

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

REZONING: REZ2022-00019

Regarding: LEE CORNERS REZONE

Location: 4915, 4921, 4923 Lee Boulevard, and
4918, 4920, 4922, and 4924 Lee Circle South

Lehigh Acres Planning Community
(District 5)

Hearing Date: September 7, 2023

Record Closed: September 14, 2023

I. Request

Rezone 2.8± acres from Commercial Planned Development (CPD) and Residential Single-Family (RS-1) to Community Commercial (CC).¹

The property legal description is set forth in Exhibit A.

II. Hearing Examiner Decision

Approved.

III. Discussion

Applicant originally requested to rezone 2.8± acres to General Commercial (CG) in Lehigh Acres. The property is vacant, located at the intersections of Lee Street and Lee Boulevard/Lee Circle South.

Staff found the requested CG district permits uses too intense for surrounding residential lands and recommended denial.² However, staff determined the Community Commercial (CC) district is appropriate for the site.³ Applicant agreed.⁴

¹ Applicant originally sought rezoning to General Commercial (CG) but subsequently requested the CC district upon Staff's recommendation of denial to CG. See Applicant's Ex. a: 48 Hour Letter dated Sept. 5, 2023.

² See Staff Report (pg. 1-4).

³ See *Id.* at pg. 4.

⁴ See Applicant Ex. a: 48 Hour Submittal; Quattrone Testimony.

Applicant has a pending development order to construct a drive-through pharmacy, permitted in the CC district. Because CC zoning is a “conventional” district, it is not possible to impose conditions on approval. Rather, the CC use regulation table governs permitted uses, subject to limitations imposed by the Lee Plan.⁵ Deviations from the Land Development Code (LDC) may be achieved by variance.

The Department of Community Development staff recommended approval of the CC district, finding the request satisfied LDC review criteria.

Zoning Review Criteria

Before approving a rezoning, 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
- G. Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.⁶

History

The property consists of 11 contiguous platted lots in Lehigh Acres.⁷ Most of the site is zoned CPD, except for one lot zoned RS-1.⁸ The CPD lands are approved for a variety of commercial uses including retail, restaurants, and office.⁹

In 2016, the CPD property received development order approval for a commercial retail center.¹⁰ Construction under the development order never commenced.

⁵ LDC §34-621.

⁶ See LDC §34-145(d)(4)(a)(1).

⁷ Three lots are combined under a single STRAP number. See Staff Report (pg. 1).

⁸ See Staff Report (pg. 1), *referencing* Lee Corners CPD Z-08-051; Staff Report (Attachment J).

⁹ See *Id.*

¹⁰ DOS2016-00010 is approved for a commercial retail center with parking, drainage, utilities, and landscaping. Quattrone Testimony; See Applicant's Ex. 1 (slide 5).

Applicant subsequently acquired the RS-1 lot abutting CPD lands to the east. The request seeks to unify zoning across CPD property and the RS-1 lot to achieve a development program similar to the approved CPD.



*CPD lands are shown in blue with the RS-1 lot in green; the property is outlined in red

Character of the Area

The site is bordered by Lee Boulevard on the north, Lee Street to the west, and Lee Circle to the south. Commercial development lines Lee Boulevard with scattered residential development throughout the area.

Lee Plan/Compatibility

Planned developments must be consistent with the Lee Plan.¹¹ Zoning requests must be compatible with existing/planned uses in the area and minimize potential negative effects on neighboring property.¹²

The Lee Plan Future Land Use Map designates the property as Central Urban in the Lehigh Acres Planning Community.¹³ Central Urban areas comprise the County's urban core with access to a comprehensive array of services and infrastructure.¹⁴ Typical development patterns include a mix of residential, commercial, civic, and other relatively intense uses.

¹¹ Lee Plan Policy 2.1.2; LDC §34-411(a).

¹² LDC §34-145(d)(4), §34-411; Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

¹³ Lee Plan Maps 1-A, 1-B, 2-A, 2-B. The property is not within Lehigh Acres Overlays.

¹⁴ Lee Plan Policy 1.1.3.

The request proposes commercial uses along a major road corridor in Lehigh Acres.¹⁵ The Board previously found the property suitable for commercial development similar to the requested CC district.¹⁶ There have been no changes to alter a finding of Lee Plan consistency.

