

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

WHEREAS, Carron Day and Brian Bigelow filed an application on behalf of the contract purchaser, Dennis J. Lynch, with the consent of the property owner, Steven H. Paletsky, M.D., Trustee, to rezone a 13.47±-acre parcel from Agricultural (AG-2) to Commercial Planned Development (CPD) in reference to Tulip Associates CPD; and

WHEREAS, a public hearing was advertised and held on February 9, 2000, and continued to February 15, 2000, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #99-09-162.03Z 01.01; and

WHEREAS, a second public hearing was advertised and held on March 20, 2000, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to rezone a 13.47±-acre parcel from AG-2 to CPD, to allow a maximum of 130,500 square feet of commercial floor area with buildings not to exceed 45 feet in height. The property is located in the Suburban Land Use Category and legally described in attached Exhibit A. The request is APPROVED SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. Development must be consistent with the one-page Master Concept Plan (MCP) entitled "Conceptual Master Plan," stamped received January 25, 2000, last revised January 18, 2000, prepared by Florida Land Planning, except as modified by the conditions below. This development must comply with the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

The second Site Development Note on the approved MCP (relating to the project uses and intensity; the combination of or addition of other uses to the project provided that the number of peak, PM trips do not exceed the level in the August 1999 Traffic Impact Statement) has not been approved and has no force or effect as part of this planned development.

The third Site Development Note on the approved MCP is intended to provide some flexibility in the location of access points, internal roadways, and parcel boundary lines; it is not intended, and will not be construed, to allow a developer to completely reconfigure the overall site plan in a fashion that would render the conditions herein below inapplicable.

The approved intensity of this development may not exceed the following:

Tracts "A" through "F" are limited to a maximum overall total gross floor area of 130,500 square feet with not more than 30,000 square feet of this total devoted to uses that must meet the Lee Plan Commercial Site Location Standards. The 30,000 square feet which must meet Lee Plan Commercial Site Location Standards must be located on Tracts "A" through "D".

2. The following is the approved Schedule of Uses for this planned development replacing the Schedule requested on the approved MCP:

### **SCHEDULE OF USES**

#### **Tracts "A" through "D":**

ACCESSORY USES AND STRUCTURES (LDC §§ 34-1171 *et seq.*, 34-2441 *et seq.*, 34-1863, and 34-2141 *et seq.*)

ADMINISTRATIVE OFFICES

ANIMALS: Clinic (LDC § 34-1321 *et seq.*)

ASSISTED LIVING FACILITY - maximum of 100 beds

★AUTO PARTS STORE - without installation facilities

BANKS AND FINANCIAL ESTABLISHMENTS [LDC § 34-622(c)(3)]: Groups I and II (excluding Federal Reserve Banks and Security and Commodity Exchanges)

BUSINESS SERVICES [LDC § 34-622(c)(5)]: Group I

CLOTHING STORES, general [LDC § 34-622(c)(8)]

CONSUMPTION ON PREMISES - accessory to full service restaurant use ONLY as restricted in Condition 15

DAY CARE CENTER, CHILD, ADULT

\*DRUGSTORE, PHARMACY

DRIVE THRU FOR ANY PERMITTED USE - NO outside speaker systems, loud speakers, or public address systems are allowed in conjunction with this use.

ENTRANCE GATES AND GATEHOUSE (LDC § 34-1741 *et seq.*)

