

**M E M O R A N D U M
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

DATE: May 12, 2023

**TO: Board of County Commissioners FROM: Donna Marie Collins
Lee County Chief Hearing Examiner**

**RE: CRYSTAL DRIVE REZONE
Hearing Examiner Decision**

Chief Hearing Examiner Donna Marie Collins has rendered a Decision on the following zoning request:

CRYSTAL DRIVE REZONE

REZ2022-00027

HEARD: May 11, 2023

A copy of the Decision is attached for ready reference.

cc: Michael Jacob, Esq. / County Attorney's Office
Joseph Adams, Esq. / County Attorney's Office
Anthony Rodriguez / Zoning Section
Lindsay Hickey / Zoning Section
Warren Baucom / Economic Development
Phil Gillogly / Natural Resources
Jamie Princing / Community Development
Applicant(s) & Representative(s)
Other Interested Parties

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

REZONING: REZ2022-00027

Regarding: CRYSTAL DRIVE REZONE

Location: North side of Crystal Drive, approximately 750 feet
west of Metro Parkway

South Fort Myers Planning Community
(District 2)

Hearing Date: May 11, 2023

I. Request

Rezone 3.84 +/- acres from Light Industrial (IL) and Agricultural (AG-2) to IL.

The property legal description is set forth in Exhibit A.

II. Hearing Examiner Decision

Approved.

III. Discussion

The request seeks to rezone 3.84 acres from Agriculture (AG-2) and Light Industrial (IL) to IL on Crystal Drive in Fort Myers. The proposed IL zoning district is a “conventional” zoning district. Therefore, it is not possible to impose conditions on approval. The IL use regulation table governs permitted uses, subject to limitations imposed by the Lee Plan.¹ Applicant must obtain deviations from the Land Development Code (LDC) via the variance or administrative amendment process.

The Department of Community Development staff recommended approval, finding the proposed IL zoning district satisfies LDC review criteria.

The Hearing Examiner finds the request meets the Lee Plan and LDC review criteria for rezonings and approves the request. Discussion follows below.

¹ LDC 34-621, 34-903.

History

The property was formerly Seaboard Air Line Railroad right of way and is comprised of two parcels zoned AG-2 and IL. The north 2.04 acres are zoned for agriculture and the southern 1.8 acres fronting on Crystal Drive are zoned IL. Applicant owns/operates a business on the adjacent 12.5 acres and intends to expand existing operations to include the property.²

Character of the Area

The property fronts Crystal Drive west of Metro Parkway. Crystal Drive is a heavily traveled collector roadway connecting US 41 to Metro Parkway and Plantation Road. Both the Crystal Drive and Metro Parkway corridors are developed with light industrial and commercial land uses. The Villas residential subdivision is located across Crystal Drive. Single-family homes line the south side of Crystal Drive.

The 1.8 parcel fronting Crystal Drive already carries an IL zoning designation. The abutting 2.04 acres lies 640 feet to the north and is zoned for agriculture. Both parcels are vacant and covered with dense vegetation.

Lee Plan

The Lee Plan Future Land Use Map designates the property Central Urban. Central Urban areas are the urban core of the County with access to a full range of services and infrastructure.³

Development patterns in the area include a variety of light industrial development on the north side of Crystal Drive and a residential subdivision on the south side. Both land uses are permitted in Central Urban areas.⁴ Zoning the property to accommodate light industrial development on the entire site ensures adequate land to meet the County's industrial needs.⁵

Compatibility with surrounding land uses

The proposed IL zoning district is consistent with densely settled development patterns surrounding the site and compatible with nearby land uses.⁶ The property meets the definition of infill development as it is one of only a few vacant parcels in the area. The request contributes to contiguous development patterns along Crystal Drive and the Metro Parkway corridor.⁷

² Lee Plan Objective 158.4, Policy 158.4.1. Applicant operates AAA Supply on adjacent property and seeks to expand operations onto the site.

