

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

REZONING: REZ2023-00029

Regarding: CHIEF COURT INDUSTRIAL REZONING

Location: 15851 and 15881 Chief Court
San Carlos Planning Community
(District 2)

Hearing Date: August 22, 2024

I. **Request**

Rezone two parcels totaling 1.88 acres from Agricultural (AG-2) to General Commercial (CG).

The properties legal description is set forth in Exhibit A.

II. **Hearing Examiner Decision**

Approved.

III. **Discussion**

Synopsis of Request

This is a request to rezone two parcels from Agriculture (AG-2) to General Commercial (CG) in South Fort Myers.¹ The parcels are vacant and lie to the east of Chief Court. The two parcels have no road frontage, they share ownership with the abutting Light Industrial (IL) zoned property with access to Chief Court.² The IL property operates as a boat repair business.³ Applicant intends to expand the existing business using the property for open and enclosed boat storage.

The Hearing Examiner has final decision making authority on applications to rezone property to conventional zoning districts.⁴

¹ The northernmost parcel is 1.31 acres and the southern parcel is 0.575 acres.

² Site address is 15881 Chief Court.

³ Offshore Marine Center, Inc., and Offshore Performance Specs, Inc., owned by Don D Carter Trust.

⁴ LDC §34-145(d)(1)a.

The Department of Community Development staff recommended approval of the request, finding the proposed CG zoning district satisfies Land Development Code (LDC) review criteria.

Character of the Area

The properties are bounded on the east by the Ten Mile Canal. Surrounding properties to the west and south lie within the Briarwood Industrial Park and are zoned for and developed with light industrial uses.⁵

The request for the CG zoning district updates the zoning designation to a district consistent with an area developed with light industrial uses.

History

The parcels are remnants of an abandoned railroad right of way and share ownership with the abutting Offshore Marine Center, Inc. and Offshore Performance Specs, Inc. The businesses provide boat repair and maintenance services. Rezoning the properties to the CG district will partially abate an outstanding code violation arising from using .575 acre AG-2 property for open storage.⁶ Other violations for constructing a structure and clearing property without permits must be addressed via development order and building permitting processes.⁷

Lee Plan

The Lee County Comprehensive Plan (Lee Plan) regulates land development activity in the County.⁸ The Plan's Future Land Use Map divides the County into future urban, nonurban, and environmentally sensitive areas. All development must be consistent with the Lee Plan including the Future Land Use Map.⁹

The property is designated Urban Community by the Lee Plan.¹⁰ The Urban Community features a mix of intense commercial and residential uses.¹¹ Surrounding development is part of the Briarwood Industrial subdivision developed with light industrial uses.

⁵ The parcel north of the northernmost tract is zoned for agriculture. A corner of the northernmost tract also touches the southeast corner of the Laurel Oaks RPD.

⁶ VIO 2023-04469. In order to fully abate the violation, areas of open storage must be enclosed with a fence/visual screen.

⁷ VIOs 2023-04465, 2023-04466, 2023-04471, 2023-4572, and 2023-4573.

⁸ LDC §34-491.

⁹ Lee Plan Policy 2.1.2; LDC §§34-411(a), 34-491: Rezoning must be consistent with Lee Plan goals, objectives, and policies. Potential conflicts between the Lee Plan and the LDC must be resolved in favor of the Lee Plan.

¹⁰ Lee Plan Future Land Use Map 1-A.

¹¹ Lee Plan Policy 1.1.4.

The parcels' current zoning designation is AG-2. The AG-2 district is intended to support agricultural operations and ancillary residential uses.¹² The Lee Plan discourages the introduction of new agricultural uses in future urban areas.¹³ Accordingly, agricultural operations are no longer appropriate on the property.¹⁴ The requested commercial zoning district authorizes development of land uses suited to urban areas.¹⁵

The Lee Plan Economic Element supports retention of existing businesses.¹⁶ The planned expansion of the existing marine service operation to abutting properties constitutes infill, while enabling the business to expand capacity in furtherance of Lee Plan directives.¹⁷

Zoning Actions Must Comply with the LDC and Other County Regulations.

