

M E M O R A N D U M
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER

DATE: June 5, 2026

TO: Board of County Commissioners FROM: Donna Marie Collins
Lee County Chief Hearing Examiner

RE: 16400 Old US 41
Hearing Examiner Decision

Chief Hearing Examiner Donna Marie Collins has rendered a Decision on the following zoning request:

16400 Old US 41

REZ2025-00012

HEARD: June 4, 2026

A copy of the Decision is attached for ready reference.

cc: Anthony Rodriguez / Zoning Section
Brianna Schroeder / Zoning Section
Warren Baucom / Economic Development
Phil Gillogly / Natural Resources
Brienne Cherry / Community Development
Applicant(s) & Representative(s)
Other Interested Parties

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

REZONING: REZ2025-00012

Regarding: 16400 Old US 41

Location: 16420 Old US 41

San Carlos Planning Community
(District 2)

Hearing Date: June 4, 2026

I. Request

Rezone 1.98± acres from Agricultural (AG-2) to Intensive Commercial (CI) zoning district.

The property legal description is set forth in Exhibit A.

II. Hearing Examiner Decision

Approved.

III. Discussion

Synopsis of Request

The Applicant seeks to rezone 1.98 acres from Agriculture (AG-2) to Intensive Commercial (CI) on Old US 41 in the San Carlos Planning District.¹ The property is located at 16400 Old US 41, north of Alico Road.

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

The Hearing Examiner has final decision-making authority on applications to rezone property to conventional zoning districts.² The Hearing Examiner finds the request meets LDC review criteria for rezonings and approves the request. Discussion follows below.

¹ Lee Plan Map 1-B.

² LDC §34-145(d)(1)a.

History

The 1.98-acre site is part of a larger tract over five acres in size. The site has bifurcated zoning in that the subject 1.98-acre parcel is zoned AG-2, and the remaining 3.21 acres are zoned Light Industrial (IL).³ The property owner testified a marine construction business formerly occupied the site. Applicant recently combined the two properties in preparation for sale.

The site access to Old US 41 is via adjacent property under common ownership.⁴ The western boundary is the Ten Mile Canal.

Conventional industrial zoning districts dominate Old US 41, but the Lee County Comprehensive Plan (Lee Plan) now requires planned development zoning for industrial land uses in the Urban Community.⁵ For this reason, the request seeks approval for a commercial district permit, including light industrial uses.

The subject 1.98-acre portion of the property was used for open storage of materials and supplies.

The property is vacant and unimproved.

Lee Plan

The property is designated Urban Community by the Lee Plan.⁶ The Urban Community is characterized by a mixture of relatively intense commercial and residential uses along, with limited light industrial uses.

The Lee Plan Economic Element encourages expansion of the County's economic base.⁷ Land development creates jobs, increases property values, generates tax revenue, and contributes to economic growth. The proposed CI zoning district contributes to a positive business climate by expanding opportunities for commercial and light industrial development, creating additional employment opportunities in the region.⁸

³ In October 2025, the property was combined with the abutting 3.21-acre lot with frontage on Old US 41.

⁴ Staff Report Attachment D: Applicant's Narrative.

⁵ Lee Plan 7.1.2. There is one tract across the street recently rezoned to Industrial Planned Development.

⁶ Lee Plan Future Land Use Map 1-A.

⁷ Lee Plan Goals 158, 161, Objective 158.2.

⁸ Lee Plan Goal 158 Objective 158.3.

Compliance with LDC and County Regulations.

The current zoning designation is Agricultural. The purpose of Agricultural Districts is to provide for agriculture and ancillary residential uses.⁹ The Lee Plan discourages new agricultural pursuits in future urban areas equipped with public services and infrastructure to serve development.¹⁰ The requested intense commercial zoning district authorizes development of land uses better suited to property in the Urban Community.¹¹

The purpose of the CI zoning district is to designate suitable locations for commercial activities with similar needs as industrial land uses.¹² The CI district serves as a transition between consumer-oriented commercial and light industrial uses.

The CI district includes some heavy commercial and light industrial uses permitted in the IL and General Industrial (IG) zoning districts.¹³ Shared land uses include Building Material Sales, Business Services, Group II, Storage, Indoor, Open Storage, Warehouse (Hybrid, Mini-Warehouse, Private, and Public), and Wholesale, Groups I, III, and IV.

