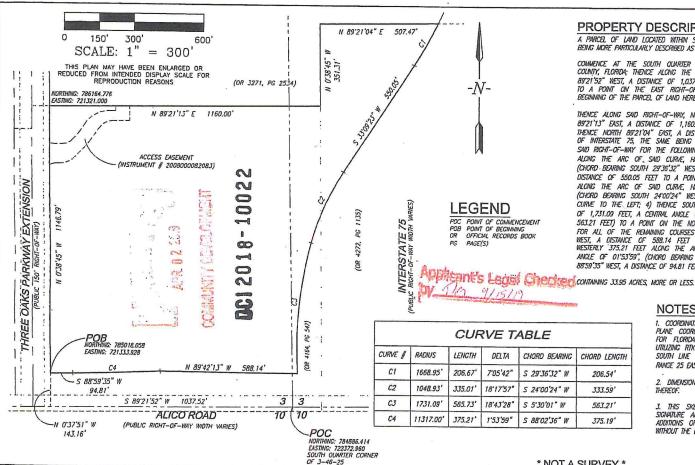
**Deputy Hearing Examiner** 

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

# **Exhibits to Hearing Examiner's Recommendation**

Exhibit À	Legal Description and Vicinity Map
Exhibit B	Recommended Conditions and Deviations (Strike through/underlined version)
Exhibit C	Recommended Conditions and Deviations (Clean version)
Exhibit D	Exhibits Presented at Hearing
Exhibit E	Hearing Participants
Exhibit F	Information

# Exhibit A LEGAL DESCRIPTION AND VICINITY MAP



PROPERTY DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN SECTION 3, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTH QUARTER CORNER OF SECTION 3, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA: THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3, SOUTH 89'21'52" WEST, A DISTANCE OF 1,037.52 FEET; THENCE NORTH 00'37'51" WEST, A DISTANCE OF 143.16 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF THREE OAKS PARKWAY EXTENSION AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED:

THENCE ALONG SAID RIGHT-OF-WAY, NORTH 00'38'45" WEST, A DISTANCE OF 1,146.79 FEET; THENCE NORTH 89'21'13" EAST, A DISTANCE OF 1,160.00 FEET; THENCE NORTH 00'38'45" WEST, A DISTANCE OF 351.31 FEET; THENCE NORTH 89'21'04" EAST, A DISTANCE OF 507.47 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF INTERSTATE 75, THE SAME BEING A POINT ON A NON TANGENTIAL CURVE TO THE RIGHT; THENCE ALONG SAID RIGHT-OF-WAY FOR THE FOLLOWING FOUR (4) COURSES AND DISTANCES, 1) SOUTHWESTERLY 206.67 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1,668.95 FEET, A CENTRAL ANGLE OF 07:05'42". (CHORD BEARING SOUTH 29'36'32" WEST, A DISTANCE OF 206.54 FEET); 2) THENCE SOUTH 33'09'23" WEST, A DISTANCE OF 550.05 FEET TO A POINT ON A CURVE TO THE LEFT; 3) THENCE SOUTHWESTERLY 335.01 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1,048.93 FEET, A CENTRAL ANGLE OF 18'17'57", (CHORD BEARING SOUTH 24'00'24" WEST, A DISTANCE OF 333.59 FEET) TO A POINT ON A NON TANGENTIAL CURVE TO THE LEFT; 4) THENCE SOUTHERLY 565.73 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1,731.09 FEET, A CENTRAL ANGLE OF 18'43'28", (CHORD BEARING SOUTH 05'30'01" WEST, A DISTANCE OF 563.21 FEET) TO A POINT ON THE NORTH RIGHT-OF-WAY OF AUCO ROAD; THENCE ALONG SAID RIGHT-OF-WAY FOR ALL OF THE REMAINING COURSES AND DISTANCES BACK TO THE POINT OF BEGINNING, NORTH 89'42'13" WEST, A DISTANCE OF 588.14 FEET TO A POINT ON A NON TANGENTIAL CURVE TO THE RIGHT; THENCE WESTERLY 375.21 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 11,317.00 FEET, A CENTRAL ANGLE OF 01'53'59", (CHORD BEARING SOUTH 88'02'36" WEST, A DISTANCE OF 375.19 FEET); THENCE SOUTH 88'59'35" WEST, A DISTANCE OF 94.81 FEET TO THE POINT OF BEGINNING.