The Lehigh community plan emphasizes safe and secure neighborhoods with pedestrian friendly commercial nodes.¹⁷ The CC district permits commercial uses suitable for the site's location between a heavily developed corridor and residential areas.¹⁸

Development of commercial uses triggers design criteria imposed by the LDC.¹⁹ These standards include right-of-way buffering, landscaping, and setback from residential properties. Code mandated development standards minimize potential offsite impacts ensuring compatibility with surrounding land uses.²⁰

The CC zoning district is consistent with area development patterns and compatible with nearby land uses.²¹ Commercial development of the property meets the definition of infill development contributing to contiguous development patterns.²²

The requested CC rezoning is consistent with the Lee Plan and compatible with the surrounding area.

Transportation/Traffic

Rezoning requests must provide access sufficient to support the proposed development intensity.²³ Expected impacts on transportation facilities must be addressed by existing County regulations.²⁴

The site fronts three roads: Lee Boulevard, Lee Circle, and Lee Street. The Lee Plan discourages direct access to Lee Boulevard.²⁵ However, existing

¹⁵ Most of the site is already zoned CPD, permitting a broad range of commercial uses.

¹⁶ Z-08-051.

¹⁷ Lee Plan Goal 25: Ensure development converts Lehigh into a vibrant residential and commercial community consisting of: safe and secure neighborhoods; vibrant commercial and employment centers; pedestrian friendly mixed use activity centers; and neighborhood nodes with green space and recreational opportunities.

¹⁸ LDC §§34-841(b), 34-844.

¹⁹ LDC §10-600 *et seq.* See also LDC §33-1411 *et seq.* Ensuring compatibility with surrounding land uses. Lee Plan Policies 5.1.5, 6.1.4.

²⁰ See *Id.*; Lee Plan Policies 6.1.1, 6.1.6.

²¹ The CC zoning district is consistent with land uses in the Central Urban category. Lee Plan Policies 2.1.1, 5.1.5, 6.1.4.

²² Lee Plan Glossary. Lee Plan Goal 6 and Objective 2.1, Policy 6.1.7.

²³ LDC §34-145(d)(4)a.1(d).

²⁴ LDC §34-145(d)(4)a.1(e).

²⁵ Lee Plan Policy 25.8.1.

development approvals permit access to Lee Boulevard.²⁶ The request improves site access by adding a parcel farther from the Lee Street/Lee Boulevard intersection, increasing separation distances.²⁷

The LDC does not require Traffic Impact Statements (TIS) for conventional zoning requests. Developer must submit a TIS during development order review and must address site related improvements at that time.²⁸ The project will be integrated with adjacent and nearby development with automotive, pedestrian, and bicycle connections.²⁹

Future development will be subject to road impact fees.³⁰

Environmental

Rezoning requests may not adversely affect environmentally critical or sensitive areas/natural resources.³¹

There are no environmental features on the property.³²

Future development must comply with LDC open space, landscaping, and buffering requirements.³³

Public Services and Infrastructure

The Lee Plan requires an evaluation of available services and infrastructure during the rezoning process.³⁴

Public services include facilities, capital improvements, and other infrastructure necessary to support development at urban levels of density and intensity.³⁵ The Lee Plan requires evaluation of available public services during the rezoning process.³⁶

²⁶ See Staff Report (pg. 6, Attachment F, I-J); Post-Hearing Written Submissions dated Sept. 14, 2023. The CPD and development order approved access directly on Lee Boulevard. Hearing discussion detailed the timing delicacies of the legal status of the access point upon rezoning in conjunction with development order modifications. The parties resolved timing concerns as evidenced in post-hearing submittals.

²⁷ See Post-Hearing Written Submissions dated Sept. 14, 2023; Roberts Testimony.

²⁸ Lee Plan Objective 39.1, Policy 39.1.1; LDC 10-8, 10-287.

²⁹ Lee Boulevard includes a shared use path.

³⁰ LDC §2-265.

³¹ LDC §34-145(d)(4)a.1(f).

³² See Staff Report (Attachment G).

³³ LDC Chapters 10, 33.

³⁴ Lee Plan Policy 2.2.1; LDC §34-145(d)(4)a.1(g).

³⁵ 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.

³⁶ Lee Plan Policy 2.2.1.

