

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

REZONING: REZ2023-00031

Regarding: 14290 N. CLEVELAND AVENUE

Location: 14180 North Cleveland Avenue
North Fort Myers Planning Community
(District 4)

Hearing Date: May 9, 2024

I. **Request**

Rezone 0.52± acres from Agricultural (AG-2) to Commercial (C-1).

The property legal description is set forth in Exhibit A.

II. **Hearing Examiner Decision**

Approved

III. **Discussion**

Applicant seeks to rezone 0.52± acres to the C-1 district in North Fort Myers. The property is located east of US 41, between Pondella Road and Pine Island Road.¹

Applicant owns adjacent parcels zoned C-1. The requested rezoning creates a cohesive 6.41± acre property,² unifies zoning for future development, and brings the site into greater compliance with Lee Plan designations and the surrounding area.³

¹ The property is within the Commercial Corridor Overlay in the North Fort Myers Planning Community. See LDC §33-1566.

² The 6.41± acre property is outlined in black on the map below.

³ Of the three parcels: (1) the northern parcel hosts an auto sales lot with open storage; (2) the southern parcel hosts a shed business; and (3) the subject parcel remains vacant. Workman and Martin Testimony. Current agricultural (AG-2) zoning is not aligned with the intensity of uses the Intensive Development category contemplates. See Lee Plan Policy 1.1.2.



The property remains vacant, flanked by commercial development along the US 41 corridor. The site is well suited for more intense development given its designations in the Commercial Corridor Overlay of the North Fort Myers Planning Community, the Intensive Development category, and the Mixed-Use Overlay.⁴ The record indicates Applicant intends to develop a mix of commercial and multi-family residential uses. The requested C-1 district supports a mixed development plan.

C-1 is a conventional zoning district.⁵ Therefore, it is not possible to impose conditions on approval. The C-1 use regulation table will govern permitted uses, subject to limitations imposed by the Lee County Comprehensive Plan (Lee Plan).⁶ Deviations from requirements of the Land Development Code (LDC) may be granted by variance.⁷ The Hearing Examiner has final decision-making authority on applications for conventional rezoning.⁸

Department of Community Development staff recommended approval of the request, finding the proposed C-1 zoning satisfied LDC review criteria.

⁴ Lee Plan Map 1-B, 1-C, 2-A, LDC §§33-1531 *et. seq.*

⁵ LDC §34-612(1), §34-841.

⁶ LDC §34-844.

⁷ LDC §34-621(a)(2).

⁸ LDC §34-145(d)(1)a.

Character of the Area

The property is located north of Pondella Road, east of US 41. Commercial lands abut the parcel to the north/south with scattered residential uses to the east. This portion of the US 41 corridor is heavily developed with retail, auto sales/service, and storage uses.

Public services and infrastructure serve the property including paved roadways, public water, sewer, law enforcement, and fire/EMS.⁹

Lee Plan Consistency/Area Compatibility/LDC Compliance

Rezoning requests must comply with the Lee Plan, meet LDC regulations, and be compatible with area uses.¹⁰ Compatibility is found when land uses exist in proximity to each other, and no use negatively impacts another.¹¹ Requested uses cannot be detrimental to the public welfare or injurious to the neighborhood.¹²

Lee Plan Maps designate the property within the Intensive Development future land use category in the North Fort Myers Planning Community.¹³

Intensive Development lands consist of high density/intensity developments along arterial roads.¹⁴ The proposed C-1 zoning district along US 41 is consistent with land uses anticipated in the Intensive Development category.¹⁵

The LDC identifies the property within the North Fort Myers Planning Community Commercial Corridor Overlay District.¹⁶ The Lee Plan mandates enhanced landscaping, greater buffering/shading of parking areas, improved commercial signage, architectural standards, and provides development incentives for properties within the District.¹⁷ Accordingly, development must adhere to supplemental standards in support of North Fort Myers Planning directives.¹⁸ Attempts to deviate from District standards are subject to greater scrutiny, requiring Applicant to meet LDC variance criteria.¹⁹ Applicant does not seek variances with this request.

⁹ See Staff Report (pg. 1-2, Attachment F-G).

¹⁰ LDC §34-145(d)(4)a.1, §34-491.

¹¹ Florida Statutes §163.3164(9); LDC §34-2.