#### NOTES:

1. COORDINATES AND BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL CEODETIC SURVEY FOR FLORIDA MEST ZONE, 1983 DATUM WITH 1990 ADJUSTMENT OBTAINED UNILIZING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND REFER TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 46 SOUTH RANGE 25 EAST, LEE COUNTY, FLORIDA AS BEING SOUTH 89'21'52" WEST

2. DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.

3. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A UCENSED FLORIDA SURVEYOR AND MAPPER, NO ADDITIONS OR DELETIONS TO THIS SKETCH AND DESCRIPTION ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY

\* NOT A SURVEY \*

M GradyMinor

Cert. of Auth. EB 0005151

Bonita Springs: 239.947.1144

DRAWN BY:

JOB CODE:

SCALE:

FILE:

SHEET:

CHECKED BY:

DATE: 24 JANUARY 2018

KJG

DLS

CRMALPDO

1"= 300

19-18-L&S

1 of 1

Civil Engineers • Land Surveyors • Ccrt. of Auth. LB 0005151

www.GradyMinor.com

Planners •

Landscape Architects Business LC 26000266

Bonita Springs, Florida 34134

Q. Grady Minor and Associates, P.A.

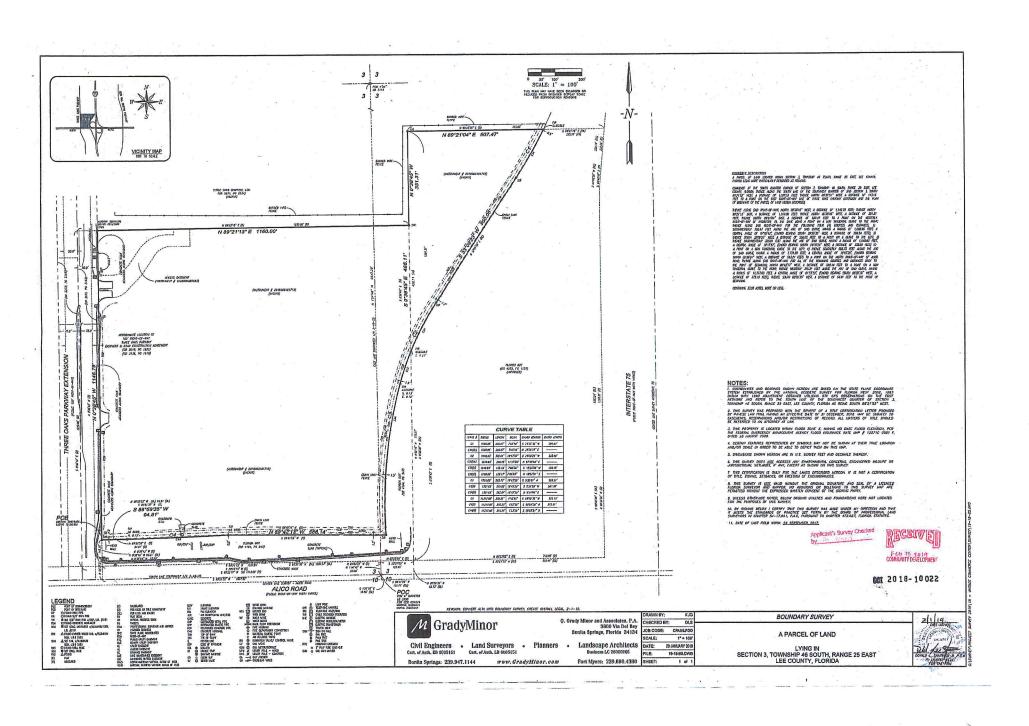
Fort Myers: 239,690,4380

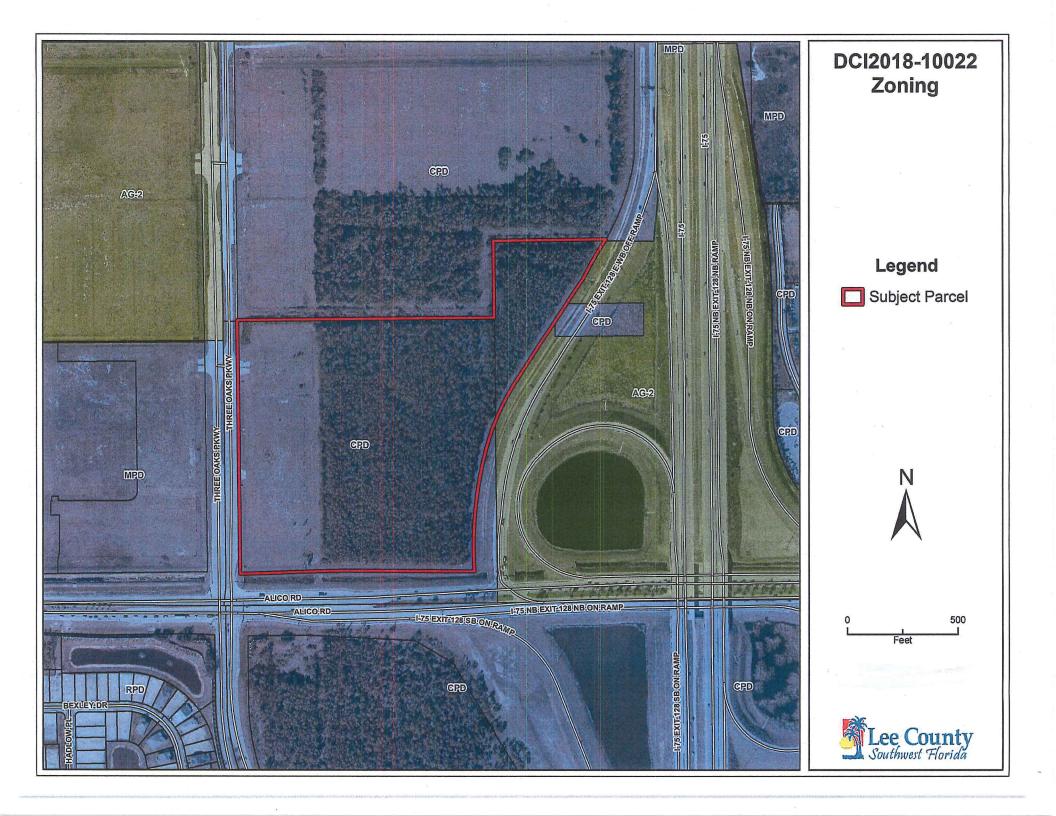
SKETCH AND DESCRIPTION

A PARCEL OF LAND

LYING IN SECTION 3, TOWNSHIP 46 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

3800 Via Del Rey





#### Exhibit B

#### RECOMMENDED CONDITIONS AND DEVIATIONS

(Strike through/underlined version)

The Hearing Examiner revised the proposed wording of conditions and deviations to improve clarity

#### **CONDITIONS:**

All references to uses are as defined in the Lee County Land Development Code (LDC). The conditions and deviations represent a codification of prior approvals from Resolution Z-99-097, Z-05-019, and ADD2006-00225, hereby superseded by approval of this zoning action.

### (1) <u>Master Concept Plan and Development Intensity:</u>Parameters:

The development of this project must be consistent with Applicant's Exhibit 2 submitted during the November 22, 2019 Hearing Examiner public hearing, identified as the Master Concept Plan for Vintage Commerce Center CPD, Sheet 1 of 1, Revision 6 (dated 11/2019), except as modified by the conditions herein.

Development is limited to 350,000 square feet of floor area and 300 hotel/motel units. Outdoor seating in conjunction with a restaurant will count toward the total floor area approved within this development.

If residential dwelling units (Dwelling unit: multiple-family building) are sought for development, these must be developed at a minimum of 8 dwelling units per acre. Residential development is permitted only in conjunction with at least 50,000 square feet or more of commercial or industrial uses. No more than 196 Lee Plan standard density dwelling units may be permitted. Additional units may be approved, up to a maximum of 22 units per acre, provided that the development meets the Bonus Density requirements of Chapter 2 of the Lee County Land Development Code and the Lee County Comprehensive Plan. The maximum number of residential dwelling units, with Bonus Density, cannot exceed 308.

