

Exhibit D

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2024-00005

Regarding: 7-ELEVEN ISLAND PARK SHOPPING CENTER

Location: 16510 South Tamiami Trail
San Carlos Planning Community
(District 3)

Hearing Date: October 31, 2024

I. Request

Amend special exception SEZ2022-00008 to modify the site plan and legal description.

II. Hearing Examiner Decision

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

III. Discussion

The Request seeks to revise the site plan of an approved special exception for convenience food and beverage store with 16 self-service fuel pumps in the Commercial (C-1) zoning district. The site is 1.84 acres.

Special Exceptions

Special exceptions are departures from County land development regulations for uses generally not permitted within a zoning district but that may be permitted when controlled by conditions.¹

The Hearing Examiner is the final decision-maker on special exceptions.²

The Hearing Examiner must grant a special exception request unless she concludes:

¹ LDC §34-2.

² LDC §34-145.

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1. The request is contrary to the public's interest and health, safety, welfare, comfort, and convenience of the citizens of the County; or,
2. The requested use conflicts with findings required by the LDC to grant a special exception.

In reaching this decision, the Hearing Examiner may attach conditions to protect public health, safety, and welfare.³

Synopsis of Request

The property lies within the Island Park Shopping Center, at the southwest corner of the US 41 and Island Park Road intersection.⁴ Applicant seeks to amend the site plan of an approved, but not yet constructed, Convenience Food and Beverage Store with 16 self-service fuel pumps approved by special exception in 2023. (SEZ2022-00008). The request includes a modification to the legal description as well.

Department of Community Development staff recommended approval.

Development History

Island Park Shopping Center first received development order approval in the mid 1980's. The center included a SunTrust Bank at the corner of US 41 and Island Park Road. The land supporting the bank and associated parking was split from the parent tract.⁵ In 2022, pending approval of a special exception request, Applicant filed administrative amendments seeking relief from setback, buffer, and parking.

Hearing Examiner approved the special exception, subject to conditions in 2023.⁶ A condition of approval required compliance with a specific site plan.

The current request revises the site plan and legal description.

³ LDC §34-145(c)(4) b.

⁴ San Carlos Planning District Lee Plan Map 1-B.

⁵ The lot split followed demolition of the bank in 2022..

⁶ SEZ2022-00008 approved November 3, 2023.

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Discussion

Special exceptions must be consistent with the Lee Plan.⁷

The property is zoned C-1 commercial and designated Suburban.⁸ Suburban lands feature residential land uses at the fringe of the County's urban core.⁹ The property is surrounded by commercial land uses and has access to public services and infrastructure.¹⁰ Redesign of the site plan maintains compact and contiguous development patterns on the US 41 corridor.¹¹

Special exceptions must protect environmentally critical/sensitive areas when applicable.

The site lies within the Coastal High Hazard Area. It is comprised entirely of uplands.

Special exceptions may not injure the neighborhood or be detrimental to public welfare.

Commercial land uses dominate the US 41 corridor.¹² West of its intersection with US 41, Island Park Road is developed with residential land uses. Buildings and parking within the Island Park Shopping Center abut the parcel on two sides. Development will be distanced from residential development by the shopping center.

The revised site plan will not create detrimental impacts to the area.

Special Exceptions must comply with zoning and other applicable regulations.

The requested changes to the site plan include:

1. Relocation of car wash building closer to convenience store.
2. Removal of 12 parking spaces.
3. Inclusion of a stormwater retention area with retaining wall.
4. Dumpster relocation.

The Hearing Examiner approved the special exception in 2023. Proposed revisions to the site plan do not change the findings in that approval.

⁷ LDC §§34-145(c)(3) a.1, 34-491(a).

⁸ Lee Plan Future Land Use Map 1-A.

⁹ Lee Plan Policy 1.1.5.

¹⁰ Lee Plan Policies 1.1.1, 39.2.1.