ESSENTIAL SERVICES (LDC §§ 34-1611 *et seq.*, and 34-1741 *et seq.*)  
 ESSENTIAL SERVICE FACILITIES [LDC § 34-622(c)(13)]: Group I (LDC §§ 34-1611 *et seq.*, 34-1741 *et seq.*, and 34-2141 *et seq.*)  
 EXCAVATION: Water retention (LDC § 34-1651)  
 FENCES, WALLS (LDC § 34-1741)  
 \*FOOD STORES [LDC § 34-622(c)(16)]: Groups I and II  
 GIFT AND SOUVENIR SHOP  
 \*HARDWARE STORE  
 HEALTH CARE FACILITIES [LDC § 34-622(c)(20)]: Groups I, II & III  
 HOBBY, TOY AND GAME SHOPS [LDC § 34-622(c)(21)]  
 HOTEL/MOTEL - limited to 130 rooms  
     Accessory uses to include full service restaurant and consumption on premises as limited in Condition 15  
 INSURANCE COMPANIES  
 LAUNDRY OR DRY CLEANING [LDC § 34-622(c)(24)]: Group I  
 MEDICAL OFFICE  
 NON-STORE RETAILERS [LDC § 34-622(c)(30)]: All Groups  
 \*PACKAGE STORE (LDC § 34-1261 *et seq.*)  
 PAINT, GLASS & WALLPAPER - limited to 5,000-square-foot store  
 PARKING LOT: Accessory  
 PERSONAL SERVICES [LDC § 34-622(c)(33)]: Groups I and IV, and beauty spa and health club  
 PET SERVICES  
 PET SHOP  
 PLACE OF WORSHIP (LDC § 34-2051 *et seq.*)  
 RELIGIOUS FACILITIES (LDC § 34-2051 *et seq.*)  
 RENTAL OR LEASING ESTABLISHMENT [LDC § 34-622(c)(39)]: Groups I and II (LDC § 34-1201 *et seq.*, 34-1352, and 34-3001 *et seq.*)  
 \*REPAIR SHOPS [LDC § 34-622(c)(40)]: Group I  
 RESTAURANTS [LDC § 34-622(c)(43)]: Groups I, II, and III, as limited in Condition 15  
 SIGNS, in accordance with Chapter 30  
 SPECIALTY RETAIL SHOPS [LDC § 34-622(c)(47)]: Groups I and II  
 \*STORAGE: Indoor only, (LDC § 34-3001 *et seq.*)  
 STUDIOS  
 TEMPORARY USES - limited to Christmas tree or other seasonal sales  
 USED MERCHANDISE STORES [LDC § 34-622(c)(54)]: Group I  
 \*VARIETY STORE

★Uses noted with this symbol are limited to the following hours of operation: 8:00 a.m. through 9:00 p.m., Monday through Saturday ONLY

\*Uses noted with this symbol are limited to the following hours of operation: 8:00 a.m. through 9:00 p.m., Monday through Saturday, and from 12:00 p.m. (noon) through 6:00 p.m. on Sunday.

**Tracts "E" and "F":**

ACCESSORY USES & STRUCTURES (LDC §§ 34-1171, *et seq.*, 34-2441 *et seq.*, 34-1863 and 34-2141 *et seq.*)  
ADMINISTRATIVE OFFICES  
AGRICULTURAL USES, continuation of existing bonafide use - ONLY until first development approval is received.  
ASSISTED LIVING FACILITIES - maximum of 100 beds  
BANKS AND FINANCIAL ESTABLISHMENTS [LDC § 34-622(c)(3)]: Groups I and II (excluding Federal Reserve Banks and Security and Commodity Exchanges) - NO drive-thru uses  
BUSINESS SERVICES [LDC § 34-622(c)(5)]: Group I  
DAY CARE CENTER, CHILD, ADULT  
ENTRANCE GATES AND GATEHOUSES  
ESSENTIAL SERVICES (LDC §§ 34-1611 *et seq.* and 34-1741 *et seq.*)  
ESSENTIAL SERVICE FACILITIES [LDC § 34-622(c)(13)]: Group I (LDC §§ 34-1611 *et seq.*, 34-1741 *et seq.*, and 34-2141 *et seq.*)  
EXCAVATION: Water retention (LDC § 34-1651)  
FENCES, WALLS (LDC § 34-1741)  
HEALTH CARE FACILITIES, Group III  
INSURANCE COMPANIES  
MEDICAL OFFICE  
PARKING LOT: Accessory  
PERSONAL SERVICES [LDC § 34-622(c)(33)]: Group I, and beauty spas and tax preparation services  
PLACE OF WORSHIP (LDC § 34-2051 *et seq.*)  
SIGNS, in accordance with Chapter 30  
STUDIOS

