

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2022-00017

Regarding: BERMUDA LAKES RV RESORT RVPD

Location: 422 Miramar Road, 4775 Bermuda Lakes Way,
and 5201 Tice Street

Fort Myers Shores Planning Community
(District 5)

Hearing Date: August 23, 2023

I. Request

Special Exception in the Recreational Vehicle Planned Development (RVPD) zoning district to allow indoor/outdoor Consumption on Premises (COP) of alcoholic beverages (Type 4COP-SFS or 11-C) in conjunction with Food and Beverage Service, Limited within an amenity area for the Bermuda Lakes RVPD, approved by Resolution Z-14-031.

II. Hearing Examiner Decision

Approval, subject to the conditions set forth in Section V.

III. Discussion

The request seeks to serve alcohol at the Bermuda Lakes RV Resort recreation center. The 48.73± resort received RVPD zoning approval in 2014.¹ The RVPD permits indoor/outdoor consumption on the premises in the recreation area.² However, zoning conditions require Special Exception approval if COP is within 500 feet of Orange River Elementary School.³ The amenity tract is internal to the RVPD, but sits 310 feet from the school's property line, prompting need for this Special Exception request.⁴

¹ Z-14-031.

² *Id.* See Conditions 2 and 4.

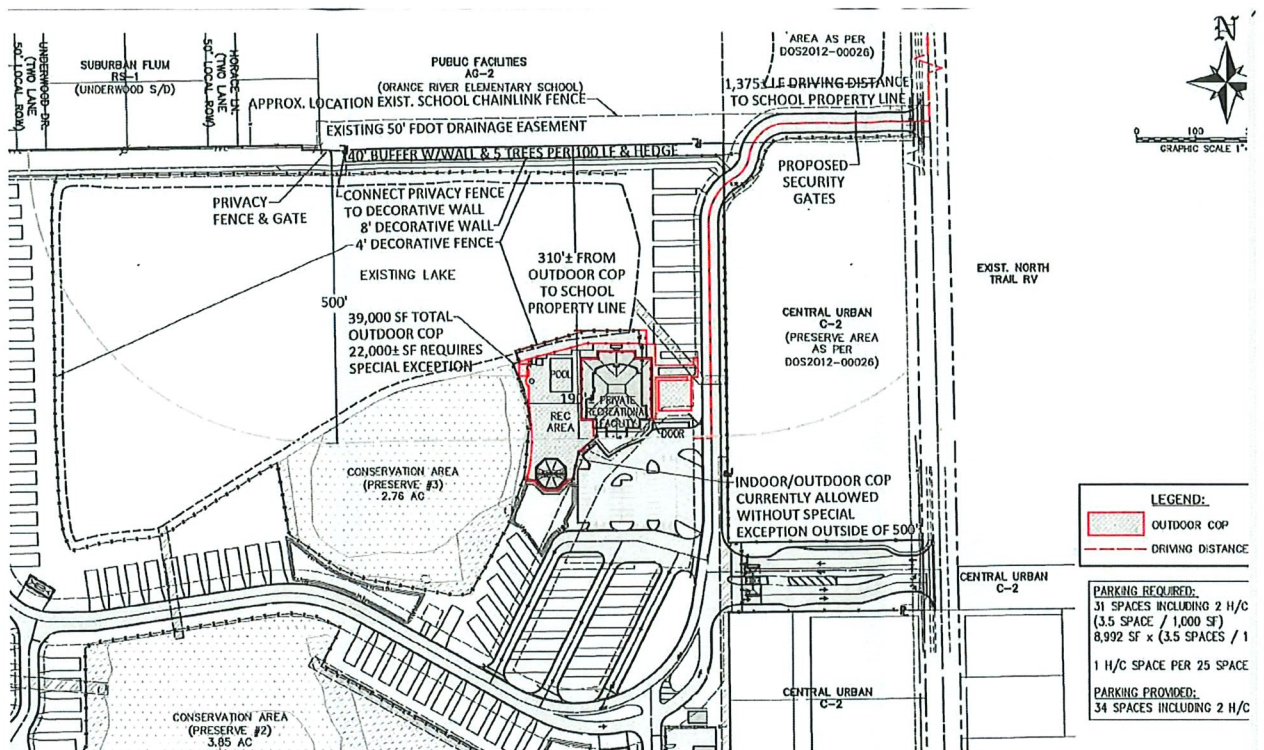
³ Z-14-031 Condition 4.