¹¹ Lee Plan Objective 2.2, Policy 6.1.7, 6.1.11.

¹² A variety of commercial zoning districts line US 41 in this area. Lee Plan Policy 1.1.1, 6.1.7.

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Public Participation

No members of the public attended the hearing before the Hearing Examiner.

Conditions

The County must administer the zoning process so that proposed land uses minimize adverse impacts to adjacent property. Conditions must rationally relate to impacts anticipated from the requested special exception.¹³ The special exception will be subject to the following conditions:

1. Site development must be substantially consistent with the site plan attached as Exhibit B. Minor revisions to the site plan may be accomplished administratively consistent with the LDC.
2. Special exception approval does not establish a right to obtain permits from state or federal agencies. Further, approval does not establish county liability if Applicant: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions resulting in violation of state or federal laws.

Conclusion

The Hearing Examiner concurs with Staff's recommendation of approval. The amendment to the site plan of the previously approved special exception meets LDC approval criteria. The Hearing Examiner finds as conditioned, the requested site plan amendments will not be a detriment to, or injure public health, safety, or welfare.

IV. Findings and Conclusions

Based upon the testimony and exhibits presented during the hearing, the Hearing Examiner finds and concludes that *as conditioned herein*, the requested special exception is approved for the following reasons:

- A. Is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, Objectives 2.1, 4.1, Policies 1.1.5, 2.1.1, 4.1.1, 4.1.2, 5.1.5, 6.1.1, 6.1.4, 6.1.6, 6.1.7, 6.1.11, 101.1.1, 101.3.2, Maps 1-A, 1-B, 3-C, 3-D, 4-A, 4-B, Table 1(b)
- B. Will be compatible with existing or planned uses. Lee Plan Goals 2, 6, Objectives 2.1, 2.2, Policies 1.1.5, 2.1.1, 2.1.2, 2.2.1, 5.1.5, 6.1.4.

¹³ LDC §34-145(c)(4)b

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- C. Will not be injurious to the neighborhood or detrimental to the public welfare. Lee Plan Policies 5.1.5, 6.1.4, 6.1.5, 6.1.6; and
- D. Will comply with LDC zoning regulations. LDC Chapters 2, 10, and 34.

V. Conditions of Approval

- 1. Special exception approval is conditioned on site development substantially consistent with the site plan revised June 2024, attached as Exhibit B.
- 2. Special exception approval does not establish a right to obtain permits from state or federal agencies. Further, approval does not establish county liability 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

- 1. Khalil Muhammad

Applicant Representatives

- 1. D. Wayne Arnold
- 2. Lauren Brown

VII. Legal Description

Exhibit A (scanned legal description with vicinity map).

VIII. Exhibits Submitted at Hearing

Staff Exhibits

- 1. *DCD Staff Report with attachments for DCI:* Prepared by Khalil Muhammad, Planner, date received October 23, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
- 2. *PowerPoint Presentation:* Prepared by Lee County Staff for SEZ2024-00005, 7-Eleven Island Park Center, dated October 31, 2024 (multiple pages – 8.5"x11")[color]

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3. *Public Notice:* For SEZ2024-00005, 7-Eleven Island Park Center (1 page – 8.5"x11")

Applicant Exhibits

- a. *48-Hour Notice:* Email from Sharon Umpenhour to Khalil Muhammad and Maria Perez, with copies to Elizabeth Workman, dated Monday, October 28, 2024, 3:14 PM (multiple pages 8.5"x11")
- b. *Second 48-Hour Notice:* Email from Sharon Umpenhour to Khalil Muhammad and Maria Perez, with copies to Elizabeth Workman, dated Monday, October 28, 2024, 4:47 PM (multiple pages 8.5"x11")

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.

