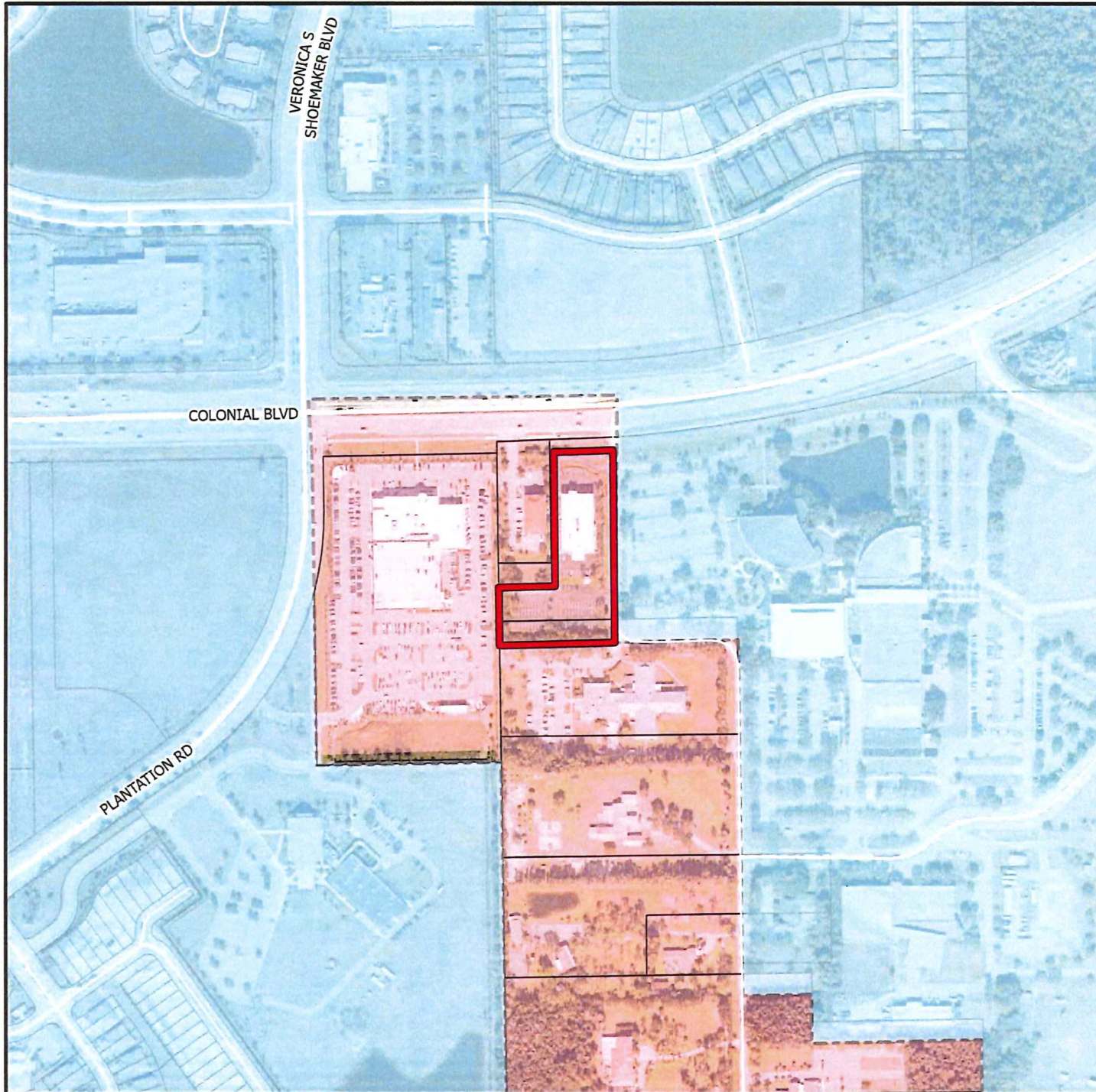


Summary of Hearing Examiner Recommendation

SS BUILDING

The request seeks to convert an existing building to a public warehouse facility. The site has been improved with the building and associated landscaping since 1980. The proposed Commercial Planned Development zoning district is less intense than current zoning designation. Accordingly, the project remains compatible with surrounding development.