⁴ See Staff Report (pg. 1). The Lee County School District considers the COP area to be farther than 500 feet from the school. See Staff Report (Attachment G); Danley Testimony. The LDC measures distances from property lines, yielding the 310-foot measurement. LDC §34-1264.

The property is under construction pursuant to a 2014 development order.⁵ Site development is consistent with the RVPD Master Concept Plan. The recreation tract/amenity area abuts a conservation area and lake. The lake separates the amenity area from school property, along with a vegetated buffer, privacy wall, 50-foot drainage easement, and fencing. Driving distance to the school exceeds one thousand feet.⁶

Access to the recreation area is limited to resort residents and guests. The RVPD restricts access through entrance gates.⁷ The request proposes no physical changes to the property.

Staff recommended approval of the request with conditions.



Special Exception Criteria

Special Exceptions are specified departures from the County's land development regulations for uses that may be permitted when governed by conditions designed

⁵ DOS2014-00091.

⁶ See Applicant's Ex. 1 (slide 9). Driving distance from the amenity area to the school is shown as 1,375± feet.

⁷ Hewitt Testimony.

to promote public health, safety, welfare, order, comfort, convenience, appearance, or prosperity.⁸

The Hearing Examiner must grant a request for Special Exception unless:

1. The request is contrary to the public interest and the health, safety, welfare, comfort, and convenience of the citizens of the county; or
2. The requested use conflicts with the findings necessary to grant a special exception.⁹ These findings include consistency with the Lee County Comprehensive Plan (Lee Plan), compatibility with existing and planned uses, no injury to the neighborhood, and compliance with the zoning provisions pertaining to the use as well as other applicable regulations.¹⁰

In reaching this decision, the Hearing Examiner may attach conditions necessary to protect the public.¹¹ Such conditions must rationally relate to the special exception.¹²

Lee Plan Compliance and Compatibility

The property is located within the Suburban future land use category in the Tice Planning Community.¹³ Suburban areas are characterized by residential areas on the fringe of Central Urban or Urban Community land use categories.¹⁴

The property received zoning approval to develop an amenity center with COP.¹⁵ As such, it has been found consistent with the Lee Plan and compatible with the surrounding area.¹⁶

The request seeks alcohol consumption/service within 500 feet of a school. The parties demonstrated the school is adequately protected from potential off-site impacts by:

⁸ LDC §34-2.

⁹ LDC §34-145(c)(3); LDC §34-145(c)(4)(a).

¹⁰ LDC §34-145(c)(3).

¹¹ *Id.*

¹² LDC §34-145(c)(4)(b).

¹³ Lee Plan Map 1-A, 1-B, Goal 34, Policy 1.1.5.

¹⁴ Lee Plan Policy 1.1.5.

¹⁵ Staff Report (pg. 2-3); Z-14-031.

¹⁶ *Id.*

- Physical separation from the school property line of 310 feet, mostly lake;¹⁷
- Driving distance from the COP area to the school entrance of 1,375 feet;
- An eight-foot-tall privacy wall;
- A four-foot-tall decorative fence;
- Fifty-foot FDOT drainage easement;
- A chain link fencing surrounding the Orange River Elementary campus;
- No direct pedestrian access from COP area to the school; and
- A letter of no objection from the Lee County School District.¹⁸

In total, these measures minimize potential off-site impacts.¹⁹

The Hearing Examiner finds the request consistent with the Lee Plan and appropriate at the proposed location, subject to conditions.

Injury to Neighborhood/Public Welfare

The request does not present injury to the neighborhood or public welfare. Proposed conditions limit hours of operation and location of alcohol consumption. These conditions serve to protect the public and minimize potential off-site impacts. Consumption areas are distanced from the adjacent elementary school by a lake, eight-foot-tall wall, four-foot-tall fence, vegetated buffer, and a 50-foot drainage easement. There is no pedestrian access directly from the school to the consumption area.

Natural Resources/Environmental Areas

The request does not impact environmentally critical or sensitive areas, or natural resources.²⁰ The site is cleared in anticipation of construction. RVPD conditions require preservation areas to remain unaltered.²¹

Compliance with Zoning Regulations

The request does not seek variances from land development regulations. Future site development must comply with the LDC.²²

¹⁷ The Lee County School District measures distance differently and considers the COP area to be farther than 500 feet from the school. See Staff Report (Attachment G). The LDC measures distances from property lines, yielding the 310-foot measurement.