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Decision rendered October 31, 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 to Hearing Examiner Decision

- A: Legal Description and Vicinity Map
- B: Site Plan Revised June 2024

Exhibit A

DESCRIPTION

A PARCEL OF LAND BEING THE LANDS DESCRIBED IN INSTRUMENT NUMBER 2018000171817, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND A PORTION OF LANDS DESCRIBED IN INSTRUMENT NUMBER 2015000242014, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF LANDS DESCRIBED IN INSTRUMENT NUMBER 2018000171817, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID LANDS AND THE EXTENSION THEREOF SOUTH 58°08'20" WEST, A DISTANCE OF 279.49 FEET; THENCE NORTH 31°51'40" WEST, A DISTANCE OF 287.65 FEET TO AN INTERSECTION WITH THE SOUTHEAST RIGHT-OF-WAY OF ISLAND PARK RD; THENCE ALONG SAID SOUTHEAST RIGHT-OF-WAY NORTH 58°22'42" EAST, A DISTANCE OF 255.64 FEET TO A POINT ON A NON TANGENTIAL CURVE TO THE RIGHT; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY EASTERLY 39.27 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'22", (CHORD BEARING SOUTH 76°37'07" EAST, A DISTANCE OF 35.36 FEET) TO AN INTERSECTION WITH THE SOUTHWEST RIGHT-OF-WAY OF U.S. 41 (TAMIAMI TRAIL); THENCE ALONG SAID SOUTHWEST RIGHT-OF-WAY SOUTH 31°37'18" EAST, A DISTANCE OF 236.62 FEET TO A POINT ON A NON TANGENTIAL CURVE TO THE LEFT; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY SOUTHEASTERLY 24.85 FEET ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 5,797.58 FEET, A CENTRAL ANGLE OF 00°14'44", (CHORD BEARING SOUTH 31°44'18" EAST, A DISTANCE OF 24.85 FEET) TO THE POINT OF BEGINNING.

CONTAINING 1.84 ACRES, MORE OR LESS.

REVIEWED
SEZ2024-00005
Rick Burris, Principal
Planner
Lee County DCD/Planning
8/26/2024

NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED BY THE NATIONAL GEODETIC SURVEY FOR FLORIDA WEST ZONE, 1983 DATUM WITH 1990 ADJUSTMENT OBTAINED UTILIZING RTK GPS OBSERVATIONS ON THE FDOT NETWORK AND REFER TO THE SOUTHEAST RIGHT-OF-WAY LINE OF ISLAND PARK RD, LEE COUNTY, FLORIDA AS BEING N 58°22'42" E.
2. DIMENSIONS SHOWN HEREON ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.
3. THIS SKETCH AND DESCRIPTION IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR THE DIGITAL SIGNATURE AND DIGITAL SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER. NO ADDITIONS OR DELETIONS TO THIS SKETCH AND DESCRIPTION ARE PERMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE SIGNING PARTY.

*NOT VALID WITHOUT
SHEET 2 OF 2*

DRAWN BY:	AH
CHECKED BY:	TJD
JOB CODE:	CC71141IP
SCALE:	N/A
DATE:	2 JUNE 2022
FILE:	21-126-SL
SHEET:	1 of 2

* NOT A SURVEY *



GradyMinor

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Bonita Springs, Florida 34134

Civil Engineers • Land Surveyors • Planners • Landscape Architects
Cert. of Auth. EB 0005151 Cert. of Auth. LB 0005151 Business LC 26000266
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SKETCH AND DESCRIPTION