¹² LDC §34-145(c)(3)a.4.

¹³ Lee Plan Map 1-A, 1-B, 2-A, Policy 1.1.2.

¹⁴ Lee Plan Policy 1.1.2.

¹⁵ Lee Plan Policy 1.1.2. Property may not be rezoned to a district inconsistent with its future land use map category or text of the Lee Plan. LDC §34-491(c).

¹⁶ LDC §33-1566.

¹⁷ Lee Plan Policy 30.2.5, LDC §§33-1566 *et. seq.*

¹⁸ Lee Plan Policy 30.2.5, LDC §33-1571 *et. seq.*

¹⁹ *Id.*

The property also sits within the Mixed-Use Overlay (MUO).²⁰ The proposal is consistent with the MUO as it infills development, diversifies uses, offers pedestrian connectivity, provides public open space, and revitalizes property along a major corridor.²¹ Allowing mixed use development at this location furthers economic objectives by expanding employment opportunities.²²

The Lee Plan directs new development to protect residential neighborhoods.²³ The property is distanced from the nearest residential use by existing commercial uses.²⁴ Development must comply with buffer and screening requirements to minimize off-site impacts to residential areas. Accordingly, the request does not negatively impact area residents.

The Hearing Examiner finds the requested C-1 zoning consistent with the Lee Plan and compatible with the surrounding area.

Transportation

Rezoning requests must provide access sufficient to support the proposed development intensity.²⁵ Expected impacts on transportation facilities must be addressed by existing County regulations.²⁶

The property fronts US 41/North Cleveland Avenue, a State maintained arterial road.²⁷ There is sufficient access to support site development.²⁸

The LDC does not require a Traffic Impact Statement (TIS) for conventional zoning requests. Rather, the LDC mandates review of traffic impacts during the development order process. Applicant must comply with LDC transportation requirements at the time of development order review.²⁹

Environmental

Rezoning requests may not adversely affect environmentally critical or sensitive areas/natural resources.³⁰

²⁰ Lee Plan Map 1-C.

²¹ See Goal 11, 30, Objective 2.1, 2.2, 11.2, 30.2, 30.3, Policies 11.2.2, 11.2.5, 11.2.6, 30.2.3, 30.2.7, 30.3.1, 30.5.3.

²² Lee Plan Goal 158, Objective 158.2.

²³ Lee Plan Policy 5.1.5; Staff Report (pg. 5).

²⁴ See Staff Report (pg. 3). Applicant must meet LDC buffering standards at the time of development.

²⁵ LDC §34-145(d)(4)a.1(d).

²⁶ LDC §34-145(d)(4)a.1(e).

²⁷ See Staff Report (pg. 4-5). FDOT will determine access connections to US 41.

²⁸ See *Id.*

²⁹ LDC ch. 10, §33-1531 *et. seq.*

³⁰ LDC §34-145(d)(4)a.1(f).

The property is not within a flow-way and does not show evidence of protected species.³¹ Staff observed indigenous vegetation which will be addressed prior to commencing development.³²

Applicant must comply with LDC open space, buffer, water management, and environmental requirements during development order review.³³ Applicant must meet supplemental buffering/screening standards for the North Fort Myers Planning Community.³⁴

Public Services

The Lee Plan requires an evaluation of available services and infrastructure during the rezoning process.³⁵

The area is served by urban services and infrastructure. The property directly accesses an arterial road connecting to the greater county network.³⁶ Public water and sanitary sewer services are available to the site.³⁷ The North Fort Myers Fire District, Lee County Sheriff, and Lee County EMS provide emergency services.³⁸ Public transit serves the area with a Lee Tran bus shelter in proximity.³⁹

Public Concerns

Applicant presented its request at a community meeting in compliance with LDC requirements.⁴⁰ The North Fort Myers Planning Panel unanimously supported the request.⁴¹ Applicant must conduct additional meetings before the North Fort Myers Design Review Panel prior to commencing development.⁴²

No members of the public appeared at the hearing before the Hearing Examiner.