¹⁸ See Staff Report (Attachment G).

¹⁹ Lee Plan 5.1.5. The record supports finding that the request does not jeopardize the safety of students.

²⁰ Staff Report (pg. 4).

²¹ Hewitt Testimony; Z-14-031.

²² LDC §34-1261 *et. seq.*

Public

No members of the public appeared at the hearing.

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation of approval. The Special Exception meets LDC review criteria because it is consistent with the property's future land use classification and is compatible with the surrounding area.

As conditioned, the requested consumption on premises will not be detrimental or injurious to the area. There are no negative impacts anticipated to public health, safety, and welfare.

IV. Findings and Conclusions

Based upon the testimony and evidence presented in the record, the Hearing Examiner finds and concludes the requested Special Exception:

- A. Is consistent with the Lee Plan. See Lee Plan Goals 5, 34, Objectives 2.1, 2.2, and Policies 1.1.5, 5.1.5;
- B. Does not impact natural resources or land that is environmentally critical/sensitive;
- C. Will be compatible with existing or planned uses. See Lee Plan Objectives 2.1, 2.2, and Policies 5.1.5;
- D. Will not be injurious to the neighborhood or detrimental to the public welfare. See Lee Plan Policy 5.1.5; and
- E. Will comply with all zoning provisions and supplemental regulations set forth in the LDC. See LDC §§34-623, 34-624, 34-1264.

V. Conditions of Approval

1. COP Site Plan. Approval is limited to consumption on premises (4COP-SFS or 11C) for the Private Recreation Facility and outdoor recreation areas as depicted on the site plan entitled "Bermuda Lakes RV Resort, Special Exception for COP Site Plan," dated 11/26/2014 (Exhibit B).

2. Hours of Operation. COP is permitted during the following hours:
7:00 AM to 2:00 AM indoor consumption; and
8:00 AM to 10:00 PM outdoor consumption.
3. Other Approvals. This Special Exception approval does not establish a right to obtain permits from state or federal agencies. Further, this approval does not establish liability on the county if Applicant: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal laws.

VI. Participants

Staff

Dirk Danley, Jr.

Applicant Representatives

Stacy Ellis Hewitt

Public Participants

None

VII. Legal Description

See Exhibit A (scanned legal description with vicinity map).

The Strap #: 03-44-25-00-00013.0000
 03-44-25-00-00016.0000
 03-44-25-00-00010.0030
 34-44-25-00-00015.0000
 04-44-25-00-00018.0000

VIII. Exhibits Submitted at Hearing

Staff Exhibits

1. *DCD Staff Report with attachments for DCI:* Prepared by Dirk Danley, Jr., Principal Planner, date received August 14, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

2. *PowerPoint Presentation*: Prepared by DCD Staff for Staff Presentation, for Bermuda Lakes RV Resort RVPD, SEZ2022-00017 (multiple pages – 8.5"x11")[color]

Applicant Exhibits

- a. *48-Hour Notice*: Email from Stacy Hewitt, to Hearing Examiner, with copies to Dirk Danley, Jr., Maria Perez, Joseph Adams, Esq., Amanda Swindle, Esq., Michael Jacob, Esq., Tina Boone, Lauren Schaefer, Erica Temerario, and Joseph Madden, Esq., dated Friday, August 21, 2023 7:49 AM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation*: Prepared for Bermuda Lakes RV Resort RVPD, SEZ2022-00017, Lee County Hearing Examiner Public Hearing, dated August 23, 2023 (multiple pages – 8.5"x11")[color]

IX. 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.

X. Appeals

This Hearing Examiner Decision is final on the date rendered. The Decision may be appealed to the Circuit Court in Lee County within 30 days of the date rendered. Appeal is by Petition for *Writ of Certiorari* in accordance with LDC 34-146.

XI. 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.

This Decision rendered September 1, 2023.

A handwritten signature in black ink that reads "Amanda L. Rivera". The signature is written in a cursive style with a horizontal line extending to the right.