The 5.19-acre tract will continue to be split by two zoning districts following approval of the subject request.¹⁴ When a lot is split by two zoning districts, the property development regulations for the larger district prevail during site development.¹⁵ Development must abide by the minimum property development standards of the IL zoning district.¹⁶

The proposed CI district is a “*conventional*” zoning district. Therefore, it is not possible to impose conditions on approval. The CI use regulation table will govern permitted uses, subject to limitations imposed by the Lee Plan.¹⁷ Deviations from LDC may be achieved via variance or administrative amendment.¹⁸

Development will be subject to road, fire, and emergency medical services impact fees.¹⁹

⁹ LDC §34-651.

¹⁰ Lee Plan Goal 9, Objective 9.2.

¹¹ Lee Plan Goal 6, Policy 1.1.4.

¹² LDC §34-841(n). CI uses are often indistinguishable from industrial land uses.

¹³ These commercial activities are often indistinguishable from industrial land uses due to the type and size of the buildings, relations to modes of transportation, and demands on various services.

¹⁴ The 5.21-acre site is currently split between the IL and AG-2 zoning districts. Following rezoning, the 5.19-acre parcel will be comprised of 3.21 acres zoned IL and 1.9 acres zoned CI.

¹⁵ LDC §34-616(b).

¹⁶ LDC §34-904.

¹⁷ LDC §§34-621, 34-844.

¹⁸ The application seeks no variances from the code.

¹⁹ LDC Chapter 2.

Compatibility With Surrounding Land Uses

The County evaluates compatibility during the zoning process.²⁰ Appropriate intensity is determined on a case-by-case basis in accordance with Lee Plan policies and nature of surrounding land uses. Compatibility exists when land uses exist in proximity without unduly negative impacts on one another.²¹

The CI zoning district is consistent with light industrial development patterns on Old US 41. Nearby land uses consist of light industrial uses and open storage.²² Property to the south is zoned Mixed Use Planned Development (MPD).²³ The Dia Crossing MPD Master Concept Plan (MCP) depicts open space and preserves adjacent to the subject property. Multifamily dwellings are under construction south of the preserves.

The 2024 approval of residential land uses on an industrial corridor does not render the subject request incompatible with surrounding development.²⁴ Development along Old US 41 is decidedly industrial in character. The Dia Crossing MCP depicts open space/preserves along the shared property boundary, providing sufficient separation and buffering from light industrial activity.

The request meets the definition of infill and contributes to contiguous development patterns.²⁵

Access is sufficient to support development intensity, and expected impacts will be addressed by existing county regulations.

The site has no road frontage on Old US 41.²⁶ Testimony confirms the property will be integrated with adjacent property under common ownership with access to the road.²⁷

The LDC does not require a Traffic Impact Statement (TIS) for conventional zoning requests. Developer must submit a TIS during development order review and must address site related road improvements at that time.²⁸

²⁰ LDC §34-145(d)(4).

²¹ Florida Statutes s.163.3164(9).

²² The Old US 41 road corridor is nearly built out with light industrial land uses, including automotive repair and service, warehousing, open storage, offices, landscaping businesses, and utility infrastructure companies. Unscreened outdoor storage of equipment and materials dominate the area. A wireless communication facility with guy wires is located across Old US 41. Vacant property further south near the intersection with Allico Road is under development as a multifamily residential project. Lee Plan Policies 1.1.4, 6.1.7.

²³ DIA Crossing MPD approved December 4, 2024, via Z-24-028.

²⁴ Lee Plan Policy 7.1.7 is not applicable to the consideration of the request to rezone the property to CI, given industrial character of surrounding development, and the parcel's remnant status.

²⁵ Lee Plan Objectives 2.1, 2.2, Policies 2.1.1, 2.1.2, 6.1.7, 39.2.1.

²⁶ Old US 41 is a two-lane paved road maintained by Lee County.

²⁷ Testimony of Alexis Crespo, AICP; Staff Report Attachment D: Applicant's Narrative.

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

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

The property is vacant with no environmental resources or environmentally sensitive lands.

Upon redevelopment, the project must provide a stormwater system meeting County and South Florida Water Management District (SFWMD) standards.²⁹ The water management system must ensure pretreatment of stormwater prior to discharge.³⁰ Design, construction, and maintenance of artificial drainage systems must provide retention/detention areas and vegetated swale systems to minimize nutrient loading and pollution of freshwater and estuarine systems.³¹

Development in coastal areas is subject to additional requirements under the Conservation and Coastal Management Element of the Lee Plan.³² The project will be subject to regulations designed to reduce vulnerability from natural disasters such as hurricanes and flooding.³³

Development must comply with LDC open space, setback, and buffering requirements.³⁴

Public Services and Infrastructure

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

The property has access to public services and infrastructure.³⁷ The site has access to Old US 41. Lee County Utilities has public water and sanitary sewer

²⁹ Lee Plan Policies 101.1.1, 101.3.2. Developer must obtain an Environmental Resource Permit from the SFWMD.