The property has adequate access to public services and infrastructure.³⁷ Fire, EMS, and law enforcement have stations in proximity to the site.³⁸ Potable water and sanitary sewer serve the area with sufficient capacity.³⁹ Transit routes and a shared use path run along Lee Boulevard.⁴⁰

Development will be subject to impact fees.⁴¹

Public

Property owners rezoning land in the Lehigh Acres planning community must conduct one advertised public information meeting.⁴² Applicant presented the request to the Lehigh Acres Architectural, Planning, & Zoning Review Board.⁴³ Meeting minutes reflect no objection to the request.⁴⁴

One member of the public attended the Hearing Examiner hearing.⁴⁵

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation of approval. The requested CG district is too intense, but the CC zoning district satisfies LDC approval criteria.

Findings in Support of Approval

Based on the testimony and evidence presented in the record, the Hearing Examiner approves the requested CC zoning district and makes the following findings and conclusions:

- A. The CC zoning district complies with the Lee Plan. Lee Plan Goals 2, 6, 25, 60, 61, 158, Objectives 2.2, 4.1, 25.6, 25.8, Policies 1.1.3, 1.6.5, 2.1.1, 2.1.2, 2.2.1, 2.2.2, 6.1.4, 6.1.6, 6.1.7, 17.3.5, 25.6.1, 25.8.3, 25.9.1, Lee Plan Maps 1-A, 1-B, 2-B, 3-C, 3-D.

³⁷ Lee Plan Glossary definition of Public Services, Goal 4, Policies 1.1.2, 2.2.1, Standards 4.1.1, 4.1.2.

³⁸ Lehigh Acres Fire Station 103 is approximately 5,400 feet to the southeast on Gunnery Road. Lee County Sheriff East District serves the area. See Staff Report (pg. 8).

³⁹ See Staff Report (pg. 8, Attachment E).

⁴⁰ Lee Tran route 110 serves the site. See Staff Report (pg. 8); Lee Plan Maps 3-C, 3-D.

⁴¹ LDC Chapter 2.

⁴² LDC §33-1401(a).

⁴³ Lee Plan Policy 17.3.5. See Staff Report (Attachment H). The meeting was held on December 15, 2022. Applicant also presented the companion development order to the Board in 2017. See Attachment J.

⁴⁴ Applicant presented the request for the more intense CG district without objection. See Staff Report (Attachment H).

⁴⁵ The speaker posed questions to the Applicant but did not object to the rezoning.

B. The CC Commercial zoning district:

1. Meets the Land Development Code and other County regulations. LDC Chapters 2, 10, 33, 34; Lee Plan Policy 6.1.6.
2. Is compatible with existing and planned uses in the surrounding area. Lee Plan Goal 25, Objectives 2.1, 2.2, 25.6, Policies 1.1.3, 2.1.1, 2.2.1, 5.1.5, 6.1.4, 6.1.7, 25.6.1.
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, 25.8.3, 39.1.1, 39.2.1.
4. Will not adversely affect environmentally critical/sensitive areas or natural resources. Lee Plan Policy 6.1.6.
5. Will be served by public services and infrastructure. Lee Plan Goals 2, 4, Objectives 2.1, 2.2, 4.1, 6.1, Policies 1.1.3, 2.2.1, 6.1.4, 25.9.1, Standards 4.1.1, 4.1.2.

Findings in Support of Approval

Date of decision: October 12, 2023.



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

A Legal Description

B Exhibits Presented at Hearing

C Participants

Exhibit A
Legal Description

HARRIS-JORGENSEN, LLC.
3048 DEL PRADO BLVD. S., SUITE 100
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921
FLORIDA CERTIFICATE OF
AUTHORIZATION LB6921

SKETCH TO ACCOMPANY DESCRIPTION
A PARCEL OF LAND LYING
IN BLOCK 55, LEHIGH ACRES
SECTION 29, TOWNSHIP 44 SOUTH, RANGE 26 EAST,
LEHIGH ACRES, LEE COUNTY, FLORIDA

THIS IS NOT A BOUNDARY SURVEY
LEE BOULEVARD
SEE EXHIBIT "A", SHEET 2 OF 2
FOR DESCRIPTION
(2)

NO.	RADIUS	DELTA	ARC	CHORD	BEARING
1	25.00'	89°15'42"	38.95'	35.13'	N.82°18'13"E.
2	1493.77'	16°53'23"	440.34'	438.74'	S.61°30'37"E.
3	1629.90'	04°17'06"	121.90'	121.87'	N.67°48'46"W.
4	1766.03'	13°20'35"	411.27'	410.34'	N.58°59'56"W.