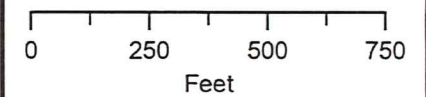
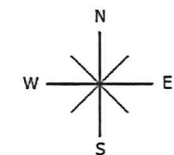
Detailed recommendation follows.



DCI2022-00015

Future Land Use

-  Subject Property
-  Intensive Development
-  City Limits



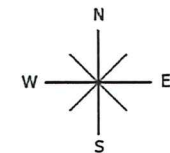


DCI2022-00015

Aerial

 Subject Property

 City Limits



0 250 500 750
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2022-00015

Regarding: **SS BUILDING**

Location: 3650 Colonial Boulevard
South Fort Myers Planning Community
(District 2)

Hearing Date: April 20, 2023

I. Request

Rezone 2.5 acres from Community Commercial (CC) to Commercial Planned Development (CPD) to allow the conversion of an existing 30,000 square-foot office building to a public warehouse.

The property legal description is set forth in Exhibit A.

II. Hearing Examiner Recommendation

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

III. Discussion

The Hearing Examiner serves as an advisor to the Board of County Commissioners (Board) on applications to rezone property to a planned development zoning district.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 2.5 acres to the Commercial Planned Development district.

In preparing a recommendation to the Board, the Hearing Examiner must apply the Lee County Comprehensive Plan (Lee Plan), Land Development Code (LDC), and other County regulations to facts adduced at hearing. The record must contain substantial competent evidence to support the recommendation.

Synopsis of Request

The request seeks approval of a CPD on 2.5 acres on Colonial Boulevard. The site is improved with a 30,000 square foot office building and parking lot.

¹ LDC 34-145(d)(4) a.

The proposed plan of development converts the building to a public warehouse facility. Building height will remain at 35 feet.

Staff recommended approval, subject to conditions.

Zoning History

The property has been zoned Community Commercial (CC) since 1979 and improved with a 30,000 square foot office building in 1984.

Lee Plan

The property fronts Colonial Boulevard, which hosts a variety of land uses, mainly within the incorporated limits of the City of Fort Myers. Abutting lands west and south are designated Intensive Development. Lands classified Intensive Development are suited for high intensity development due to ready access to public services and infrastructure.²

The existing CC zoning designation permits a wide range of medium to large scale commercial centers.³ Applicant seeks to redevelop the site, converting the existing office building into a public warehouse. Public warehouses are not permitted in the CC district, thereby motivating the application to rezone the site.

Compatibility with surrounding land uses

Compatibility exists when land uses can exist in proximity to each other and no one use unduly negatively impacts another use.⁴

The current CC zoning district is intended to permit a wide range of services and generally creates significant impacts on surrounding land uses.⁵ The uses requested are less intense than those permitted in the CC district.

² Lee Plan Policy 1.1.2 Permitted density ranges from eight to 14 dwellings per acre but may be as high as 30 units per acre under certain circumstances.

³ LDC 34-841(g). The CC district permits development of medium- to large-scale consumer-oriented commercial facilities, particularly for multiple-occupancy complexes. In addition to retail sales, the CC district permits a wide range of services in commercial centers or evolving business districts. The commercial uses permitted in the CC district are designed to serve wide areas and large populations. The permitted uses are expected to create greater impacts on surrounding land uses, requiring buffering and transition in intensity to less intense uses.

⁴ Florida Statutes s. 163.3164(9); The Lee Plan offers benchmarks from which to measure compatibility, particularly in the context of uses adjacent to established residential development. Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

⁵ LDC 34-841(g).

Abutting properties are improved with commercial development and a worship center. The plan of development proposes no changes to the existing building and parking area.

The proposed use is compatible with surrounding land uses.

Transportation

The property is located at the intersection of Colonial Boulevard and Deer Run Farms Road.⁶ Although the site fronts Colonial Boulevard, its access is limited to Deer Run Farms Road.⁷

Public warehouses are low traffic generators and not anticipated to create negative offsite impacts.⁸

Environmental

The site has no environmental features of note.

Public Services and Infrastructure

Public services are services, facilities, capital improvements, and infrastructure necessary to support development.⁹ The Lee Plan requires an evaluation of available public services during the rezoning process.¹⁰

Services and infrastructure are available along Colonial Boulevard. Specifically transit, public water, sanitary sewer, police, fire protection, and emergency medical services.¹¹

Public

No members of the public attended the hearing.