If residential development is approved as part of a local development order, the maximum non-residential floor area of 350,000 square feet will be reduced by 200 square feet for each dwelling unit approved.

Development must comply with all requirements of the Lee County Land Development Code (LDC), 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 in accordance with the LDC.

If the development is completed in phases, local development order submittals must include a running inventory showing the overall number of residential dwelling units, number of hotel rooms, and total floor area (in terms of square feet) that have been constructed, are approved to be constructed, and are in the development approval process.

- (a) Master Concept Plan. Development must be substantially consistent with the one-page Master Concept Plan (MCP), dated November 21, 2019, entitled Vintage Commerce Center CPD, prepared by GradyMinor, stamped "received" by Lee County Hearing Examiner on December 16, 2019 (Exhibit B1), except where modified by the conditions below.
- (b) LDC and Lee Plan. Development and uses must comply with the LDC and the Lee County Comprehensive Plan (Lee Plan) at the time of local development order approval, except where deviations are approved herein. Subsequent amendments to the MCP, conditions, or deviations herein may require further development approvals.
- (c) <u>Approved Development Parameters</u>. <u>This Commercial Planned</u> <u>Development (CPD) allows a maximum of 350,000 square feet of floor area</u> and 300 hotel/motel units.<sup>1</sup>
- (d) Residential Development. Residential development may be approved by local development order by reducing the maximum 350,000 square feet of floor area by 200 square feet for each dwelling unit. Residential development is limited to townhouse/multiple-family buildings and is permitted only in conjunction with at least 50,000 square feet of commercial or industrial uses. Residential uses must be developed at a minimum of 8 dwelling units per acre, up to 196 units under the standard density range. Bonus density units may be approved consistent with Chapter 2 of the LDC. Total density within the CPD, inclusive of bonus units, may not exceed 308 dwelling units.
- (e) <u>Development Tracking</u>. <u>If development occurs in phases, each local development order application must include a report itemizing the following:</u>
  - (i) <u>Uses. Intensity of non-residential uses (expressed in square feet), number of residential units, and number of hotel rooms proposed in the application;</u>
  - (ii) <u>Cumulative Totals</u>. <u>The cumulative density and intensity including prior local development order approvals for each use classification; and</u>

<sup>&</sup>lt;sup>1</sup> Outdoor seating in conjunction with a restaurant counts toward the total floor area approved within this CPD.