LINE	BEARING	DISTANCE
L1	N.37°40'22"E.	78.58'
L2	N.53°13'45"E.	55.93'
L3	N.52°19'38"W.	20.43'

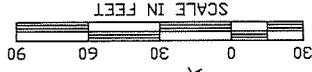
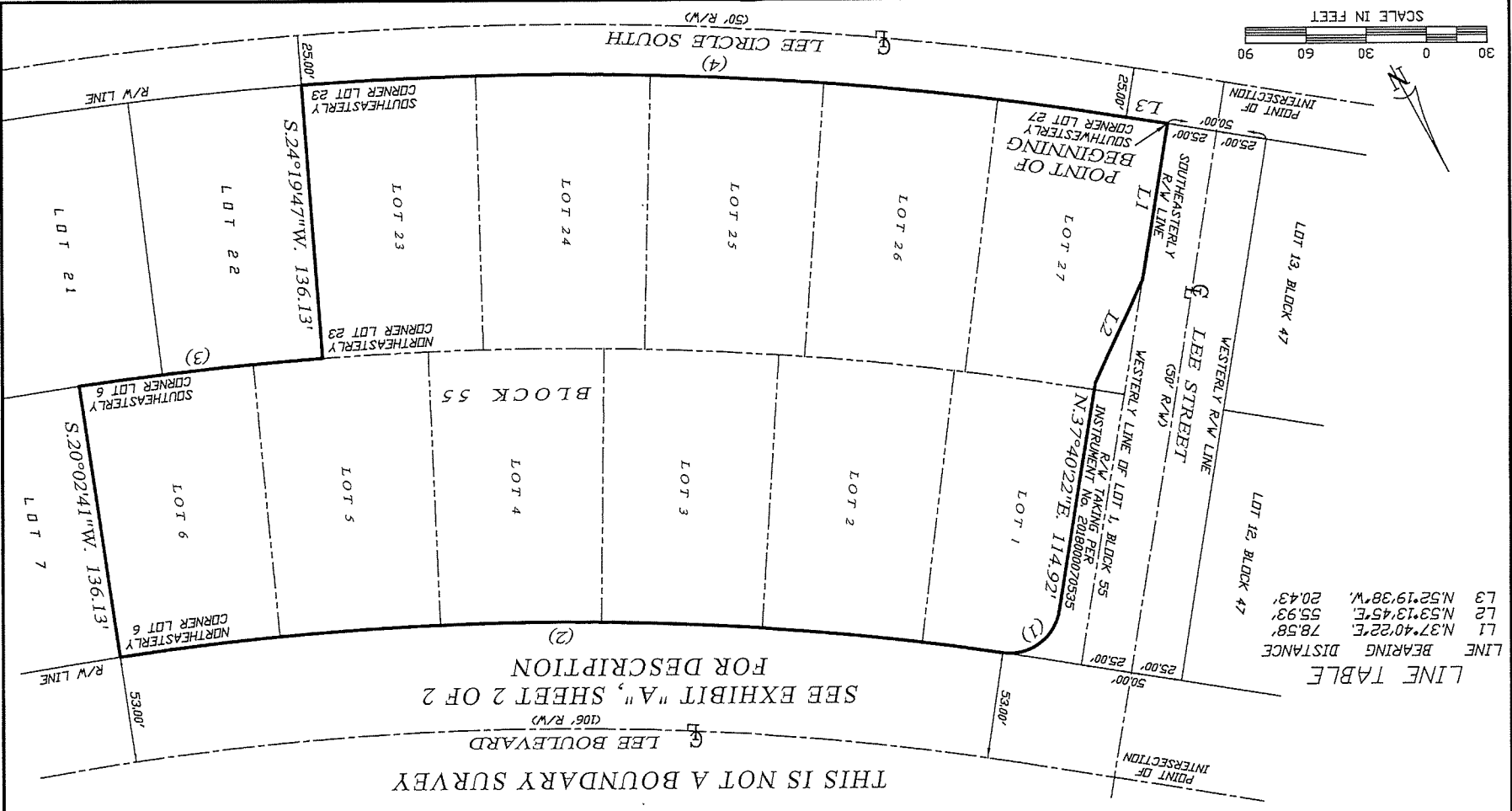


EXHIBIT A

DESCRIPTION TO ACCOMPANY SKETCH
EXHIBIT "A"

DESCRIPTION:

A PARCEL OF LAND BEING LOTS 2, 3, 4, 5, 6, 23, 24, 25 AND 26, BLOCK 55, REPLAT OF TRACT B, UNIT 7, LEHIGH ACRES, SOUTH 1/2 OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 26 EAST AS RECORDED IN PLAT BOOK 26, PAGE 160 AND PART OF LOTS 1 AND 27, BLOCK 55, UNIT 7, LEHIGH ACRES, AS RECORDED IN PLAT BOOK 15, PAGE 80, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF THE AFORESAID LOT 27; THENCE RUN N.37°40'22"E. ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF LEE STREET (50 FEET WIDE) FOR 78.58 FEET; THENCE RUN N.53°13'45"E. ALONG SAID RIGHT-OF-WAY LINE FOR 55.93 FEET; THENCE N.37°40'22"E. ALONG SAID RIGHT-OF-WAY LINE FOR 114.92 FEET TO A POINT OF CURVATURE; THENCE RUN NORTHEASTERLY FOR 38.95 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHERLY, WITH A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 89°15'42", A CHORD BEARING OF N.82°18'13"E. AND A CHORD DISTANCE OF 35.13 FEET TO A POINT OF REVERSE CURVATURE, SAID POINT LYING ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEE BOULEVARD (106 FEET WIDE); THENCE RUN SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE FOR 440.34 FEET ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY, WITH A RADIUS OF 1493.77 FEET, A CENTRAL ANGLE OF 16°53'23", A CHORD BEARING OF S.61°30'37"E. AND A CHORD DISTANCE OF 438.74 FEET TO THE NORTHEASTERLY CORNER OF LOT 6 OF THE AFORESAID BLOCK 55; THENCE RUN S.20°02'41"W. FOR 136.13 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 6, SAID POINT LYING ON A CURVE; THENCE RUN NORTHWESTERLY FOR 121.90 FEET ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY, WITH A RADIUS OF 1629.90 FEET, A CENTRAL ANGLE OF 04°17'06", A CHORD BEARING OF N.67°48'46"W. AND A CHORD DISTANCE OF 121.87 FEET TO THE NORTHEASTERLY CORNER OF LOT 23 OF THE AFORESAID BLOCK 55; THENCE RUN S.24°19'47"W. FOR 136.13 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 23, SAID POINT LYING ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF LEE CIRCLE SOUTH (50 FEET WIDE); THENCE RUN NORTHWESTERLY ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE FOR 411.27 FEET ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY, WITH A RADIUS OF 1766.03 FEET, A CENTRAL ANGLE OF 13°20'35", A CHORD BEARING OF N.58°59'56"W. AND A CHORD DISTANCE OF 410.34 FEET TO A POINT OF TANGENCY; THENCE RUN N.52°19'38"W. ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE FOR 20.43 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 122172 SQUARE FEET OR 2.805 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF THE AFORESAID LEE STREET AS BEING N.37°40'22"E.

Phillip M
Mould, P.S.M.
6515 State of
Florida
Date: 2022.05.16
08:06:23 -04'00'

REVIEWED
REZ2022-00019
Hunter Searson, GIS
Planner
Lee County Government
4/5/2023

PHILLIP M MOULD
LS6515
MAY 16, 2022

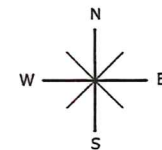
NOTE:
THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; SJ-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.



REZ2022-00019

Zoning

 Subject Property



0 500
Feet



Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Peter Blackwell, Planner, date received June 28, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County DCD Staff for Lee Corners Rezone, REZ2022-00019, Conventional Rezoning Request (multiple pages – 8.5"x11")[color]
3. *Résumé:* For Md Rakibul Alam, Ph.D., EIT (2 pages – 8.5"x11")
4. *Written Submissions:* Memorandum from Peter Blackwell, planner, to Amanda Rivera, Deputy Hearing Examiner, dated September 14, 2023 (multiple pages – 8.5"x11")

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Al Quattrone, to Shelly Stalnos, Sharon Hrabak, and Maria Perez, with copies to Peter Blackwell, and Tracy Toussaint, dated Tuesday, September 5, 2023, 3:54 PM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Al Quattrone for Lee Corners Conventional Rezoning, Lee County Hearing Examiner Public Hearing, dated Thursday, September 9, 2023 (multiple pages – 8.5"x11")[color]

Exhibit C

HEARING PARTICIPANTS

County Staff:

1. Dirk Danley, Jr.
2. Brian Roberts

Applicant Representatives:

1. Al Quattrone

Public Participants:

1. Derek Felder