**Conservation Area:**

Forest management activities, limited to removal of intrusive exotic species or diseased or dead trees, and pest control  
Hiking and nature study, clearing, including pedestrian boardwalks  
Recreational activities, outdoor only, to include only passive recreation activities  
Nature study center, non-commercial

3. The following Property Development Regulations replace the requested regulations shown on the approved MCP:

**Minimum Lot Area and Dimensions:**

Area:	1 acre
Width:	100 feet
Depth:	100 feet

Minimum Setbacks:

Street:	variable according to the functional classification of the street or road (§ 34-2191, <i>et seq.</i> )
Side:	15 feet
Rear:	25 feet
Water Body:	25 feet

Accessory Use and Structure setbacks must comply with LDC §§ 34-1171 *et seq.* and 34-2194.

Maximum Lot Coverage: 55 percent

Maximum Building Height: 45 feet - Tracts "A" through "D" ONLY  
30 feet - Tract "E"  
40 feet - Tract "F"

4. a. Prior to local development order approval, the entire site must be resurveyed specifically for Big Cypress fox squirrel presence. The protected species survey must be prepared per LDC § 10-473, and submitted to the Division of Planning, Environmental Sciences for review. If fox squirrel use of the site is verified, final management details per LDC § 10-474, must be submitted for Division of Planning/Environmental Sciences Staff review and approval.
- b. Thirty percent open space must be provided for the entire CPD development area. Individual tracts must provide a minimum of 10 percent open space. Prior to local development order approval, the development order plan must include an open space table and delineation of open space provided to demonstrate that the open space requirements are met for the entire CPD development area.
5. The approximately 0.7-acre cypress area (FLUCCS 621) must be delineated on the local development order plans as an indigenous preserve. The cypress area is the only indigenous vegetation community on-site.
6. No direct vehicular access to any parcel may be permitted from adjoining streets or roads. All parcels must be accessed from the internal road or driveway network of the project. The internal road of the project from Marsh Landing Boulevard to U.S. 41 must be constructed in accordance with Lee County local road standards. Connection separation along this internal road is a minimum of 125 feet. The internal road will not be considered an access street for impact fee credit purposes and is not eligible for impact fee credits.
7. Driveway connections with U.S. 41 are the jurisdiction of the State of Florida. This zoning action does not represent County endorsement of proposed access points since they do not meet County or State standards.

8. Buffering requirements:

a. As committed to on the MCP, the buffer along the western property line must be no less than 30 feet wide, consisting of 10 trees, of which at least five must be native shade (large canopy-type) trees, per 100 linear feet, and a hedge. No wall is required, but the developer must install a 6-foot-high security-type fence along the westerly property line as part of the buffer. The hedge must be planted in double staggered rows, be 48 inches high at installation, and maintained at 60 inches of height forming a continuous visual screen within one year after time of planting. Tree plantings within the project and in this buffer must, at a minimum, be consistent with the requirements of LDC § 10-420 for code required trees.

b. In conjunction with the buffer committed above, the developer must provide the following along the northerly 550 feet of the project's westerly property line:

either

1) a 2-foot-high berm with the height of the berm not considered in calculating the tree heights required in the LDC;

or

2) install trees that are a minimum of 2-feet taller upon installation than the tree heights required in the LDC..

c. The buffer along the westerly property line must be installed before commencement of vertical development of this project.

9. All buildings on Tracts "E" and "F" must be situated on the west side of the tracts with parking located on the east side of the buildings - away from the adjacent residential property.

10. Since the MCP shows a subdivision is a feature of this project, it must be platted in accordance with the LDC and Chapter 177 requirements of Florida Statutes.

11. All lighting of this project must be in conformance with the LDC. No parking lot lights over six feet in height may be located on Tracts "E" and "F" between the buildings and the west property line. No noise may be generated by this development that exceeds the requirements of Lee County.

12. A pedestrian/bike path may be provided, at developer's discretion, along the internal streets of this development; however, no interconnection is required into the Marsh Landing residential development.

13. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
14. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b).
15.
  - a. Hours of operation for restaurants are limited to 6:00 a.m. to 11:00 p.m. Outdoor seating must be located on the east sides of the buildings and may not be utilized after 9:00 p.m. on weekdays and 11:00 p.m. on Friday and Saturday nights. Outside speaker systems, loud speakers, and public address systems are prohibited.
  - b. Outside consumption on premises is prohibited at all restaurants and hotels except in conjunction with a restaurant or hotel meal service outside.
16. Deliveries to businesses are prohibited between the hours of 8:00 p.m. and 6:00 a.m.

#### SECTION C. DEVIATIONS:

Deviation (1) seeks relief from the LDC Section 10-296(d) requirement to provide that wearing surfaces of local and access streets for Category A development must be 12-inch asphaltic concrete, to allow for cement concrete and/or decorative pavers. This deviation is APPROVED SUBJECT TO the following conditions:

1. The alternative wearing surface is permitted only on the internal privately-maintained streets; and
2. The alternative street cross-section will be structurally equivalent to the standard flexible pavement cross-section specified in the LDC.

#### SECTION D. EXHIBITS:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: The legal description and STRAP number of the property.  
Exhibit B: Zoning Map (subject parcel identified with shading)  
Exhibit C: The Master Concept Plan

#### SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and other applicable codes or regulations.

2. The rezoning, as approved:
  - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and,
  - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and,
  - c. is compatible with existing or planned uses in the surrounding area; and,
  - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development; and,
  - e. will not adversely affect environmentally critical areas or natural resources.
  
3. The rezoning satisfies the following criteria:
  - a. the proposed use or mix of uses is appropriate at the subject location; and
  - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
  - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
  
4. Urban services, as defined in the Lee Plan, will be available and adequate to serve the proposed land use.
  
5. The approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Judah, seconded by Commissioner St. Cerny and, upon being put to a vote, the result was as follows:

John E. Manning	Absent
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye



DULY PASSED AND ADOPTED this 20th day of March, 2000.

ATTEST:  
CHARLIE GREEN, CLERK

BY: *Patricia Ferguson*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: *John E. Albright*  
Chairman

Approved as to form by:

*Ann Marie Collins*  
County Attorney's Office

MINUTES OFFICE

*Pat F*  
FILED MAR 30 2000

## EXHIBIT "A"

### LEGAL DESCRIPTION

A tract or parcel of land lying in Sections 04 and 09, Township 47 South, Range 25 East, Lee County, Florida, described as follows:

Commence at the Southeast corner of Section 04, Township 47 South, Range 25 East;  
THENCE S88°14'22"W for 2,266.44 feet along the South line of the Southeast Quarter (SE¼) of said Section 04 to an intersection with the Westerly right-of-way line of US 41 (SR 45, Tamiami Trail) and the POINT OF BEGINNING;  
THENCE N06°41'21"W for 825.79 feet along said Westerly right-of-way;  
THENCE S88°14'22"W for 501.86 feet along the Southerly line of a road right-of-way (50.00 feet from the centerline) as described in OR Book 1994 at Page 267 of the public records of Lee County, Florida to an intersection with a line parallel with and lying 500.00 feet Westerly of (as measured perpendicular to) the aforementioned Westerly right-of-way line of US 41;  
THENCE S06°41'21"E for 1,194.76 feet along said parallel line and a line common with a tract or parcel of land as described in OR Book 1775 at Page 2026 of said public records;  
THENCE N83°18'39"E for 500.00 feet;  
THENCE N06°41'21"W for 325.85 feet along the aforementioned Westerly right-of-way of US 41 to the POINT OF BEGINNING.  
Containing 13.467 acres, more or less.