The purpose of the CG zoning district is to accommodate consumer-oriented commercial facilities of a type or scale not suited for shopping centers. Permitted uses in the CG district often consist of a single principal building devoted to sale of parts, administration, repair services, or manufacture. The CG district relies on ground areas for storage or display of goods. Permitted uses are generally not sensitive to impacts from adjacent land uses yet generate substantial impacts on surrounding land uses.¹⁸

Once rezoned, use of the property must be consistent with the CG district use regulation schedule.¹⁹ Site development must comply with the LDC or seek variances.²⁰ Specifically, open storage and outdoor display of merchandise must comply with setback, screening, and lighting requirements.²¹

Development will be subject to road, fire, and emergency medical services impact fees.²²

¹² LDC §34-651.

¹³ Lee Plan Goal 9, Objective 9.2.

¹⁴ *Id.*

¹⁵ Lee Plan Objective 9.2, Policy 9.2.1.

¹⁶ Lee Plan Goal 159, Objective 159.2.

¹⁷ Lee Plan Policies 158.3.4, 159.2.3, 159.2.4.

¹⁸ LDC §34-841(h).

¹⁹ LDC §34-844.

²⁰ The proposed CG zoning district is a "conventional" zoning district. Therefore, it is not possible to impose conditions on approval. The CG use regulation table governs permitted uses, subject to limitations imposed by the Lee Plan.

²¹ LDC §§34-3001 *et seq.*

²² LDC Chapter 2.

Compatibility with Surrounding Land Uses

The property is located at the rear of an industrial park developed with light industrial uses.²³ The property qualifies as “infill” contributing to contiguous development patterns.²⁴ The proposed CG district permits uses compatible with surrounding industrial development.²⁵

Requests to rezone property must demonstrate access sufficient to support the proposed development intensity and address expected impacts to the transportation facilities by existing County regulations.

The parcels are accessible from Chief Court through a site developed with a boat repair business. Chief Court is a dead end road terminating with a cul-de-sac. Chief Court intersects with Youngquist Road, which provides access to the County road network via US 41.

The LDC does not require a Traffic Impact Statement (TIS) for conventional zoning requests. Developer must submit a TIS during development order review and address site related road improvements.²⁶ Future development will be subject to road impact fees.²⁷

Zoning actions must protect environmentally critical/sensitive areas when applicable.

Development must comply with open space and landscaping requirements of the LDC.²⁸ Buffering for open storage includes eight foot high screening if visible from residential uses.²⁹

Public Services and Infrastructure

Public services include facilities, capital improvements, and infrastructure necessary to support development at urban levels of intensity.³⁰ The Lee Plan requires evaluation of available public services during the rezoning process.³¹

²³ Businesses in the immediate area include warehousing, car and truck repair, and open storage. Ten Mile Canal forms the east property boundary.

²⁴ Lee Plan Goal 6, Objective 2.2.

²⁵ Lee Plan Goal 6, Policies 1.1.4, 6.1.7.

²⁶ Lee Plan Objective 39.1, Policy 39.1.1; LDC §§10-8, 10-287.

²⁷ LDC §2-265.

²⁸ LDC §10-424. As a small commercial project, applicant must provide a minimum of 20% open space. See Staff Report Attachment F: Environmental Staff Report.

²⁹ LDC §34-3005(b) There are residential land uses northeast of the site.

³⁰ 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.

³¹ Lee Plan Policy 2.2.1.

The property has access to public services and infrastructure.³² Lee County Utilities has public water infrastructure available to serve the property.³³ The site is served by onsite septic. However, if demand requires, sanitary sewer lines served by Forest Utilities must be extended to the site. Fire, EMS, and law enforcement have stations in proximity to the site.³⁴

Public

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

IV. Findings in Support of Approval

Based upon the testimony and exhibits presented at hearing, the Hearing approves the requested CG zoning district. Specifically, the Hearing Examiner finds the proposed CG district:

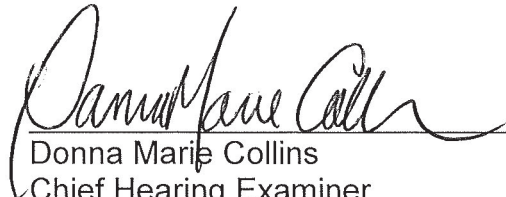
- A. Is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, 159, Objectives 2.1, 2.2, 159.2, Policies 1.1.4, 1.7.6, 2.1.1, 2.2.1, 5.1.5, 6.1.1, 6.1.4, 6.1.6, 6.1.7, 158.3.4, 159.2.3, 159.2.4, Table 1(b).
- B. Will comply with the LDC. LDC Chapters 2, 10, and 34.
- C. Will be compatible with existing/planned uses in the surrounding area. Lee Plan Goals 2, 6, Objectives 2.2, Policies 1.1.4, 2.1.2, 2.2.1, 5.1.5, 6.1.1, 6.1.4.
- D. Will provide sufficient access to support development intensity and existing County regulations will adequately address expected impacts on transportation facilities. Lee Plan Objective 39.1, Policies 38.1.1, 39.1.1, 39.2.2.
- E. Will not adversely affect environmentally critical areas or natural resources. Lee Plan Goal 125, Policies.
- F. Will be served by urban services and infrastructure. Lee Plan Goal 2, Objectives 2.1, 2.2, Policies 1.1.4, 2.2.1, Standards 4.1.1, 4.1.2.

³² Lee Plan Glossary definition of Public Services, Goal 4, Policies 1.1.4, 2.2.1, Standards 4.1.1, 4.1.2.

³³ Lee Plan Standards 4.1.1, 4.1.2; Staff Report Attachment D: Applicant's Request Statement.

³⁴ Lee Plan Objectives 2.1, 2.2, Policy 2.1.1, San Carlos Fire Control & Rescue Service District Station #52. Lee County Sheriff District Offices are 2.5 miles from the property on Six Mile Cypress Parkway. Staff Report Attachment D: Applicant's Request Statement.

Date of decision: August 23, 2024.



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

REVIEWED
REZ2023-00029
Rick Burris, Principal
Planner
Lee County DCD/Planning
6/25/2024

SKETCH TO ACCOMPANY DESCRIPTION:
A TRACT OR PARCEL OF LAND LYING
IN A PORTION OF THE
SOUTHEAST 1/4 OF SECTION 36,
TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