⁶ Lee County Administrative Code 11-1. Colonial Boulevard is a six-lane divided arterial. Deer Run Farms Road is a privately maintained local road.

⁷ The developed site has two driveway accesses to Deer Run Farms Road.

⁸ The proposed warehouse use represents a reduction traffic and commercial intensity than the uses permitted under the existing CC zoning designation Testimony of Michael Roeder AICP.

⁹ Public services and infrastructure available to serve the project will include public water (Lee County Utilities), sewer (FGUA), paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools.

¹⁰ Lee Plan Policy 2.2.1.

¹¹ Lee Plan Objectives 53.1, 56.1, Policies 1.1.4, 6.1.4; The property lies within the South Trail Fire Control and Rescue District, Station on Crystal Drive. However, fire and EMS services are provided by Fort Myers Fire District from Station 16, one mile north of the property on Veronica S. Shoemaker Boulevard. Lee County Sheriff provides law enforcement service. City of Fort Myers provides potable water and sanitary sewer service to the site. Lee Tran Route 110 runs along Colonial Boulevard with a stop in front of the property.

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect natural resources.¹² Conditions must plausibly relate to anticipated impacts, and pertinent to mitigating impacts to public health, safety, and welfare.¹³

The proposed CPD is subject to conditions of approval. The conditions reasonably relate to the impacts anticipated from the development.¹⁴

LDC Compliance – Deviations

Applications to rezone property must meet the LDC and other County regulations or qualify for deviations. A “deviation” is a departure from a land development regulation.¹⁵ Applicants must demonstrate each requested deviation enhances the planned development and will not cause a detriment to the public.¹⁶

The request seeks three deviations from LDC standards. The deviations pertain to street design and construction standards, buffers, and parking lot interconnections.

Staff recommended approval of two of the three deviations, finding only two deviations advance the objectives of the planned development and protect public health, safety, and welfare.¹⁷ Staff recommends denial of the deviation from LDC street design and construction standards.

The request to deviate from street design and construction standards is premature. Applicant may seek an administrative deviation at the time of development order review. The remaining deviations meet the standard for approval.

IV. Findings and Conclusions

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

- A. The proposed SS Building Commercial Planned Development complies with the Lee Plan. Lee Plan Goals 2, 6, 77, Objectives 2.1, 2.2, 6.1, Policies 1.1.2, 2.2.1, 6.1.1, 6.1.3, 6.1.4, 6.1.6, 6.1.8.

¹² Lee Plan Policy 135.9.6; LDC 34-145(d)(4) a.2.(b), LDC 34-377(a)(3), and 34-932(b and c).

¹³ LDC 34-932(c).

¹⁴ LDC 34-83(b)(4) a.3.

¹⁵ LDC §34-2.

¹⁶ LDC §34-373(a)(9).

¹⁷ LDC 34-373(a)(9), 34-377(a)(4).

B. *As conditioned*, the proposed CPD:

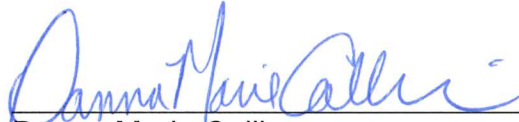
1. Meets the Land Development Code and other county regulations or qualifies for deviations.
2. Is compatible with existing and planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, Policies 1.1.2, 2.1.1, 2.2.1, 6.1.4, 6.1.7.
3. Provides access sufficient to support the proposed development intensity. Expected impacts on transportation facilities will be addressed by county regulations and conditions of approval. Lee Plan Objective 39.1, Policies 2.2.1, 39.1.1.
4. Will not adversely affect environmentally critical areas and natural resources. Lee Plan Goal 77, Objective 77.2, and Policies 6.1.6.
5. Will be served by public services including transit, paved roads, potable water, sanitary sewer, urban surface water management, police, fire, and emergency services. Lee Plan Goals 2, 4, 6, Objectives 2.1, 2.2, 4.1, 6.1, 53.1, 56.1, Policies 2.2.1, 6.1.5, 39.2.1, Standards 4.1.1 and 4.1.2.
6. The proposed use is appropriate at the location. Lee Plan Goals 6, Objectives 2.1, 2.2, Policies 2.1.1, 2.1.2, 6.1.4, 6.1.7, 6.1.8.