(iii) Remaining Density and Intensity. The number of units, hotel rooms, or square footage available for future development for each use classification approved in this CPD.

### (2) Previous Actions:

All previous actions in Resolution Number Z-99-097 and Resolution Z-05-019, as amended by ADD2006-00225, are hereby rendered null and void by this action.

## 3.(2) Schedule of Uses and Property Development Regulations:

#### (a) Schedule of Uses

Accessory uses and structures

Administrative Office

ATM (automatic teller machine)

**Auto Parts Store** 

Auto Repair and Service: Groups I & II

Automobile Service Station

Banks and Financial Establishments: Groups I & II

Bar or Cocktail Lounge

**Boats: Boat Sales** 

Building material sales

Business Services: Groups I & II

Car wash

Clothing stores, general

Consumption on premises

Contractor and Builders, Groups I & II

Convenience Food and Beverage Store, limited to one (1) within the planned development

Department Store

Drive Through Facility for Any Permitted Use

Drugstore

Dwelling unit, multiple-family building (limited to Parcel A)

**Entrance Gates and Gatehouses** 

**Essential Services** 

Essential Service Facilities, Group I

Excavation, Water Retention

Food stores, Group I

Hardware Store

Health Care Facility, Group III

Hobby, Toy and Game Shops

Hotel/motel (limited to Parcel C and any Outparcel)

Household and Office Furnishings, Groups I & II

**Insurance Companies** 

Laundromat

Laundry or Dry Cleaning, Group I

Lawn and Garden Supply Store

Medical Office

**Nightclubs** 

Non-Store Retailers, All Groups

Package Store

Paint, Glass and Wallpaper

Parking Lot: Accessory and Temporary Personal Services: Groups I through III

Pet Services
Pet Shop
Pharmacy

Place of worship

Printing and Publishing

Recreation facilities: commercial: Groups I through V

Religious facilities

Rental or Leasing Establishments: Groups II and III

Repair Shops: Groups I & II Restaurants. Fast Food

Restaurants: Groups I through IV

Schools: commercial

Signs

Social Services: Group I

Specialty Retail Shops: Groups I through IV

Storage, Indoor

**Studios** 

Temporary Uses (LDC Section 34-3041 et seg):

Carnivals, fairs, circuses and amusement devices

Christmas tree sales

Temporary contractor's office and equipment storage shed

Seasonal farmers' market Temporary storage facilities

Used Merchandise Store: Group I

Vehicle and equipment dealers: Groups I through V

Warehouse: Mini-warehouse and Public

# (b) Property Development Regulations

Minimum Lot Area and Dimensions<sup>2</sup>

Lot Area:

10,000 square feet

Lot Width:

100 feet

Lot Depth:

100 feet

<sup>&</sup>lt;sup>2</sup> Tracts A and B may be further subdivided through an administrative amendment to the planned development, provided all lots comply with the above minimum lot area and dimensions.

#### Minimum Building Setbacks:

Street:

25 feet

Side:

15 feet

Rear:

20 feet

Water body: 25 feet

#### Maximum Building Height:

85 feet (LDC Section 34-935(e)(4))

#### Maximum lot coverage:

45 percent

\*Note: Tracts A and B may be further subdivided through an administrative amendment to the planned development, provided all lots comply with the above minimum lot area and dimensions.

#### Minimum Open Space:

Prior to development order approvals, the following open space requirements must be depicted on the development order plans development order plans must depict:

- A total of 3.18 acres of indigenous open space that (must\_includes 2.55 (i) acres of indigenous preserve with 125% indigenous credits);
- (ii) All cCommercial development must provide 30% open space; and
- (iii) All rResidential development must provide 40% open space.3
- 4.(3) Airport Noise Notification. The developer, successor or assign acknowledges the property's proximity to Southwest Florida International Airport and the potential for noises created by and incidental to the operation of the airport as outlined in Land Development Code Section 34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code Section 34-1104(b).
- 5.(4) As part of the first local development order, the local development order plans must depict access interconnection to Alico Crossings Center CPD from the northwestern corner of this planned development consistent with the Access Easement recorded in Instrument # 2008000082083 and depicted on the Master Concept Plan, unless written mutual consent to relocate this interconnection is demonstrated at the time of the development order.

<sup>&</sup>lt;sup>3</sup> Developer may reduce open space requirements consistent with LDC 2-152(c)(1)(b) if the project utilizes Pine Island TDU's.