The applicant has indicated that the STRAP numbers for the subject property are:  
04-47-25-00-00001.0020 and 09-47-25-00-00001.0050

# ZONING MAP

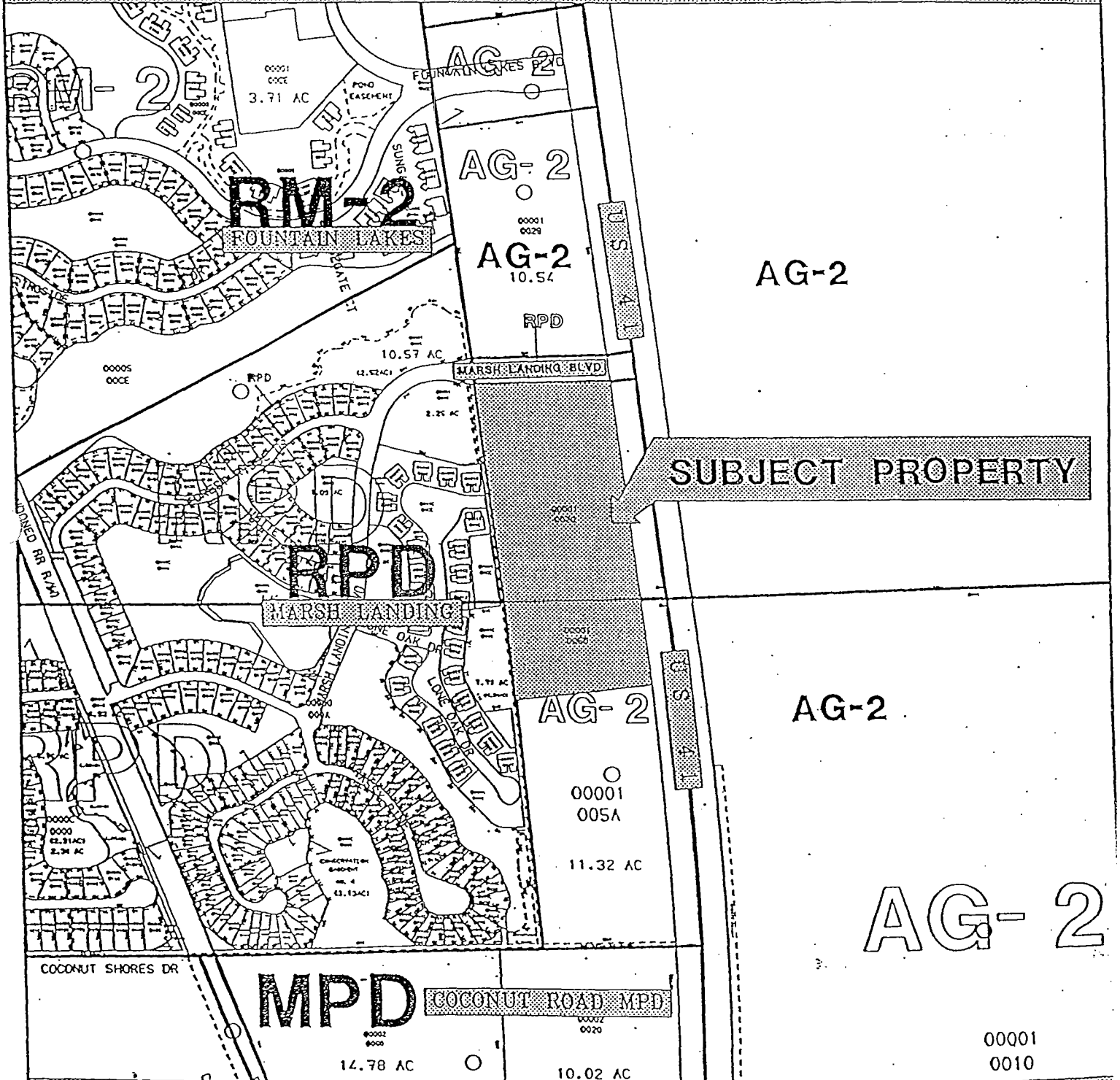


EXHIBIT B

**PERMITTED USES**

The definitions and list of permitted uses within the Groups refer to Lee County Development Code in effect as of the effective date of the zoning resolution.

**TRACT E AND F**

Accessory Uses and Structures customarily associated with the uses permitted in this district.

