

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

WHEREAS, Philip B. Pugh, Trustee, in reference to Pelican Landing Business Park, filed an application for an amendment to a Commercial Planned Development (CPD) pursuant to the Lee County Land Development Code (LDC); and

WHEREAS, a Public Hearing was advertised and held on April 29, 1998 before the Lee County Zoning Hearing Examiner who gave full consideration to the evidence in the record (Case #95-05-092.02Z 01.01); and

WHEREAS, a second Public Hearing was advertised and held on June 29, 1998 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 the 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 for an amendment of the Commercial Planned Development (CPD) zoning that was granted by Zoning Resolution 88-325, and amended by Z-92-034, PD-93-021, PD-94-024 and PD-95-017, as follows: 1) increase the originally approved maximum of 57,500 square feet, to a maximum of 78,075 square feet; 2) add six deviations; and 3) request an access road requirement waiver conforming to LDC Section 10-283(a)(4). The legal description of the subject property is set forth in Exhibit A, attached to this resolution. The request is hereby APPROVED, subject to the conditions and deviations set forth in Sections B and C below.

SECTION B. CONDITIONS:

1. The development of this project must conform to the one-page (revised) Master Concept Plan (MCP) entitled "Pelican Landing Business Park" prepared by Florida Land Planning, Inc., dated 05/06/98, stamped received 05/07/98, OR the one-page sheet identified as Sheet A-1, entitled "Development Concept Plan, Open Space 25%," prepared by Sheeley Architects, Inc., dated 02/05/98, and stamped received 03/04/98, except as modified below. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:

Overall Project

- a. The project may be developed to 78,075 maximum square feet of commercial floor area. Of that amount, a maximum of 30,000 square feet may be retail space.
- b. Regardless of the maximum floor area approved by this amendment, this approval does not alleviate the need to comply with all state and county development regulations for life safety and fire codes, special setbacks, open space, buffering and parking spaces, except as specifically modified by this approval.

- c. Development cannot exceed the parameters of the TIS accepted as part of the 1995 Development Order documents.
- d. Permitted Uses

Tract A

Administrative Offices
Animal Clinic
Assisted Living Facility (ALF)
ATM (automatic teller machine)
Auto Parts Store with or without Installation Service
Automobile Service Station
Auto Repair and Service Group I
Bait and Tackle Shop
Banks and Financial Establishments Groups I & II
Boat Parts Store and Boat Rental
Broadcast Studio, Commercial Radio and Television
Building and Material Sales
Business Services Group I
Car Wash
Caretaker's Residence
Cleaning and Maintenance Services
Clothing Stores, General
Clubs: Commercial, Fraternal, Membership Organization, Private
Communication Tower 100 feet or less in height
Consumption on Premises
Contractors and Builders Groups I, II & III
Convenience Food and Beverage Store
Day Care Center, Adult, Child
Department Store
Drive-through Facility for Any Permitted Use
Drugstore, Pharmacy
Entrance Gates and Gatehouse
Essential Services
Essential Service Facility Group I
Excavation Water Retention
Indoor Flea Market
Food Stores Groups I & II
Funeral Home or Mortuary (No Cremation)
Hardware Store
Health Care Facility Groups I, II & III
Hobby, Toy, Game Shops
Hotel/Motel
Household and Office Furnishings Groups I, II & III
Insurance Companies
Laundromat
Laundry or Dry Cleaning Group I
Lawn and Garden Supply Store
Library
Medical Office
Model Display Center
Multiple Family Residential

Non-store Retailers all Groups
 Package Store
 Paint, Glass and Wallpaper
 Parks, Public or Private, Groups I & II
 Parking Lot; Accessory and Temporary
 Personal Services Groups I, II, III & IV
 Pet Shop
 Pharmacy
 Place of Worship
 Plant Nursery
 Recreation, Commercial Groups II & IV
 Recreational Facilities; Public or Private Indoor Only
 Religious Facilities
 Rental or Leasing Establishments Groups I, II, III
 Repair Shops Groups I & II
 Research and Development Laboratories Group II
 Restaurant Fast Food
 Restaurants Groups I, II, III & IV
 School, Commercial
 Self-Service Fuel Pumps
 Self-Service Fuel Pump Station
 Signs in Accordance with Chapter 30
 Social Services Group I
 Specialty Retail Shop Groups I, II, III & IV
 Storage Indoor & Open
 Studios
 Supermarket
 Temporary Construction and Sales Office
 Temporary Uses
 Theater Indoor
 Transportation Services Group II
 Used Merchandise Stores Groups I, II, III
 Variety Store
 Vehicle and Equipment Dealers Groups I, II, III & IV, Group V (farm equipment only)
 Wholesale Establishment Groups III & IV

Tract B

All of the uses permitted in Tract A, plus Mini-Warehouse.

