

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

WHEREAS, TDM Consulting, Inc., filed an application on behalf of the property owner, Trop-Snoop, LLC, to rezone a 0.46± acre parcel from Two-Family Conservation (TFC-2) to Commercial Planned Development (CPD) in reference to Tropical Fence CPD; and

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner, Amanda L. Rivera, was advertised and held on February 16, 2023; and

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case # DCI2022-00036 and recommended approval of the Request; and

WHEREAS, a second public hearing was advertised and held on May 17, 2023 before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to rezone a 0.46± acre parcel from TFC-2 to CPD, to legitimize expansion of an existing Contractor and Builder use to the north, to allow open storage.

The property is located in the Central Urban Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. Master Concept Plan (MCP) and Development Parameters

- a. MCP. Development must be substantially consistent with the one-page MCP entitled "393 and 397 Balboa Avenue" prepared by TDM Consulting, Inc, last revised 11/2022 (Exhibit C), except as modified by the conditions below.
- b. LDC and Lee Plan. Development must comply with the LDC and Lee Plan at time of development order approval except where granted by deviation herein. Subsequent amendments to this resolution or MCP may be subject to further development approvals.

- c. Development Parameters. The CPD is approved for a maximum of 16,250 square feet of open storage in conjunction with the Contractor and Builders, Groups I and II use.

2. Schedule of Uses and Property Development Regulations

a. Schedule of Uses

Accessory Uses and Structures  
Administrative Offices  
Contractor and Builder, Groups I and II  
Essential Services  
Essential Service Facilities, Group I  
Excavation, Water Retention  
Fences, Walls  
Parking Lot, Accessory  
Signs  
Storage, Indoor, Open

b. Site Development Regulations

Lot Size

|                    |                    |
|--------------------|--------------------|
| Minimum Lot Area:  | 20,000 square feet |
| Minimum Lot Width: | 100 feet           |
| Minimum Lot Depth: | 100 feet           |

Setbacks

|                       |                          |
|-----------------------|--------------------------|
| Development Perimeter | 15 feet                  |
| Street                | 25 feet – public roadway |
| Side                  | 15 feet                  |
| Rear                  | 15 feet                  |

|                             |            |
|-----------------------------|------------|
| <u>Maximum Lot Coverage</u> | 60 percent |
|-----------------------------|------------|

|                       |         |
|-----------------------|---------|
| <u>Maximum Height</u> | 35 feet |
|-----------------------|---------|

3. County Permit Issuance

Issuance of a county development permit does not establish a right to obtain a permit from state or federal agencies. Further, it does not establish liability on the part of the county if the developer: (a) does not obtain requisite approvals or fulfill the obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal law.

## SECTION C. DEVIATIONS:

1. Deviation (1) is WITHDRAWN.
2. Type C Buffer. Deviation (2) seeks relief from the LDC § 10-416(d)(4) requirement for a Type C buffer to be 15-feet-wide with 5 trees and 18 shrubs per 100 linear feet with a solid wall, berm, or wall/berm combination, not less than 8 feet in height as measured from the finished grade, to allow the Type C buffer to be 10-feet-wide with 5 trees and 18 shrubs per 100 linear feet, for all vegetation to be native species, for all plant materials to meet the standards for Florida No. 1 or better, for all trees to be a minimum of 12 feet in height at time of planting, for all shrubs to be 24 inches in height at time of planting, and for the wall, berm, or wall/berm combination to be 6 feet in height. This deviation is APPROVED, SUBJECT TO the following condition:

Landscape plans must depict a ten-foot-wide buffer with six-foot-high solid opaque fence setback ten feet from the east and south property lines abutting residential uses. The buffer must include five trees and 18 shrubs per 100 linear feet. Trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. Shrubs must be 24-inches-in-height. Buffer vegetation must be 100 percent native species.

3. Type D Buffer. Deviation (3) seeks relief from the LDC § 10-416(d)(4) requirement for a Type D buffer to be 15-feet-wide with 5 trees per 100 linear feet and double staggered hedge row, to allow the buffer adjacent to Balboa Avenue to be 10-feet-wide with 5 trees per 100 linear feet, a double-staggered hedge row, for vegetation to be native species, for trees to be a minimum of 12 feet in height at time of planting, and for plant materials to meet the standards for Florida No. 1 or better. This deviation is APPROVED, SUBJECT TO the following condition:

Landscape plans must depict a ten-foot-wide right-of-way buffer with a six-foot-high solid, opaque setback ten feet and abutting Balboa Avenue. The buffer must include five trees per 100 linear feet and a double staggered hedge. Trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. Shrubs must be 24-inches-in-height. Buffer vegetation must be 100 percent native species.

