

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2024-00001

Regarding: LEE BOULEVARD CONVENIENCE STORE

Location: 5541 Brookfield Street
Lehigh Acres Planning Community
(District 5)

Hearing Date: February 27, 2025

I. Request

Special Exception in the Commercial (C-2) zoning district for a Convenience Food and Beverage Store with 14 self-service fuel pumps.

II. Hearing Examiner Decision

Approval, subject to conditions set forth in Section V.

III. Discussion

The request seeks to increase the permitted number of self-service fuel pumps from eight to 14 on a 2.21± acre vacant parcel along Lee Boulevard.¹

The parcel lies within the Lehigh Acres Planning Community, at the northeast corner of the Lee Boulevard/Alvin Avenue intersection.² Intense commercial uses occupy the other quadrants of the intersection. A fast-food restaurant with drive-through sits at the southwest corner, while convenience stores with fuel pumps lie at the northwest and southeast corners. The Board approved the RaceTrac station to the west with 24 pumps on a parcel of similar size and characteristics.³

Applicant seeks to develop a convenience store with 14 self-service fuel pumps. Convenience food and beverage stores with eight fuel pumps are permitted by

¹ Applicant owns adjacent lands totaling 6.44± acres. Special exception approval is limited to the 2.21± acre parcel as described in the Staff Report (Attachment H).

² Lee Plan Map 1-B, 2-A, 2-B.

³ Z-09-027.

right in the C-2 district.⁴ However, requests for more than eight fuel pumps require approval by special exception.⁵

Department of Community Development staff recommended approval, finding the proposed special exception satisfies LDC review criteria.

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.⁶

The Hearing Examiner has final decision-making authority on special exceptions.⁷

The Hearing Examiner *must* grant a special exception *unless*:

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

The Hearing Examiner may attach conditions to an approved special exception to protect public health, safety, and welfare.⁸

Lee Plan Consistency

Special exceptions must be consistent with the Lee Plan.⁹

The property is zoned C-2 and designated Central Urban by the Lee Plan.¹⁰

Central Urban areas are the county's urban core, with access to a wide array of public services and infrastructure. Residential, commercial, public, quasi-public, and limited light industrial land uses can be found within Central Urban areas.

⁴ LDC §34-844.

⁵ LDC §34-844, Note 19.

⁶ LDC §34-2.

⁷ LDC §34-145(c).

⁸ LDC §34-145(c)(4)b.

⁹ LDC §§34-145(c)(3) a.1, §34-491(a).

¹⁰ Lee Plan Future Land Use Map 1-A, Policy 1.1.1. The property is also within the Mixed-Use Overlay. Lee Plan Map 1-C.

The site has access to public services and infrastructure including improved roads, transit, and bike/pedestrian facilities.¹¹ The proposal promotes compact and contiguous development patterns and constitutes infill development.¹²

The property may develop with a convenience food and beverage store and eight fuel pumps by right. The requested addition of six fuel pumps on the site remains consistent with the Lee Plan.¹³

Natural Resources/Environmental Areas

Special exceptions must protect environmentally critical/sensitive areas where applicable.¹⁴

The property does not contain environmentally critical/sensitive features. Applicant's expert ecologist confirmed there are no wetlands or protected species on site.¹⁵

Injury to Neighborhood/Public Welfare

Special exceptions may not injure the neighborhood or be a detriment to the public welfare.¹⁶

Commercial land uses feature prominently along the Lee Boulevard corridor, particularly at the Alvin Avenue intersection.¹⁷ The proposed convenience store will be located at the corner of the Lee Boulevard/Alvin Avenue intersection, with access to both Lee Boulevard and Brookfield Street. Residential uses occupy lands north of Brookfield Street. The Lee Boulevard access will be right-in only.¹⁸ Two full access points provide circulation to Brookfield Street.

The proposed convenience food/beverage store with fuel pumps will serve the surrounding community and traveling public. Conditions of approval mitigate off-site impacts.¹⁹

¹¹ Lee Plan Policies 6.1.1, 39.2.1.

¹² Lee Plan Objective 2.2, Policy 6.1.7.