³ Lee Plan Policy 1.1.3.

⁴ *Id.*

⁵ Lee Plan Policy 158.3.5.

⁶ The surrounding area is nearly built out. The IL zoning district is consistent with land uses in the Central Urban category. Lee Plan Policies 1.1.3, 7.1.3, 7.1.4.

⁷ Lee Plan Goal 7, Policies 7.1.3, 7.1.4, Glossary. Lee Plan Objective 2.1.

Residential land uses are separated by Crystal Drive to the southwest and a golf course to the north.

Transportation

The site has 120.48 feet of road frontage on Crystal Drive.⁸ Record testimony confirms the property will be integrated with adjacent property under common ownership.⁹ The plan is to use the existing driveway on the adjacent parcel to the west.¹⁰

Developer must submit a TIS during development order review and must address site related road improvements at that time.¹¹

Environmental

There are no environmental features on the property, which is vacant and covered with exotic vegetation.¹² Future development must comply with LDC open space, landscaping, and buffering requirements.¹³

Public Services and Infrastructure

Public services include facilities, capital improvements, and infrastructure necessary to support development at urban levels of intensity.¹⁴ The Lee Plan requires evaluation of available public services during the rezoning process.¹⁵

The property has access to public services and infrastructure.¹⁶ The site fronts on Crystal Drive a two-lane county-maintained collector road.¹⁷ Lee County Utilities has public water and sanitary sewer infrastructure along Crystal Drive.¹⁸ Fire, EMS, and law enforcement have stations in proximity to the site.¹⁹

⁸ Crystal Drive is a two-lane county maintained collector road. Lee County Administrative Code 11-1.

⁹ Testimony of Stacy Hewitt; Staff Report.

¹⁰ See Staff Report.

¹¹ Lee Plan Objective 39.1, Policy 39.1.1; LDC 10-8, 10-287.

¹² County staff observed no evidence of listed species on the property. Staff Report Attachment I; Developer must remove exotic vegetation as a condition of development order approval. See LDC 10-154(18), 10-415.

¹³ Lee Plan Policy 7.1.6, LDC Chapter 10.

¹⁴ Public services include public water and sewer, paved streets, parks and recreation facilities, urban levels of police, fire and emergency services, surface water management, schools, employment, industrial and commercial centers, institutional, public, or administrative facilities, and community facilities.

¹⁵ Lee Plan Policy 2.2.1.

¹⁶ Lee Plan Glossary definition of Public Services, Goal 4, Policies 1.1.3, 2.2.1, Standards 4.1.1, 4.1.2.

¹⁷ Lee County AC 11-1.

¹⁸ Lee Plan Standards 4.1.1, 4.1.2; Staff Report Attachment E.

¹⁹ South Trail Fire & Rescue District Station 61, Lee County EMS Medic 1, and Lee County Sheriff.

Development will be subject to road, fire, and emergency medical services impact fees.²⁰

Public

No members of the public attended the Hearing Examiner hearing. Staff submitted an email from a property owner across Crystal Drive expressing opposition to the request citing traffic concerns.

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation of approval. The requested IL (Light Industrial) zoning district satisfies LDC approval criteria.

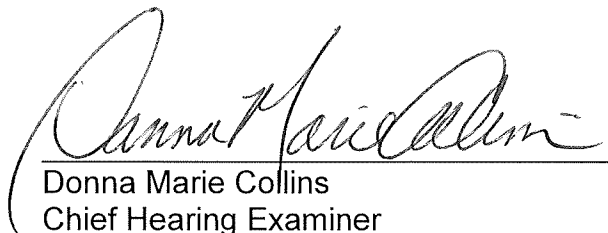
Findings in Support of Approval

Based on the testimony and exhibits presented in the record, the Hearing Examiner approves the requested IL Light Industrial zoning district and makes the following findings and conclusions:

- A. The requested IL zoning district complies with the Lee Plan. Lee Plan Goals 2, 7, 158, Objectives 2.1, 2.2, 4.1, 158.4, Policies 1.1.3, 1.6.5, 2.1.1, 2.1.2, 2.2.1, 2.2.2, 7.1.1, 7.1.3, 7.1.4, 7.1.7, 7.1.8, 158.4.1. Lee Plan Maps 1-A, 3-D, 4-A, 4-B.
- B. The IL district:
 - 1. Meets the Land Development Code and other County regulations. LDC Chapters 2, 10, 34.
 - 2. Is compatible with existing and planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, Policies 1.1.3, 2.1.1, 5.1.5, 7.1.1, 7.1.3, 7.1.7.
 - 3. Will provide access sufficient to support development intensity. Expected impacts on transportation facilities will be addressed by County regulations. Lee Plan Policies 6.1.5, 39.1.1, 39.2.1
 - 4. Will not adversely affect environmentally critical/sensitive areas or natural resources.
 - 5. Will be served by public services and infrastructure. Lee Plan Goals 2, 4, Objectives 2.1, 2.2, 4.1, Policies 1.1.3, 2.2.1, 7.1.4, Standards 4.1.1, 4.1.2.

²⁰ LDC Chapter 2.

Date of decision: May 12, 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

A Legal Description
B Exhibits Presented at Hearing
C Participants

Exhibit A
Legal Description

Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared Lindsay Hickey, Technician I, date received April 26, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for Crystal Drive Rezone, REZ2022-00027, Conventional Rezoning (multiple pages – 8.5"x11") [color]
3. *Email Response:* From Dirk Danley, Jr., to Elizabeth Fayhee, dated Tuesday, May 9, 2023 9:55 AM (1 page – 8.5"x11")

APPLICANT EXHIBITS

- a. *48-Hour Notice:* From Stacy Hewitt, to Hearing Examiner, with copies to Maria Perez, Lindsay Hickey, Dirk Danley, Jr., Joseph Adams, Esq., Amanda Swindle, Esq., Michael Jacobs, Esq., Tina Boone, Lauren Schaefer, and Erica Temerario, dated Tuesday, May 9, 2023 8:51 AM (3 pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Stacy Hewitt, with Banks Engineering for Crystal Drive Rezone, REZ2022-00027, Lee County Hearing Examiner Public Hearing, dated May 11, 2023 (multiple pages – 8.5"x11") [color]
2. *Email Response:* From Stacy Hewitt to Elizabeth Fayhee, dated Friday, April 21, 2023 12:00 PM (1 page – 8.5"x11")

Exhibit A



Professional Engineers, Planners & Land Surveyors

DESCRIPTION
OF
A PARCEL OF LAND LYING IN
SECTION 13, TOWNSHIP 45 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

(PER INSTRUMENT NUMBER 2020000015296)

A PARCEL OF LAND LYING IN THE NORTHEAST QUARTER (NE1/4) OF SECTION 13, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA. SAID PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER (NE1/4) OF SECTION 13; THENCE S 89°12'59" W, ALONG THE NORTH LINE OF SAID QUARTER SECTION FOR 84.00 FEET TO A POINT ON THE WEST LINE OF FORMER I.D.D. TEN MILE CANAL (NOW KNOWN AS TEN MILE LINEAR PARK), AND THE POINT OF BEGINNING; THENCE S 00°29'37" W, ALONG SAID WEST LINE, ALSO BEING THE EAST LINE OF THE FORMER S.A.L. RAILROAD RIGHT-OF-WAY AS DESCRIBED IN DEED BOOK 108, PAGE 320 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 1271.13 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF CRYSTAL DRIVE (100 FEET WIDE); THENCE S 89°21'30" W, ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 120.48 FEET TO THE WEST LINE OF AFORESAID FORMER S.A.L. RAILROAD RIGHT OF WAY; THENCE N 00°31'01" W, ALONG SAID WEST RIGHT-OF-WAY LINE FOR 1270.53 FEET TO THE AFORESAID NORTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 13; THENCE N 89°12'59" E, ALONG SAID NORTH LINE FOR 142.90 FEET TO THE POINT OF BEGINNING.