³⁰ Lee Plan Policy 125.1.2.

³¹ Development order submittals must provide drainage calculations and information to ensure compliance with the Lee Plan. Lee Plan Policies 125.1.2 and 125.1.3.

³² The property is located within a Coastal High Hazard Area defined as the area below the elevation of the Category 1 storm surge line established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model and delineated by Lee Plan Map 5-A. Lee Plan Objective 2.6. See Goals 72, 73, 101.

³³ Lee Plan Goal 72, Objectives 72.2, 101.3, Policy 101.1.1; LDC §2-481 *et seq.* Development must be restricted to uplands Lee Plan Policy 101.3.2.

³⁴ Lee Plan Policy 6.1.6.

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.

³⁷ Goals 4, 53, 56, 65, 95, Policies 1.1.4, 2.2.1, Standards 4.1.1, 4.1.2.

infrastructure available to serve the property.³⁸ Fire, EMS, and law enforcement stations are in proximity to the site.³⁹

Public

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

Conclusion

Based upon the testimony and exhibits presented at hearing, the Hearing Examiner finds the CI zoning district meets the criteria set forth in the LDC and is compatible with surrounding development.

IV. Findings in Support of Approval

The proposed Intensive Commercial (CI) zoning district:

- A. Is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, 7, Objectives 2.1, 2.2, 6.1, 39.1, 101.1, 158.3, Policies 1.1.4, 1.7.6, 2.1.1, 2.1.2, 2.2.1, 6.1.1, 6.1.4, 6.1.6, 6.1.7, 7.1.2, 7.1.7, 38.1.1, 39.1.1, 39.2.1, 101.1.1, 101.3.2, 125.1.2, 125.1.3, 158.2.1, Standards 4.1.1, 4.1.2, Maps 1-A, 5-A, 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 2.1, 2.2, 6.1, Policies 1.1.4, 2.1.2, 2.2.1, 6.1.1, 6.1.4, 6.1.7, 158.2.2.
- 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 6.1.1, 6.1.5, 7.1.7, 38.1.1, 39.1.1, 39.2.1, 158.3.1.
- E. Will not adversely affect environmentally critical areas or natural resources. Lee Plan Policies 6.1.1, 6.1.6, 101.1.1, 125.1.2, 125.1.3, Lee Plan Map 5-A.
- F. Will be served by urban services and infrastructure. Lee Plan Goal 2, 6, 60, 70, 95, Objectives 2.1, 2.2, 4.1, 66.1, 158.3, Policies 2.2.1, 6.1.4, 65.1.5, 65.2.1, 72.1.6, 73.2.2, 160.1.1, 160.1.2, Standards 4.1.1, 4.1.2, Lee Plan Maps 4-A, 4-B.

³⁸ Lee Plan Standards 4.1.1, 4.1.2; Staff Report Attachment F.

³⁹ Staff Report Pages 7-8. San Carlos Fire Station 52 and Lee County Emergency Medical Services are co-located at a station on Island Park Road, within two miles of the site. Lee County Sheriff's Headquarters is located on Six Mile Cypress Parkway within five miles of the site.

Date of decision: June 5, 2026.