¹³ Lee Plan Goals 1, 4, 6, 25, 63, 77, Objectives 25.6, Policy 1.1.3, 2.1.1, 2.1.2, 5.1.5, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 11.2.2, 25.8.1, 25.8.4, 25.9.1, 25.9.2, 60.1.1, 125.1.2, 125.1.4

¹⁴ LDC §34-145(c)(3)a.2.

¹⁵ Owen Testimony ; See also Staff Report (Attachment I).

¹⁶ LDC §34-145(c)(3)a.4.

¹⁷ A variety of commercial zoning districts line Lee Boulevard in this area. Lee Plan Policy 6.1.7. Convenience stores with gas stations occupy two of the intersection quadrants at this location.

¹⁸ See MCP; Treesh & Miller Testimony.

¹⁹ Condition 2 limits hours of deliveries consistent with the property to the west. See Z-09-027.

Compliance with Zoning Regulations

Special exceptions must comply with zoning regulations and be compatible with existing/planned uses.²⁰

The purpose of the C-2 zoning district is to regulate commercial land uses lawfully existing as of August 1, 1986.²¹ New applications to rezone property to the C-2 district are limited to lands within a Mixed-Use Overlay.²² Since C-2 is a conventional zoning district, site development must comply with the LDC or seek variances.

Convenience food and beverage stores are subject to site specific development regulations to ensure compatibility with surrounding land uses.²³ The pending development order application seeks administrative relief from certain LDC standards to accommodate the proposed development.²⁴ Staff found requested relief from buffers and transportation requirements sufficient pending approval of this special exception.²⁵

Public Participation

Applicant held a community meeting consistent with LDC requirements for special exception requests in the Lehigh Acres Planning Community.²⁶

One member of the public attended the hearing before the Hearing Examiner to clarify elements of the request and offer comments on proposed access.

Conditions

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts on adjacent residential property. Conditions must rationally relate to impacts anticipated from the requested special

²⁰ LDC §34-145(c)(3)a.5, LDC §34-145(c)(3)a.3.

²¹ LDC §34-841(b).

²² *Id.* The property is already designated within the Mixed Use Overlay. See Plan Map 1-C.

²³ LDC §34-1353, §34-1354.

²⁴ See Staff Report (pg. 2, *citing* ADD2024-00074). The Staff Report erroneously references deviation from LDC §34-288, but should reflect §10-288.

²⁵ See *Id.* (*citing* DOS2024-00051). Most of the northern boundary near residential uses features an enhanced buffer to shield development impacts. Miller Testimony.

²⁶ LDC §33-1401. The meeting was held before the Lehigh Acres Architectural, Planning, & Zoning Review Board on April 25, 2024. See Staff Report (Attachment E).

exception.²⁷ Special exception approval will be subject to conditions to ensure compliance with Applicant's proposed site plan.²⁸

Conclusion

The Hearing Examiner concurs with Staff's recommendation of approval. A special exception allowing up to 14 fueling stations meets LDC approval criteria. The Hearing Examiner also finds that as conditioned, the requested special exception will not be detrimental or injurious to County residents.

IV. Findings and Conclusions

Based upon the testimony and evidence presented in the record, the Hearing Examiner concludes that the requested special exception is approved subject to conditions, and finds the request:

- A. Is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, 25, 63, 77, Objectives 2.1, 4.1, 25.6, Policies 1.1.3, 2.1.1, 2.1.2, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 11.2.2, 25.8.1, 25.8.4, 25.9.1, 25.9.2, 60.1.1, 125.1.2, 125.1.4, Maps 1-A, 1-B, 1-C, 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 1.1.3, 2.1.1, 2.1.2, 2.2.1, 5.1.5, 6.1.4.
- C. Will not be injurious to the neighborhood or detrimental to the public welfare. Lee Plan Policies 6.1.4, 6.1.5, 6.1.6; and
- D. Will comply with LDC zoning regulations. LDC Chapters 2, 10, 33, and 34.

