

**2014 LEE COUNTY CONCURRENCY
MANAGEMENT REPORT**

			ROAD	PERFORMANCE		2013 100th HIGHEST HR		EST 2014 100th HIGHEST HR		FORECAST FUTURE VOL		
				LOS	CAPACITY	LOS	VOLUME	LOS	VOLUME	LOS	VOLUME	
THREE OAKS PKWY	CORKSCREW RD	SAN CARLOS BL	4LD	E	1,940	B	916	B	935	B	1,155	26600
THREE OAKS PKWY	SAN CARLOS BL	ALICO RD	4LD	E	1,940	A	631	A	631	B	803	26700
TICE ST*	PALM BEACH BL (SR 80)	ORTIZ AVE	2LU	E	860	C	83	C	83	C	88	26800
TICE ST*	ORTIZ AVE	STALEY RD	2LU	E	860	C	130	C	136	D	641	26900
TREELINE AVE	TERMINAL ACCESS RD	DANIELS PKWY	4LD	E	1,960	B	1,299	B	1,299	B	1,479	27000
TREELINE AVE	DANIELS PKWY	ARBORWOOD RD	4LD	E	1,960	A	563	A	563	A	618	27030
TREELINE AVE	ARBORWOOD RD	COLONIAL BL	4LD	E	1,960	A	563	A	563	A	563	27070
VETERANS MEM PKWY	SR78	SURFSIDE BL	4LD	D	2,080	A	660	A	660	A	660	27200
VETERANS MEM PKWY	SURFSIDE BL	CHIQUITA BL	4LD	E	2,080	A	664	A	664	A	664	27250
VETERANS MEM PKWY*	CHIQUITA BL	SKYLINE DR	4LD	D	2,080	A	1,810	A	1,810	A	1,810	27300
VETERANS MEM PKWY	SKYLINE DR	SANTA BARBARA BL	6LD	D	3,120	A	1,822	A	1,822	A	1,852	27400
VETERANS MEM PKWY	SANTA BARBARA	COUNTRY CLUB BL	6LD	D	3,120	A	2,528	A	2,528	A	2,528	27500
VETERANS MEM PKWY	COUNTRY CLUB BL	MIDPOINT BR TOLL PLAZA	6LD	D	3,120	A	2,776	A	2,776	A	2,776	27600
VETERANS MEM PKWY	MIDPOINT BR TOLL PLAZA	MCGREGOR BL	4LB	D	3,440	C	2,390	C	2,390	C	2,390	27700
VIA COCONUT PT	SOUTH END	CORKSCREW RD	4LD	E	1,780	C	249	C	249	C	249	27720
WHISKEY CREEK DR*	COLLEGE PKWY	SAUTERN DR	2LD	E	860	C	320	C	320	C	333	27900
WHISKEY CREEK DR*	SAUTERN DR	MCGREGOR BL	2LD	E	860	C	320	C	320	C	320	28000
WILLIAMS RD	US 41	RIVER RANCH RD	2LU	E	860	C	202	C	202	C	242	28100
WILLIAMS AVE	LEE BL	W 6th ST	2LN	E	860	C	436	C	440	C	492	28200
WINKLER RD*	STOCKBRIDGE	SUMMERLIN RD	2LN	E	860	C	444	C	461	D	625	28300
WINKLER RD	SUMMERLIN RD	GLADIOLUS DR	4LD	E	1,520	D	335	D	336	D	336	28400
WINKLER RD*	GLADIOLUS DR	BRANDYWINE CIR	2LN	E	920	B	593	B	593	B	600	28500
WINKLER RD*	BRANDYWINE CIR	CYPRESS LAKE DR	2LN	E	920	B	675	B	675	B	675	28600
WINKLER RD	CYPRESS LAKE DR	COLLEGE PKWY	4LD	E	1,800	C	683	C	683	D	833	28700
WINKLER RD*	COLLEGE PKWY	MCGREGOR BL	2LN	E	840	B	347	B	350	B	360	28800
WOODLAND BL*	US 41	AUSTIN ST	2LU	E	860	C	266	C	266	C	266	28900
W 6th ST	WILLIAMS AVE	JOEL BL	2LU	E	860	C	153	C	153	C	153	29000
W 12th ST*	GUNNERY RD	SUNSHINE BL	2LU	E	860	C	75	C	77	C	77	29100
W 12th ST*	SUNSHINE BL	WILLIAMS AVE	2LU	E	860	C	75	C	76	C	165	29200
W 12th ST*	WILLIAMS AVE	JOEL BL	2LU	E	860	C	91	C	92	C	92	29300
W 14th ST*	SUNSHINE BL	RICHMOND AVE	2LU	E	860	C	47	C	48	C	48	29400
US 41	COLLIER COUNTY LINE	BONITA BEACH RD	6LD	E	2,740	B	1,959	B	1,959	B	1,959	29500
US 41	BONITA BEACH RD	WEST TERRY ST	6LD	E	3,020	B	2,250	B	2,250	B	2,250	29600
US 41	WEST TERRY ST	OLD 41	6LD	E	3,020	B	2,058	B	2,058	B	2,058	29700
US 41	OLD 41	CORKSCREW RD	6LD	E	3,020	B	2,473	B	2,509	B	2,833	29800
US 41	CORKSCREW RD	SANIBEL BL	6LD	E	3,000	B	1,804	B	1,817	B	1,988	29900
US 41	SANIBEL BL	ALICO RD	6LD	E	3,000	B	2,043	B	2,053	B	2,253	30000
US 41	ALICO RD	ISLAND PARK RD	6LD	E	3,000	B	2,587	B	2,588	B	2,769	30100

**LEE COUNTY GENERALIZED LEVEL
OF SERVICE TABLES**

Lee County
Generalized Peak Hour Directional Service Volumes
Urbanized Areas

Sept. 2013

c:\input4

Uninterrupted Flow Highway						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	120	420	840	1,190	1,640
2	Divided	1,060	1,810	2,560	3,240	3,590
3	Divided	1,600	2,720	3,840	4,860	5,380
Arterials						
Class I (40 mph or higher posted speed limit)						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	140	800	860	860
2	Divided	*	260	1,840	1,960	1,960
3	Divided	*	410	2,840	2,940	2,940
4	Divided	*	550	3,840	3,940	3,940
Class II (35 mph or slower posted speed limit)						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	*	330	710	780
2	Divided	*	*	710	1,590	1,660
3	Divided	*	*	1,150	2,450	2,500
4	Divided	*	*	1,580	3,310	3,340
Controlled Access Facilities						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	160	880	940	940
2	Divided	*	270	1,970	2,100	2,100
3	Divided	*	430	3,050	3,180	3,180
Collectors						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	*	310	670	740
1	Divided	*	*	330	710	780
2	Undivided	*	*	740	1,460	1,460
2	Divided	*	*	780	1,530	1,530
Note: the service volumes for I-75 (freeway), bicycle mode, pedestrian mode, and bus mode should be from FDOT's most current version of LOS Handbook.						

US 41 TRAFFIC DATA

FLORIDA DEPARTMENT OF TRANSPORTATION
 TRANSPORTATION STATISTICS OFFICE
 2014 HISTORICAL AADT REPORT

COUNTY: 12 - LEE

SITE: 0089 - SR 45/US 41/TAMIAMI TR, N OF ESTERO RV/S OF CNTY RD

YEAR	AADT	DIRECTION 1	DIRECTION 2	*K FACTOR	D FACTOR	T FACTOR
2014	40500 C	N 20000	S 20500	9.00	54.60	3.00
2013	35000 C	N 18000	S 17000	9.00	59.70	3.60
2012	34000 C	N 17000	S 17000	9.00	54.30	3.90
2011	36500 F	N 19000	S 17500	9.00	55.00	3.70
2010	36500 C	N 19000	S 17500	10.32	57.60	3.70
2009	36500 C	N 18500	S 18000	10.24	54.47	4.90
2008	40500 C	N 20500	S 20000	10.37	58.94	4.30
2007	44500 C	N 21500	S 23000	10.16	54.76	7.70
2006	41500 C	N 21000	S 20500	10.23	54.38	5.40
2005	39000 C	N 19500	S 19500	10.30	54.10	6.70
2004	48500 C	N 24500	S 24000	9.90	54.30	6.70
2003	37500 C	N 19000	S 18500	9.80	55.60	6.70
2002	32500 C	N 15000	S 17500	9.90	54.50	7.80
2001	32000 C	N 16000	S 16000	10.00	55.60	6.30
2000	30500 F	N 15500	S 15000	9.90	55.20	9.00
1999	28500 C	N 14500	S 14000	10.00	54.50	5.60

AADT FLAGS: C = COMPUTED; E = MANUAL ESTIMATE; F = FIRST YEAR ESTIMATE
 S = SECOND YEAR ESTIMATE; T = THIRD YEAR ESTIMATE; F = FOURTH YEAR ESTIMATE
 V = FIFTH YEAR ESTIMATE; 6 = SIXTH YEAR ESTIMATE; X = UNKNOWN
 *K FACTOR: STARTING WITH YEAR 2011 IS STANDARDK, PRIOR YEARS ARE K30 VALUES

TRIP GENERATION EQUATIONS

TRIP GENERATION EQUATIONS

ITE TRIP GENERATION REPORT, 9th EDITION

Land Use	Weekday AM Peak Hour	Weekday PM Peak Hour	Daily (2-way)
Shopping Center (LUC 820)	$\ln(T) = 0.61 \ln(X) + 2.24$ (62% In/38% Out)	$\ln(T) = 0.67 \ln(X) + 3.31$ (48% In/52% Out)	$\ln(T) = 0.65 \ln(X) + 5.83$
T = Number of Trips, X = 1,000's of square feet of Gross Floor Area (GFA)			

August 18, 2015

Ms. Stacey Hewitt
Banks Engineering
10511 Six Mile Cypress Parkway
Fort Myers, FL33966

RE: Estero WAS Mino CPD
DCI2015-00016

DCI2015-00016

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AUG 18 2015

COMMUNITY DEVELOPMENT

Dear Ms. Hewitt:

TR Transportation Consultants, Inc. has reviewed the comments issued by the Lee County Department of Community Development for the proposed Estero WAS Minor CPD application. The comments and TR Transportation's response to those comments are listed below for reference.

LC ZTIS PD Application Sufficiency Checklist

12) *Page 3 - Depending on the development scenario, is it advisable to summarize the land uses proposed in this CPD as shopping center? The applicant clearly includes the development of multiple fast food restaurants, rather than a shopping center. Please discuss this with Marcus Evans of Development Services and determine if there is a need to revise the TIS to more accurately reflect the potential worst case development scenario.*

Just an observation, does the applicant think that all traffic to this parcel will solely use the intersection of Pelican Sound Boulevard and US 41 as depicted on Figure 2? Other means of access to the project are found at the connections from Paradise Shoppes to US 41 and to Williams Road. Please consider this as part of the resubmittal.

The proposed Master Concept Plan depicts a multi-tenant building. One of the requested uses is a fast food restaurant that could have a drive through lane. If this use were located within the multi-tenant building, there would be other uses within the building and Shopping Center would be the most appropriate land use code. Should the site developed with a stand-alone fast food restaurant, then there would be no other tenants and the fast food restaurant would be typical of the stand-alone QSR footprints that are being constructed, such as McDonalds, Taco Bell or Chick-fil-a. These stand-alone uses are typically under 5,000 square feet in size and generate a higher pass-by percentage that was analyzed with the shopping center use. Although there is no way to predict what will ultimately be constructed on this site, the shopping center land use code generates a

significant amount of vehicle trips and we feel represents as accurate analysis as can be provided at this time in the process.

With respect to the assignment of trips to the subject site, there will be a distribution of trips internal to the Paradise Shoppes and to US 41 and Williams Road. However, for this analysis, the trips were graphically illustrated to ingress/egress US 41 at the nearest access location. At the time of local Development Order, a more detailed assignment will be completed to all the site access drives serving Paradise Shoppes.

- 4) *The project buildout year in the TIS is indicated as 2018. However, a zoning level analysis should analyze a minimum of 5 year buildout. Please revise.*

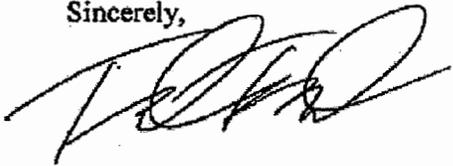
Table 2A has been revised to reflect the buildout year of 2020 and is attached for reference. There was no change in the Level of Service on the adjacent roadways. U.S. 41 will remain at LOS "B" in 2020 with the project traffic added to the network. A revised Figure 3 is also attached reflecting the 2020 projected Level of Service.