- Administrative Offices
- Agriculture Uses, continuation of existing bona fide use only.
- Assisted Living Facility
- ATM (Automatic Teller Machine)
- Banks and Financial Establishments, Groups I and II
- Bed and Breakfast
- Broadcast Studio, Commercial Radio and Television
- Business Services, Group I (excluding: bail bonding and blood donor, stations) and Group II
- Carpeting Residence
- Computer and Data Processing
- Cultural Facilities
- Day Care Center, Adult, Child
- Entrance Gates and Gatehouses
- Essential Services
- Essential Service Facilities, Group I
- Excavation, Water Retention
- Fences, Walls
- General and Professional Offices
- Gift and Souvenir Shop
- Hospice
- Hotel, Motel and accessory uses including but are not limited to the following:
  - Consumption on premises
  - Food and beverage service
  - Restaurant(s), Standard Groups I, II, III (includes outdoor seating)
  - Specialty retail shops
  - Personal services, limited to ATM, barbershops or beauty shops, photo agents, health clubs, steam baths, massage and the like.
  - Insurance Companies
  - Medical Offices
  - Mini-Warehouse
  - Model Homes, Model Units and Model Display Center
- Parking Lot:
  - Accessory
  - Temporary (Subject to LDC Section 34-2022)
- Personal Services, Groups I, II, III and IV
- Place of Worship
- Plant Nurseries
- Post Office
- Printing and Publishing
- Real Estate Sales and Rental
- Recreational Facilities, Personal and Private (On-site, Off-site)
- Rental and Leasing Establishments, Group I, II and III
- Repair Shops, Groups I and II
- Schools, Commercial
- Schools, Non-Commercial
- Signs
- Social Services: Groups I, II and III
- Specialty Retail Shops, Groups I, II, III and IV
- Storage, Indoor only
- Studios
- Temporary Uses (LDC Section 34-3041)
- Towers, communication, only when accessory to a permitted use
- Water Retention

Any commercial use or professional service which is comparable in nature with the foregoing uses and which the Director of Lee County Department of Community Development determines to be compatible with this proposed development.

**TRACT A, B, C AND D**

- All uses and structures allowed in Tracts E and F plus the following:
  - Animals, Clinic
  - Auto Parts Store
  - Automobile Service Station
  - Bar and Cocktail Lounge
  - Building Material Sales
  - Cleaning and Maintenance Services
  - Clothing Stores
  - Consumption on Premises
  - Convenience Food and Beverage Stores
  - Department Store
  - Drive-Through Facility for any Permitted Use
  - Drug Store, Pharmacy
  - Emergency Medical Service (ambulance station)
  - Food Stores, Group I and II
  - Fire Station
  - Gasoline Dispensing System, Special
  - Hardware Store
  - Health Care Facility, Group I, II, III and IV
  - Hobby, Toy, Game Shop
  - Household and Office Furnishings, Groups I and II
  - Laundry or Dry Cleaning, Group I (excluding Plant)

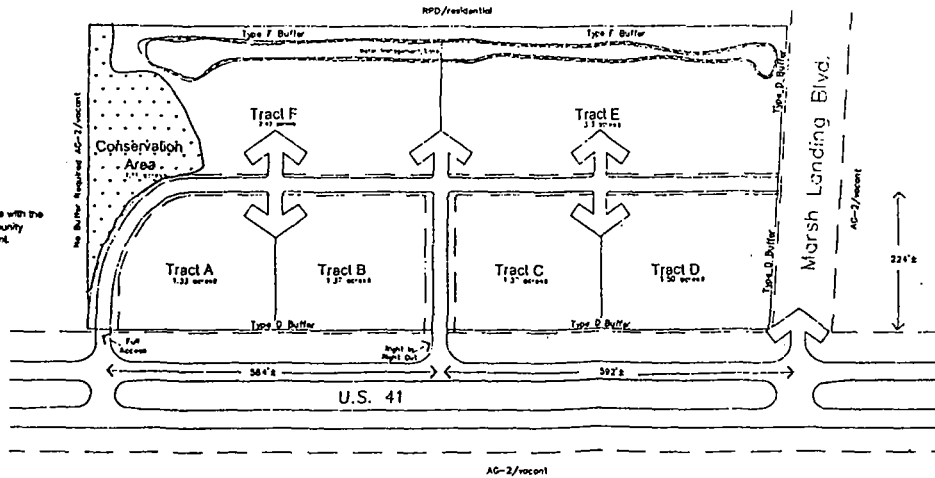
- Lawn and Garden Supply Store
- Non-stores Retailers, all Groups
- Package Store
- Paint, Glass and Wallpaper
- Pet Services
- Pet Shop
- Pharmacy
- Recreational Facilities, Commercial
- Religious Facilities
- Restaurant(s) Fast Food (includes outdoor seating)
- Restaurant(s), Standard Groups I, II, III and IV (includes outdoor seating)
- Self Service Fuel Pumps and Stations
- Used Merchandise Store: Groups I and II
- Variety Store
- Wholesale Establishment, Group III