Donna Marie Collins
Chief Hearing Examiner

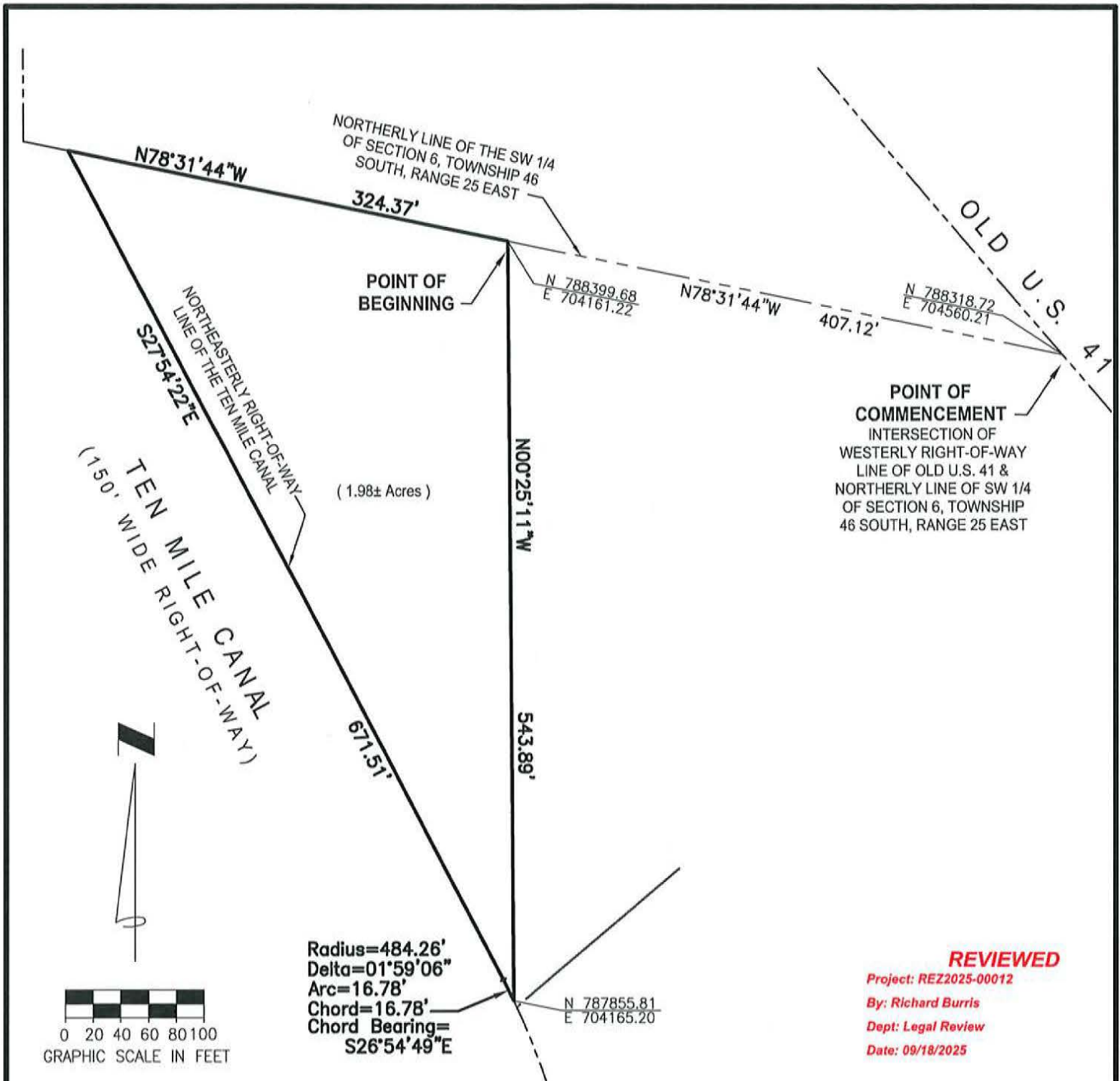
Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits

A Legal Description
B Exhibits Presented at Hearing
C Participants

Exhibit A
Legal Description

Exhibit A



REVIEWED

Project: REZ2025-00012

By: Richard Burris

Dept: Legal Review

Date: 09/18/2025

THIS IS NOT A BOUNDARY SURVEY

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

 J H McCARRIER LAND SURVEYING, INC. Licensed Business No. 7027	PROJECT				SKETCH & LEGAL DESCRIPTION										
					'16400 OLD U.S. 41 - FORT MYERS'										
					PART OF THE SW 1/4 OF SECTION 6, TOWNSHIP 46 SOUTH, RANGE 25 EAST										
2460 SUNRISE BOULEVARD FORT MYERS, FLORIDA 33907 Phone:(239) 277-7821	CLIENT		HALEY WARD, INC.		SCALE		1"=100'		DATE		JUNE 18, 2021				
			13041 MCGREGOR BLVD		FILENAME		16400OldUS41_s&l.dwg		PROJECT NO.		20-143.1				
			FORT MYERS, FL 33919												
			PHONE: (239) 418-1331		DRAWN BY		JHM		CHECKED BY		JHM				
												SHEET 1 OF 2			