4. Open Space. Deviation (4) seeks relief from the LDC § 10-415 requirement for small commercial developments to provide a minimum of 20% open space, to allow a minimum of 19% open space. This deviation is APPROVED.
5. Storage Facilities. Deviation (5) seeks relief from the LDC § 34-3005(b) requirement that commercial/industrial outdoor storage be shielded behind a continuous visual screening at least 8 feet in height when visible from a residential use/zoning district and 6 feet in height when visible from any street right-of-way or street easement, to allow the continuous visual screen to be 6 feet in height when visible from a residential use/zoning district. This deviation is APPROVED, SUBJECT TO the following condition:

Landscape plans must depict a ten-foot-wide buffer with a six-foot-high solid opaque fence setback ten feet from the east and south property lines abutting residential uses. The buffer must include five trees and 18 shrubs per 100 linear

feet. Trees must be 12-feet-in-height with a three-inch caliper, and six-foot-wide canopy spread. Shrubs must be 24-inches-in-height. Buffer vegetation must be 100 percent native species.

6. Entrance Gate. Deviation (6) seeks relief from the LDC § 34-1748(5) requirement that a paved turn-around having a turning radius sufficient to accommodate a U-turn for a single unit truck must be provided on the ingress side of the gate, to allow a T-turnaround for passenger cars as shown on the MCP. This deviation is APPROVED, SUBJECT TO the following condition:

Developer must provide signage indicating no parking in the area shown on the MCP for the T-turnaround.

#### SECTION D. EXHIBITS:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: Legal description of the property
- Exhibit B: Zoning Map (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan

#### SECTION E. FINDINGS AND CONCLUSIONS:

Based upon its review, the Board of County Commissioners adopts the recommendation of the Hearing Examiner, including the following findings and conclusions:

1. As conditioned herein, the proposed rezoning to CPD:
  - a. Complies with the Lee Plan. See Lee Plan Goals 2, 4, 6, 34, Objectives 1.1, 2.1, 2.2, 4.1, 6.1, 34.1, 34.2, and Policies 1.1.3, 1.7.6, 2.1.1, 2.2.1, 4.1.1, 6.1.1, 6.1.3, 6.1.4, 6.1.7, 34.2.2; Lee Plan Maps 1-A, 2-A, Table 1(b).
  - b. Complies with the LDC and other County regulations. See, LDC Chapters 10 and 34.
  - c. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.1.3, 2.1.1, 2.1.2, 2.2.1, 6.1.1; LDC §§ 34-411(c), (i), and (j).
  - d. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goal 77, Objectives 4.1, and LDC § 34-411(h).
  - e. 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, 6.1.5, 39.1.1.
  - f. Will be served by urban services. See, Lee Plan Glossary, Goal 2; Objectives 2.1, 2.2, 4.1; Policies 2.2.1, and Standard 4.1.1; LDC § 34-411(d).

2. The MCP 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).
3. The proposed mix of uses is appropriate at the proposed location. See, Lee Plan Policies 1.1.3, 2.1.1, 6.1.1.
4. 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.
5. As conditioned herein, the deviations:
  - a. Enhance the objectives of the planned development; and
  - b. Promote the intent of the LDC to protect the public health, safety, and welfare. See, LDC § 34-377(b)(4).

#### SECTION F. SCRIVENER'S ERRORS

The Board intends that this resolution can be renumbered or relettered and typographical errors that do not affect the intent and are consistent with the Board's action can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

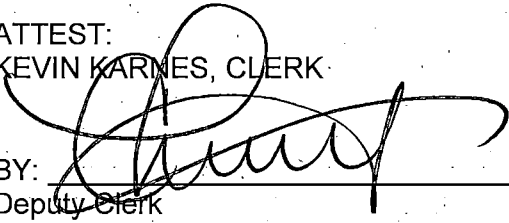
Commissioner Pendergrass made a motion to adopt the foregoing resolution, seconded by Commissioner Greenwell. The vote was as follows:

Adopted by unanimous consent.

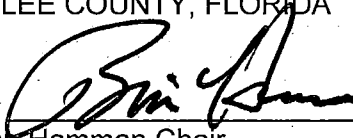
|                     |     |
|---------------------|-----|
| Kevin Ruane         | Aye |
| Cecil L Pendergrass | Aye |
| Raymond Sandelli    | Aye |
| Brian Hamman        | Aye |
| Mike Greenwell      | Aye |

DULY PASSED AND ADOPTED this 17th day of May 2023.