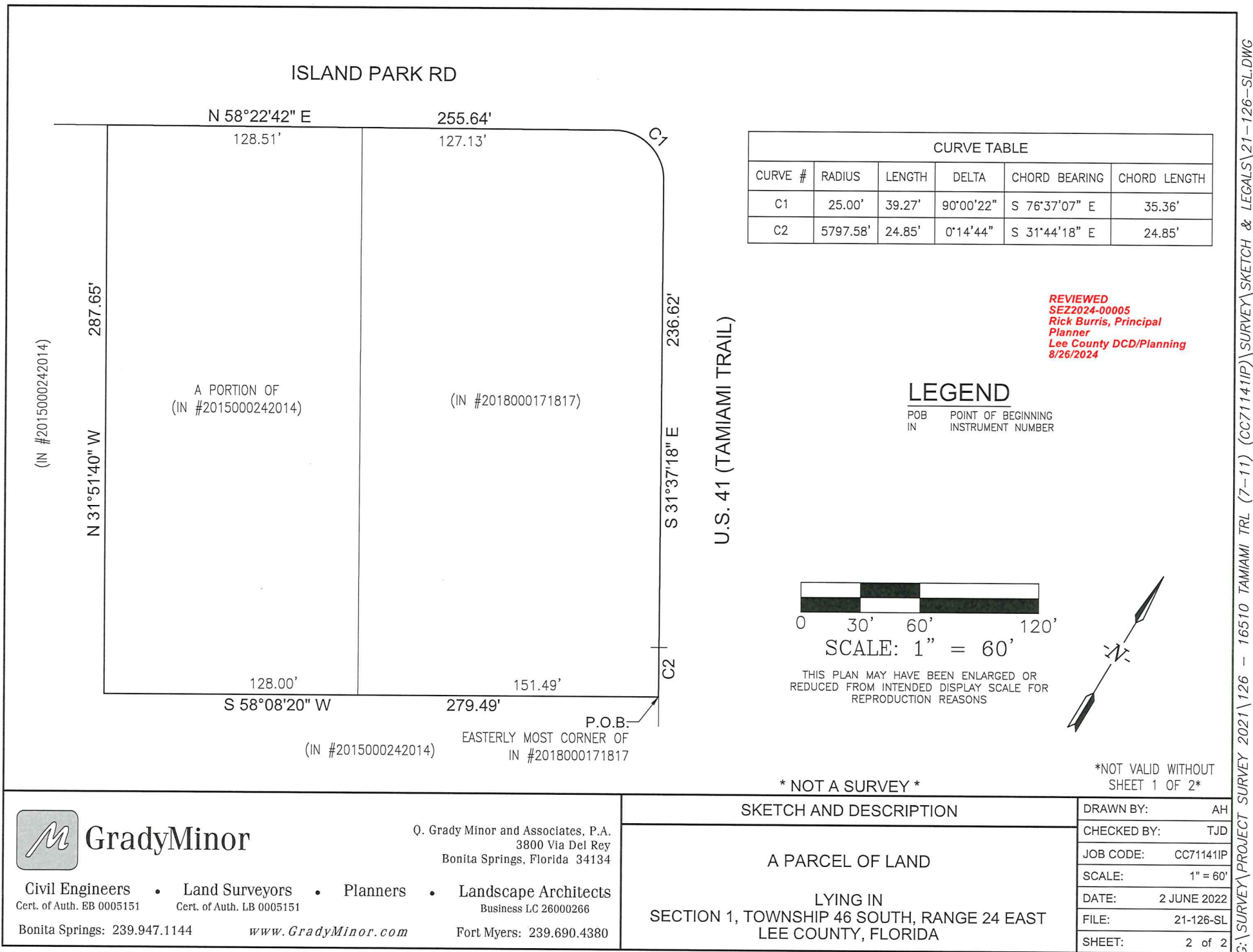
A PARCEL OF LAND

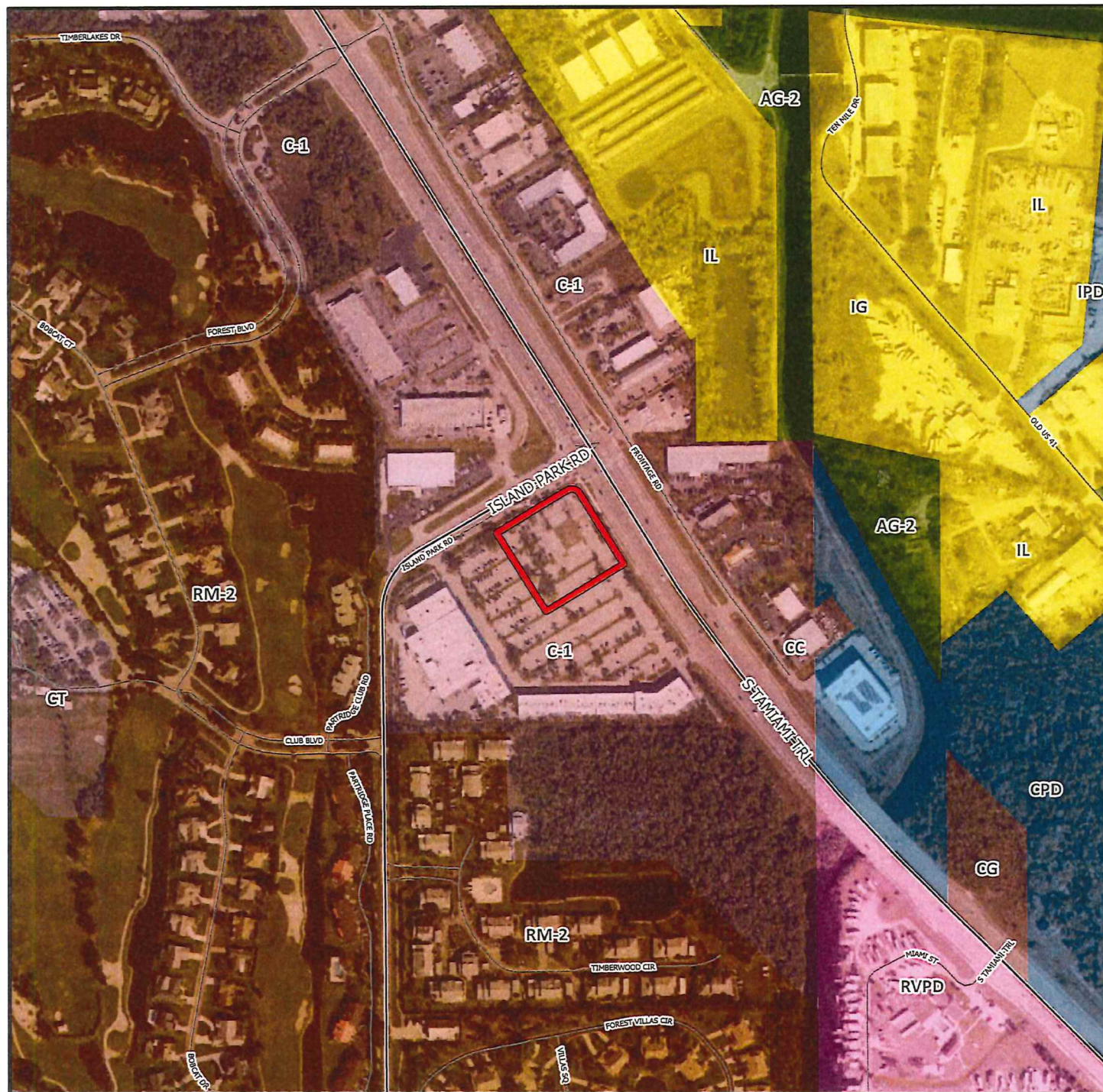
LYING IN
SECTION 1, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA



DATE SIGNED
Digitally signed by
Timothy Jon
DeVries, P.S.M.
Date: 2024.05.14
08:34:04 -04'00'

TIMOTHY J. DEVRIES, P.S.M.
FL LICENSE #6758
FOR THE FIRM

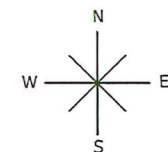




SEZ2024-00005

Zoning

 Subject Property



0 500
Feet