LEGAL DESCRIPTION

A PORTION OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF SECTION 6, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LYING NORTHEASTERLY OF THE TEN MILE CANAL, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A 3" X 3" CONCRETE MONUMENT, MARKING THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF OLD U.S. 41 AND THE NORTHERLY LINE OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF SAID SECTION 6, RUN N78°31'44"W ALONG SAID QUARTER SECTION LINE, A DISTANCE OF 407.12 FEET TO A 4" X 4" CONCRETE MONUMENT AND THE **POINT OF BEGINNING**; THENCE CONTINUE N78°31'44"W ALONG SAID QUARTER SECTION LINE, A DISTANCE OF 324.37 FEET TO A POINT OF INTERSECTION WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID TEN MILE CANAL (150-FOOT WIDE); THENCE RUN S27°54'22"E ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 671.51 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE WEST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING FOR ITS ELEMENTS A RADIUS OF 484.26 FEET, A CENTRAL ANGLE OF 01°59'06", AN ARC DISTANCE OF 16.78 FEET, A CHORD DISTANCE OF 16.78 FEET AND A CHORD BEARING OF S26°54'49"E; THENCE RUN N00°25'11"W, A DISTANCE OF 543.89 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 1.98 ACRES, MORE OR LESS.

SURVEYOR'S NOTES

1. BEARINGS SHOWN HEREON ARE BASED UPON FIXING THE MONUMENTED NORTH LINE OF THE SOUTHWEST ONE-QUARTER (SW 1/4) OF SECTION 6, TOWNSHIP 46 SOUTH, RANGE 25 EAST, AS N78°31'44"W.
2. THIS MAP IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL, OR A VALIDATED ELECTRONIC SIGNATURE, OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. HORIZONTAL COORDINATE VALUES SHOWN HEREON REFLECT FLORIDA STATE PLANE COORDINATES, WEST ZONE, AND ARE REFERENCED TO THE NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT.

PREPARED BY:

Judith H McCarrier, PSM
License No. 6021
State of Florida

2025.07.03

15:06:50 -04'00'

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



REVIEWED

Project: REZ2025-00012

By: Richard Burris

Dept: Legal Review

Date: 09/18/2025

THIS IS NOT A BOUNDARY SURVEY

SEE SHEET 1 OF 2 FOR SKETCH.



J H MCCARRIER LAND SURVEYING, INC.
Licensed Business No. 7027

2460 SUNRISE BOULEVARD
FORT MYERS, FLORIDA 33907
Phone: (239) 277-7821

PROJECT

SKETCH & LEGAL DESCRIPTION

'16400 OLD U.S. 41 - FORT MYERS'

PART OF THE SW 1/4 OF SECTION 6, TOWNSHIP 46 SOUTH, RANGE 25 EAST

CLIENT

HALEY WARD, INC.

13041 MCGREGOR BLVD
FORT MYERS, FL 33919
PHONE: (239) 418-1331

SCALE

N.A.

DATE

JUNE 18, 2021

FILENAME

16400OldUS41_s&l.dwg

PROJECT NO.

20-143.1

DRAWN BY

JHM

CHECKED BY

JHM

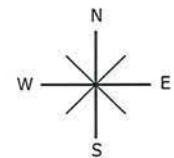
SHEET 2 OF 2



REZ2025-00012

Zoning

 Subject Property



0 500
Feet



Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. DCD Staff Report with attachments for DCI: Prepared by Brianna Schroeder, Planner, date received May 20, 2026 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. 48-Hour Notice: Email from Brianna Schroeder to Maria Perez, Greenie-1963, Carol Zepeda, and Alexis Crespo, with copies to Rebecca Sweigert, Brienne Cherry, Mikki Rozdolski, Anthony Rodriguez, Joseph Adams, and Mark Ledesma, dated Tuesday, June 2, 2026, 10:08 AM (multiple pages – 8.5"x11")[color]
3. PowerPoint Presentation: Prepared by Lee County Staff for 16400 Old US 41, REZ2025-00012, Hearing Examiner, dated June 4, 2026 (multiple pages – 8.5"x11")[color]

APPLICANT EXHIBITS

1. 48-Hour Notice: Email from Alexis Crespo to Maria Perez, with copies to Brianna Schroeder and Carol Zepeda, dated Monday, June 1, 2026, 5:13 PM (multiple pages – 8.5"x11")
2. PowerPoint Presentation: Prepared for Zoning Case REZ2025-00012, 16400 Old US 41 Rezone, dated June 4, 2026 (multiple pages – 8.5"x11")[color]

Exhibit C

HEARING PARTICIPANTS

County Staff:

1. Brianna Schroeder, Planner, Department of Community Development

Applicant Representatives:

1. Alexis Crespo, AICP
2. Mike Jones