- 7) *Table 1A indicates that the Link Specific Service Volumes were utilized, however it appears that the Generalized Level of Service Volumes were actually utilized. Please clarify.*

The Level of Service analysis was based on the Generalized Level of Service Volume and Table 1A was revised and is attached for reference.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Ted B. Treesh, PTP
President

Attachments

DCI2015-00016

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**TABLE 1A
PEAK DIRECTION PROJECT TRAFFIC VS. LOS C LINK VOLUMES
ESTERO WAS CPD**

TOTAL AM PEAK HOUR PROJECT TRAFFIC = 34 VPH IN= 21 OUT= 13
 TOTAL PM PEAK HOUR PROJECT TRAFFIC = 118 VPH IN= 57 OUT= 61

ROADWAY	SEGMENT	ROADWAY CLASS	LOS A VOLUME	LOS B VOLUME	LOS C VOLUME	LOS D VOLUME	LOS E VOLUME	PROJECT			
								TRAFFIC DISTRIBUTION	AM PEAK	PM PEAK	PROJ/LOS C
US 41	N. of Pelican Sound Blvd.	6LD	0	410	2,840	2,940	2,940	40%	8	24	0.86%
	S. of Pelican Sound Blvd.	6LD	0	410	2,840	2,940	2,940	60%	13	37	1.29%

* Lee County Generalized Specific Service Volumes

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0012015-00016

**TABLE 2A
 BUILD-OUT TRAFFIC VOLUMES AND 100TH HIGHEST HOUR LEVEL OF SERVICE ANALYSIS
 ESTERO WAS CPD**

TOTAL AM PEAK HOUR PROJECT TRAFFIC = 34 VPH IN= 21 OUT= 13
 TOTAL PM PEAK HOUR PROJECT TRAFFIC = 118 VPH IN= 57 OUT= 61

ROADWAY	SEGMENT	STN#	BASE YR	2012 ADT	YRS OF GROWTH	ANNUAL RATE	2013 PK HR	2020		PERCENT PROJECT TRAFFIC	2020		2020			
								PK HR	PK SEASON		AM PROJ TRAFFIC	PM PROJ TRAFFIC	BACKGROUND + AM PROJ TRAFFIC	BACKGROUND + PM PROJ TRAFFIC		
		SITE#	ADT	ADT		RATE	PEAK DIR. ¹	VOLUME	LOS		AM PROJ TRAFFIC	PM PROJ TRAFFIC	VOLUME	LOS	VOLUME	LOS
US 41	N. of Pelican Sound Blvd.	12089	39,000	40,500	9	1.00%	2,473	2,651	B	40.0%	8	24	2,660	B	2,676	B
	S. of Pelican Sound Blvd.	12089	39,000	40,500	9	1.00%	2,473	2,651	B	60.0%	13	37	2,664	B	2,688	B

¹The 2013 100th highest hour traffic volumes were obtained from the 2014 Lee County Concurrency Management Report.

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 DCJ 2015-00016



U.S. 41

2,651 - "B"
(2,676 - "B")

PELICAN SOUND DR.



2,651 - "B"
(2,688 - "B")

PARADISE SHOPPES OF ESTERO

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DCI 2015-00016

WILLIAMS RD.

LEGEND

XXX - "C" 2020 PEAK SEASON PEAK HOUR
PEAK DIRECTION BACKGROUND TRAFFIC
AND LEVEL OF SERVICE DESIGNATION

(XXX - "C") 2020 PEAK SEASON PEAK HOUR
PEAK DIRECTION BACKGROUND
TRAFFIC PLUS PM PROJECT TRAFFIC
AND LEVEL OF SERVICE DESIGNATION

F1506.03

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

WHEREAS, Matt Uhle filed an application on behalf of the contract purchaser, Paradise Development Group, with the consent of the property owner, Charles M. Long, to amend the existing Mixed Use Planned Development (MPD) zoning to adopt a new Master Concept Plan (MCP) for a project known as Camargo MPD; and

WHEREAS, a public hearing was advertised and held on October 13, 2004, and continued to October 27, 2004, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case DCI2004-00013; and

WHEREAS, a second public hearing was advertised and held on November 29, 2004, 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 amend the existing MPD zoning to adopt a new MCP to allow the continued development of a vacated portion of the overall project. The existing MPD was approved in Resolution Z-98-029 for:

1. up to 300,000 square feet of commercial floor area (of which not more than 100,000 square feet can be retail use); and
2. a total of 500 beds in an assisted living facility; and
3. a potential conversion of up to 100,000 square feet of retail uses to 75,000 square feet of office uses.

The requested amendment allows up to 100,000 square feet of retail on the vacated section of the MPD south of Pelican Sound Boulevard which was previously designated for commercial uses.

This resolution will have no effect on the residential portion of the MPD or the vacated commercial area north of Pelican Sound Boulevard.

The property is located in the Suburban Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

COPY

SECTION B. CONDITIONS:

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

1. Resolution Z-98-029 remains in effect unless specifically amended by actions within this zoning case.
2. Development must be consistent with the two-page MCP entitled "Camargo MPD," dated November 29, 2004, date stamped received by the Permit Counter on Jan 13, 2005, except as modified by the conditions below. This MCP replaces all MCPs pertaining to the development of the subject property. Development must comply with all requirements of the 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 development of this portion of the project is limited to a maximum of 100,000 square feet of floor area.

3. Conditions 3 and 4 of Resolution Z-98-029 are hereby amended replacing the Schedule of Uses and Property Development Regulations for this portion of the development with the following:

a. Schedule of Uses

Accessory Uses and Structures (LDC §§ 34-1171 *et seq.*, 34-2441 *et seq.*, 34-1863, 34-2141 *et seq.*, and 34-3108)(See Note 1 below)

Administrative Offices

ATM (automatic teller machine)

Auto Parts Store - without installation facilities

Automobile Service Station (Limited to one use located on either Parcel 3 or 4 in conjunction with a convenience store and car wash) See Note 2

Banks and Financial Establishments (LDC §34-622(c)(3)): Groups I and II

Boat Parts Store, without installation

Broadcast Studios

Business Services, Group I

Car Wash (Limited to one use located on either Parcel 3 or 4 in conjunction with an automobile service station and convenience store)

Clothing Stores, general (LDC §34-622(c)(8))

Clubs:

Commercial

Fraternal, membership organization (LDC §34-2111)

Private (LDC §34-2111)

Computer and Data Processing Services

Consumption on Premises (LDC Section 34-1261 *et seq.*) (strictly limited in conjunction with a Restaurant use only)

Convenience Food and Beverage Store (Limited to one use located on either Parcel 3 or 4 in conjunction with an automobile service station and car wash) See Note 2

Cultural Facilities (LDC §34-622(c)(10))
 Day Care Center, Child, Adult
 Department Store (Limited to a maximum of 25,000 square feet per store)
 Drive-through Facility for any Permitted Use (limited to a maximum of 5 parcels.
 Any drive through facility placed on Parcels 1, 2, 5, and 6 may only be placed on a western facing building facade. On the parcel containing the automobile service station/convenience food and beverage store/car wash, the car wash entrance and exit must face east and west respectively. A drive through facility on Parcel 7 may only be placed on the northern facade so long as the vehicles travel in an east to west direction.
 Drugstore (limited to only one within the project)
 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 and Beverage Service, Limited
 Food Stores (LDC §34-622(c)(16)): Group I
 Hardware Store (limited to a maximum of 10,000 square feet)
 Health Care Facilities (LDC §34-622(c)(20)): Groups I, II, and III
 Hobby, Toy, and Game Store
 Household and Office Furnishings (LDC §34-622(c)(22)), Groups I and II (Household use as limited by the LDC and Office use is limited to businesses like Kinko's Office Depot, Office Max or other like business. Large newspaper printing facilities are prohibited.)
 Insurance Companies (LDC §34-622(c)(23))
 Laundry or Dry Cleaning (LDC §34-622(c)(24)): Group I
 Lawn and Garden Supply Stores (LDC §34-2081)
 Library
 Medical Office
 Nonstore Retailers (LDC §34-622(c)(30)), all groups
 Package Store (LDC §34-1261 *et seq.*)(In conjunction with a multiple-use occupancy complex only; free-standing stores are prohibited)
 Paint, Glass and Wallpaper
 Parks (LDC §34-622(c)(32)): Groups I and II
 Parking Lot: Accessory (see Note 1 below)
 Garage, public parking
 Temporary
 Personal Services (LDC §34-622(c)(33)):
 Group I, limited to - ATM's
 Barbershops and Beauty Shop
 Clothing Alterations and Repair including Dressmakers, Seamstresses and Tailors
 Laundry Agents (wherein the establishment may do its own pressing and finish work but not the laundering or dry cleaning which is performed elsewhere)

Photo Agents (wherein drop-off and pickup film services are provided but the actual processing and developing is done elsewhere)

Shoe Repair Services (wherein shoe repair or shoe shining for individual customers is performed)

Group II, limited to - Beauty spas
Health clubs or spas
Reducing or slenderizing salons
Steam or turkish baths

Group III, limited to - Artificial limbs
Crutches
Hearing aids
Hospital beds
Optical supplies
Orthopedic supplies
Wheelchairs

Pet Services (outdoor pens, enclosures, and dog runs are prohibited)

Pet Shop (outdoor pens, enclosures, and dog runs are prohibited)

Pharmacy

Post Office

Real Estate Sales Office (LDC §§ 34-1951 *et seq.*, and 34-3021)

Recreational Facilities: Commercial (LDC §34-622(c)(38)): Groups II and IV

Religious Facilities (LDC §34-2051 *et seq.*)

Rental or Leasing Establishment (LDC §34-622(c)(39))(All storage must be indoor and outdoor display is prohibited):

Group I, limited to - Beach chairs, umbrellas, and similar facilities
Bicycles
Moped and scooters
Passenger car pickup and drop off (no maintenance or repairs and limited storage)

Group II, limited to - Appliances
Bicycles
Costumes
Furniture
Garden equipment
Movies, videotapes and similar home entertainment
Party and banquet supplies
Tools and equipment primarily for home use

Repair Shops (34-622(c)(40)): Groups I and II

Research and Development Laboratories (LDC §34-622(c)(41)): Groups II and IV

Restaurant, Fast Food (Limited to one within the project; must be located on either Parcel 2 or 5)

Restaurants (LDC §34-622(c)(43)): Groups I, II, and III

Schools: Commercial (LDC §34-622(c)(45)) (LDC §34-2381)

Self Service Fuel Pumps (only in conjunction with an Automobile Service Station or Convenience Food and Beverage Store) See Note 2

Signs, in accordance with LDC Chapter 30

Social Services (LDC §34-622(c)(46)): Group I
Specialty Retail Shops (LDC §34-622(c)(47)): Groups I, II, III, and IV (no outdoor storage or display permitted)
Studios (LDC §34-622(c)(49))
Temporary Uses (LDC §34-3041 *et seq.*)(limited solely to temporary contractor's office and storage shed),
Theater, indoor (LDC §34-2471 *et seq.*)
Used Merchandise Stores (LDC §34-622(c)(54)): Groups I and II
Variety Store
Wholesale Establishments (LDC §34-622(c)(56)): Group III

NOTE:

1. All accessory uses, including accessory parking, must be located on the same tract, parcel, outparcel, or lot where a principal use is located. Accessory uses must be incidental and subordinate to the principal use of the tract, parcel, outparcel, or lot.
2. A maximum of eight (8) fueling positions (four pump structures) are permitted within this development. A Special Exception will be required to permit more than eight (8) fueling station (four pump structures).

b. Site Development Regulations

Development based on the use within this 22-acre portion of the MPD must comply with the following Property Development Regulations:

Minimum Lot Area and Dimensions:

Area: 7,500 square feet
Width: 75 feet
Depth: 100 feet

Minimum Setbacks:

Street: variable according to the functional classification of the street or road (§34-2191 *et seq.*)
Side: 15 feet
Rear: 20 feet
Water Body: zero feet

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

Maximum Lot Coverage: 60 percent

Maximum Building Height: 45 feet

Minimum Building Separation: Minimum building separation is the greater of either the minimum required setbacks or one-half the sum of the height of the buildings. (LDC §34-935(e)(4))

4. Condition 7 of Resolution Z-98-029 is hereby amended to include the following buffer:

A minimum 30-foot-wide native landscaped arterial road buffer must be provided. In areas where native vegetation does not exist, the developer will plant five native trees and 15 native shrubs per 100 linear feet. This buffer must include a 2-foot-high undulating berm (with landscaping on the berm) running parallel to U.S. 41. New landscaping will be planted in a well designed and clustered manner.
5. Blasting activities are prohibited as part of this planned development. If blasting is necessary, then a public hearing amendment of this planned development will be required in order to permit the activity.
6. 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.
7. 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).
8. Development of this commercial project must be in compliance with the revised Design Guidelines attached hereto as Exhibit D.
9. Outdoor dining is permitted on the subject property only in conjunction with the Restaurant and Fast-Food Restaurant uses. NO other outdoor uses or outdoor sales, display, or storage is allowed on the 22-acre commercial site.
10. Access onto Williams Road must be limited to right-in/right-out until improvements are made to Williams Road as determined necessary by LCDOT to allow left-in/left-out turning.