Amanda L. Rivera
Deputy Hearing Examiner

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

Exhibits to Hearing Examiner Decision

- A: Legal Description and Vicinity Map
- B: Site Plan

Banks Engineering
Professional Engineers, Planners & Land Surveyors
FORT MYERS ♦ SARASOTA ♦ PORT CHARLOTTE

DESCRIPTION
OF A
PARCEL OF LAND
LYING IN
SECTION 3 AND SECTION 4, TOWNSHIP 44 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 3 AND SECTION 4, TOWNSHIP 44 SOUTH, RANGE 25 EAST, BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERLY CORNER COMMON TO SAID SECTION 3 AND 4; THENCE N.89°22'11"E. ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3 FOR 1089.94 FEET; THENCE N.00°58'12"W. PARALLEL WITH THE WEST LINE OF SAID FRACTION FOR 30.00 FEET TO AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF TICE STREET (WIDTH VARIES) AND THE POINT OF BEGINNING; THENCE CONTINUE N.00°58'12"W. ALONG SAID PARALLEL LINE AND THE BOUNDARY OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3601, AT PAGE 1183 OF THE PUBLIC RECORDS OF SAID LEE COUNTY FOR 630.46 FEET; THENCE S.89°22'11"W. ALONG SAID BOUNDARY PARALLEL WITH THE SOUTH LINE OF SAID FRACTION FOR 989.95 FEET; THENCE N.00°58'12"W. ALONG SAID BOUNDARY FOR 362.53 FEET TO THE SOUTHEAST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4856, AT PAGE 1115 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE S.89°10'12"W. ALONG THE SOUTH LINE OF SAID LANDS FOR 99.99 FEET TO THE SOUTHWEST CORNER OF SAID LANDS AND A INTERSECTION WITH THE EAST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4; THENCE S.00°58'12"E. ALONG THE EAST LINE OF SAID FRACTION FOR 362.00 FEET TO THE SOUTHEAST CORNER OF SAID FRACTION; THENCE S.88°53'17"W. ALONG THE SOUTH LINE OF SAID FRACTION FOR 331.09 FEET TO THE SOUTHWEST CORNER OF SAID FRACTION; THENCE N.00°57'46"W. ALONG THE WEST LINE OF SAID FRACTION FOR 661.52 FEET TO THE NORTHWEST CORNER OF SAID FRACTION; THENCE N.89°02'25"E. ALONG THE NORTH LINE OF SAID FRACTION FOR 331.01 FEET TO AN INTERSECTION WITH THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 3 AND THE WEST LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 4856, AT PAGE 1115; THENCE N.00°58'12"W. ALONG SAID WEST LINE FOR 456.32 FEET TO THE NORTHWEST CORNER OF SAID LANDS; THENCE N.89°10'12"E. ALONG THE NORTH LINE OF SAID LANDS FOR 99.99 FEET TO THE NORTHEAST CORNER OF SAID LANDS AND A INTERSECTION WITH THE BOUNDARY LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3601, AT PAGE 1183 THENCE ALONG THE BOUNDARY OF SAID LANDS THE FOLLOWING DESCRIBED COURSES N.89°10'12"E. FOR 601.79 FEET; THENCE S.00°58'12"E. FOR 8.00 FEET; THENCE N.89°10'12"E. FOR 730.58 FEET TO AN INTERSECTION WITH THE WEST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3615, AT PAGE 154 OF SAID PUBLIC RECORDS; THENCE ALONG THE BOUNDARY OF SAID LANDS THE FOLLOWING DESCRIBED COURSES S.00°19'44"E. FOR 682.22 FEET; THENCE N.89°22'11"E. FOR 335.15 FEET TO AN INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF LEXINGTON AVENUE; THENCE S.00°58'12"E. ALONG SAID WEST LINE FOR 119.99 FEET TO THE NORTHEAST CORNER OF LOT 1, LEXINGTON COMMERCE CENTER AS RECORDED IN PLAT BOOK 63, AT PAGE 98 AND 99 OF PUBLIC RECORDS OF SAID LEE COUNTY; THENCE S.89°22'11"W. ALONG THE NORTH LINE OF SAID LOT FOR 336.49 FEET TO THE NORTHWEST CORNER OF SAID LOT; THENCE S.00°19'44"E. ALONG THE WEST LINE OF LOTS 1 AND 2 OF SAID LEXINGTON COMMERCE CENTER FOR 311.91 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1903, AT PAGE 4558 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N.89°22'11"E. ALONG THE NORTH LINE OF SAID LANDS FOR 164.93 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE S.00°38'35"E. ALONG THE EAST LINE OF SAID LANDS FOR 630.45 FEET TO THE SOUTHEAST CORNER OF SAID LANDS AND AN INTERSECTION WITH SAID NORTH RIGHT-OF-WAY LINE OF TICE STREET; THENCE S.89°22'11"W. ALONG SAID NORTH LINE FOR 491.32 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAIN 48.78 ACRES, MORE OR LESS

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

BEARINGS, DISTANCES AND COORDINATES ARE BASED ON THE "STATE PLANE COORDINATES SYSTEM" FLORIDA WEST ZONE 1983/90 ADJUSTMENT WHEREIN THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA BEARS N.89° 22' 25"E. THE AVERAGE SCALE FACTOR IS 0.999946104.