BEARINGS ARE ASSUMED ON THE CENTERLINE OF CRYSTAL DRIVE AS BEARING N 89°21'30" E, PER FORT MYERS VILLAS UNIT NO. 2-B, AS RECORDED IN PLAT BOOK 12, PAGE 30, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

SAID PARCEL CONTAINS: 3.84 ACRES, MORE OR LESS.

ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

DESCRIPTION PREPARED: 09-06-2022.

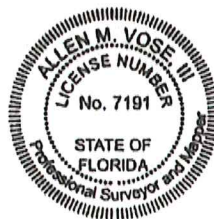
Digitally signed by Allen M Vose III

Date: 2022.09.06 12:00:58 -04'00'

ALLEN M. VOSE III, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATION NO. 7191

DATE SIGNED 09-06-2022

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S:\Jobs\88xx\8850\Surveying\Descriptions\8850 STRAP-13-45-24-00-00007.0000 SKT.dwg



REVIEWED
REZ2022-00027
Rick Burris, Principal
Planner
Lee County DCD/Planning
3/8/2023

SHEET 1 OF 2

• SERVING THE STATE OF FLORIDA •

10511 Six Mile Cypress Parkway • Suite 101 • Fort Myers, Florida 33966

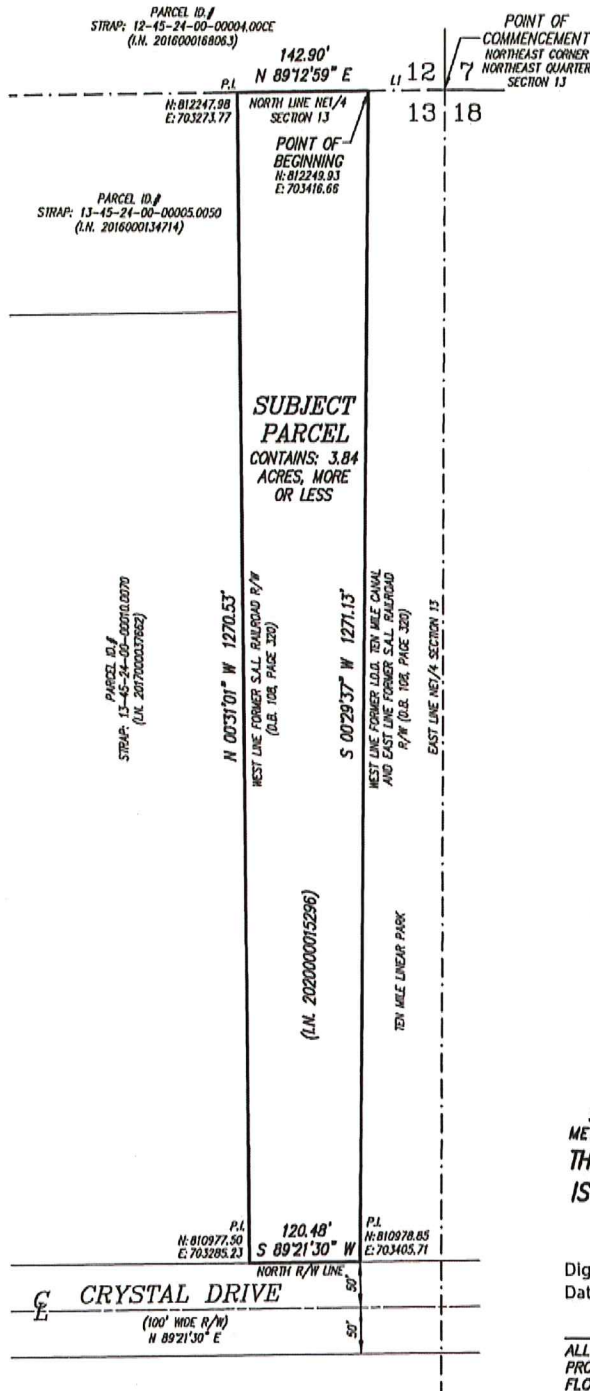
Phone 239-939-5490 • www.bankseng.com • Fax 239-939-2523