- e. The total combined square footage of the following uses cannot exceed 25,000 square feet of gross floor area on the entire project site: Building and Material Sales; and, Contractors and Builders Group III; and, Vehicle and Equipment Dealers Group V (Farm Equipment Only).

- 3. The property development limitations are:

Minimum Lot Size and Areas:

Except as noted below, the property development regulations of the CC zoning district, as it may be amended would apply to any subdivided lots.

Minimum project perimeter setbacks:

North: 5 feet
East: 25 feet
South: 25 feet
West (FP&L): 0 feet (developer must submit written approval from the utility prior to the issuance of any development order)

In the event the subject property is subdivided, a zero-foot building setback from any internal lot lines will be required.

Maximum Lot Coverage: 40 percent

Maximum Building Height: Three stories or 45 feet, whichever is less

Open Space: 25 percent, subject to compliance with Condition 4

If the property is not developed in conformance with Sheet A-1, a minimum of 30 percent open space is required per LDC Section 10-413(b).

4. If the property is developed in conformance with the development plan included as Sheet A-1, then, to address environmental issues, the developer must adhere to the following:
 - a. A minimum of 25 percent open space is required; and
 - b. Trees planted as part of the general (on-site) tree requirement per LDC Section 10-415(a)(4) must be a minimum of 12 feet in height at planting with a minimum trunk diameter of three inches measured at three feet above the ground. One tree must be provided per each 3,000 square feet of development area; and
 - c. Residential uses may not exceed a total of five dwelling units within the entire development area.
5. Approval of this zoning request does not address access on U.S. 41, since Lee County has no jurisdiction over that roadway. The developer must settle U.S. 41 access issues with Florida Department of Transportation (FDOT). If FDOT requires U.S. 41 access changes, the developer must amend the MCP to show the changed access points prior to the issuance of a local development order. The developer must seek and receive approval of an administrative amendment under the regulations in effect at that time.
6. Transportation:
 - a. The developer may request to dedicate the access road shown on the MCP to the County for impact fee credits. If accepted by the County, only the area necessary for the function of the access road (as set by the Director of the Lee County Division of Transportation) will be eligible for credits.
 - b. The County hereby waives the frontage road requirement for the U.S. 41 frontage south of the entrance road.
7. There will be no outside consumption on premises use within 100 feet of the south property line.

8. There will be no outside speaker system, loud speakers, or public address systems associated with any fast food drive-thru use within 100 feet of the south property line.
9. Deliveries to any businesses within 100 feet of the south property line are prohibited between the hours of 8:00 p.m. and 6:00 a.m.
10. Garbage or grease dumpsters may not be located within 35 feet of the south property line.
11. Any car wash, convenience food and beverage store, gas pumps, auto parts store with installation service, automobile service station, auto repair and service, drive thru uses for fast food restaurants, establishment must be located north of the project's access point on U.S. 41, or at least a minimum distance of 100 feet from the south property line, whichever is further from the south property line.
12. Open storage (Outdoor Display of Merchandise for Sale or Rent) is prohibited within 35 feet of the south property line, regardless of the use designation.
13. All trash storage or dumpster areas must be screened on at least three sides with a 6-foot-high, 100 percent opaque fence, wall, or hedge, with an opaque gate.
14. Exterior lighting must be of the lowest intensity meeting life safety codes, and must be shielded and directed away from the adjacent residential areas and public roads. Mercury vapor lighting is prohibited.
15. Special Setbacks & Buffering:
 - a. The developer must provide a 15-foot-wide buffer along the southerly perimeter property line and set back buildings a minimum of 25 feet from the southerly perimeter property line. Concurrent with the first new building construction or expansion of the existing building, a combination of a berm and wall (stucco, pre-cast concrete or similar material) totaling 10 feet above the existing grade at the property line must be installed along the south property line. The vegetative buffer will be an enhancement of the existing six trees per 100 linear feet to a total of seven trees per 100 linear feet. Any new trees in this buffer must be no less than 10 feet tall with a 3-inch caliper at three feet above the ground. The wall and buffer must extend from the front property line to the east side of the FP&L easement.
 - b. The developer must remove invasive exotic vegetation from the special buffering area, and provide the wall and additional plantings as part of the first phase of any construction on-site.
 - c. The protected tree credit is not applicable to this buffer requirement.
16. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with applicable Lee County Land Development Code provisions may be required to obtain a local development order.
17. Approval of this amendment does not give the Developer the undeniable right to receive local development order approval that exceeds the Year 2010 Overlay use allocation, if such allocation exists, for the applicable district.
18. Zoning Resolution Z-95-086 is hereby declared null and void, and any conditions or approvals contained therein are of no further force and effect.