V. Conditions of Approval

- 1. Site Plan. Special exception approval is conditioned on site development substantially consistent with the "7-11 Site Plan" dated November 22, 2024 (Exhibit B).
- 2. Hours of Deliveries. Deliveries are limited to 6:00 am to 12:00 am daily.
- 3. Development Permits. 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

²⁷ LDC §34-145(c)(4)b.

²⁸ The condition requires site design to substantially comply with the site plan in Staff Report Attachment C.

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. Peter Blackwell

Applicant Representatives

1. Richard Akin, Esq.
2. Albert Martes-Rodriguez
3. Linda Miller
4. Paul Owen
5. Ted Treesh

Public Participants

1. Derek Felder

VII. Legal Description

Exhibit A (scanned legal description with vicinity map).

Strap #: 30-44-26-05-00000.B010

VIII. Exhibits Submitted at Hearing

Staff Exhibits

1. *DCD Staff Report with attachments for DCI:* Prepared by Peter Blackwell, Planner, date received February 19, 2025 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *Affidavit of Publication:* For Zoning Case SEZ2024-00001, Lee Boulevard Convenience Store (1 page – 8.5"x11")
3. *PowerPoint Presentation:* Prepare by Lee County Staff for SEZ2024-00001, Lee Boulevard Convenience Store (multiple pages – 8.5"x11")[color]

Applicant Exhibits

- a. *48-Hour Notice*: Email from Richard Akin, Esq., to Hearing Examiner, with copies to Linda Miller, Joseph Adams, Esq., Anthony Rodriguez, Peter Blackwell, Mike and Metcalf, dated Tuesday, February 25, 2025, 12:32 PM (3 pages – 8.5"x)
1. *PowerPoint Presentation*: Prepare for SEZ2024-00001, Lee Boulevard Convenience Store (multiple pages – 8.5"x11")[color]
2. *Site Plan*: Prepared by Avalon Engineers, Inc., for Lee Boulevard Commercial Subdivision (2 pages – 11"x17" and 24"x36")[color]
3. *Résumé*: For Albert A. Martes-Rodriguez, P.E. (3 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.

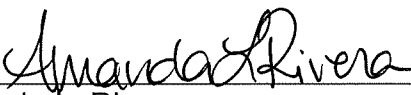
X. Appeals

This Hearing Examiner Decision is final on the date rendered. The Decision may be appealed to the Lee County Circuit Court 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 are part of the case file maintained by the Department of Community Development. Case files and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:00 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.

Decision rendered March 5, 2025.



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

K.E. TRASK, P.A.
LAND SURVEYORS

A PARCEL LYING IN
SECTION 30, TOWNSHIP 44 SOUTH, RANGE 26 EAST,
LEE COUNTY, FLORIDA.

(C-STORE)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 30, TOWNSHIP 44 SOUTH, RANGE 26 EAST, BEING A PART OF TRACT B, LEHIGH ACRES SUBDIVISION, PLAT BOOK 26 PAGE 55, LEE COUNTY PUBLIC RECORDS, AS DESCRIBED IN OFFICIAL RECORDS INSTRUMENT 2021000029777, SAID PUBLIC RECORDS, AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A 3"X3" CONCRETE MONUMENT WITH DISK STAMPED "PRM/LEHIGH CORP." MARKING THE NORTHEAST CORNER OF LOT 10, BLOCK 34, SAID LEHIGH ACRES SUBDIVISION, PLAT BOOK 26, PAGE 55; THENCE S.01°06'55"E. ALONG THE EAST RIGHT OF WAY LINE OF ALVIN AVENUE AS SHOWN ON SAID PLAT, FOR 546.02 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LEE BOULEVARD (COUNTY ROAD 884); THENCE N.89°20'24"E. ALONG SAID RIGHT OF WAY LINE FOR 319.22 FEET TO THE EASTERLY RIGHT OF WAY LINE OF ALVIN AVENUE, AS DESCRIBED IN OFFICIAL RECORDS BOOK 2837, PAGE 2748, SAID PUBLIC RECORDS AND THE POINT OF BEGINNING, BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, A CHORD BEARING N.53°09'36"W. AND LENGTH OF 30.44 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND CURVE THROUGH A CENTRAL ANGLE OF 75°00'00" FOR AN ARC LENGTH OF 32.72 FEET; THENCE N.15°39'36"W. ALONG SAID RIGHT OF WAY LINE FOR 210.57 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 678.00 FEET, A CHORD BEARING N.17°38'46"W. AND LENGTH OF 47.00 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND CURVE, THROUGH A CENTRAL ANGLE OF 03°58'21" FOR AN ARC LENGTH OF 47.01 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, A CHORD BEARING N.34°51'13"E. AND LENGTH OF 40.70 FEET; THENCE ALONG SAID RIGHT OF WAY LINE AND CURVE THROUGH A CENTRAL ANGLE OF 108°58'21" FOR AN ARC LENGTH OF 47.55 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BROOKFIELD STREET; THENCE N.89°20'24"E. ALONG SAID RIGHT OF WAY LINE AND THE BOUNDARY OF SAID TRACT B, FOR 331.27 FEET; THENCE S.00°39'36"E. FOR 300.00 FEET TO SAID NORTHERLY RIGHT OF WAY LINE OF LEE BOULEVARD (COUNTY ROAD 884); THENCE S.89°20'24"W. ALONG SAID RIGHT OF WAY LINE AND THE BOUNDARY OF SAID TRACT B, FOR 262.54 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 96344.48 SQUARE FEET OR 2.21 ACRES, MORE OR LESS.