ATTEST:  
KEVIN KARNES, CLERK

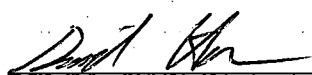
BY:   
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY:   
Brian Hamman Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

  
David W. Halverson  
Assistant County Attorney  
County Attorney's Office

RECEIVED  
MINUTES OFFICE  
2023 JUN -1 AM 10:50

## Exhibit A

### LEGAL DESCRIPTION

LOTS 887, 888 AND 889, BLOCK 28, RUSSEL PARK ANNEX, A SUBDIVISION,  
LOCATED IN SECTION 04, TOWNSHIP 44 EAST, RANGE 25 SOUTH, ACCORDING TO  
THE PLAT THEREOF IN FILE AND RECORDED IN PLAT BOOK 7, PAGE 8, OF THE  
PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

### STRAP NOS.

04-44-25-04,00028.8870

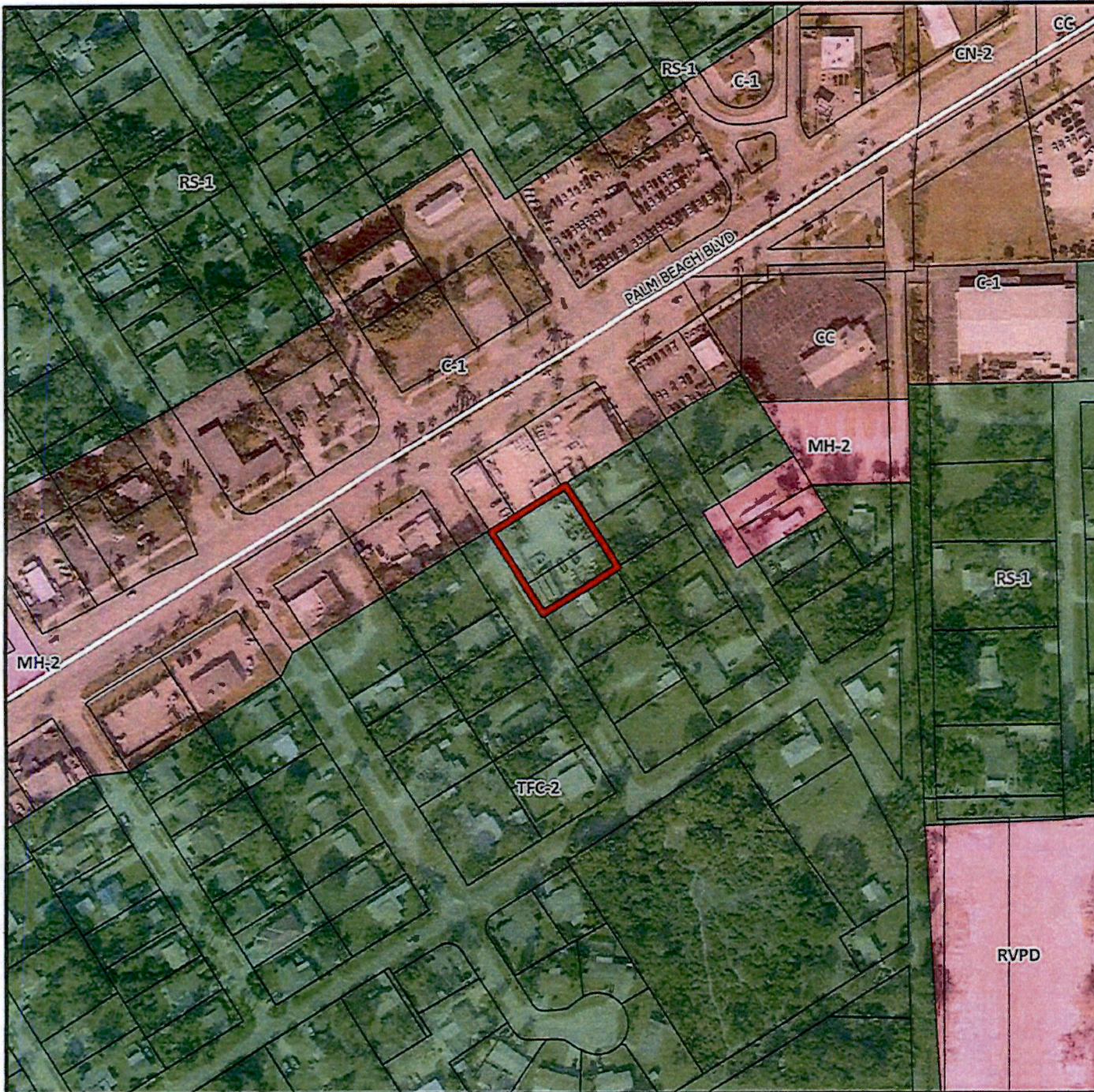
04-44-25-04-00028.8890

### REVIEWED

DCI2022-00036

*Rick Burris, Principal  
Planner*

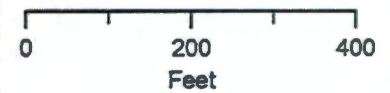
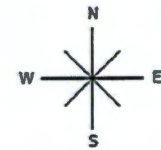
*Lee County DCD/Planning  
7/5/2022*



DCI2022-00036

Zoning

 Subject Property



STREET ADDRESS  
393 AND 397 BALBOA AVENUE  
FORT MYERS, FL 33905

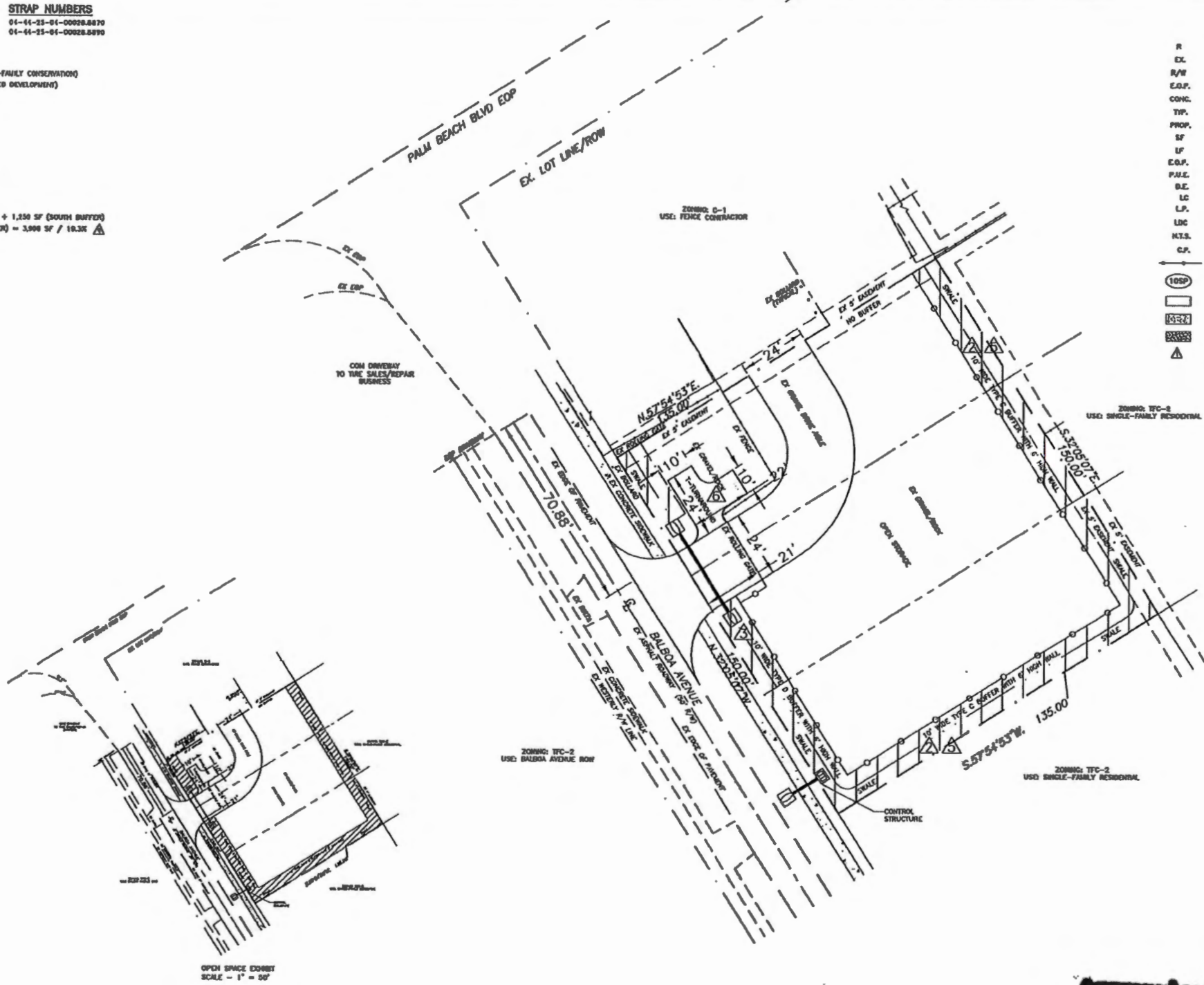
STRAP NUMBERS  
01-44-23-01-00028.0070  
01-44-23-01-00028.0070