C. Recommended conditions and applicable regulations provide sufficient safeguards to protect the public interest. In addition, recommended conditions reasonably relate to impacts expected from the proposed development.

D. *As conditioned*, the deviations:

1. Enhance the planned development; and
2. Preserve and promote the intent of the LDC to protect public health, safety, and welfare.

Recommendation dated: April 27, 2023.



Donna Marie Collins
Chief Hearing Examiner

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

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

Exhibit A

DESCRIPTION

Description of a Parcel of Land Lying in the Northwest 1/4 of Section 5, T-45-S, R-25-E, Lee County, Florida (Easterly Parcel)

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the northwest one quarter (NW 1/4) of Section 5, Township 45 South, Range 25 East, and more particularly described as follows:

Starting at the northwest corner of said Section 5 thence S00°08'44"W along the west line of said Section 5 for 124.08 feet to the southerly right-of-way line of Colonial Boulevard; thence N89°55'48"E along said right-of-way line for 157.51 feet to the Point of Beginning of the herein described parcel; thence continue N89°55'48"E along said right-of-way line for 57.66 feet to the beginning of a curve concave to the north having a radius of 2989.79 feet thence easterly along said curve and said right-of-way line through a central angle of 02°01'11" for 105.39 feet to an intersection with the west line of the westerly 670.00 feet of the easterly 1000.00 feet of the north one half (N 1/2) of the northwest one quarter (NW 1/4) of the northwest one quarter (NW 1/4) of said Section 5; thence S00°27'26"W along a line not tangent to said curve and along said west line for 535.94 feet; thence S89°27'53"W along the south line of said fraction for 317.64 feet; thence N00°08'44"E along the aforesaid west line of said Section 5 for 163.01 feet; thence N89°27'53"E for 155.50 feet; thence N00°27'26"E for 372.38 feet to the Point of Beginning.

Said parcel contains 2.58 acres, more or less.

**Charles E.
Tolton**

Digitally signed by Charles E. Tolton
DN: cn=Charles E. Tolton, o=Charles
Tolton and Assoc., Inc., ou=Survey,
email=c.tolton@ctasurveying.com,
c=US
Date: 2022.09.01 10:35:05 -04'00'



**Charles E. Tolton, P.S.M.
Florida Registration No. 4582**

**REVIEWED
DCI2022-00015
Rick Burris, Principal
Planner
Lee County DCD/Planning
10/6/2022**

Charles E.
Tolton

Digitally signed by Charles E. Tolton
DN: cn=Charles E. Tolton, o=Charles
Tolton and Assoc., Inc., ou=Surrey,
email=ctolton@erasurveying.com,
c=US
Date: 2022.09.01 09:56:27 -0400

Date: 09/01/2022

Charles E. Tilton, P.S.M.
Florida Registration No. 4582

SCALE:	1" = 100'
DATE:	08/31/2022
DRAWN BY:	DWP
CHECK BY:	G.E.T.
FIELD BY:	T.S. & P.H.
F.B. 179	PQ. 48
JOB NO.:	CTA 07007

СТА

CHARLES TOLTON & ASSOCIATES, INC.
ENGINEERING LAND SURVEYING
3508 RADIO ROAD, SUITE E
NAPLES, FLORIDA 34104
(239) 793-6833
EMAIL: C.Tolton@ctasurveying.com

REVISIONS

Certified To:

KHOSROW MOAVENI

SKETCH TO ACCOMPANY
DESCRIPTION

NOT A BOUNDARY SURVEY

SHEET:
2
OF
2

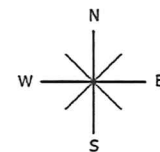


DCI2022-00015

Zoning

 Subject Property

 City Limits



0 250 500 750
Feet



Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by Hearing Examiner

CONDITIONS

1. Master Concept Plan and Development Parameters

Master Concept Plan (MCP). Development of the subject property must be substantially consistent with the two-page MCP entitled "Master Concept Plan SS Building CPD" dated January 2023. (Exhibit B1).