SECTION C. DEVIATIONS:

1. Deviations (1), (3), (5) and (6) which were previously approved in Z-98-029 remain in effect for this 22-acre portion of the project.
2. Deviation (7) seeks relief from the LDC §10-415(b)(1) requirement to provide 50 percent of the open space percentage requirement be provided through the on-site preservation of existing native vegetation communities; to allow the preservation of the westerly 10 acres in accordance with Resolution Z-98-029. This deviation is APPROVED.

SECTION D. EXHIBITS AND STRAP NUMBER:

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

- Exhibit A: Legal description of the property
- Exhibit B: Zoning Map (subject parcel identified with shading)
- Exhibit C: Master Concept Plan dated November 29, 2004, date stamped received by the Permit Counter on Jan 13, 2005
- Exhibit D: Design Guidelines

The applicant has indicated that the STRAP number for the property is: 33-46-25-00-00001.0030.

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 and regulations.
2. The MPD zoning, as conditioned:
 - a. meets or exceeds the 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 approval of this rezoning request 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 Albion, seconded by Commissioner Hall, and, upon being put to a vote, the result was as follows:

Robert P. Janes	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Tammy Hall	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 29th day of November 2004.

ATTEST:
CHARLIE GREEN, CLERK

BY: *Charlie Green*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *[Signature]*
Chairman

Approved as to form by:

[Signature]
Timothy Jones
County Attorney's Office



RECEIVED
MINUTES OFFICE
2005 FEB 11 AM 10:34

Applicant's Legal Checked

by ES Nov/22/2004

DCI 2004-00013

DESCRIPTION

For the specific area subject to
this request (21.73 acres)

Parcel in

Section 33, Township 46 South, Range 25 East
Lee County, Florida

2004 DEC 15 PM 3:46
RECEIVED BY
LEE CO. ATTORNEY

A tract or parcel of land in Section 33, Township 46 South, Range 25 East, Lee County, Florida being part of lands described in Official Record Book 2787, Page 1398, Lee County Records, being more particularly described as follows.

From the southeast corner of the southwest quarter (SW 1/4) of Section 33, Township 46 South, Range 25 East, Lee County, Florida, run N01°03'48"W along the east line of said fraction for 30.00 feet to an intersection with the north right-of-way line of Williams Road (60 feet wide), said point being the POINT OF BEGINNING

From said POINT OF BEGINNING continue along said east fraction line N01°03'48"W for 750.21 feet to a point of curvature; thence run northerly along the arc of said curve to the right of radius 500.00 feet (delta 22°23'46") (chord bearing N10°08'05"E) (chord 194.20 feet), for 195.44 feet to a point of reverse curvature; thence run northerly along the arc of said curve to the left of radius 30.00 feet (delta 85°58'03") (chord bearing N21°39'03"W) (chord 40.91 feet) for 45.01 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the right of radius 315.00 feet (delta 55°00'10") (chord bearing N37°08'00"W) (chord 290.92 feet) for 302.39 feet to a point of reverse curvature; thence run northwesterly along the arc of said curve to the left of radius 33.00 feet (delta 81°14'53") (chord bearing N50°15'21"W) (chord 42.97 feet) for 46.80 feet to a point of tangency; thence run S89°07'12"W for 203.82 feet to a point of curvature; thence run northwesterly along the arc of said curve to the right of radius 30.00 feet (delta 89°50'48") (chord bearing N45°57'24"W) (chord 42.37 feet), for 47.04 feet to a point of tangency; thence run N01°02'01"W for 572.18 feet to an intersection with the south right-of-way line of Pelican Sound Drive as recorded in Official record Book 3533, Page 4459, Lee County Records; thence run N88°25'54"E along said south right-of-way line for 874.95 feet to an intersection with the west right-of-way line of Tamiami Trail (State Road 45); thence run S04°52'56"W along said west right-of-way line for 1,860.03 feet to an intersection with the north right-of-way line of Williams Road; thence run S88°20'42"W along said north right-of-way for 268.35 feet to the POINT OF BEGINNING.

Containing 21.73 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (1983/99 adjustment) And are based on the south line of the southwest quarter (SW 1/4) of said Section 33 to bear N88°33'52"E.

21840s06desc.doc

RECEIVED
NOV 22 2004
DCI 2004-00013
PERMIT COUNTER

Scott A. Wheeler 11/19/04
Scott A. Wheeler (For The Firm)
Professional Surveyor and Mapper
Florida Certificate No. 5949