Interconnection to Adjacent Property. Development order plans must depict access to the adjacent property to the north consistent with the recorded Access Easement and MCP. The interconnection may be relocated if mutual written consent by the landowners is provided at the time of development order review.<sup>4</sup>

- The Applicant, on behalf of the property owner, or any successor or assign, acknowledges the proposed planned development may generate the need for certain site-related transportation improvements, including at the intersection of Alico Road/Three Oaks Parkway. The ultimate improvements will be based on the requirements of Chapter 10 of the Lee County Land Development Code and the project's subsequent site-related traffic impacts. Further, the Applicant, on behalf of the property owner, or any successor or assign, also agrees to include a disclosure statement on any resulting plats, and also in all documents for condominium, property owner and homeowner associations advising that all owners within the development will equitably share the cost of these improvements caused by the effect of the cumulatively-approved site/project development at the time the improvements are determined by the County to be necessary. Additionally, if approved by the Board of County Commissioners, a copy of the resulting executed zoning resolution and master concept plan must be recorded upon approval in the Public Records of Lee County, Florida, and indexed under the name of the current property owner as the grantor upon recording.
- 7.(5) <u>Development Permits.</u> <u>Issuance of a County development permits does not establish a right to obtain permits from state or federal agencies. Further, it <u>county permits</u> does not establish liability on the <u>part of the</u> county if the developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies, or (b) undertake actions resulting in violation of state or federal law.</u>
- (6) Vehicular/Pedestrian Impacts. This zoning approval does not address mitigation of the project's vehicular or pedestrian impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
- 8-(7) Concurrency. Approval of tThis rezoning approval does not constitute a finding that the proposed project meets the concurrency requirements set forth in the LDC Chapter 2 and the or Lee Plan. The dDeveloper is required tomust demonstrate compliance with all regulatory concurrency requirements prior to issuance of a local development order.

#### **DEVIATIONS:**

<u>1.</u> <u>Setbacks</u>. Deviation (1) seeks relief from LDC §10-329(d)(l)a.<u>2.3.</u> requiring requirement of a 50 foot setback from road rights-of-way and private property lines for water retention excavation, to allow a 25 foot setback. <del>Staff recommends approval of this request.</del>

**HEX Recommendation**: Approve, *subject to* the following condition:

Developer must provide adequate protection for wayward vehicles along Alico Road and the property's eastern property line. The elements of protection will be reviewed during the development order process and are subject to approval of the Director of Development Services. Similarly, the setback along the eastern property line is approved with the condition the lake is adequately buffered from the adjoining property line with berms or landscaping to deter unauthorized access. These elements can also be reviewed during the development order process and are subject to the Director's approval.<sup>5</sup>

Signs. Deviation (2) seeks relief from LDC §30-153(2)a.4. requiring requirement that on-site identification signs be set back a minimum of 15 feet from any street right-of-way or easement and 10 feet from any other property line, to allow project identification signs in a median within the project's internal road right-of-way. This deviation is recommended for APPROVAL with the condition that the identification signs are placed and constructed in accordance with LDC §30-93, visibility triangle safe sight distance requirements.

HEX Recommendation: Approve, subject to the following condition:

Identification signs must be placed and constructed in accordance with LDC §30-93, visibility triangle safe sight distance requirements.<sup>6</sup>

Exhibits to Conditions: B1 Master Concept Plan

<sup>&</sup>lt;sup>5</sup> This deviation with condition was previously approved in Z-05-019 as Deviation 1.

<sup>&</sup>lt;sup>6</sup> This deviation with condition was previously approved in Z-05-019 as Deviation 5.

#### **Exhibit C**

#### RECOMMENDED CONDITIONS AND DEVIATIONS

(Clean Version)

#### **CONDITIONS:**

All references to uses are as defined in the Lee County Land Development Code (LDC). The conditions and deviations represent a codification of prior approvals from Resolution Z-99-097, Z-05-019, and ADD2006-00225, hereby superseded by approval of this zoning action.

## (1) Master Concept Plan/Development Parameters:

- (a) Master Concept Plan. Development must be substantially consistent with the one-page Master Concept Plan (MCP), dated November 21, 2019, entitled *Vintage Commerce Center CPD*, prepared by GradyMinor, stamped "received" by Lee County Hearing Examiner on December 16, 2019 (Exhibit B1), except where modified by the conditions below.
- (b) <u>LDC and Lee Plan</u>. Development and uses must comply with the LDC and the Lee County Comprehensive Plan (Lee Plan) at the time of local development order approval, except where deviations are approved herein. Subsequent amendments to the MCP, conditions, or deviations herein may require further development approvals.
- (c) <u>Approved Development Parameters</u>. This Commercial Planned Development (CPD) allows a maximum of 350,000 square feet of floor area and 300 hotel/motel units.<sup>1</sup>
- (d) Residential Development. Residential development may be approved by local development order by reducing the maximum 350,000 square feet of floor area by 200 square feet for each dwelling unit. Residential development is limited to townhouse/multiple-family buildings and is permitted only in conjunction with at least 50,000 square feet of commercial or industrial uses. Residential uses must be developed at a minimum of 8 dwelling units per acre, up to 196 units under the standard density range. Bonus density units may be approved consistent with Chapter 2 of the LDC. Total density within the CPD, inclusive of bonus units, may not exceed 308 dwelling units.

<sup>&</sup>lt;sup>1</sup> Outdoor seating in conjunction with a restaurant counts toward the total floor area approved within this CPD.