³¹ See Staff Report (pg. 3). The LDC requires a protected species survey at time of development order. Staff reviewed the site and did not locate protected species or evidence of habitat. See *Id.*

³² *Id.*; Lee Plan Policy 123.2.4. The adjoining parcels are subject to two Code Violations. However, the record reflects the 0.52± acre parcel is not directly named in either violation. Martin and Workman Testimony; See Staff Report (pg. 1, citing VIO2022-03229, VIO2022-03230).

³³ See generally LDC ch. 10, Lee Plan Goal 126, Policy 126.1.4, Standard 4.1.4.

³⁴ See LDC §33-1531 *et. seq.* Attempts to deviate from landscaping/buffering trigger variance review.

³⁵ Lee Plan Policy 2.2.1; LDC §34-145(d)(4)a.1(g).

³⁶ Lee Plan Map 3-B.

³⁷ Provided by Lee County Utilities and FGUA. See Staff Report (pg. 3, Attachment G).

³⁸ See Staff Report (pg. 3). North Fort Myers Fire Station #2 is 1.7± miles and the Sheriff's office is 0.6± miles away. See *Id.*

³⁹ Lee Tran Route 140 runs along North Cleveland Avenue with a sheltered stop 0.19± miles from the site. *Id.*

⁴⁰ LDC §33-1532. See Staff Report (pg. 4, Attachment H). The meeting was held on October 3, 2023.

⁴¹ See Meeting Summary (Attachment H).

⁴² LDC §33-1532.

Conclusion

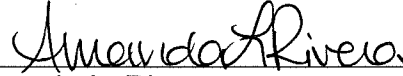
The Hearing Examiner concurs with the staff analysis and recommendation of approval. The requested C-1 zoning district meets LDC criteria for approval.

Findings in Support of Approval

The Hearing Examiner approves the requested C-1 zoning district and finds the proposed C-1 district:

- A. Complies with the Lee Plan. Lee Plan Goals 1, 2, 4, 5, 6, 11, 30, 158, Objectives 2.1, 2.2, 4.1, 5.1, 6.1 11.2, 30.2, 158.2, and Policies 1.1.1, 1.1.2, 2.1.1, 2.2.1, 2.2.2, 5.1.6, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 11.2.1, 11.2.2, 11.2.4, 11.2.5, 17.3.4, 30.1.3, 30.2.3, 30.2.5, 30.2.6, 77.3.7, 123.2.4, 125.1.2, Standards 4.1.1, 4.1.2, 4.1.4; Lee Plan Maps 1-A, 1-B, 2-A, 3-D, 4-E.
- B. Complies with the Land Development Code. LDC §§33-1531 *et. seq.*, §34-621, §34-623, §34-624, §34-841 *et. seq.*
- C. Is compatible with existing and planned uses in the surrounding area. Lee Plan Policies 1.1.2, 2.1.1, 2.2.1, 6.1.4, 6.1.6, 11.2.2, 11.2.5.
- D. Will provide sufficient access to support development. Lee Plan Goal 39, Policy 6.1.1, 6.1.5, 11.2.2, 39.1.1.
- E. Expected Impacts to transportation facilities will be addressed by County regulations. Lee Plan Goal 39, Policies 2.2.1, 6.1.1, 6.1.5, 11.2.1, 39.1.1.
- F. Will not adversely affect environmentally critical/sensitive areas or natural resources. Lee Plan Policy 6.1.6, 30.2.5, 77.3.7, 123.2.4, 125.1.2, Standard 4.1.4.
- G. Will be served by urban services and infrastructure. Lee Plan Goals 2, 4, 6, Objectives 2.1, 2.2, Policies 2.2.1, Standards 4.1.1,

Date of decision: May 10, 2024.

A handwritten signature in black ink, reading "Amanda L. Rivera", written over a horizontal line.

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

Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Elizabeth Workman, Principal Planner, date received April 24, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for REZ2023-00031, 14290 N Cleveland Avenue, dated May 9, 2024 (multiple pages – 8.5"x11")[color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Veronica Martin to Maria Perez, with copies to Elizabeth Workman and Jamie Pringing, dated Thursday, May 2, 2024, 7:21 PM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared for REZ2023-00031, 14290 N Cleveland Avenue, Lee County Hearing Examiner, dated May 9, 2024 (multiple pages – 8.5"x11")[color]

Exhibit C

HEARING PARTICIPANTS

County Staff:

Elizabeth Workman

Applicant Representatives:

Randy Krise

Veronica Martin

Public Participants:

None

Exhibit A
Legal Description

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING FOR PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SAID SECTION 3 WITH THE WEST LINE OF THE EAST ONE-HALF (E 1/2) OF THE WEST ONE-HALF (W 1/2) OF THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SAID SECTION 3; THENCE S89°27'08"E, ALONG SAID NORTH LINE, FOR 168.64 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST ONE-HALF (W 1/2) OF THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SAID SECTION 3; THENCE S00°29'17"E, ALONG SAID EAST LINE, FOR 175.03 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 175 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE OF OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SAID SECTION 3; THENCE N89°27'08"W, ALONG SAID PARALLEL LINE, FOR 62.60 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF STATE ROAD 45 (U.S. 41 / N. CLEVELAND AVENUE - 200-FOOT WIDE PER FDOT RIGHT-OF-WAY MAP 12010-2121); THENCE N39°28'06"W, ALONG SAID EAST RIGHT-OF-WAY LINE, FOR 168.40 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF THE EAST ONE-HALF (E 1/2) OF THE WEST ONE-HALF (W 1/2) OF THE EAST ONE-HALF (E 1/2) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF SAID SECTION 3; THENCE N00°36'05"W, ALONG SAID WEST LINE, FOR 46.04 FEET TO POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.52 ACRES, MORE OR LESS.

SURVEYOR'S NOTES

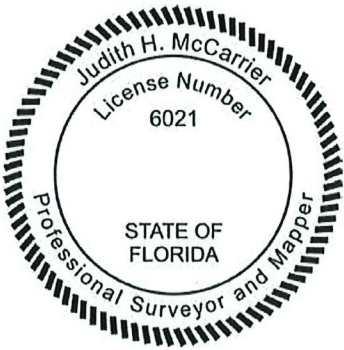
- 1. BEARINGS SHOWN HEREON ARE BASED UPON FIXING THE MONUMENTED EAST LINE OF THE SE 1/4 OF SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST, AS S00°15'43"E.
- 2. THIS MAP IS NOT VALID WITHOUT EITHER THE SIGNATURE AND THE ORIGINAL RAISED SEAL, OR A VALIDATED ELECTRONIC SIGNATURE, OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 3. SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.
- 4. FDOT = FLORIDA DEPARTMENT OF TRANSPORTATION

REVIEWED
REZ2023-00031
Rick Burris, Principal
Planner
Lee County DCD/Planning
2/29/2024

PREPARED BY:

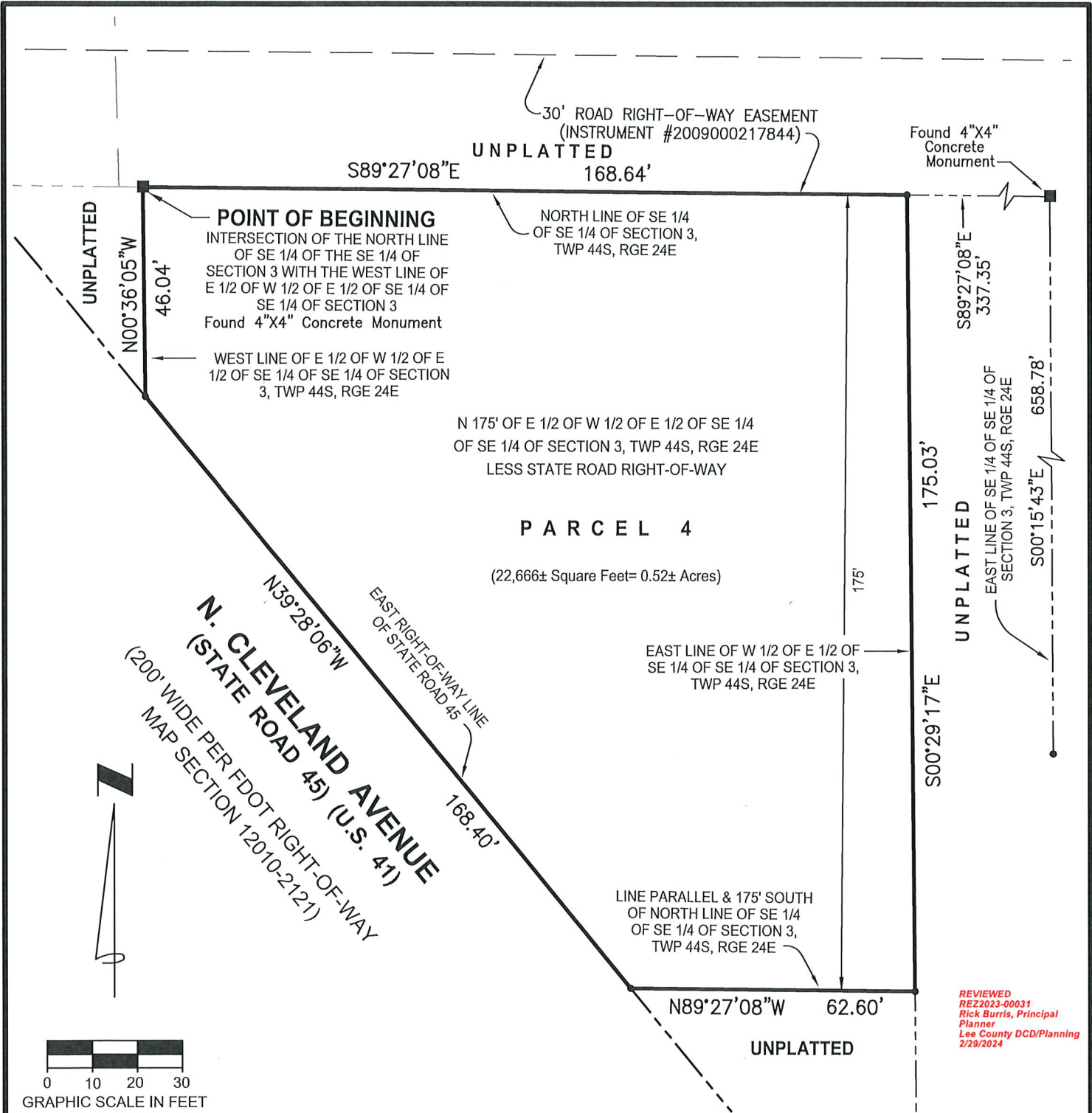
Judith H McCarrier, PSM 2023.09.29
License No. 6021
State of Florida 12:47:10 -04'00'

JUDITH H. McCARRIER
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA LICENSE NO. 6021



SEE SHEET 2 OF 2 FOR SKETCH.