MAPPED

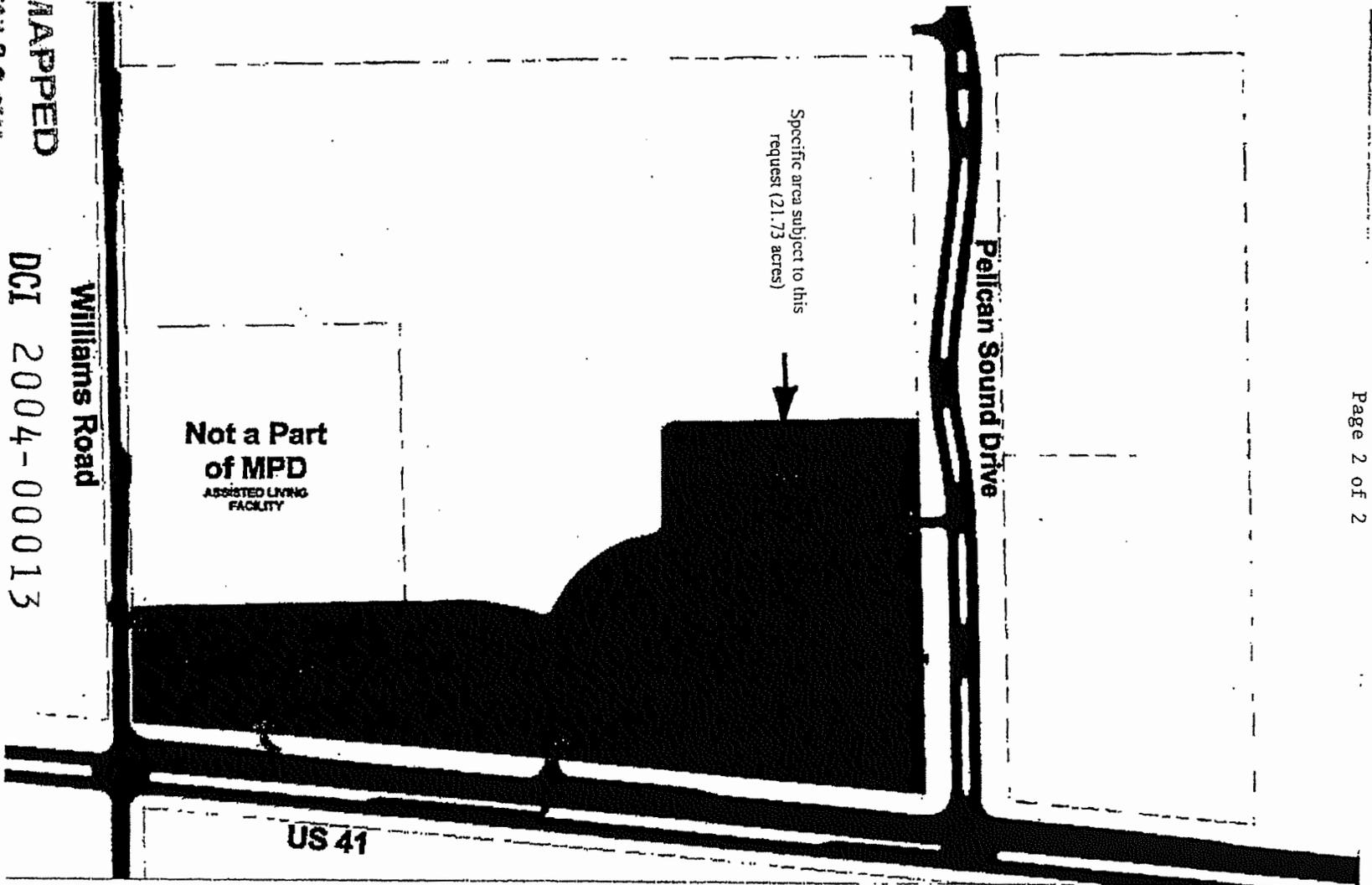
NOV 22 2004

ZONING

PARADISE SHOPPES OF ESTERO

EXHIBIT A

Page 2 of 2



MAPPED
BY 22507
ZONING

DCI 2004-00013

Parcel Map

ZONING INTAKE MAP

8/24/2004

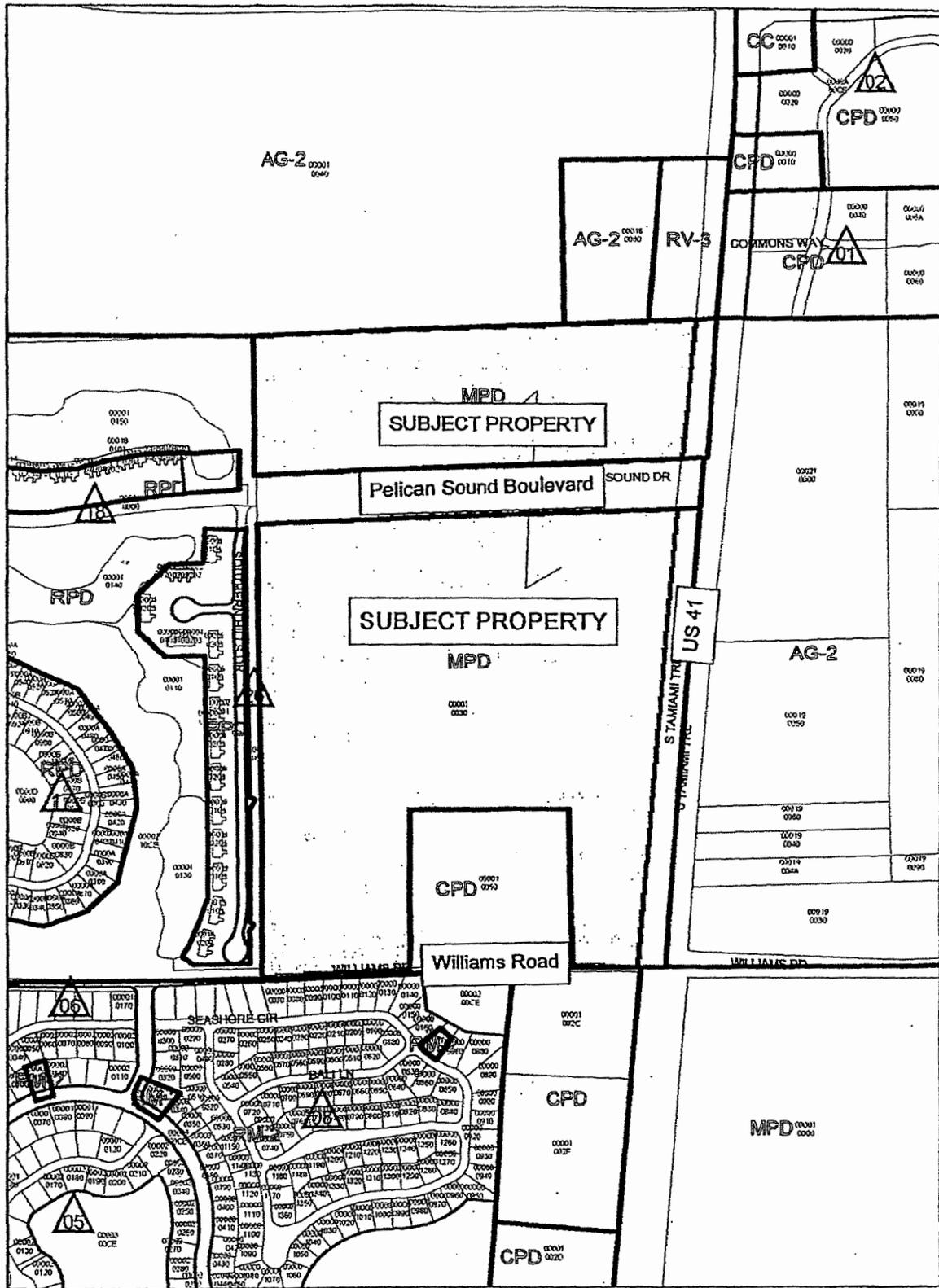


EXHIBIT B



MASTER CONCEPT PLAN
 CAMARGO MPD
 LEE COUNTY, FLORIDA
 COMMERCIAL PORTION - SOUTH
 November 28, 2004

RECEIVED
 JAN 13 2005
 PERMITS DIVISION
 DC22004-00013

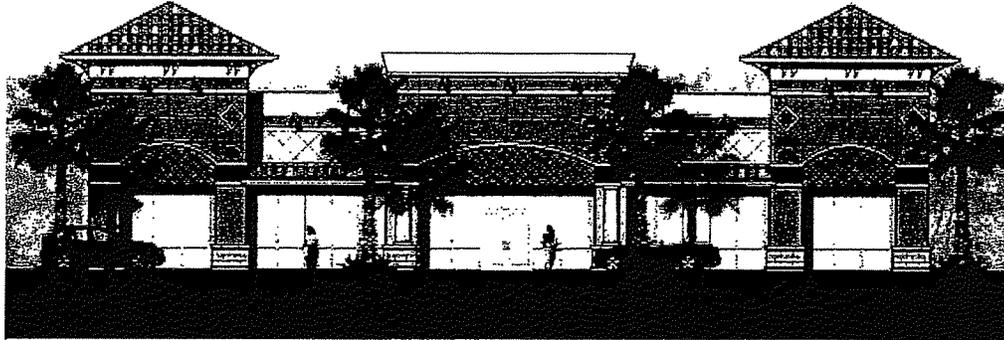
EXHIBIT 6J

APPROVED
 DATE: 11/28/04
 BY: [Signature]
 TITLE: [Title]
 PROJECT: [Project Name]

BARRACO
 2000 W. UNIVERSITY BLVD.
 SUITE 100
 TAMPA, FL 33606
 TEL: 813-289-1100
 FAX: 813-289-1101
 WWW.BARRACO.COM

PARADISE SHOPPES OF ESTERO

EXHIBIT D
21 Pages



Project Overview

This document describes the intent of the applicant in developing the Paradise Shoppes of Estero project, and proposes design guidelines by which the project will be constructed. The objective is to provide the Estero community and Lee County the assurances that this project will be developed to meet the language and intent of the Estero Plan, while allowing the developer the flexibility to market the project to tenants with varying uses, building types and size requirements.

The Paradise Shoppes of Estero project is located on the northwest corner of U.S. Highway 41 and Williams Road. The project is strategically nestled in the heart of Estero bounded by new commercial development, which will provide services, plazas and amenities to be enjoyed by all ages. The project architecture, layout and design will incorporate features exceeding both the current Lee County design guidelines, found in LDC Article IV, and the Estero Plan, Goal 19 of the Lee County Comprehensive Plan.

In developing the property located at the northwest corner of U.S. Highway 41 and Williams Road it is important to do so in accordance with the Lee County Comprehensive Plan (including Goal 19, the Estero Plan) and the development constraints presented with a 22-acre site at this location. The following base postulations, as well as policies that influence this type of development, were utilized.

- The subject property is located at the intersection of an arterial roadway –U.S. Highway 41, and two secondary roadways –Williams Road and Pelican Sound Boulevard. Access driveways are evenly distributed among the complementary roadways. U.S. Highway 41 is a primary thoroughfare and can safely support commercial development.

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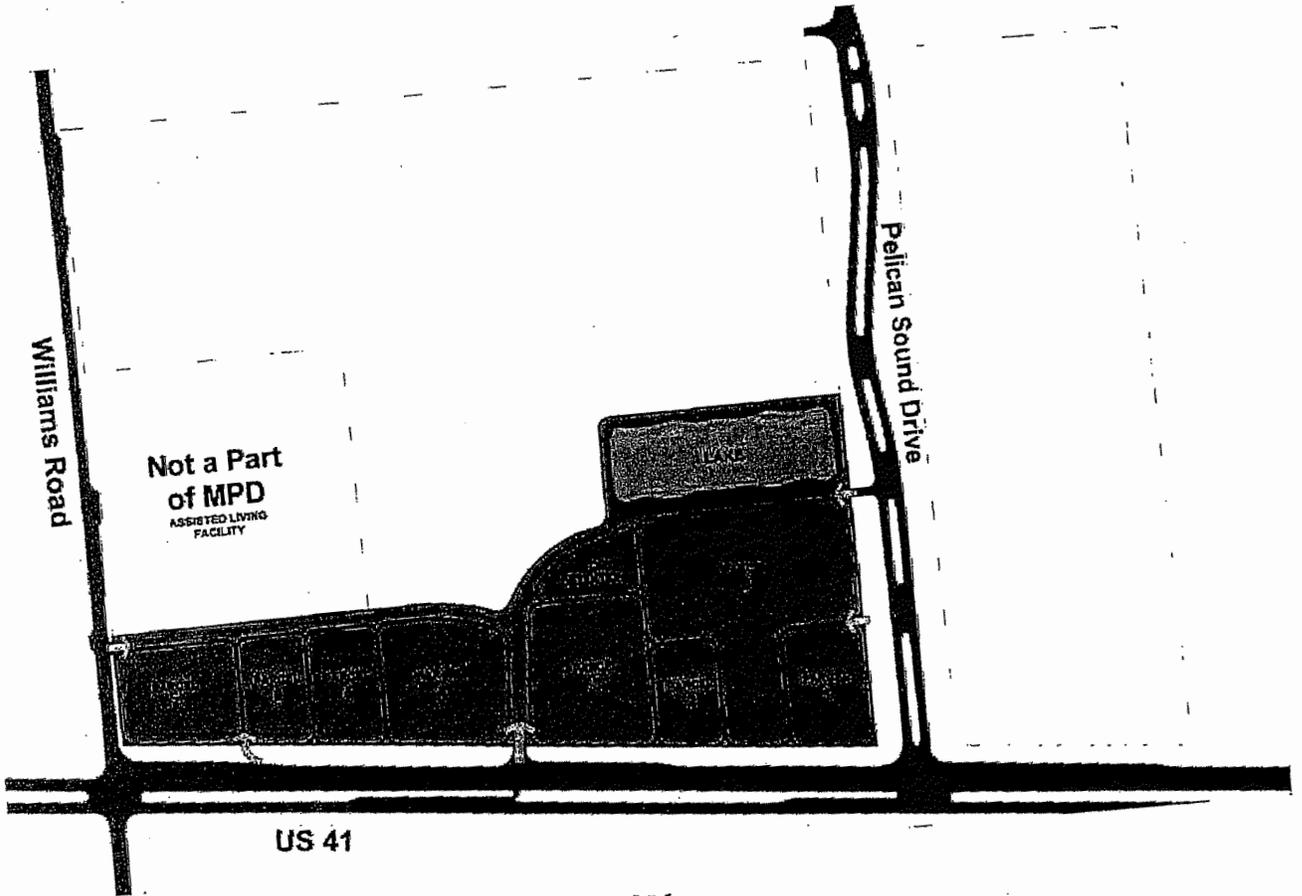
- The proposed development site is within the Suburban land use category, which was designated for areas that are primarily residential but allow commercial development as neighborhood centers are necessary to promote the quality of life in these areas. Commercial development is limited to neighborhood centers and industrial development is not allowed. The Lee Plan projects less intense development in these areas, more characteristic of a suburban area.
- The intent of these design guidelines and standards is to meet and exceed the requirements of the Estero Plan, yet allowing for the development of a large commercial project containing one or more major anchors.

Design Guidelines and Standards

The following design guidelines are intended to establish the standard with which this development will comply. The guidelines however, are intended to be flexible to allow for a more detailed analysis by the Lee County development review staff and the Estero Development Review Committee at the time of local development order.

- The Paradise Shoppes of Estero is planned as a functionally interrelated commercial site under unified control, subject to common guidelines and standards to ensure a quality development. All development will meet and enhance LDC Article IV, the Estero Design Guidelines.
 - The Paradise Shoppes of Estero will be a fully integrated planned site, where attention to the overall site design is achieved by providing well designed and integrated vehicular use areas, pedestrian paths, a common or compatible architectural theme, unified signage, landscaping and lighting throughout the site.
 - The Paradise Shoppes of Estero will be developed on a 22-acre site as part of the Estero Overlay that designates an area of architecturally attractive landscaped buildings that cater to the needs of the community.
- A. Vista Areas – Parcels 1-7 *(See Illustration on following page)*
- Architectural Standards: The Vista Areas will feature an integrated and compatible Mediterranean architectural building style or theme. Massing of building facades will be

PARADISE SHOPPES OF ESTERO



Parcel Map

PARADISE SHOPPES OF ESTERO

reduced by transitioning building heights, widths and colors, textures and adding architectural elements such as wall projections, loggias, canopies, corner towers, archways or columns, appropriately scaled for the public. Primary entry facades will have windows along no less than 10% of their horizontal length in addition to the primary entrance. These treatments will create visual interest and variety, while providing visitors to the project a pedestrian-friendly atmosphere. Building architectural styles shall be compatible and complimentary elements such as roof treatments, signage, landscaping and building materials and colors.

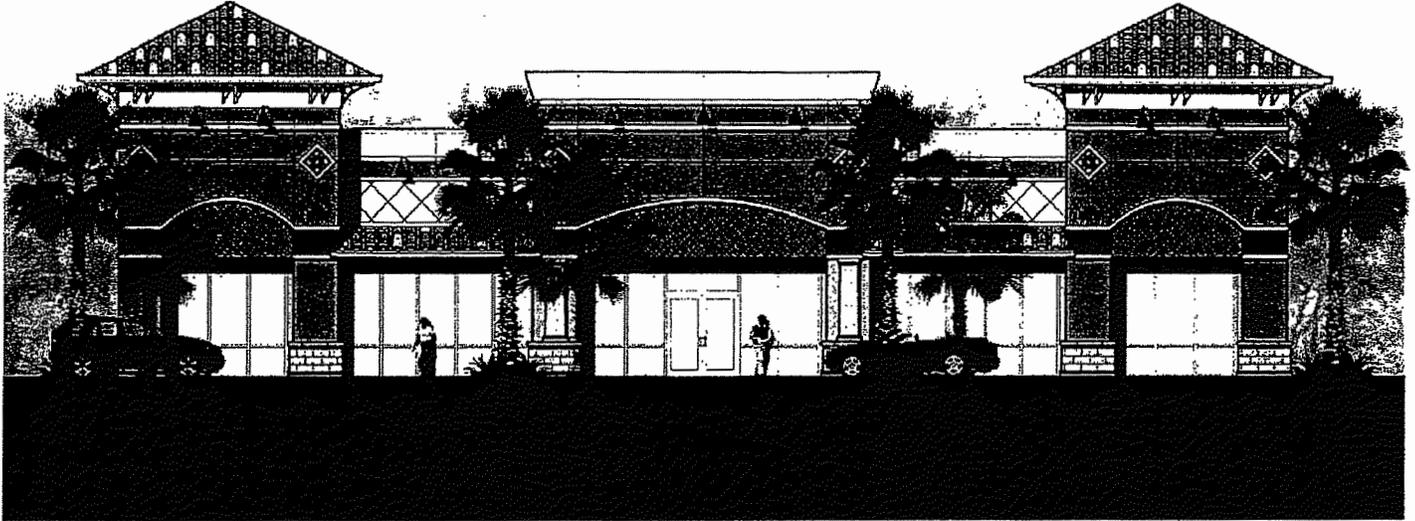
- Each free-standing use will provide a visually appealing, articulated, identifiable path of entry for pedestrians and vehicles for the internal drive to the site, from the site to the buildings themselves, and from U.S. Highway 41 to the free-standing use. The orientation of a building or structure upon a site will reflect not only the project's functionality, but will also be responsive to the individual parcel's characteristics and relationship to U.S. Highway 41.
- Building lighting design will be architecturally treated in the style of the building architecture. Lighting fixtures illuminating the parking area shall meet the design standards of Lee County Development Code Section 34-625 and shielded to eliminate light intrusion crossing the property line when abutting residential and assisted living facility uses.
- Landscaping: Landscape design guidelines for free-standing uses will create a harmonious and visually pleasing landscape that is cohesive and complimentary to the overall master landscape plan. The Paradise Shoppes of Estero landscape concept will feature combinations of native plants and ornamental varieties, which will be designed to define and accent pedestrian and vehicular spaces, as well as enhance the building architectural style. Landscape designs will create a coherent theme, which emphasizes plant material as a primary unifying element. Where possible, existing native trees will be incorporated into the site plan to add character to the pedestrian/open space areas and enhance buffer and perimeter areas. A Landscape Plan for the entire project perimeter buffer will be provided at the time of the first Development Order for the site.