Compliance with Lee Plan and Land Development Code (LDC). Further development activity must comply with the Lee Plan and LDC, except where deviations have been approved herein. Amendments to the MCP and conditions of approval may require further development approvals.

Approved Development Parameters. Development intensity is limited to $\pm 30,000$ square feet of general office and warehouse uses.

2. Schedule of Uses and Property Development Regulations

a. Schedule of Permitted Uses

Accessory uses and structures.
Administrative offices
ATM (Automatic Teller Machine)
Business services, Group I
Fences, Walls
Essential services
Essential service facilities, Group I
Parking lot:
 Accessory
Signs
Warehouse, private, mini and hybrid
Temporary uses

b. Property Development Regulations

Minimum Lot Area and Dimensions

Area: 2.58 acres
Width: 160 feet
Depth: 535 feet

Minimum Setbacks, Maximum Building Height, and Maximum Lot Coverage

Arterial Street	50 feet
Local Street	20 feet
Side	15 feet
Rear	25 feet
Maximum building height	35 feet (two stories)
Maximum lot coverage	15 percent

3. Open Space

Development order plans must depict 38% (0.98 acres) of open space.

4. State and Federal Permits

County development permits do not create rights to permits from state or federal agencies and do not create liability if applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

1. Street Design and Construction Standards. Deviation 1 seeks relief from LDC §10-296, which requires all development abut and have access to a street designed, constructed, or improved to meet certain standards, to allow site access from the existing roadways that were designed/constructed prior to adoption of LDC 10-296.

Hearing Examiner recommends denial of Deviation 1. Applicant may seek relief from the requirement during development order permitting per LDC §10-104.

2. Buffers. Deviation 2 seeks relief from LDC §10-416(d), which requires a 5-foot-wide Type A landscape buffer between commercial projects, to allow no buffer along a segment of the west property line where an existing asphalt driveway is bisected by the common property line.

Hearing Examiner Recommendation: Approved, limited to existing conditions.

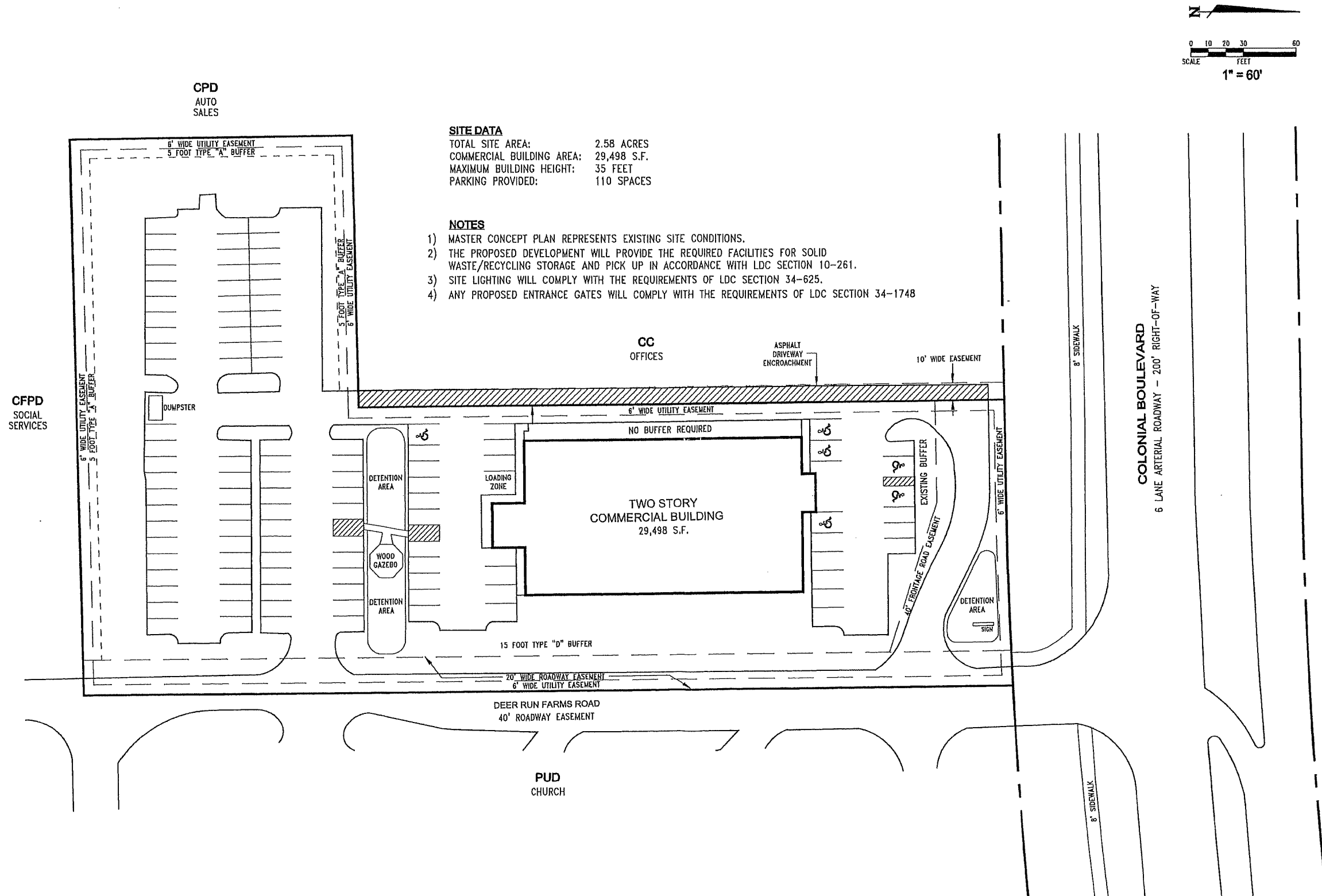
3. Parking Lot Interconnections. Deviation 3 seeks relief from LDC §34-2015(2)f, which requires adjacent commercial uses to provide parking lot interconnections for automobile traffic, to allow no interconnection to the south and west.