- (e) <u>Development Tracking</u>. If development occurs in phases, each local development order application must include a report itemizing the following:
  - (i) <u>Uses</u>. Intensity of non-residential uses (expressed in square feet), number of residential units, and number of hotel rooms proposed in the application;
  - (ii) <u>Cumulative Totals</u>. The cumulative density and intensity including prior local development order approvals for each use classification; and
  - (iii) Remaining Density and Intensity. The number of units, hotel rooms, or square footage available for future development for each use classification approved in this CPD.

## (2) Schedule of Uses and Property Development Regulations:

#### (a) Schedule of Uses

Accessory uses and structures

Administrative Office

ATM (automatic teller machine)

**Auto Parts Store** 

Auto Repair and Service: Groups I & II

**Automobile Service Station** 

Banks and Financial Establishments: Groups I & II

Bar or Cocktail Lounge

Boats: Boat Sales

Building material sales

Business Services: Groups I & II

Car wash

Clothing stores, general

Consumption on premises

Contractor and Builders, Groups I & II

Convenience Food and Beverage Store, limited to one (1) within the planned development

Department Store

Drive Through Facility for Any Permitted Use

Drugstore

Dwelling unit, multiple-family building (limited to Parcel A)

**Entrance Gates and Gatehouses** 

**Essential Services** 

Essential Service Facilities, Group I

Excavation, Water Retention

Food stores, Group I

Hardware Store

Health Care Facility, Group III

Hobby, Toy and Game Shops

Hotel/motel (limited to Parcel C and any Outparcel)

Household and Office Furnishings, Groups I & II

**Insurance Companies** 

Laundromat

Laundry or Dry Cleaning, Group I

Lawn and Garden Supply Store

Medical Office

Night clubs

Non-Store Retailers, All Groups

Package Store

Paint, Glass and Wallpaper

Parking Lot: Accessory and Temporary

Personal Services: Groups I through III

Pet Services

Pet Shop

Pharmacy

Place of worship

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Recreation facilities: commercial: Groups I through V

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Repair Shops: Groups I & II

Restaurants, Fast Food

Restaurants: Groups I through IV

Schools: commercial

Signs

Social Services: Group I

Specialty Retail Shops: Groups I through IV

Storage, Indoor

**Studios** 

Temporary Uses (LDC §§34-3041 et seq):

Carnivals, fairs, circuses and amusement devices

Christmas tree sales

Temporary contractor's office and equipment storage shed

Seasonal farmers' market

Temporary storage facilities

Used Merchandise Store: Group I

Vehicle and equipment dealers: Groups I through V

Warehouse: Mini-warehouse and Public

#### (b) **Property Development Regulations**

Minimum Lot Area and Dimensions:<sup>2</sup>

Lot Area

10,000 square feet

Lot Width:

100 feet

Lot Depth:

100 feet

#### Minimum Building Setbacks:

Street:

25 feet

Side

15 feet

Rear

20 feet

Water body 25 feet

## Maximum Building Height:

85 feet

## Maximum lot coverage:

45 percent

### Minimum Open Space:

Prior to development order approvals, development order plans must depict:

- (i) 3.18 acres of indigenous open space (must include 2.55 acres of indigenous preserve with 125% indigenous credits);
- Commercial development must provide 30% open space; and (ii)
- Residential development must provide 40% open space.<sup>3</sup> (iii)
- (3) Airport Noise Notification. The developer, successor or assign acknowledges the property's proximity to Southwest Florida International Airport and the potential for noises created by and incidental to the operation of the airport as outlined in Land Development Code Section 34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code Section 34-1104(b).

<sup>&</sup>lt;sup>2</sup> Tracts A and B may be further subdivided through an administrative amendment to the planned development, provided all lots comply with the above minimum lot area and dimensions.

<sup>&</sup>lt;sup>3</sup> Developer may reduce open space requirements consistent with LDC 2-152(c)(1)(b) if the project utilizes Pine Island TDU's.

- (4) <u>Interconnection to Adjacent Property</u>. Development order plans must depict access to the adjacent property to the north consistent with the recorded Access Easement and MCP. The interconnection may be relocated if mutual written consent by the landowners is provided at the time of development order review.<sup>4</sup>
- (5) <u>Development Permits</u>. County development permits do not establish a right to obtain permits from state or federal agencies. Further, county permits do not establish liability on the county if the developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions resulting in violation of state or federal law.
- (6) <u>Vehicular/Pedestrian Impacts</u>. This zoning approval does not address mitigation of the project's vehicular or pedestrian impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
- (7) <u>Concurrency</u>. This zoning approval does not constitute a finding that the project meets concurrency requirements set forth in the LDC or Lee Plan. Developer must demonstrate compliance with regulatory concurrency requirements prior to issuance of a local development order.

#### **DEVIATIONS:**

1. <u>Setbacks.</u> Deviation (1) seeks relief from the LDC §10-329(d)(l)a.3 requirement of a 50 foot setback from road rights-of-way and private property lines for water retention excavation, to allow a 25 foot setback.