PARADISE SHOPPES OF ESTERO

B. Anchor Parcel – Parcel 8

- The Anchor Parcel will accommodate one or several commercial uses. The on-site pedestrian system will connect the Anchor Parcel to the adjacent Vista Parcel paralleling U.S. Highway 41 and the buildings of the Anchor Parcel will be designed to compliment the Vista Parcels. The parking area will be designed to minimize hardscaped areas, visually and physically.
- Architectural Standards: The Anchor Parcel will feature an integrated and compatible Mediterranean vernacular architectural building style or theme, which will also be incorporated into the Vista Parcels and all other free-standing uses. Buildings will have architectural features and patterns that provide visual interest from the perspective of the pedestrian, reduce massing aesthetic and be site responsive. Facades will be designed to reduce the mass/scale and uniform monolithic appearance of large adorned walls, while providing visual interest that will be consistent with the center's identity and character through the use of articulation, detail and scale. Articulation is accomplished by varying the building's mass in height and width so that it appears to be divided into distinct massing elements and details that can be perceived at the scale of the pedestrian. (See illustration on the following page)

PARADISE SHOPPES OF ESTERO



Buildings will also provide a minimum of two of the following building design treatments:

- Canopies or portico, integrated with the buildings' massing and style
- Overhangs
- Raised cornice parapets over doors
- Arches
- Ornamental and structural architectural details, other than cornices, which are integrated into the building structure and overall design
- Any other treatment, which, in the opinion of the Architect meets the intent of the design character

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Building facades may include a repeating pattern and will include no less than two of the design elements listed below. At least one of these design elements may repeat horizontally.

- Color change
- Texture change
- Material module change
- Expression of architectural relief, through a change in plane of no less than 6 inches in width, such as a reveal, and offset or a projecting rib
- Architectural banding
- Pattern change



PARADISE SHOPPES OF ESTERO



PARADISE SHOPPES OF ESTERO

Roof will meet at least two of the following requirements:

- Parapets will be used to conceal roof top equipment and flat roofs where required
- Where overhanging eaves are used, overhangs will be no less than 12 inches beyond the supporting walls with a minimum fascia of 8 inches
- Three-dimensional cornice treatment which will be a minimum of 12 inches in height with a minimum of two reliefs

Major anchor parcel buildings will have clearly defined, highly visible customer entrances which incorporates benches or other seating components and decorative landscape planters.

Exterior building colors and materials contribute significantly to the visual impact of a building.

Predominant exterior building materials will include, but are not limited to:

- Stucco
- EFIS
- Architectural Block
- Tinted, textured, other than smooth or ribbed, concrete masonry units; or
- Natural Stone and/or Pre-cast Concrete

Customer parking for the Anchor Parcel will be in accordance with Section 34-1046 Design Standards, Item 7. In addition to Item 7, customer parking will be located in front of the Anchor Parcel building.

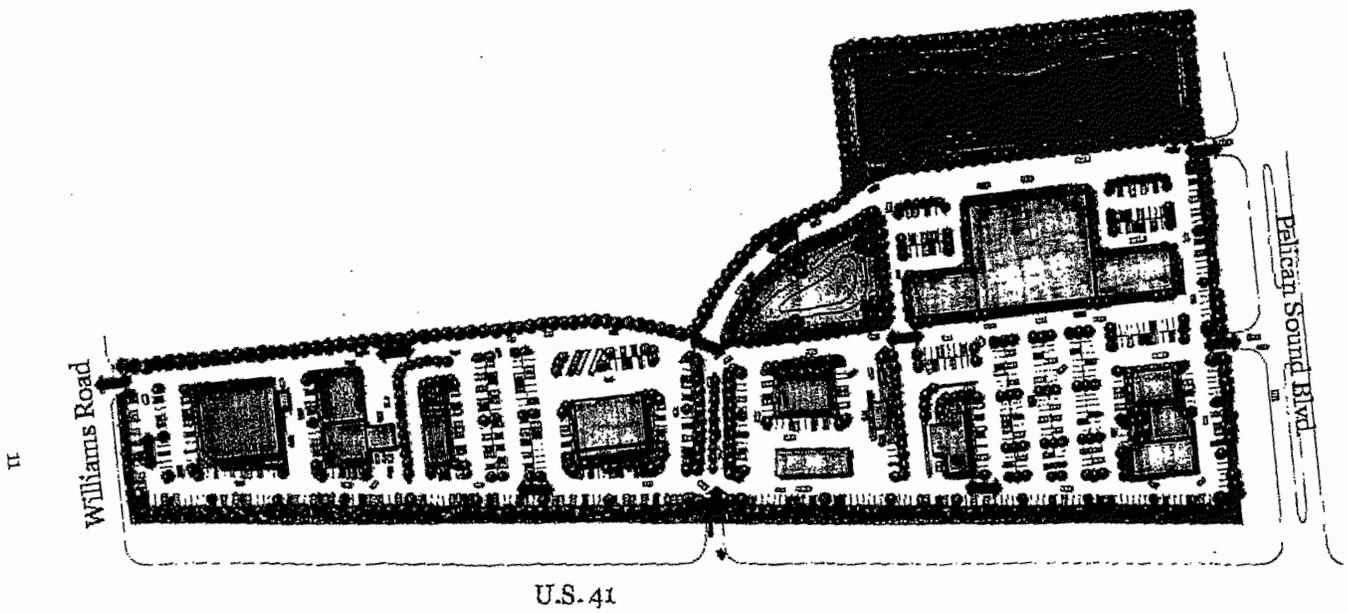
C. Common / Public Areas

- Internal roadways will provide efficient vehicular circulation and will be designed with streetscapes that create pedestrian-friendly environments. Streetscape plans will be designed to establish a hierarchy of vehicular and pedestrian flow appropriate in scale and character with landscape improvements, street function and adjacent land uses with the intention of linking uses throughout the project.
- Project architectural features will be developed within common areas of the project and will be coordinated in the design, color and style. Architectural features shall be permitted throughout the site.

PARADISE SHOPPES OF ESTERO

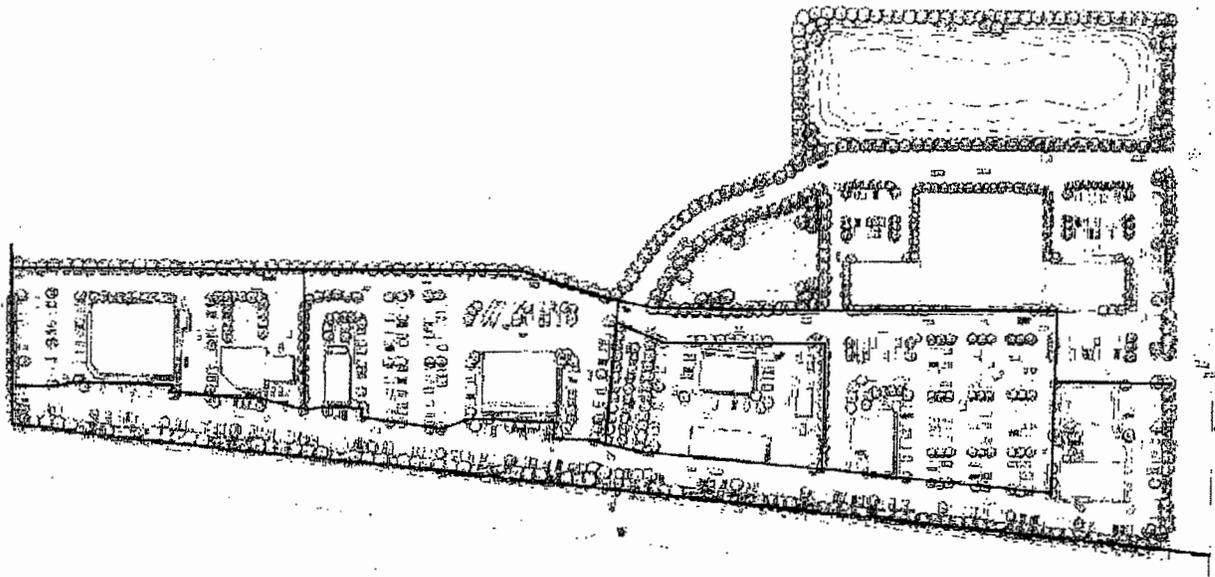
- The Paradise Shoppes of Estero will provide a variety of publicly accessible amenities such as bicycle racks, benches and trash receptacles, which will further the project's commitment to complement and enhance Lee County and Estero's Design Guidelines, and serve to provide a sense of place for the community.
- A pedestrian way network shall be established throughout the project as shown on the Conceptual Site Plan on the following page. The pedestrian system will serve to link Anchor and vista areas with freestanding uses at the perimeter of the project site, by providing a landscaped walkway protected from vehicular traffic movement. Any required breaks in the pedestrian network for vehicular access to the site shall be identified through use of treated surfaces, signage or other traffic calming techniques deemed appropriate to reduce the speed of vehicles and provide safe pedestrian movements throughout the site.
 - The anchor parcel/building area pedestrian way shall be a wide intermittently covered walkway, featuring concrete surfaces which may be paved, tiled, etc. This pedestrian way will include architectural features such as fountains, courtyards, arbors or similar design features, and decorative landscape plantings. This pathway shall have a minimum unobstructed pedestrian way of 5 feet average width. Seating and decorative landscape planting shall be provided intermittently along the pathway and at all primary tenant entrances where appropriate.
 - The parking area pedestrian way shall be located generally within the parking area as shown on the Conceptual Site Plan on the following page. This pedestrian way system will be designed to promote safe and convenient linkage from the parking area to the entire project. Vehicular crossings will be identified with signage, landscaping and clearly marked through use of varied pavement treatment and other traffic calming techniques. This pedestrian way system shall be a minimum of 4 feet in width, with paver, stamped concrete or banded concrete pedestrian pathway. This pedestrian pathway will feature canopy trees or palms with ground level landscape plantings. Canopy trees or palms shall be planted along the pedestrian way system and shall be a minimum 12 feet high with a 4 foot spread for canopy trees and equivalent specification for shade palms at the time of planting.
 - The perimeter pedestrian way system is designed to link free-standing uses with the parking and vista area pedestrian way as shown on the Conceptual Site Plan on the following page. Vehicular crossings will be identified with signage, landscaping and clearly marked through uses of varied pavement treatments or other traffic calming techniques.

PARADISE SHOPPES OF ESTERO



Conceptual Site Plan: Vehicular Circulation

PARADISE SHOPPES OF ESTERO



Conceptual Site Plan: Pedestrian Circulation

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Landscaping

A. General

The attached Native Plant Lists are provided to present a specific plant palette for perimeter buffers, native re-vegetation, preserve enhancement and satisfy LDC native plant requirements. Any non-native landscape material use shall be allowed under the LDC and will be used to provide additional color and texture for areas to be enhanced such as main vehicular and pedestrian entries, circulation routes, building perimeter plantings and pedestrian amenity open space.

B. Perimeter

- Buildings along U.S. Highway 41 will be designed in accordance with LDC Article IV; the setback requirements for the Estero Overlay. Trees may be clustered to allow view corridors to internal buildings. Where possible, native trees will be preserved and incorporated into the perimeter buffer areas for screening and aesthetic enhancement of the project.
- Where parking or service areas along U.S. Highway 41 are located within 75 feet of the right of way line, the developer must maintain a minimum 30 foot setback for parking or service areas from the U.S. Highway 41 right-of-way, with a landscaped berm to obscure the parking areas as well as the vehicles. Trees may be clustered to allow view corridors to internal buildings. Where possible, native trees will be preserved and incorporated into the perimeter buffer areas for screening and aesthetic enhancement of the project. Further, sidewalk improvements may be made (subject to FDOT review and utility conflicts) to create a landscape area between the edge of the pavement of U.S. Highway 41 and the sidewalk.
- Where an access road for a drive-thru is located along U.S. Highway 41 within 75 feet of the right of way line, the developer must maintain a maximum 25 foot building setback from the U.S. Highway 41 right-of-way, with a landscaper buffer to obscure the drive areas as well as the vehicles. Trees may be clustered to allow view corridors to internal buildings. Where possible, native trees will be preserved and incorporated into the perimeter buffer areas for screening and aesthetic enhancement of the project. Further, sidewalk improvements may be made to create a landscape area between the edge of the pavement of U.S. Highway 41 and the sidewalk (subject to FDOT review, utility conflicts and spacing issues).
- Where buildings along Williams Road or Pelican Sound Boulevard are designed such that parking areas are in front of the building, an enhanced 30 foot buffer consisting of a minimum ten (10) trees and thirty (30) shrubs per 100 linear feet, will be installed at the time of development with

PARADISE SHOPPES OF ESTERO

a ±2 feet undulating landscaped berm, to adequately screen parking areas from view (Typical Section B). This is not intended to block visual corridors to the buildings, but is intended to screen parking areas. Trees may be clustered to allow view corridors to internal buildings. Where possible, native trees will be preserved and incorporated into the perimeter buffer areas for screening and aesthetic enhancement of the project.