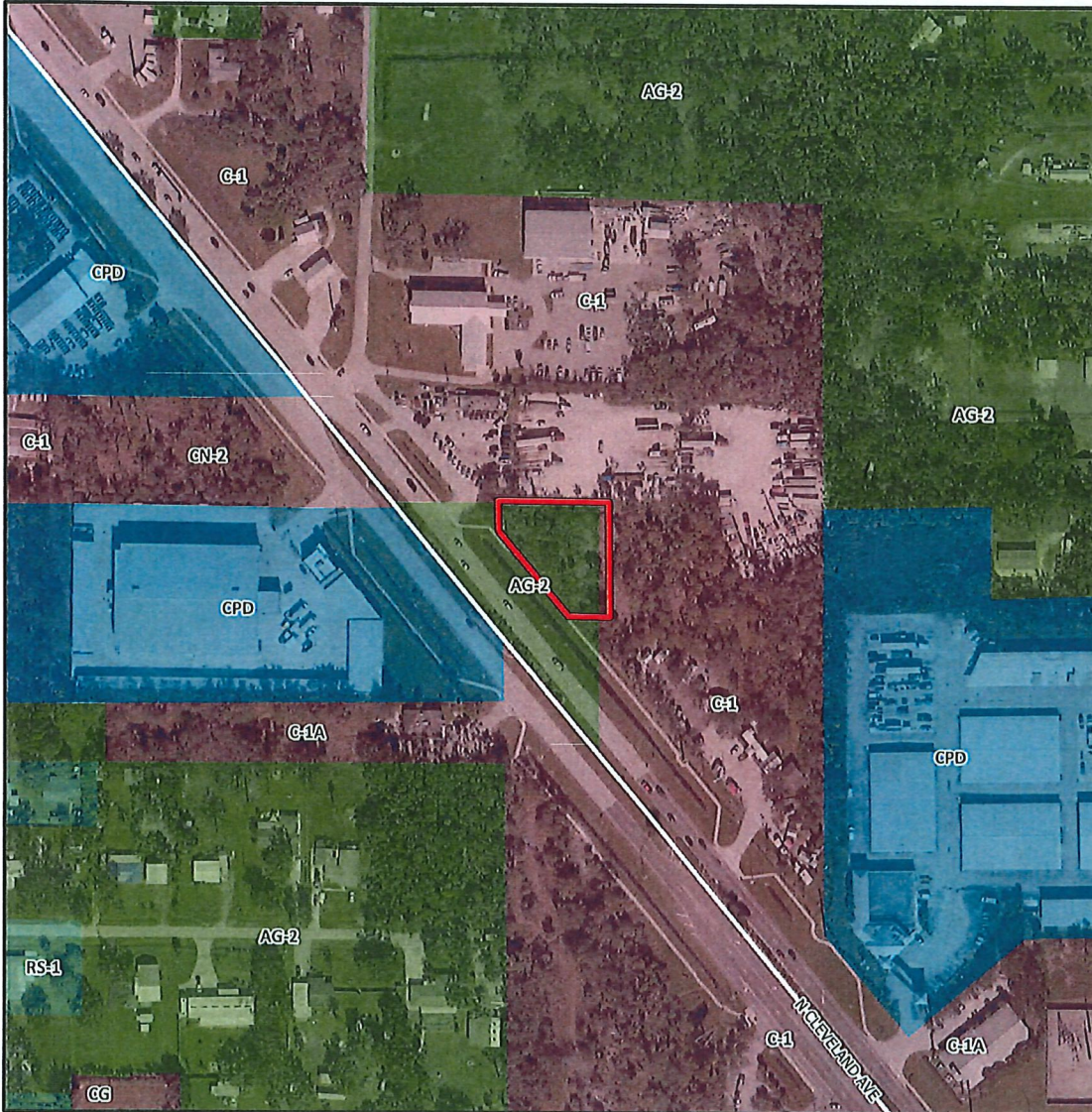
JHM J H McCARRIER LAND SURVEYING, INC. Licensed Business No. 7027 2460 SUNRISE BOULEVARD FORT MYERS, FLORIDA 33907 Phone: (239) 277-7821	PROJECT			SKETCH AND LEGAL DESCRIPTION	
	PARCEL 4 - N 175' OF E 1/2 OF W 1/2 OF E 1/2 OF SE 1/4			SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA	
	CLIENT			SCALE	DATE
14290 N CLEVELAND AVE, LLC			N.A.	SEPT. 29, 2023	
16 WINEWOOD COURT			FILENAME	PROJECT NO.	
FORT MYERS, FLORIDA 33919			NFM_14180NCleveland_P4_S+L.dwg	22-041.20	
PHONE: (239) 690-4100			DRAWN BY	CHECKED BY	SHEET 1 OF 2
			JHM	JHM	



THIS IS NOT A BOUNDARY SURVEY.

SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION, SURVEYOR'S NOTES & CERTIFICATION.

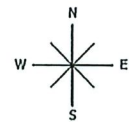
 J H McCARRIER LAND SURVEYING, INC. Licensed Business No. 7027	PROJECT SKETCH AND LEGAL DESCRIPTION PARCEL 4 - N 175' OF E 1/2 OF W 1/2 OF E 1/2 OF SE 1/4 OF SE 1/4 SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA		
	CLIENT 14290 N CLEVELAND AVE, LLC 16 WINEWOOD COURT FORT MYERS, FLORIDA 33919 PHONE: (239) 690-4100	SCALE 1"=30'	DATE SEPT. 29, 2023
2460 SUNRISE BOULEVARD FORT MYERS, FLORIDA 33907 Phone: (239) 277-7821		FILENAME NFM_14180NCleveland_P4_S+L.dwg	PROJECT NO. 22-041.20
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			SHEET 2 OF 2



REZ2023-00031

Zoning

 Subject Property



0 400
Feet



Exhibit B

EXHIBITS PRESENTED AT HEARING

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Elizabeth Workman

Applicant Representatives:

Randy Krise

Veronica Martin

Public Participants:

None