DESCRIPTION PREPARED 09-15-05
DESCRIPTION REVISED 04-01-14


RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009
DATE SIGNED 6-19-14

REVIEWED
SE22022-00017
Rick Burris, Principal
Planner
Lee County DCD/Planning
4/25/2023

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SHEET 1 OF 2

Banks Engineering, Inc.

PROFESSIONAL ENGINEERS, LAND SURVEYORS & PLANNERS
FLORIDA BUSINESS CERTIFICATION NUMBER LB 6890
10511 SIX MILE CYPRESS PARKWAY - SUITE 101
FORT MYERS, FLORIDA 33912
(239) 939-5490

SKETCH OF DESCRIPTION

OF
A TRACT OR PARCEL OF LAND LYING IN
SECTION 3 AND 4, TOWNSHIP 44 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA



1" = 300'

LEGEND:

PG. INDICATES PAGE
PGS. INDICATES PAGES
P.B. INDICATES PLAT BOOK
P.I. INDICATES POINT OF INTERSECTION
O.R. INDICATES OFFICIAL RECORDS BOOK

REVIEWED
SE22022-00017
Rick Burris, Principal
Planner
Lee County DCD/Planning
4/25/2023

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

Richard M. Ritz

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009

- DATE SIGNED: 06-19-14
- THIS SKETCH OF DESCRIPTION IS NOT VALID
WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOTES:

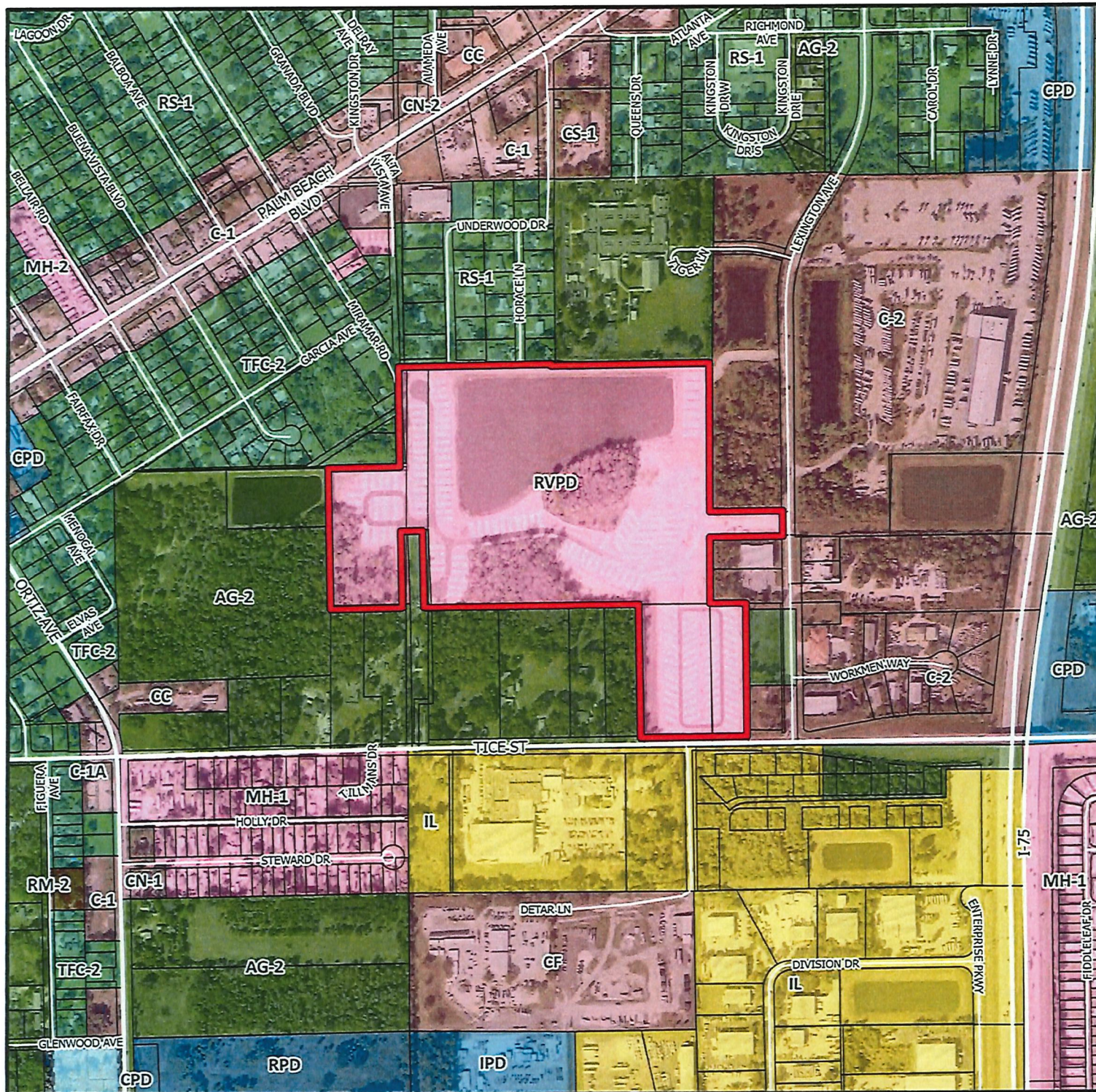
- 1.) SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
- 2.) BEARING, DISTANCES AND COORDINATES ARE BASED ON THE "STATE PLANE COORDINATES SYSTEM" FLORIDA WEST ZONE 1983/90 ADJUSTMENT WHEREIN THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA BEARS N 89°22'25" E