- The height of required trees within buffers shall be 12 feet overall in height. Canopy trees shall have a 4 foot canopy spread at the time of planting.
- Landscape buffers, berms, fences and walls, where applicable, must be constructed along the perimeter of the Paradise Shoppes of Estero boundary concurrent with site development within each vista area or anchor parcel respectively.
- Sidewalks, signage, water management systems, drainage structures, project architectural features, lighting and utilities will be permitted within perimeter landscape buffers.
- Perimeter landscape berms located within the Paradise Shoppes of Estero boundary and contiguous to a property line and/or right-of-way line may be constructed such that they encroach into the right-of-way when approved by the applicable owner or agency.
- The developer and adjacent landowners endeavor to provide a unified homogenous landscape and entry feature for Pelican Sound Boulevard. The entry feature will be designed to compliment the Paradise Shoppes of Estero project.

C. Internal

Per LDC Sections 34-1042 thru 34-1047, internal landscaping will be provided to minimize hardscaped areas, both visually and physically, accentuate entryways, define pedestrian areas and enhance the pedestrian walkway system. In all landscaped areas, existing native trees will be preserved.

PARADISE SHOPPES OF ESTERO



U.S. 41 Parking/Pedestrian/U.S. Retail Shops Entrance
41 Circulations



Entrance from U.S. 41



Creation of Focal Points

PARADISE SHOPPES OF ESTERO

Signage

- A. All signs shall be of consistent architectural style and shall feature like building materials and sign structures. Sign Structures will be uniform in size, color and building material.
- B. All signs will comply with the land development code sign guidelines at the time of the issuance of the sign permit.

PARADISE SHOPPES OF ESTERO

RECOMMENDED PLANTS - Native Trees (Med. & Large)

(The Plants Listed Range from Zones 9, 10 and 11)

Botanical Name	Common Name	Botanical Name	Common Name
<i>Acacia chorophylla</i>	Cinnecord	<i>Juniperus silicicola</i>	Southern Red Cedar
<i>Acacia farnesiana</i>	Sweet Acacia	<i>Juniperus virginiana</i>	Red Cedar
<i>Acer rubrum</i>	Red Maple	<i>Laguncularia racemosa</i>	White Mangrove
<i>Acer saccharum</i> subs. <i>Floridanum</i>	Florida Maple	<i>Liriodendron tulipifera</i>	Tulip Poplar
<i>Annona glabra</i>	Pond Apple	<i>Magnolia grandiflora</i>	Southern Magnolia
<i>Betula nigra</i>	River Birch	<i>Magnolia virginiana</i>	Sweet Magnolia
<i>Bourreria succulenta</i>	Strongbark	<i>Morus rubra</i>	Red Mulberry
<i>Bursera simaruba</i>	Gumbo Limbo	<i>Myrcanthes fragrans</i>	Simpson Stopper
<i>Celtis laevigata</i>	Sugarberry	<i>Nyssa sylvatica</i>	Black Gum
<i>Cercis canadensis</i>	Red Bud	<i>Persea palustris</i>	Florida Red Bay
<i>Chlonanthus virginicus</i>	White Fringetree	<i>Pinus elliotii</i>	Slash Pine
<i>Chrysobalanus icaco</i>	Cocoplum	<i>Pinus elliotii</i> 'dense'	South Florida Slash Pine
<i>Chrysophyllum oliviforme</i>	Satin Leaf	<i>Pinus palustris</i>	Longleaf Pine
<i>Citharexylum spinosum</i>	Fiddlewood	<i>Pinus taeda</i>	Loblolly Pine
<i>Clusia rosea</i>	Pitch Apple	<i>Piscidia piscipula</i>	Jamaica Dogwood
<i>Coccoloba diversifolia</i>	Pigeon Plum	<i>Plantanus occidentalis</i>	Sycamore
<i>Coccoloba uvifera</i>	Seagrape	<i>Prunus angustifolia</i>	Chickasaw Plum
<i>Conocarpus erectus</i>	Buttonwood	<i>Prunus caroliniana</i>	Cherry Laurel
<i>Cordia sebestena</i>	Geiger Tree	<i>Prunus myrtifolia</i>	West Indian Cherry
<i>Cornus florida</i>	Dogwood	<i>Quercus alba</i>	White Oak
<i>Diospyros virginiana</i>	Persimmon	<i>Quercus falcata</i>	Southern Red Oak
<i>Eugenia axillaris</i>	White Stopper	<i>Quercus laurifolia</i>	Laurel Oak
<i>Eugenia confusa</i>	Redberry Stopper	<i>Quercus michauxii</i>	Swamp Chestnut Oak
<i>Eugenia foetida</i>	Spanish Stopper	<i>Quercus nigra</i>	Water Oak
<i>Eugenia rhombea</i>	Red Stopper	<i>Quercus shumardii</i>	Shumard Oak
<i>Gordonia lasianthus</i>	Loblolly Bay	<i>Quercus virginiana</i>	Live Oak
<i>Gualacum sanctum</i>	Lignum Vitae	<i>Rhizophora mangle</i>	Red Mangrove
<i>Gymnanthes lucida</i>	Crabwood	<i>Salix caroliniana</i>	Coastal Plain Willow
<i>Hibiscus tiliaceus</i>	Mahoe	<i>Sapindus saponaria</i>	Wingleaf Soapberry
<i>Ilex cassine</i>	Dahoon Holly	<i>Schaefferia frutescens</i>	Florida Boxwood
<i>Ilex opaca</i>	American Holly	<i>Sideroxylon foetidissimum</i>	Mastic
<i>Ilex vomitoria</i>	Yaupon Holly	<i>Sideroxylon salicifolium</i>	Willow Bustin
<i>Ilex x attenuata</i>	East Palatka Holly	<i>Swietenia mahagoni</i>	Mahogany
<i>Jacquinia keyensis</i>	Joewood	<i>Taxodium distichum</i>	Bald Cypress
		<i>Ulmus alata</i>	Winged Elm
		<i>Ulmus americana</i> var. <i>floridana</i>	Florida Elm
		<i>Viburnum obovatum</i>	Walter's Viburnum

PARADISE SHOPPES OF ESTERO

RECOMMENDED PLANTS - Native Shrubs

(The Plants Listed Range from Zones 9, 10 and 11)

Botanical Name	Common Name	Botanical Name	Common Name
<i>Ardisia escallonioides</i>	Marlberry		
<i>Baccharis halimifolia</i>	Saltbush		
<i>Callicarpa americana</i>	Beautyberry		
<i>Capparis cynophallophora</i>	Jamaican Caper		
<i>Cassia ligustrina</i>	Privet Cassia		
<i>Cephalanthus occidentalis</i>	Buttonbush		
<i>Clethera alnifolia</i> 'Ruby Spice'	Sweet Pepperbush		
<i>Cordia globosa</i>	Bloodberry		
<i>Cyrilla racemiflora</i>	Titi		
<i>Dodonaea viscosa</i>	Varnishleaf		
<i>Erithalis fruticosa</i>	Black Torch		
<i>Ernodia littoralis</i>	Beach Creeper		
<i>Erythrina herbacea</i>	Coral Bean		
<i>Foresteria segregata</i>	Florida Privet		
<i>Genipa clusiifolia</i>	Seven-Year-Apple		
<i>Hamelia patens</i>	Firebush		
<i>Hypericum</i> spp.	St. John's Wort		
<i>Illicium floridanum</i>	Florida Anise		
<i>Itea virginica</i>	Virginia Sweetspire		
<i>Iva frutescens</i>	Marsh Elder		
<i>Lantana involucrata</i>	Native White Lantana		
<i>Licania michauxii</i>	Gopher Apple		
<i>Lyonia lucida</i>	Fetterbush		
<i>Myrica cerifera</i>	Wax Myrtle		
<i>Opuntia</i> spp.	Prickly Pear		
<i>Psychotria nervosa</i>	Wild Coffee		
<i>Randia aculeata</i>	White Indigo Berry		
<i>Rapanea punctata</i>	Myrsine		
<i>Rivina humilis</i>	Rouge Plant		
<i>Sambucus simpsonii</i>	Elderberry		
<i>Scaevola plumieri</i>	Scaevola		
<i>Sophora tomentosa</i>	Necklace Pod		
<i>Stachytarpheta jamaicensis</i>	Blue Porterweed		
<i>Styrax americanus</i>	Snowbell		
<i>Suriana maritima</i>	Bay Cedar		
<i>Yucca aloifolia</i>	Spanish Bayonet		
<i>Zamia pumila</i>	Coontie		

PARADISE SHOPPES OF ESTERO

RECOMMENDED PLANTS - Native Grasses

(The Plants Listed Range from Zones 9, 10 and 11)

Botanical Name	Common Name	Botanical Name	Common Name
Andropogon brachystachys	Shortspike Bluestem		
Eragrostis ellottii	Elliot Love Grass		
Eragrostis spectabilis	Purple Love Grass		
Muhlenbergia capillaris	Muhly Grass		
Sorghastrum secundum	Lopsided Indiangrass		
Spartina bakeri	Sand Cordgrass		
Tripsacum dactyloides	Fakahatchee Grass		
Tripsacum floridanum	Florida Gamma Grass		
Uniola paniculata	Sea Oats		

PARADISE SHOPPES OF ESTERO

RECOMMENDED PLANTS - Native Ferns

(The Plants Listed Range from Zones 9, 10 and 11)

Botanical Name	Common Name	Botanical Name	Common Name
Acrostichum danaeifolium	Leather Fern		
Blechnum serrulatum	Swamp Fern		
Ctenitis sloanei	Florida Tree Fern		
Nepherolepis spp.	Swordfern/Boston Fern		
Osmunda regalis	Royal Fern		
Pteridium aquilinum	Bracken		

PARADISE SHOPPES OF ESTERO

RECOMMENDED PLANTS - Native Aquatics

(The Plants Listed Range from Zones 9, 10 and 11)

Botanical Name	Common Name	Botanical Name	Common Name
<i>Canna flaccida</i>	Yellow Canna		
<i>Equisetum</i> spp.	Horsetail		
<i>Juncus effusus</i>	Soft Rush		
<i>Nuphar luteum</i>	Spatterdock		
<i>Nymphaea odorata</i>	White Water Lily		
<i>Pontederia lanceolata</i>	Pickerelweed		
<i>Sagittaria</i> spp.	Arrowhead		
<i>Scirpus</i> spp.	Giant Bulrush		
<i>Thalia geniculata</i>	Alligator Flag		

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL EXCEPTION: SEZ2005-00007
APPLICANT: THE PARADISE GROUP, in reference to
PARADISE SHOPPES OF ESTERO
HEARING DATE: JUNE 2, 2005

I. APPLICATION:

Filed by THE PARADISE GROUP, 3265 Meridian Parkway, Suite 100, Weston, Florida 33331 (Applicant/Agent); CHARLES M. LONG, ET AL, 2201 2nd Street, Fort Myers, Florida 33901 (Owner); SHELLIE JOHNSON, AICP, c/o BARRACO AND ASSOCIATES, INC., 2271 McGregor Boulevard, Fort Myers, Florida 33901; MATT D. UHLE, ESQUIRE, c/o KNOTT, CONSOER, EBELINI, HART & SWETT, P.A., 1625 Hendry Street, Unit 301, Fort Myers, Florida 33901; and TED TREESH, c/o METRO TRANSPORTATION GROUP, INC., 12651 McGregor Boulevard, Fort Myers, Florida 33919 (Agents).

Request is for a Special Exception in the Mixed Use Planned Development (MPD) zoning district to increase the number of gas pumps from eight (8) pumps (four two-sided), as specified in Resolution Z04-068, to 16 (eight 2-sided) pumps on Parcel 4 of Paradise Shoppes of Estero.