HEX Recommendation: Approve, subject to the following condition:

Developer must provide adequate protection for wayward vehicles along Alico Road and the property's eastern property line. The elements of protection will be reviewed during the development order process and are subject to approval of the Director of Development Services. Similarly, the setback along the eastern property line is approved with the condition the lake is adequately buffered from the adjoining property line with berms or landscaping to deter unauthorized access. These elements can also be reviewed during the development order process and are subject to the Director's approval.<sup>5</sup>

<sup>5</sup> This deviation with condition was previously approved in Z-05-019 as Deviation 1.

<sup>&</sup>lt;sup>4</sup> The Access Easement is recorded at Lee County Official Records Instrument #2008000082083.

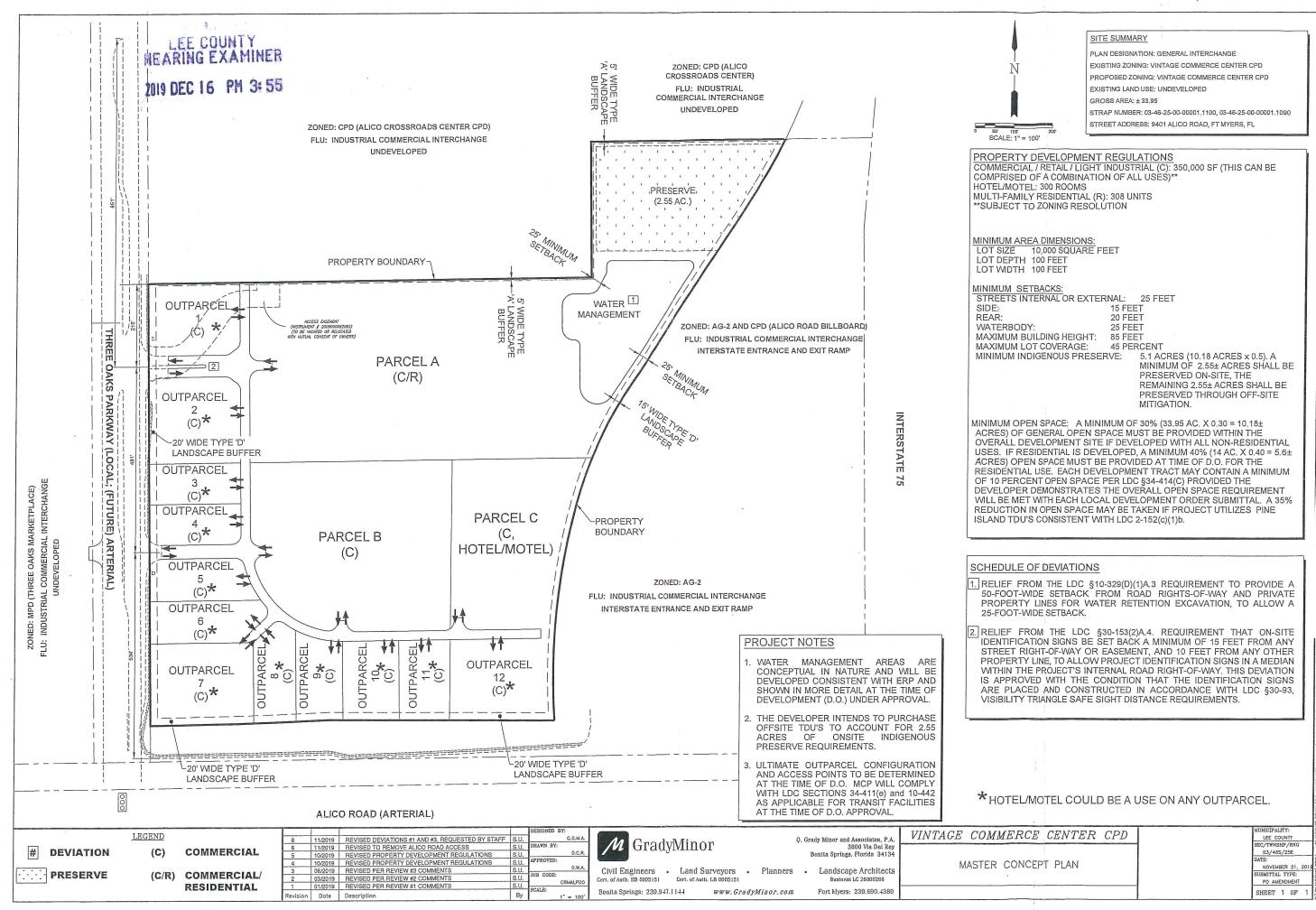
2. <u>Signs</u>. Deviation (2) seeks relief from the LDC §30-153(2)a.4. requirement that onsite identification signs be set back a minimum of 15 feet from any street right-ofway or easement and 10 feet from any other property line, to allow project identification signs in a median within the project's internal road right-of-way.