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PREPARED 09-15-05
REVISED 04-01-14
SHEET 2 OF 2

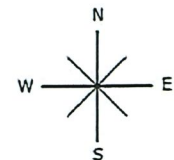
SEZ2022-00017

Zoning



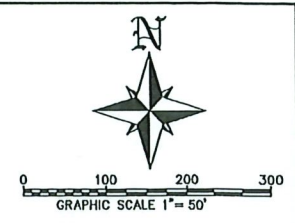
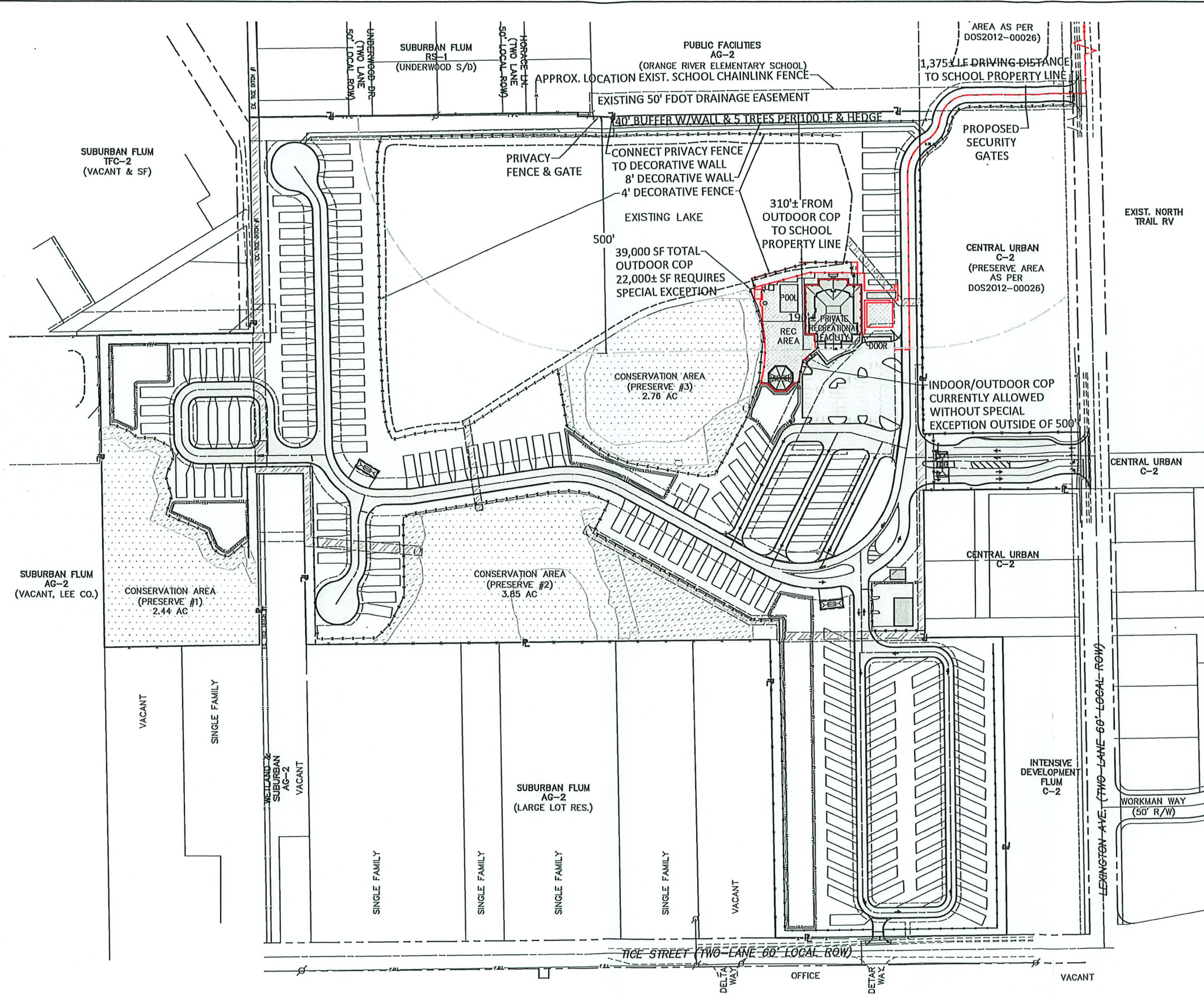
 Subject Property