The subject property is described as Parcel Number 4 within the Paradise Shoppes of Estero, which is located at the northwest corner of U.S. 41 and the Williams Road intersection and is bordered to the north by Pelican Sound Drive, Estero, Florida, in Section 33, Township 46 South, Range 25 East, Lee County, Florida (District #3).

The Strap # as furnished by the Applicant is: 33-46-25-00-00001.0030

II. STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Chahram Badamchian. The Staff Report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner **APPROVES** the Applicant's request for a Special Exception in the MPD zoning district to increase the number of gas pumps from eight (8) pumps (four 2-sided) to 16 (eight 2-sided) pumps for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITIONS:

1. The access to the automobile service station shall be through the shopping center. No direct access from U.S. 41 shall be allowed for this parcel.
2. The development must be in substantial compliance with the attached Site Plan labeled as **Exhibit B**.

IV. HEARING EXAMINER DISCUSSION:

This is a request for a Special Exception to increase the number of gas pumps approved in the 2004 amendment to the 83.4-acre Camargo Trust Mixed Use Planned Development (MPD), located in the northwest corner of Williams Road and U.S. 41 in Estero. The gas station use is being proposed for the 2.25-acre outparcel #4, which is approximately 700 feet north of Williams Road, and a similar distance south of Pelican Sound Drive. It is abutted on the north, south and west by other parcels within the MPD, and by U.S. 41 on the east. The parcel is located adjacent to the southernmost, unsignalized access point from U.S. 41, which allows only right-in/right-out and left-in turning movements. The subject property is designated Suburban in the Lee Plan.

The Camargo Trust MPD was initially approved in 1998, but that Master Concept Plan (MCP) was vacated as a result of the developer's failure to timely obtain development orders for the project. The MCP was amended in 2004, at which time only one gas station or convenience food and beverage store was approved for the entire site. Those uses were restricted to a maximum of eight fueling stations (four 2-sided pumps), with more pumps allowed only through a Special Exception request. In the 2004 amendment, Applicant was requesting eight 2-sided pumps (16 fueling stations), but decided not to contest Staff's and the Hearing Examiner's recommendation of four 2-sided pumps at the BOCC hearing. Instead, they opted to use the Special Exception "right" to request the additional pumps.

As stated by Staff in the 2004 public hearing, the purpose of the Special Exception request was to allow them to perform a more site-specific, more detailed evaluation of the appropriateness of the additional gas pumps. Staff felt that a Special Exception request would provide additional information on such factors as the size of the gas station site, its location in reference to other commercial and residential uses, and its potential access to major roadways.

The Special Exception request herein is to allow Applicant to increase the number of fuel pumps from four 2-sided to eight 2-sided pumps - for a total of 16 fueling stations. They pointed out that these fuel pumps are surrounded on three sides by other commercial uses within the MPD, and on the fourth side by the six lanes of U.S. 41. Outparcel #4 will have access from two signalized intersections - Williams Road and Pelican Sound Drive - through the internal roadway system, as well as from the limited access point located on the northeast corner of Outparcel #4. No direct access to U.S. 41 will be allowed for this site.

Staff recommended approval of the Special Exception, with conditions, finding that it was consistent with the intent of the Lee Plan and the Land Development Code, and would be compatible with the surrounding mixture of commercial uses. They found that the 2.25-acre size of the subject parcel would allow the additional pumps to be installed without interfering with traffic flow on the parcel or the overall site. They also determined that the architectural and enhanced landscaping and setback requirements set out in the Estero Special Development Area of High Growth would ensure that the use would be visually or aesthetically pleasing.

No members of the public appeared at the public hearing, but the Hearing Examiner's files contain one letter, from a nearby property owner, objecting to the request because of the increased traffic that will use Williams Road.

The Hearing Examiner reluctantly approves the Special Exception, as conditioned herein, finding that the request, as conditioned, meets the criteria for approval set out in LDC Section 34-145, and is consistent with the intent and provisions of the Lee Plan and the Land Development Code. She agrees with Staff that the proposed use will be compatible with the surrounding commercial uses, and will not be detrimental to the immediate commercial neighborhood.

While the Hearing Examiner finds that the request, as conditioned, legally meets the criteria for approval, she also finds that the approval of this request may be in direct opposition to the several statements made by the Board of County Commissioners (BOCC) relating to the limiting of the number of convenience food and beverage store and gas stations in new zoning requests. However, it is her opinion that she has no recourse but to approve the request, as it does comply with the criteria for approval, and does not display any detriment or injury to the public health, safety and welfare.

In her 2004 Recommendation, which was accepted and approved by the BOCC, the Hearing Examiner recommended approval of allowing additional gas pumps on this site through the use of the Special Exception process. It was only after this request was received and evaluated by her that she realized its approval would enable Applicant to have the number of gas pumps he had originally asked - *without* having to apply to the BOCC for them. Thus, the Special Exception process would remove the BOCC review from the matter and would allow the Staff and Hearing Examiner to approve increased numbers of gas pumps, based strictly upon the Special Exception approval criteria. While still being faced with this one request, the Hearing Examiner has instructed Staff not to include the Special Exception provision in any further rezonings.

It is the Hearing Examiner's opinion that the conditions imposed on this Special Exception are reasonably related to the impacts anticipated from the proposed use, and, with other regulations, will safeguard the public health, safety and welfare.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

- A. That the Applicant has proved entitlement to the Special Exception, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
- B. That the requested use, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.
- C. That the requested use, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan.
- D. That the 16-fueling stations, as conditioned, are compatible with existing or planned uses in the surrounding area.
- E. That approval of the Special Exception, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.

F. That the proposed gas station use, as conditioned, will not adversely affect environmentally critical areas and natural resources.

G. That urban services, as defined in the Lee Plan, are available and adequate to serve the proposed land use.

H. That the conditions imposed herein are reasonably related to the impacts anticipated from the proposed uses and, with other regulations, will safeguard the public's interests.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

1 Resume for Chahram Badamtchian, AICP, with the Department of Community Development

2 Letter of objection from Alvin W. Reitz, dated June 1, 2005

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

1 Aerial photograph, prepared by Barraco & Associates, for Paradise Shoppes of Estero, dated May 31, 2005

2 Site Plan for Paradise Shoppes of Estero, prepared by Barraco & Associates, dated May 26, 2005 [board]

3 Camargo MPD Overview, prepared by Barraco & Associates, dated June 2, 2005 [board]

4 Aerial photograph with surrounding streets and subject property labeled [color]

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

VII. PRESENTATION SUMMARY:

The Hearing Examiner explained the hearing process and placed all the participants under oath. Matt Uhle, with Knott, Consoer, Ebelini, Hart & Swett, P.A., introduced himself as the Applicant's representative, stating that the request was fairly simple and they had no issues with the Staff Report. He just wanted to embellish some of the background facts and then Shellie Johnson, of Barraco and Associates, Inc., would give the presentation. Ted Treesh, of Metro Transportation Group, was also available to answer questions.

Mr. Uhle explained that the case had some recent history that was worth mentioning. The subject property was included in the Paradise Shoppes amendment to the Camargo Trust Mixed Use Planned Development (MPD) that had been heard by the Hearing Examiner not long ago. He offered a copy of the Hearing Examiner's Recommendation for the record. In that particular case an issue has arisen at the public hearing regarding the number of pumps

being requested. In that Schedule of Uses, Staff had recommended approval of the use, but had limited it to eight pumps, as that term was defined in the Land Development Code (LDC).

The Applicant had objected to that restriction and there was a "spirited discussion" about the concept of saturation that he was sure the Hearing Examiner would remember. During that hearing, Mr. Block, who was the County Staff person, indicated that, in his opinion, one reason for requiring a Special Exception for more gas pumps was to address issues of a site specific nature. He wanted to see more detail, before he would sign off on more pumps.

When the Hearing Examiner's Recommendation came out, it contained an interesting discussion about saturation, which the Board of County Commissioners (BOCC) did not follow up on. Mr. Uhle said that, when the Applicant considered their options, they concluded that, rather than make an issue of it in front of the BOCC, they would simply drop it and go along with the Special Exception request. They thought that it was a reasonably fast and objective process. So, there was no discussion on the restricted number of pumps when that case went before the BOCC. They simply acquiesced with the Staff Recommendation then, which was why they were at this public hearing. Obviously they had completed a Special Exception application with all of the prerequisite analyses.

At that point, Ms. Johnson came forward to give her presentation. Mr. Uhle made it known that her resume was on file and that she had previously been accepted as an expert in zoning and land use planning. He asked that she be accepted as such again, which the Hearing Examiner did after hearing no objections from Staff.

Ms. Johnson explained that the subject parcel was Parcel Number 4 within the Paradise Shoppes of Estero MPD. She pointed out the outline of the approved southern commercial portion of the overall Camargo MPD on an aerial photograph. She described the parcel as centrally located within that MPD, and surrounded to the north, south and west by other parcels within the MPD. The residential portion of the MPD was to the west. She also pointed out the future North Point Lake MPD on the east side of U.S. 41.

When this MPD was approved, a gas station/convenience food and beverage store was restricted only to either Parcel 3 or Parcel 4. The Applicant has chosen Parcel 4, which was really an ideal location for that kind of use. It was immediately adjacent to the central entrance of the shopping center, and would provide easy access into and out of the shopping center for vehicles moving in a southbound direction on U.S. 41. There were also two other access points within the shopping center that would allow movement throughout the shopping center and that site.

She explained that gas stations or gas pumps were typically considered a secondary destination, and Parcel 4 was ideally located for quick "in and out" movements on southbound on U.S. 41, and internal to the shopping center. For northbound traffic from U.S. 41, the MPD was approved with two other access points - one off Pelican Sound Drive and one was off of Williams Road. Williams Road was currently a signalized intersection at U.S. 41, and Pelican Sound Drive was destined for a future signal. Those two major intersections would be signalized for easy access into and out of the site for northbound traffic.

The Hearing Examiner wanted to know if the problems with the access point onto Williams Road had been worked out. She recalled there being a question in the prior hearing regarding the problem with the stacking of vehicles in the left-turn lane from Williams Road

onto U.S. 41. She thought that was what the Applicant and other developers in the area were working on.

Mr. Uhle explained that there was, in fact, a condition imposed by the BOCC that required them to work on making improvements to that intersection. There was an additional condition that flowed from the high-rise cases that followed. The bottom line was that a cooperative effort was underway to fix the problem.

Ms. Johnson said that they concurred with Staff's analysis with regard to the consistency with the Lee County Comprehensive Plan. In particular, she pointed out Objective 19.2 that talked about commercial land use in Estero and commercial site location standards, noting they were consistent with those provisions. Additionally, there were a couple of extra policies, i.e., Policy 2.2.1 and 5.1.5, that dealt with proximity to road networks and compatibility with surrounding uses.

The proposed gas pumps were to be centrally located within a commercial development, and were well buffered from adjacent residential uses. Additionally, Parcel 4 was located in an area that would provide convenient access for that type of use for residential properties or for area residents to the west of U.S. 41. So, they believed that they were consistent with those policies.

The Hearing Examiner questioned whether the signalization at Pelican Sound Drive was tied to the development of the North Point Lake Development of Regional Impact (DRI). Ms. Johnson referred that question to Mr. Treesh, who introduced himself and stated that his resume was on file with the Hearing Examiner's Office. As he had previously been accepted as an expert witness in transportation and planning related matters in that forum, he asked to be accepted as such again. After hearing no objections from Staff, he was accepted.

The Hearing Examiner restated her recollection that the stop light at Pelican Sound Drive was tied into the development of the North Point DRI, and wondered if he had any idea when that might occur. He explained that, as part of the DRI approval, signalization of that intersection was identified as an improvement that would be required. Because U.S. 41 was a Florida Department of Transportation (FDOT) maintained roadway, they would have to meet certain warrants before the signal would be permitted. So, once North Point Lake was under construction and had major tenants in there, a study would be done to determine if the warrants were met, and the design would be completed. He didn't have a time frame; it was really dependent on the construction schedule.

He explained that, if this MPD project built out, it was very possible that the warrants could be met simply based on their own traffic, if North Point Lake was delayed. So the timing of the light was really just based on when the volume of traffic was there that warranted the signal. Currently, there was insufficient traffic there to justify the light or to get it approved by FDOT.

The Hearing Examiner pointed out the mobile home park to the north and the vacant area to the south of Parcel, wanting to know if the south parcel was part of the Camargo MPD. Mr. Treesch confirmed it was. She wanted to know if there was any chance of a traffic light being placed at the intersection or where the gas station was proposed. Mr. Treesh said no, because the access was only a directional left turn in - no left turn out - for that entrance. Thus it could not be signalized.