BEARINGS ARE PLANE COORDINATE FLORIDA WEST ZONE, NORTH AMERICAN DATUM OF 1983/1990, THE NORTHLERY RIGHT OF WAY LINE OF LEE BOULEVARD AS BEARING S.89°20'24"W.

COORDINATES AS SHOWN ARE PLANE COORDINATE FLORIDA WEST ZONE, NORTH AMERICAN DATUM OF 1983/1990.

K.E. TRASK, P.A.
FLORIDA LICENSED BUSINESS LB8450

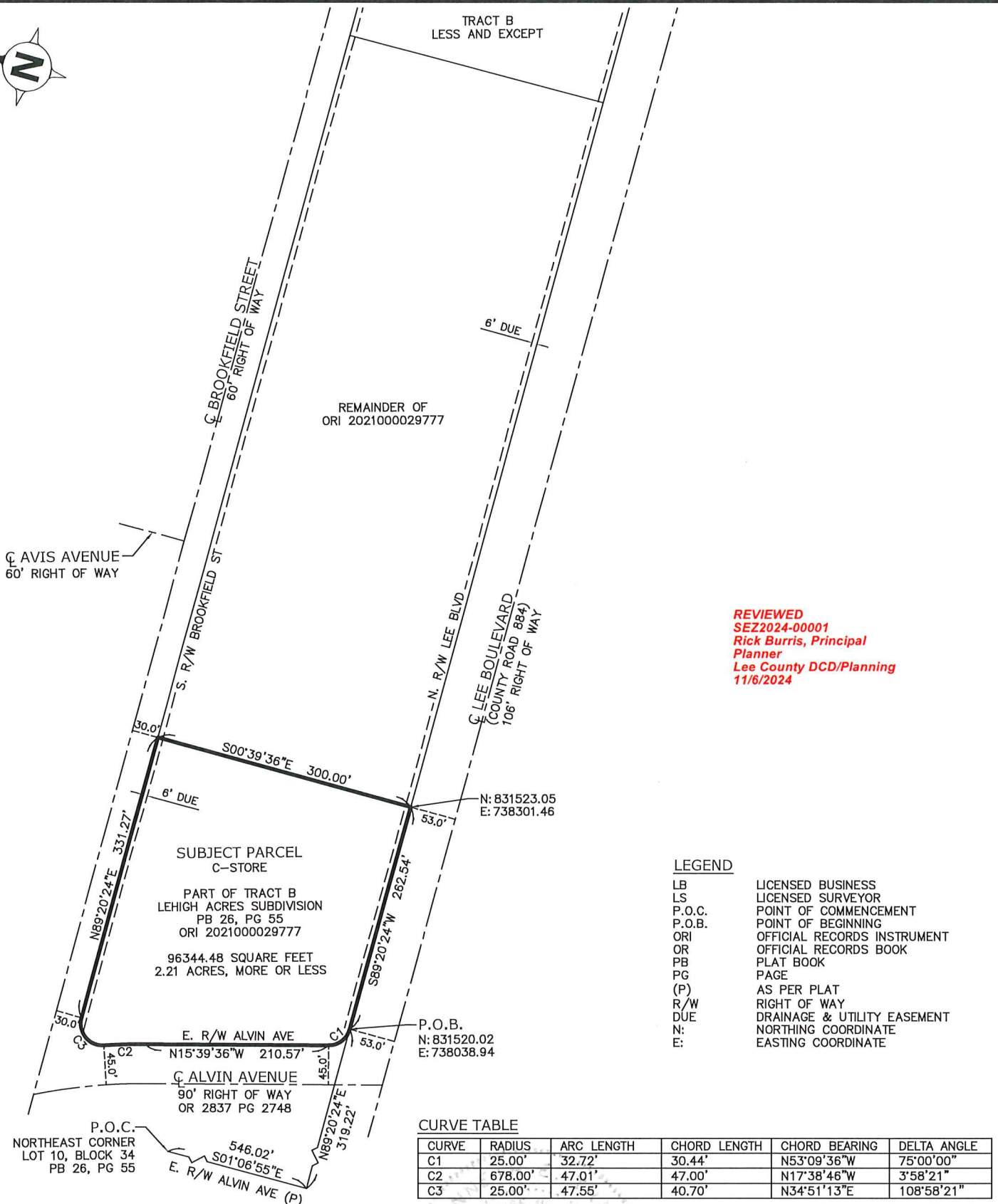
MARCH 1, 2024

Kenneth E. Trask
PLS4684 State of Florida
-05'00"

Digitally signed by Kenneth E. Trask
Trask PLS4684 State of Florida
Date: 2024.03.05 11:35:08

KENNETH E. TRASK
PROFESSIONAL LAND SURVEYOR
FLORIDA LICENSE LS4684

REVIEWED
SEZ2024-00001
Rick Burris, Principal
Planner
Lee County DCD/Planning
11/6/2024



OF A PARCEL LYING IN
SECTIONS 30, TOWNSHIP 44 SOUTH,
RANGE 26 EAST,
LEE COUNTY, FLORIDA.