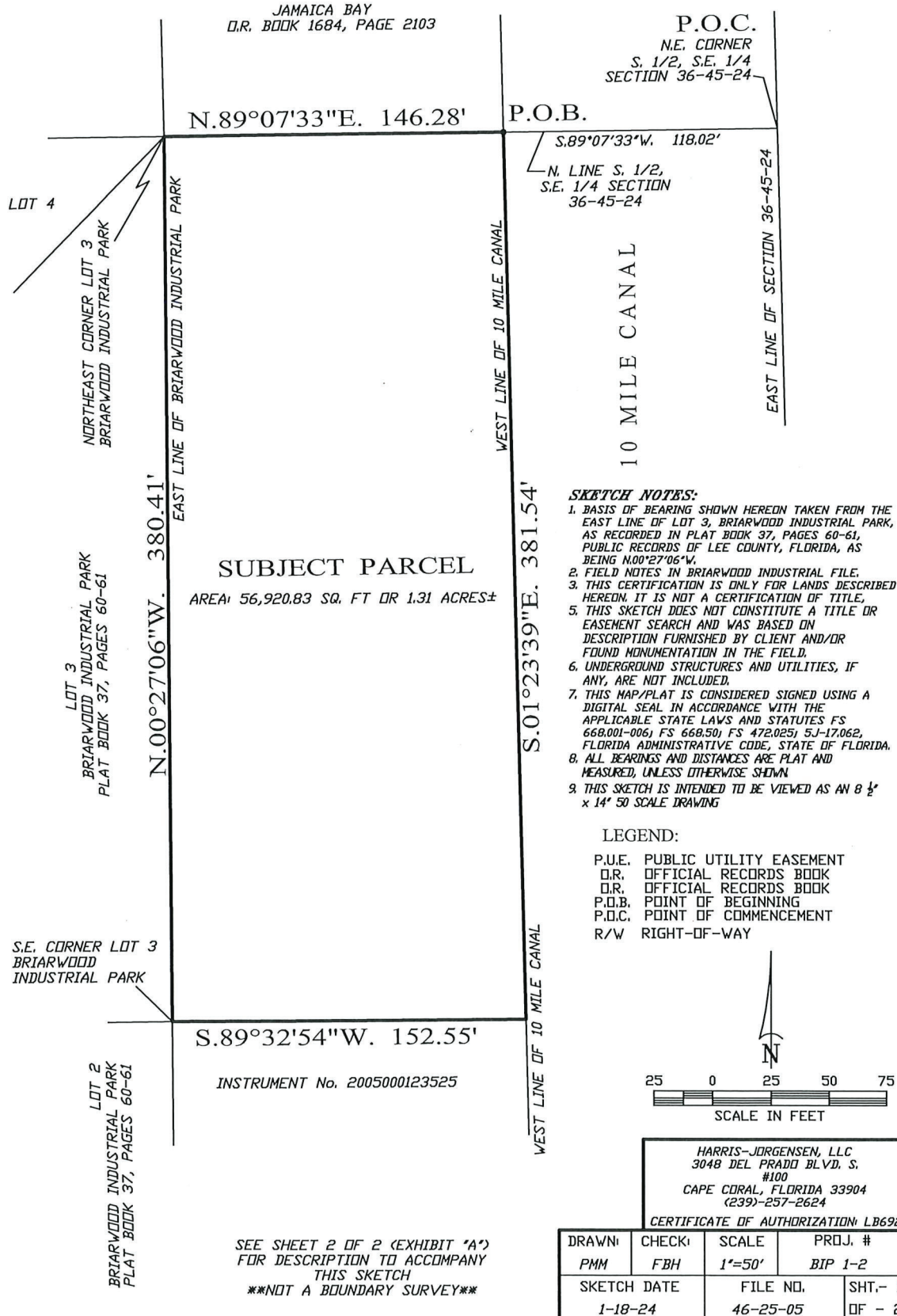


EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH:

A TRACT OR PARCEL OF LAND LYING
IN A PORTION OF THE
SOUTHEAST 1/4 OF SECTION 36,
TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

****NOT A BOUNDARY SURVEY****

DESCRIPTION:

A PLOT OR PARCEL OF LAND LYING IN A PORTION OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$) OF SECTION 36, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, SAID PLOT OR PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTH HALF (S $\frac{1}{2}$), OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$) OF SECTION 36, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°07'33"W. ALONG THE NORTH LINE OF SOUTH HALF (S.1/2), OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$) SAID SECTION 36, FOR 118.02 FEET, TO THE POINT OF BEGINNING; THENCE RUN S.01°23'39"E. ALONG THE WEST LINE OF TEN MILE CANAL RIGHT OF WAY FOR 381.54 FEET; THENCE RUN S.89°32'54"W. TO THE SOUTHEAST CORNER OF LOT 3, BRIARWOOD INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 37, PAGES 60-61, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 152.55 FEET; THENCE RUN N.00°27'06"W. TO THE NORTHEAST CORNER OF SAID LOT 3, FOR 380.41 FEET; THENCE RUN N.89°07'33"E. TO A POINT ALONG THE AFORESAID WEST RIGHT OF WAY LINE OF TEN MILE CANAL FOR 146.28 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 56,920.83 SQ. FT OR 1.31 ACRES, MORE OR LESS.

REVIEWED
REZ2023-00029
Rick Burris, Principal
Planner
Lee County DCD/Planning
6/25/2024

Phillip M
Mould,
LS6515, State
of Florida

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PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
LS6515 - STATE OF FLORIDA
1-18-24

CERTIFICATE OF
AUTHORIZATION: LB6921

HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S. #100
CAPE CORAL, FLORIDA 33904
(239)-257-2624

REVIEWED
REZ2023-00029
Rick Burris, Principal
Planner
Lee County DCD/Planning
6/25/2024

SKETCH TO ACCOMPANY DESCRIPTION:
A TRACT OR PARCEL OF LAND LYING
IN A PORTION OF THE
SOUTHEAST 1/4 OF SECTION 36,
TOWNSHIP 45 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

LOT 2
BRIARWOOD INDUSTRIAL PARK
PLAT BOOK 37, PAGES 60-61

N.E. CORNER LOT 1
BRIARWOOD
INDUSTRIAL PARK

P.O.C. / P.O.B.

LOT 1
BRIARWOOD INDUSTRIAL PARK
PLAT BOOK 37, PAGES 60-61

S.E. CORNER LOT 1
BRIARWOOD
INDUSTRIAL PARK

INSTRUMENT No. 2005000123525
(UNPLATTED LANDS)

N.89°33'21"E. 155.18'

SUBJECT PARCEL

AREA: 25,038.48 SQUARE FEET, OR
0.57 ACRES, MORE OR LESS.