HEX Recommendation: Approve, *subject to* the following condition:

Identification signs must be placed and constructed in accordance with LDC §30-93, visibility triangle safe sight distance requirements.<sup>6</sup>

Exhibits to Conditions:
B1 Master Concept Plan

<sup>&</sup>lt;sup>6</sup> This deviation with condition was previously approved in Z-05-019 as Deviation 5.



#### **Exhibit D**

#### **EXHIBITS PRESENTED AT HEARING**

#### **STAFF EXHIBITS**

- 1. DCD Staff Report with attachments: Prepared by Alvin Block, Principal Planner, dated November 8, 2019 (multiple pages 8.5"x11" & 11"x14") [black & white, color]
- 2. Revised Condition 3(e): Memorandum from Alvin Block, Principal Planner, to Amanda L. Rivera, Deputy Hearing Examiner (1 page 8.5"x11)
- 3. *PowerPoint Presentation:* Prepared for DCl2018-10022, Vintage Commerce Center CPD (multiple pages 8.5"x11")
- 4. *Résumé:* Michael Allen Fiigon, II, Planner with Lee County Port Authority (1 page 8.5"x11)
- 5. Resolution: Number Z-18-007, zoning case number DCI2017-00001, Alico Road 254 Amendment, adopted May 16, 2018 (multiple pages 8.5"x11")
- 6. Resolution: Number Z-00-075, zoning case number DCI2000-00031, Alico Commercial Park, adopted December 8, 2000 (multiple double-sided pages 8.5"x11")
- 7. 48-Hour Notice for December 19, 2019 Hearing: Memorandum from Alvin Block, Principal Planner, to Amanda L. Rivera, Deputy Hearing Examiner, with copies to Marcus Evans, Steve Jansen, Beth Workman, & Mike Fiigon, dated December 16, 2019 (multiple pages 8.5"x11" & 1 page 11"x17")

#### **APPLICANT EXHIBITS**

- a. 48-Hour Notice: Email from Sharon Umpenhour, on behalf of Wayne Arnold, with Grady Minor and Associates, P.A., to Hearing Examiner, with copies Brian Intihar, Wayne Arnold & Neale Montgomery, Esq., dated Tuesday, November 19, 2019 4:21 PM (6 pages 8.5"x11")
- b. Second 48-Hour Notice: Email from Sharon Umpenhour, with Grady Minor and Associates, P.A., to Alvin Block, Audra Ennis, with copies to Wayne Arnold, Neale Montgomery, Esq., Brian Intihar, & Maria Perez, dated Tuesday, November 21, 2019 4:53 PM (3 pages 8.5"x11" & 1 page 11"x17")

- 1. *PowerPoint Presentation:* Prepared by Grady Minor and Associates, P.A., for Vintage Commerce Center Planned Development Amendment, DCI218-10022, dated November 22, 2019 (multiple pages 8.5"x11"-[color]
- 2. Revised Master Concept Plan: Prepared by Grady Minor and Associates, P.A., for Vintage Commerce Center CPD, dated November 21, 2019, last revised November 20, 2019 (1 page 11"x17")
- 3. *Résumé:* Frank J. Feeney, P.E., Senior Project Manager with Grady Minor and Associates, P.A. (1 page 8.5"x11")
- 4. 48-Hour Notice for December 19, 2019 Hearing: Email from Sharon Umpenhour, with Grady Minor and Associates, P.A., to Alvin Block, Hearing Examiner, with copies to Wayne Arnold, Neale Montgomery, Esq., Brian Intihar, & Maria Perez, dated Tuesday, December 17, 2019 3:14 PM (multiple pages 8.5"x11" & 1 page 11"x17")
- 5. Second 48-Hour Notice for December 19, 2019 Hearing: Email from Sharon Umpenhour, with Grady Minor and Associates, P.A., to Alvin Block, Hearing Examiner, with copies to Wayne Arnold, Neale Montgomery, Esq., Brian Intihar, & Maria Perez, dated Tuesday, December 17, 2019 3:30 PM (2 pages 8.5"x11" & 1 page 11"x17")
- 6. Conditions of Approval: Memorandum from D. Wayne Arnold, Ted Treesh, & Brian Intihar, to Amanda Rivera, Esq., Deputy Hearing Examiner, with copies to Brian Intihar, Neale Montgomery, Esq., Alvin Block, & Maria Perez, dated December 18, 2019 (multiple pages 8.5"x11")

#### Exhibit E

## **HEARING PARTICIPANTS**

# County Staff:

- 1. Alvin "Chip" Block
- 2. Michael Allen Fiigon, II
- 3. Marcus Evans

# Applicant Representatives:

- 1. Wayne Arnold
- 2. Brian Intihar
- 3. Tyler King
- 4. Neale Montgomery, Esq.
- 5. Ted Treesh

# Public Participants:

- 1. Alan Freeman
- 2. Michael Maurer

#### Exhibit F

#### INFORMATION

#### **UNAUTHORIZED COMMUNICATIONS:**

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

#### HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

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

#### **COPIES OF TESTIMONY AND TRANSCRIPTS:**

- A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.