Kenneth E. Trask
PLS4684 State of
Florida

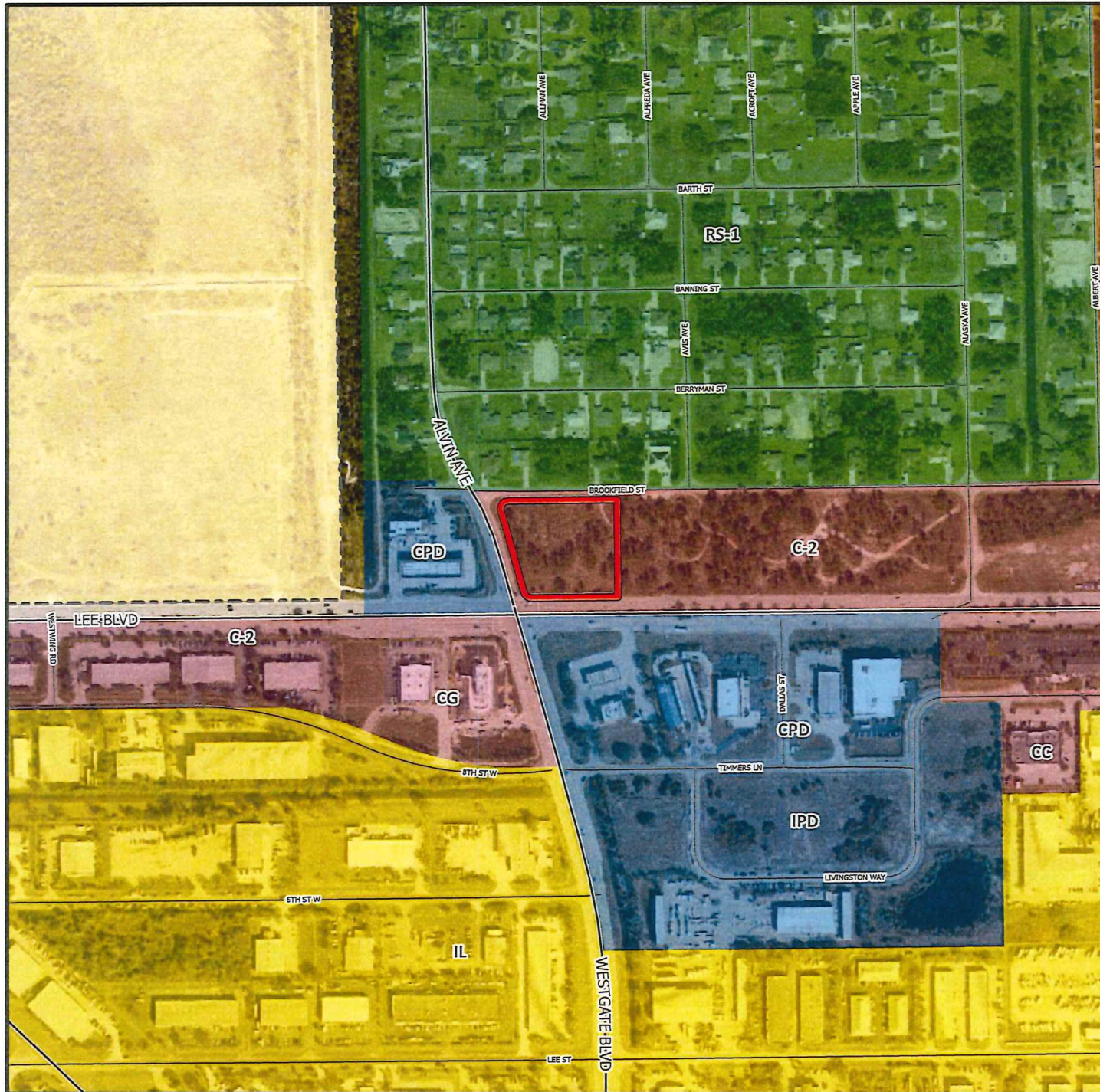
Digitally signed by Kenneth E.
Trask PLS4684 State of Florida
Date: 2024.03.05 11:34:44
-05'00'

KENNETH E. TRASK
PROFESSIONAL LAND SURVEYOR
FLORIDA LICENSE NO. LS4684

DATE _____

Florida Licensed Business No. LB8450
12345 Blasingim Road
Fort Myers, Florida 33966
(239) 980-1495