N.00°27'06"W. 160.00'

S.89°32'54"W. 157.82'

STRAP: 36-45-24-00-00011.0140
(UNPLATTED LANDS)

W. LINE OF 10 MILE CANAL
S.01°23'39"E. 160.00'

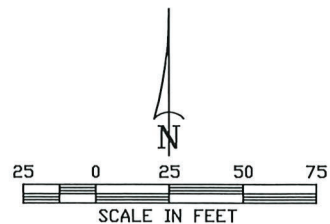
FORMER I.D.D. CANAL
(10 MILE CANAL)

SKETCH NOTES:

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EAST LINE OF LOT 1, BRIARWOOD INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 37, PAGES 60-61, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS BEING N.00°27'06"W.
2. FIELD NOTES IN BRIARWOOD INDUSTRIAL FILE.
3. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE.
5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. 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; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2' x 14' 50 SCALE DRAWING

LEGEND:

P.U.E. PUBLIC UTILITY EASEMENT
O.R. OFFICIAL RECORDS BOOK
O.R. OFFICIAL RECORDS BOOK
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
R/W RIGHT-OF-WAY



HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S.
#100
CAPE CORAL, FLORIDA 33904
(239)-257-2624

CERTIFICATE OF AUTHORIZATION: LB6921

SEE SHEET 2 OF 2 (EXHIBIT "A")
FOR DESCRIPTION TO ACCOMPANY
THIS SKETCH
NOT A BOUNDARY SURVEY

DRAWN: PMM	CHECK: FBH	SCALE 1"=50'	PROJ. # BIP 1-2
SKETCH DATE 1-18-24	FILE NO. 46-25-05	SHT.- 1 OF - 2	

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DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, BRIARWOOD INDUSTRIAL PARK, AS RECORDED IN PLAT
BOOK 37, PAGES 60-61, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, FOR A POINT OF BEGINNING; THENCE RUN
N.89°33'21"E. TO A POINT ALONG THE WEST LINE OF THE TEN MILE CANAL RIGHT OF WAY, FOR 155.81 FEET;
THENCE RUN S.01°23'39"E. ALONG SAID WEST CANAL RIGHT OF WAY FOR 160.00 FEET; THENCE RUN S.89°32'54"W.
TO THE SOUTHEAST CORNER OF THE AFORESAID LOT 1, FOR 157.82 FEET; THENCE RUN N.00°27'06"W. ALONG
THE WEST LINE OF SAID LOT 1, FOR 160.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 25,038.48 SQUARE FEET, OR 0.57 ACRES, MORE OR LESS.