The Hearing Examiner wanted to know if Pelican Sound Drive still had a dual access. Mr. Treesh described it as a "full median opening."

With Applicant having completed their presentation, Chahram Badamtchian introduced himself as a County Planner and provided a copy of his resume to the Hearing Examiner. He noted that it was his first hearing for Lee County, and he wanted to be qualified as an expert in planning and zoning. At the Hearing Examiner's request, Mr. Badamtchian reviewed his resume, noting that he had a Master's Degree in Architecture and City Planning, and a PHD in Urban Planning. He had been a Principal Planner for Collier County for 11 years, before working for two years in the private sector. He also was a member of the American Institute of Certified Planners. He started work with Lee County on January 20, 2005.

The Hearing Examiner summarized his experience as eleven years with Collier County, almost three years in private practice, and now six months with Lee County. After hearing no objections from Applicant, he was accepted as an expert witness in land use and planning.

Mr. Badamtchian indicated that his presentation would be very short. He had received a letter from a resident in the area, and offered a copy for the record. Basically, that letter was saying that the resident was not happy with the request. The Hearing Examiner verified that the Applicant's Attorney had received a copy of that letter. Mr. Badamtchian declared that was the only correspondence he had received from people in the area.

He noted the Staff Report, and added that the Estero area had more stringent rules for gas stations than other areas of Lee County. Those rules were more restrictive regarding the size and width of the lot, and the landscape buffers. He had found that this project met or exceeded all of those requirements. Staff recommended approval of the request with two standard conditions that were part of the Staff report.

The Hearing Examiner wanted to know if Mr. Badamtchian was familiar with the BOCC's attitude toward additional pumps, which he confirmed he was. The Hearing Examiner indicated her understanding that there were revisions to the LDC in the work that related to establishing some criteria for that situation. Mr. Badamtchian advised that he was not familiar with the text of those revisions, but had heard about it. The Hearing Examiner stated that she had not seen the revisions yet and wondered if this particular project met all of the requirements of the Estero land development requirements and Goal 19 of the Lee Plan. She wanted to know if it was his opinion that the addition of the eight gas pumps was appropriate at that particular area, and would not cause any kind of adverse effects or impacts on public health, safety, and welfare, or on the surrounding community.

He explained that U.S. 41 was a state-owned highway - not a residential road - and that a major highway was the best location to have a gas station. They had safe access in and out, with one existing traffic light (at the south end) and another one planned in the future. The lot was large enough to accommodate the additional pumps. He also mentioned that some people were against gas stations, but that gas stations were already an approved use on this site, with or without the additional pumps. So, it was Staff's opinion that, because of the lot location and size and the compliance with open space and landscape buffers, the additional pumps would not negatively impact the surrounding neighborhoods and properties.

The Hearing Examiner explained that she was not sure how she planned to rule on the case. She thought that, from a legal standpoint, given Staff's position and the Applicant's position, she might "have to" approve this. She advised that she was little concerned about this situation wherein Staff had started requiring these cases to come in as Special Exceptions. Her concern related to the approval of more pumps as a Special Exception, which was not reviewed by the BOCC, particularly since the BOCC had been very adamant about the number of gas stations and gas pumps.

From a legal standpoint, since it met the criteria for approval, she might not be able to deny it, if she was so inclined. She planned to discuss this situation with Pam Houck - after this case was completed. She was emphatic that she did not want any further Special Exception "gifts" on gas stations and convenience food and beverage stores put in any more of the Developments of County Impact (DCIs) coming through; she really wanted the language taken out.

She stated that it was not right to put her in the position of having to countermand or ignore the BOCC's directions. She knew how the BOCC felt about it, and as part of her review, she had to consider their concerns and statements. She indicated that she would be looking at the tape on the prior case hearing, in which she had been very pointed to the BOCC in her discussion of this matter. She had indicated that the BOCC needed to make some kind of substantive criteria on which to base these limitations at Staff level. She knew that had not be accomplished yet, but was still uncomfortable being put in a position of having to countermand the BOCC's directions to Staff.

She advised that she had not really considered the ramifications of allowing these uses to be approved by Special Exception, and did not believe that Staff had either. She was sure the BOCC never realized the implications of that condition. Now that she had really thought about it, she did not think the pumps should be approved in this manner.

Mr. Uhle asked if he could respond to that briefly. He said she had raised a significant issue. First of all, it was their position, based on the record, that there was no basis for her to do anything but approve the project. However, regarding the bigger issue, while there was clearly a heightened concern about gas pumps and the number of gas pumps, he thought if the broader spectrum of decisions was looked at, the BOCC had no consistent position either to approve them or not to approve them or to approve them on a particular level.

In the particular area of this property, Coconut Point development had limitations on the number and location of that kind of uses, but none on the number of gas pumps. All the way down U.S. 41, the same thing could be found, as well as in other areas of the County. He didn't think it would be correct to say that there was any record in which the BOCC clearly would have denied this particular addition of gas pumps.

When the Applicant took the case to the BOCC, they made it clear they agreed with the Staff position and it was never discussed after that. So there could not be any BOCC discussion of that particular case in which the BOCC stated that they didn't want these gas pumps.

The Hearing Examiner indicated that she would watch the tape anyway, explaining that the main point she was making was that she did not want Staff to put that condition in any future rezoning cases. Until the BOCC came up with some specific criteria, she didn't think it was right to throw the "hot potato" in the Hearing Examiner's lap. Particularly, if her decision was going to be contrary to positions that the BOCC had expressed or taken in the past.

As she had previously stated, the Hearing Examiner did not see a legal basis for denying the Special Exception based on the evidence and testimony, even though she didn't like being put in that position of doing an end run around the board. She reiterated her concerns about the process. She planned to do a site visit, although she had been out there previously. She thought the Decision would be ready by the end of the month or the beginning of the following month. The hearing was then closed.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Paul Tremblay, c/o Paradise Group, 5265 Meridian Parkway, Suite 100, Weston, Florida 33331

ADDITIONAL COUNTY STAFF:

1. Joan Henry, Assistant County Attorney, P. O. Box 398, Ft. Myers, Florida 33902

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VI.):

For: NONE

Against: NONE

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER DECISION:

For: NONE

Against:

1. Alvin W. Reitz & Carol B. Reitz, 21780 Southern Hills Drive #103, Estero, Florida 33928 (see Staff's Exhibit 2)

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation. . . . [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff]. . . . [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication . . . [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

XI. APPEALS:

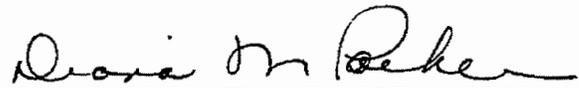
This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered. Appeal is by Petition for Writ of Certiorari in accordance with Lee County Land Development Code Section 34-146.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 9th day of August, 2005. Notice or copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



DIANA M. PARKER
LEE COUNTY HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/479-8100
Facsimile: 239/479-8106

SEZ 2005 00007
DESCRIPTION

RECEIVED
JAN 25 2005

Parcel in
Section 33, Township 46 South, Range 25 East
Lee County, Florida

PERMIT COUNTER

A tract or parcel of land lying in Section 33, Township, 46 South, Range 25 East, Lee County, Florida being part of lands described in Official Records Book 2787, Page 1398, Lee County Records, being more particularly described as follows;

From the South Quarter (S1/4) corner of said Section 33 run N01°03'48"W along the East line of the Southwest Quarter (SW 1/4) of said Section 33 for 724.60 feet to the POINT OF BEGINNING;

From said Point of Beginning continue N01°03'48"W along said East line for 55.61 feet to a point of curvature; thence run northerly along an arc of curve to the right of radius 500.00 feet (delta 22°23'46") (chord bearing N10°08'05"E)(chord 194.20 feet) for 195.44 feet to a point of reverse curvature; thence run northerly along an arc of curve to the left of radius 30.00 feet (delta 85°58'03") (chord bearing N21°39'04"W) (chord 40.91 feet) for 45.01 feet to a point of reverse curvature; thence run northwesterly along an arc of curve to the right of radius 315.00 feet (delta 00°25'52") (chord bearing N64°25'09"W) (chord 2.37 feet) for 2.37 feet; thence run N88°26'47"E along a non-tangent line for 265.18 feet to a point of curvature; thence run easterly along an arc of curve to the right of radius 224.50 feet (delta 05°23'59") (chord bearing S88°51'14"E)(chord 21.15 feet) for 21.16 feet to a point of tangency; thence run S86°09'14"E for 62.43 feet an intersection with the Westerly right of way line of Tamiami Trail (State Road 45)(200 feet wide); thence run S04°52'56"W along said Westerly Right-of-way line for 283.11 feet; thence run S88°56'12"W for 340.39 feet to the Point of Beginning.

Containing 2.25 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (NAD 1983/1999 adjustment) and are based on the South Line of the Southwest Quarter (SW1/4), of said Section 33 to bear N88°33'52"E.

Applicant's Legal Checked

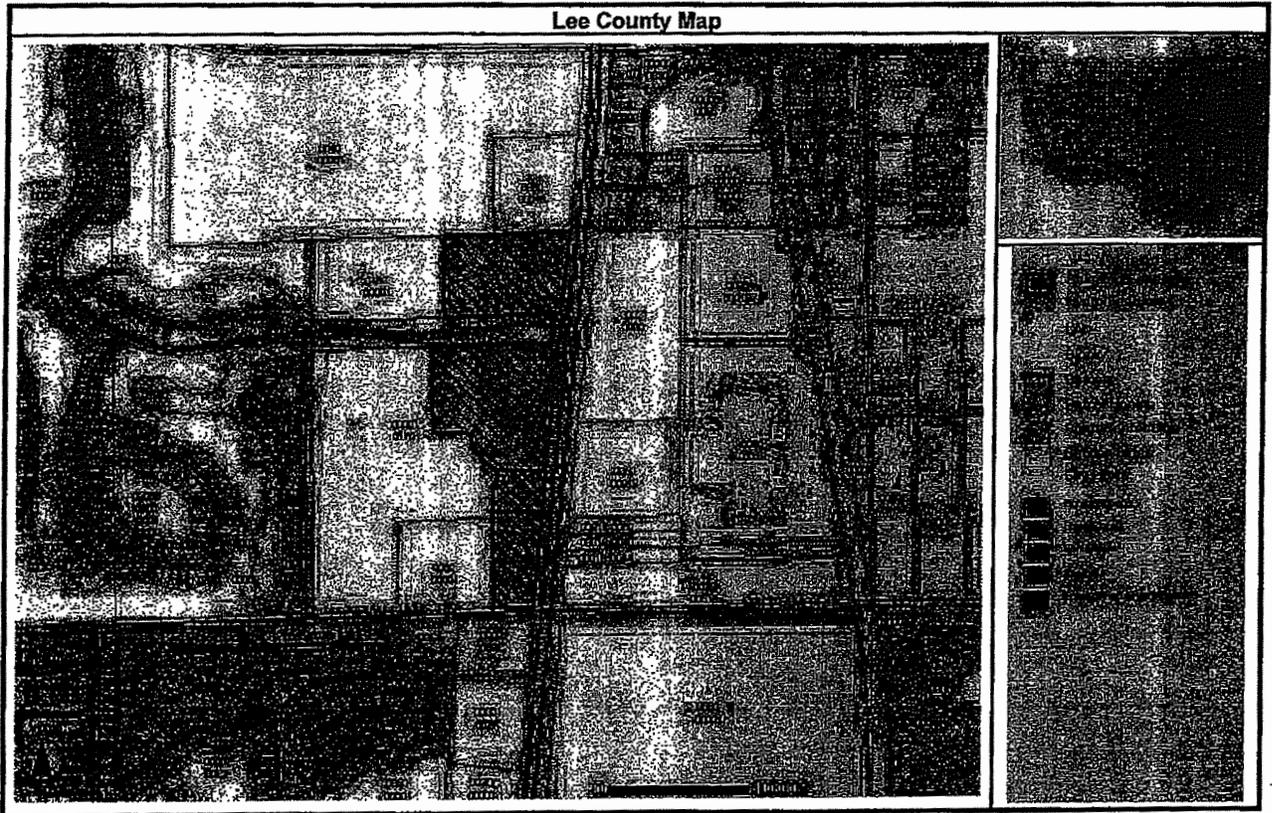
by Lgm 2/24/2005

Scott A. Wheeler 1/24/05
Scott A. Wheeler (For The Firm)
Professional Surveyor and Mapper
Florida Certificate No. 50249

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EXHIBIT "A"



ATTACHMENT "A"