Hearing Examiner Recommendation: Approved, limited to existing development and addition of mini-warehouse use.

Exhibits to Conditions:

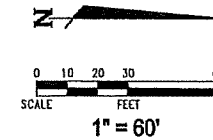
B1 Master Concept Plan entitled "SS Building CPD" dated January 2023.

EXHIBIT B-1



DWG. NO. 2201 SHEET 1 OF 2	MASTER CONCEPT PLAN SS BUILDING CPD	SEC 05, TWP 45S., RGE 28E. LEE COUNTY, FLORIDA	 GARY F. MULLER, AICP 1482 ARISTLE DRIVE • FT. MYERS, FLORIDA 33919 • (239) 565-8772	FILE # 2201 MCP	REVISION
				DATE 01/23	SCALE NOTED
				DESIGN GFM	
				DRAWN GFM	
				CHECK GFM	

LEGEND
⊕ REQUESTED DEVIATION
⊠ OPEN SPACE AREA

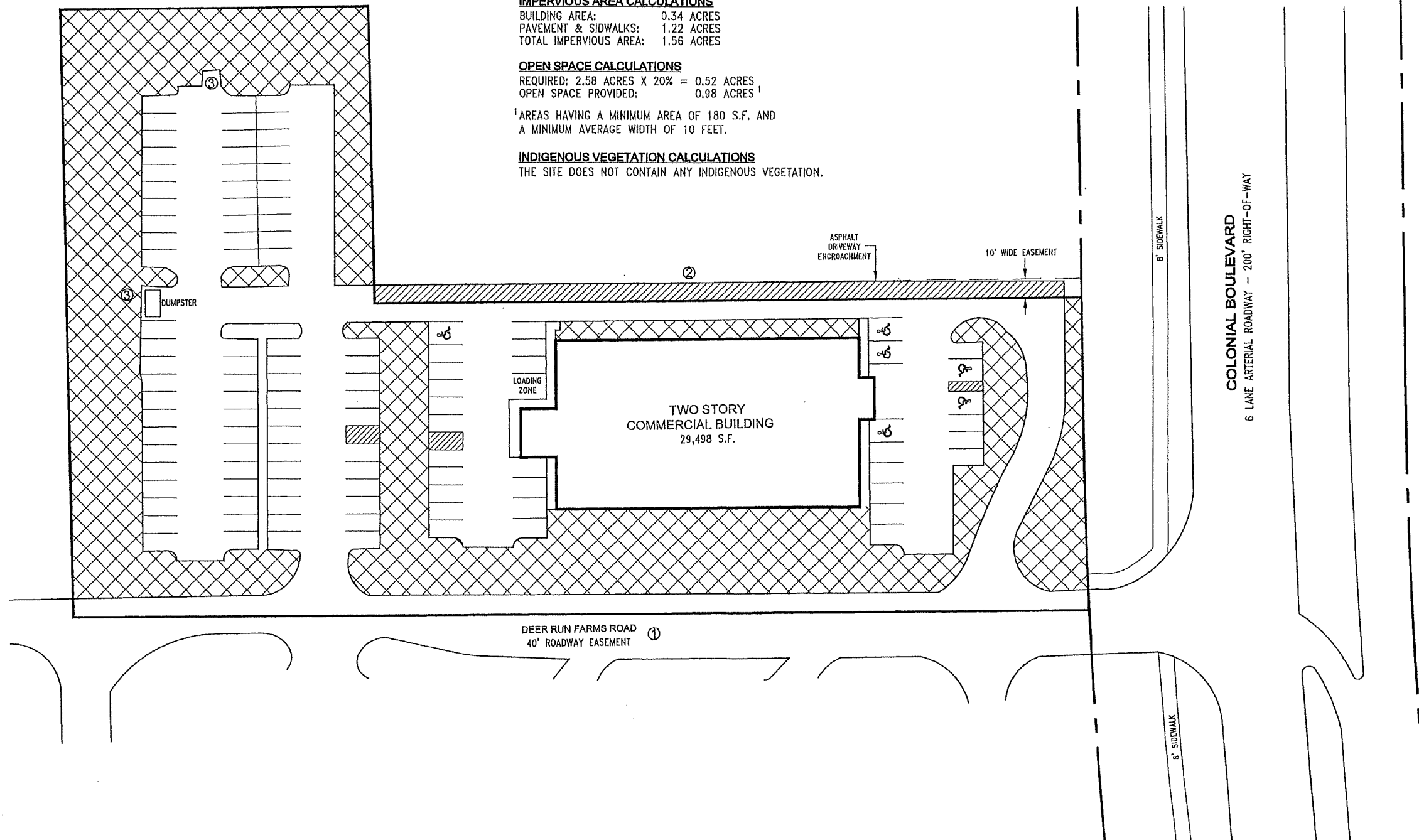


IMPERVIOUS AREA CALCULATIONS
BUILDING AREA: 0.34 ACRES
PAVEMENT & SIDEWALKS: 1.22 ACRES
TOTAL IMPERVIOUS AREA: 1.56 ACRES

OPEN SPACE CALCULATIONS
REQUIRED: 2.58 ACRES X 20% = 0.52 ACRES
OPEN SPACE PROVIDED: 0.98 ACRES¹

¹AREAS HAVING A MINIMUM AREA OF 180 S.F. AND
A MINIMUM AVERAGE WIDTH OF 10 FEET.

INDIGENOUS VEGETATION CALCULATIONS
THE SITE DOES NOT CONTAIN ANY INDIGENOUS VEGETATION.



FILE # 2201MCP		REVISION	DATE
DATE 01/23		NOTED	
SCALE		NOTED	
DESIGN		GFM	
DRAWN		GFM	
CHECK		GFM	
 GARY F. MULLER, AICP			
1482 ARISTYLE DRIVE • FT. MYERS, FLORIDA 33919 • (239) 385-6772			
SEC 05, TWP 45S., RGE 25E.		LEE COUNTY, FLORIDA	
MASTER CONCEPT PLAN		SS BUILDING CPD	
DWG. NO.		2201	
SHEET 2 OF 2			

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Adam Mendez, Senior Planner, date received April 5, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for SS Building, DCI2022-00015, 3650 Colonial Boulevard (multiple pages 8.5"x11") [color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Michael Roeder with Knott-Ebelini-Hart Law Firm, to Hearing Examiner, with copies to Adam Mendez and Khosrow Moaveni, dated Tuesday, April 18, 2023, 10:51 AM (2 pages – 8.5"x11")

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Adam Mendez

Applicant Representatives:

1. Khosrow Moaveni
2. Michael Roeder

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS

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

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

- A. 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 is 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.