REVIEWED
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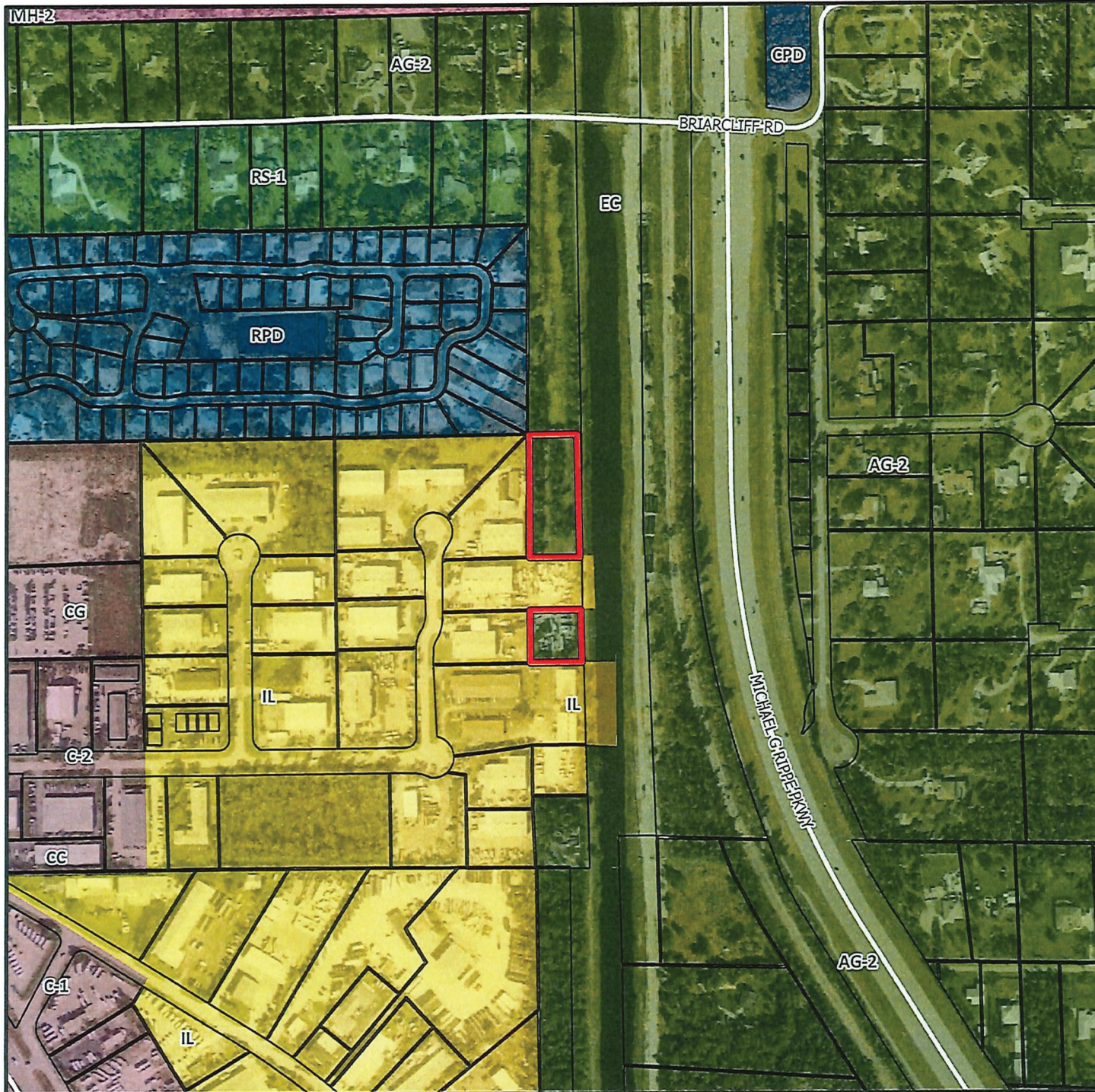
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of Florida

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LS6515, State of
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PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
LS6515 - STATE OF FLORIDA
1-18-24

CERTIFICATE OF
AUTHORIZATION: LB6921

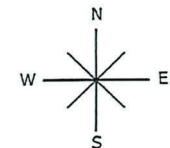
HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S. #100
CAPE CORAL, FLORIDA 33904
(239)-257-2624



REZ2023-00029

Zoning
Attachment C4

 Subject Property



0 250 500 750
Feet



Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Peter Blackwell, Planner, received August 6, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for REZ2023-00029, Chief Court Rezone (multiple pages – 8.5"x11")[color]
3. *Affidavit of Publication:* Evidence of published notice of hearing for case REZ2023-0002, Chief Court Rezone, date of hearing August 22, 2024 (1 page – 8.5"x11")

APPLICANT EXHIBITS

1. *PowerPoint Presentation:* Prepared by RVI Planning and Landscape Architect for REZ2023-00029, Chief Court Rezone (multiple pages – 8.5"x11")[color]
2. *Email Correspondence Regarding Outstanding Code Violations:* Email from Jonathan Guzman to Bob Case, William Diaz, and Steven Lopez-Silvero, with copies to Fred Drovdic, Terry Rankin, Trisa Mesa, etc., dated Tuesday, March 26, 2024, 8:18 AM (multiple pages – 8.5"x11")
3. *Amended Code Enforcement Agreement:* Case No. VIO2023-04465, regarding property at 15881 Chief Court, Fort Myers, Florida 33912, Executed July 17, 2024 (multiple pages – 8.5"x11")

Exhibit C

HEARING PARTICIPANTS

County Staff:

1. Peter Blackwell, Planner

Applicant Representatives:

1. Donald Carter
2. Bob Case, P.E.
3. Fred Drovdllic, AICP