Any commercial use or professional service which is comparable in nature with the foregoing uses and which the Director of Lee County Department of Community Development determines to be compatible with this proposed development.

**CONSERVATION AREA**

**PERMITTED USES AND STRUCTURES**

- Interpretive centers, rain shelters, gazebos
- Nature and foot trails including boardwalks and jogging paths
- Paths, boardwalks and bridges to provide access from the uplands to the wetlands.
- Recreational shelters, restroom facilities, passive parks, and picnic areas.
- Signs
- Waste Management Facilities
- Wetland Management
- Mitigation Activities
- Accessory uses and structures customarily associated with the uses permitted in this district.
- Other activities which are comparable in nature with the foregoing uses and which the Director of the Lee County Department determines to be compatible with this Conservation Area.



**PROPERTY DEVELOPMENT REGULATIONS**

**Minimum Building Setbacks:**

- Street (US41) 25 feet
- Internal Accessway 20 feet
- Side: 15 feet
- Rear: 25 feet
- Water Management Area: 20 feet
- Building Separation 20 feet (if no lot line exists)
- Internal Building Setbacks: Should the subject property be subdivided, a 7' building setback to any internal lot lines will be required.

**Maximum Lot Coverage: 55%**

**Maximum Building Height:**  
Buildings may not exceed 45 feet or three stories. However, no building taller than two stories is permitted within 200 feet of any lot zoned or used for residential purposes.

**Minimum Lot Size: 20,000 square feet**

**Parking**

Parking will meet the requirements of the LDC. Parking will be calculated based upon the developed specific uses within this project.

**Required Open Space**

On a project-wide basis, the subject property will provide the 30% open space required by the LDC. However, a minimum of 10% open space will be provided in all commercial tracts with the remaining open space provided in other tracts. Each local development order application will demonstrate that open space requirements are met.

**Required Indigenous Vegetation:**

On a project-wide basis, the subject property will meet the indigenous vegetation percentage required by the LDC.

**SITE DEVELOPMENT NOTES**

Maximum overall commercial development is limited to 130,500 square feet, with commercial retail uses limited to 30,000 square feet.

The project can be comprised of retail or services uses, medical, general office, hotel use, or any combination of those uses (in compliance with the Schedule of Uses), up to the maximum square footage, provided that the number of peak, P.M. trips do not exceed the level established in the August 1999 Traffic Impact Statement and provided that all limiting conditions and parking, open space, buffering and water management requirements are met.

Conceptual parcel areas, internal access points, and dimensions, shown on the Master Concept Plan may be combined, reconfigured or divided.

The internal accessway will meet Lee County requirements. Currently internal access separations are shown as a minimum of 274 feet.

Access to public transit will be provided within the project in accordance with LDC Section 10-442.

Project lighting must be shielded and directed away from any lot zoned or used for residential purposes.

**DEVIATION**

Deviation from LDC Section 10-296(d), Table 4(7)(c) which requires that wearing surfaces of local and access streets for category A development to be 1 1/2 inch asphaltic concrete to allow for cement concrete and/or decorative pavers. This deviation may be applied throughout the development.

Conservation  
**APPROVED**  
Project  
Master Concept Plan

**RECEIVED**  
JAN 25 2008

Site Plan # 20-010 Page 1 of 1  
Subject to conditions in Resolution Z-00-010  
DEL-964296

Zoning Case # 19-09-162.03Z 0101