 City Limits



0 500 1,000
Feet

 Lee County
Southwest Florida



LEGEND:

- OUTDOOR COP
- DRIVING DISTANCE TO SCHOOL

PARKING REQUIRED:
 31 SPACES INCLUDING 2 H/C SPACES
 (3.5 SPACE / 1,000 SF)
 8,992 SF x (3.5 SPACES / 1,000 SF)
 1 H/C SPACE PER 25 SPACES = 2 H/C

PARKING PROVIDED:
 34 SPACES INCLUDING 2 H/C SPACES

EXHIBIT B

PREPARED FOR: EXIT 24, LLC 5270 ORANGE RIVER BLVD. FT. MYERS, FL 33905 PHONE: (239) 533-8317 FAX: (239) 693-0141		BANKS ENGINEERING Professional Engineers, Planners, & Land Surveyors Serving The State Of Florida 10511 9th Mile Cypress Parkway Fort Myers, Florida 33908 PHONE: (239) 939-5490 FAX: (239) 939-2523 ENGINEERING LICENSE # EB 0469 SURVEY LICENSE # LB 0660 WWW.BANKSENDO.COM		SPECIAL EXCEPTION FOR COP SITE PLAN BERMUDA LAKES RV RESORT LEE COUNTY, FLORIDA	
DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED
11/26/2014	2062NT	_MSP	SWM	EMH	SWM
SCALE 1" = 100'					SHEET 03

CONSTRUCTION DOCUMENTS OF
BERMUDA LAKES RV RESORT - CLUBHOUSE
5051 BERMUDA LAKES DRIVE
FORT MYERS, FL 33905



PDS
ARCHITECTURE

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11/1/2011

LEGEND	
WALL TYPE	
	NEW CMU WALL
	NEW METAL STUD FRAMED WALL
FIRE EXTINGUISHER LEGEND	
	SURFACE MTD. FIRE EXTINGUISHER CABINET 5 LB ABC TYPE (3A 10BC)
LIFE SAFETY	
	INDICATES ASSEMBLY OCCUPANCY (UNCONCENTRATED)
	INDICATES EXERCISE ROOM OCCUPANCY
	INDICATES FITCHED COVN. OCCUPANCY
	INDICATES AUXILIARY STORAGE OCCUPANCY
	PROHIBED OCCUPANT LOAD OPENING WIDTH ALLOWABLE OCCUPANT LOAD
	EMERGENCY LIGHT / BATT. BACKED UP
	WALL MOUNTED EXIT SIGN
	CEILING MOUNTED EXIT SIGN
	PATH OF TRAVEL