PROJECT INFORMATION

CURRENT ZONING = TTC-2 (RESIDENTIAL, TWO-FAMILY CONSERVATION)  
PROPOSED ZONING = CPO (COMMERCIAL PLANNED DEVELOPMENT)  
FUTURE LAND USE = CENTRAL URBAN  
PROPOSED USE = OPEN STORAGE  
LOT SIZE = 20,250 SF (0.46 AC)

OPEN SPACE REQUIREMENTS

PER LDC SECTION 10-115 (SMALL PROJECTS)  
REQUIRED OPEN SPACE = 20%  
= 0.20 X 20,250 SF  
= 4,050 SF REQUIRED  
PROVIDED OPEN SPACE = 1,500 SF (EAST BUFFER) + 1,150 SF (SOUTH BUFFER)  
+ 1,150 SF (WEST BUFFER) = 3,800 SF / 19.3%



LEGEND

- R MAGNET (N' UNLESS OTHERWISE NOTED)
- EX EXISTING
- R/W RIGHT-OF-WAY
- E.O.P. EDGE OF PAVEMENT
- CONC. CONCRETE
- TYP. TYPICAL
- PROP. PROPOSED
- SF SQUARE FEET
- LF LINEAR FEET
- E.O.P. EDGE OF PAVEMENT
- P.U.E. PUBLIC UTILITY EASEMENT
- B.E. BORROW EASEMENT
- LC LEE COUNTY
- L.P. LIGHT POLE
- LDC LAND DEVELOPMENT CODE
- N.T.S. NOT TO SCALE
- C.P. CONCRETE PAD
- FENCE/MILL NUMBER OF PARKING SPACES IN LOT
- PROPOSED PAVEMENT
- CONCRETE
- GRAVEL
- DEVIATION

1" = 20'

393 AND 397 BALBOA AVENUE  
MASTER CONCEPT PLAN

Civil Engineering and Planning  
TDM CONSULTING, INC.  
43 Bartley Circle, Suite 200  
Fort Myers, FL 33907  
Phone: (239) 433-4231  
Fax: (239) 433-9632  
Cert. of Authorization # 22086  
www.tdmconsulting.com  
www.tdmengineering.com

Approved as Exhibit C  
NCP Page 1 of 1  
Revision 2-23-009

NOT VALID WITHOUT EMBOSSED SEAL, SIGNATURE, AND DATE

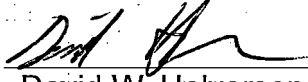
DATE: \_\_\_\_\_  
DESIGNED BY: \_\_\_\_\_  
CHECKED BY: \_\_\_\_\_  
TDM

1 of 1  
SCALE: AS NOTED

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

**DATE:** May 31, 2023

**To:** Commissioner Brian Hamman  
Chair, Board of County  
Commissioners

**FROM:**   
David W. Halverson  
Assistant County Attorney

**RE: BOCC ZONING RESOLUTION FROM THE MAY 17, 2023 MEETING  
ZONING RESOLUTION TROPICAL FENCE CPD – Z-23-009  
CASE #DCI2022-00036**

Attached is the original Resolution adopted by the Board at the May 17, 2023 zoning meeting. The Resolution has been reviewed and approved as to form and is ready for the Chair's signature. After the Chair signs the Resolution, please forward to the Minutes Department for attestation and further processing.

Thank you for your assistance with respect to the above. Should you have any questions, please do not hesitate to contact me.

DWH/slk  
Attachment

**Via e-mail only:** Michael D. Jacob, Deputy County Attorney  
Jamie Prining, Administrative Specialist, DCD/Administration & Support  
Eileen Gabrick, Minutes Office Manager, Lee County Clerk of Courts

RECEIVED  
MINUTES OFFICE  
2023 JUN - 1 AM 10:58  