date	dwg	scale	job#	sheet
3-1-24	21-152SK	1"=150'	21-152	2 OF 2

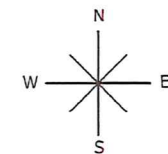


SEZ2024-00001

Zoning

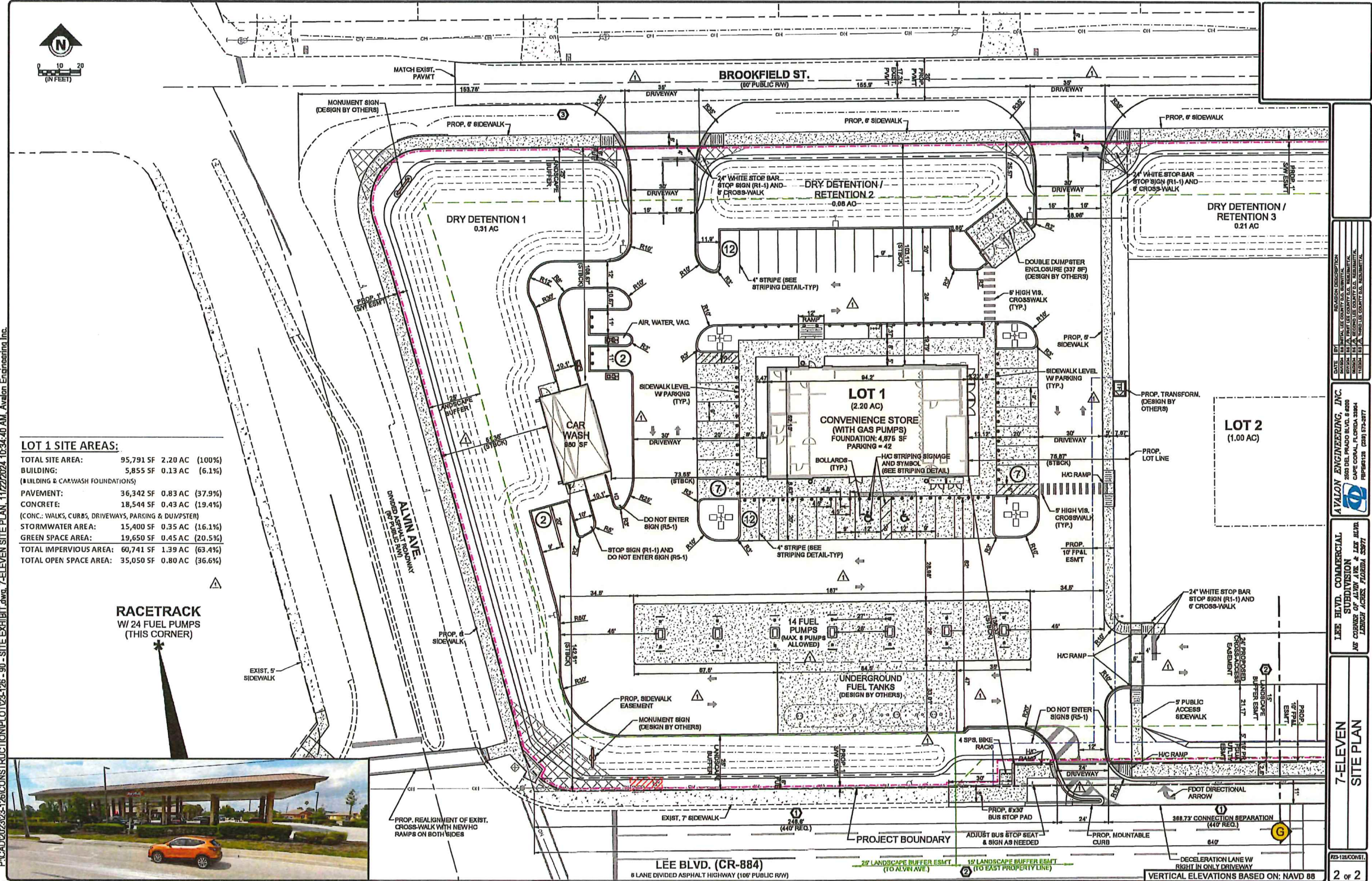
 Subject Property

 City Limits



0 500
Feet





LOT 1 SITE AREAS:

TOTAL SITE AREA:	95,791 SF	2.20 AC	(100%)
BUILDING:	5,855 SF	0.13 AC	(6.1%)
(BUILDING & CARWASH FOUNDATIONS)			
PAVEMENT:	36,342 SF	0.83 AC	(37.9%)
CONCRETE:	18,544 SF	0.43 AC	(19.4%)
(CONC.: WALKS, CURBS, DRIVEWAYS, PARKING & DUMPSTER)			
STORMWATER AREA:	15,400 SF	0.35 AC	(16.1%)
GREEN SPACE AREA:	19,650 SF	0.45 AC	(20.5%)
TOTAL IMPERVIOUS AREA:	60,741 SF	1.39 AC	(63.4%)
TOTAL OPEN SPACE AREA:	35,050 SF	0.80 AC	(36.6%)

RACETRACK
W/ 24 FUEL PUMPS
(THIS CORNER)



7-ELEVEN SITE PLAN	
7-ELEVEN COMMERCIAL SUBDIVISION NE CORNER OF ALVIN AVE. & LEE BLVD. LEESBURG, FLORIDA 33408	
AVALON ENGINEERING, INC. 2800 DEL PRADO BLVD. # 400 CAPE CORAL, FLORIDA 33904 PREPARED FOR: 7-ELEVEN DATE: 11/22/2024 BY: [Signature]	
2 of 2	

EXHIBIT B