Engineering License No. EB 6469 • Surveying License No. LB 6690

SKETCH OF DESCRIPTION

OF
A TRACT OR PARCEL OF LAND LYING IN
SECTION 13, TOWNSHIP 45 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

(PER INSTRUMENT NUMBER 2020000015296)



LINE TABLE

LINE	BEARING	DISTANCE
L1	S 89°12'59" W	84.00'

NOTES:

BEARINGS ARE ASSUMED ON THE CENTERLINE OF CRYSTAL DRIVE AS BEARING N 89°12'30" E, PER FORT MYERS VILLAS UNIT NO. 2-II, AS RECORDED IN PLAT BOOK 12, PAGE 30, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

COORDINATES SHOWN HEREON ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA WEST ZONE NAD 83/2011 (CORS). THE SCALE FACTOR IS 0.99994666.

LEGEND:

C INDICATES CENTERLINE
D.B. INDICATES DEED BOOK
R/W INDICATES RIGHT-OF-WAY
LN. INDICATES INSTRUMENT NUMBER
ID.# INDICATES IDENTIFICATION NUMBER
L.D.D. INDICATES IONA DRAINAGE DISTRICT
P.I. INDICATES POINT OF INTERSECTION
L1 INDICATES LINE DATA: SEE LINE TABLE
P.S.M. INDICATES PROFESSIONAL SURVEYOR AND MAPPER
N:812249.93 INDICATES THE "STATE PLANE COORDINATE SYSTEM"
E:703416.66 FLORIDA WEST ZONE NAD 83/2011 (CORS)
CORS INDICATES CONTINUOUSLY OPERATING REFERENCE STATION

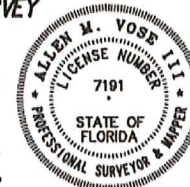
REVIEWED
RE272022-00027
Rick Burris, Principal
Planner
Lee County OGD/Planning
3/8/2023

SEE SHEET 1 OF 2 FOR COMPLETE
METES AND BOUNDS LEGAL DESCRIPTION
THIS SKETCH OF DESCRIPTION
IS NOT A BOUNDARY SURVEY

Digitally signed by Allen M Vose III
Date: 2022.09.06 12:01:14 -04'00'

ALLEN M. VOSE III, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATION NO. 7191

- DATE SIGNED: 08-08-2022
- THIS SKETCH OF DESCRIPTION IS NOT VALID
WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF
A FLORIDA LICENSED SURVEYOR AND MAPPER.



S:_0055\0001\0050\SURVEYING\DESCRIPTIONS\0050 STRAP-13-45-24-00-00007.0000 LCL.DWG
S:_0055\0001\0050\SURVEYING\DESCRIPTIONS\0050 STRAP-13-45-24-00-00007.0000 SKT.DWG

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SKETCH OF DESCRIPTION
PORTION OF NE1/4 SECTION 13-45-24
LEE COUNTY, FLORIDA

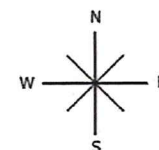
DATE	PROJECT	DRAWING	DRAWN	CHECKED	SCALE	SHEET	OF	FILE NO. (S-T-R)
08-08-2022	8850	STRAP SKT	AMV	AMV	1" = 150'	2	2	13-45-24



REZ2022-00027

Zoning

 Subject Property



0 500 1,000
Feet



Exhibit C

HEARING PARTICIPANTS

County Staff:

Dirk Danley, Jr.

Applicant Representatives:

Stacy Hewitt