19. Any building exceeding 35 feet in height must also maintain additional building separation as regulated by LDC Section 34-2174.

SECTION C. DEVIATIONS:

Deviation (1), seeking relief from LDC Section 34-2192, which requires a minimum 20-foot privately maintained local or access street setback, to allow a minimum 5-foot setback, is hereby DENIED for that portion of the road lying along U.S. 41, but is APPROVED for that portion of the road lying along the north property line.

Deviation (2) was WITHDRAWN by the Applicant.

Deviation (3.a), seeking relief from Land Development Code Section 34-1264(b)(1)a.2, which requires a 500-foot separation distance between residential uses and consumption on premises (COP) of alcoholic beverage uses, to allow a 100-foot separation from the RV units to the south, as measured from the public entrance of the COP use to the entrance of the RV units, is hereby APPROVED.

Deviation (3.b), seeking relief from LDC Section 34-1264(b)(1)a.2, which requires a 500-foot separation distance between residential uses and consumption on premises (COP) of alcoholic beverages uses, to allow residential units within buildings that serve alcoholic beverages, is hereby APPROVED internal to this project only.

Deviation (4.a), seeking relief from LDC Section 34-1263(e), which requires a 500-foot separation distance between residential uses and consumption off-premises of alcoholic beverage uses, to allow a 100-foot separation from the RV units to the south, as measured from the public entrance of the COP use to the entrance of the RV units, is hereby APPROVED.

Deviation (4.b), seeking relief from LDC Section 34-1263(e), which requires a 500-foot separation distance between residential uses and consumption off premises (COP) of alcoholic beverages uses, to allow residential units within buildings that serve alcoholic beverages, is hereby APPROVED internal to this project only.

Deviation (5), seeking relief from LDC Section 30-153(2)(4) and Section 30-153(3)(e), which requires signs to be set back a minimum of 15 feet from any street right-of-way or easement, and 10 feet from any other property line, to allow the east project ID sign to be located either in a median in the entrance road or within five feet (west) of the frontage road, is hereby DENIED.

Deviation (6), seeking relief from LDC Section 10-413(b), which requires 30 percent open space for large commercial developments, to allow 25 percent open space, is hereby APPROVED for the "main street" theme depicted on Sheet A-1 (Sheeley Architects), subject to compliance with Condition 4.

SECTION D. EXHIBITS:

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

- Exhibit A. The legal description and STRAP number of the property.
- Exhibit B. A reduced copy of the Pelican Landing Business Park Master Concept Plan.
- Exhibit C. A copy of the Pelican Landing Business Park Development Concept Plan.
- Exhibit D. A map depicting the subject parcel (shaded in) in relation to the surrounding area.

SECTION E. FINDINGS AND CONCLUSIONS:

1. The Applicant has proven entitlement to the CPD amendment, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes or regulations.
2. The CPD amendment, as conditioned:
 - a. will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request;
 - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c. is compatible with existing or planned uses in the surrounding area; and
 - d. will not adversely affect environmentally critical areas or natural resources.
- 3 Approval of the amendment, 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 the traffic it generates.
- 4 The proposed use or mix of uses is appropriate at the subject location.
- 5 The recommended conditions to the Master Concept Plan and other applicable regulations provide sufficient safeguard to the public interest, and are reasonably related to the impacts on the public interest created by or expected from the proposed development.
- 6 The approved deviations, as conditioned, enhance the achievement of the objectives of the planned development, and preserve and promote the general intent of Chapter 34, Land Development Code, to protect the public health, safety and welfare.
7. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

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

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

DULY PASSED AND ADOPTED this 29th day of June, 1998.

ATTEST:
CHARLIE GREEN, CLERK

BY: Mary Ann Trout
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: John E. Manning
Chairman

Approved as to form by:
Shirley Green
County Attorney's Office

MINUTES DEPARTMENT

FILED JUL 8 1998
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Exhibit A

LEGAL DESCRIPTION

A parcel of land lying in Section 16, Township 47 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Commencing at the North Quarter corner of Section 16, Township 47 South, Range 25 East;

THENCE S00°17'38"E a distance of 1,500.47 feet to the POINT OF BEGINNING of the lands herein described;

THENCE continue S00°17'38"E a distance of 300.71 feet;

THENCE run N89°05'01"E a distance of 1,029.00 feet to the Westerly right-of-way line of US 41;

THENCE along said Westerly right-of-way line of N10°14'04"W a distance of 306.06 feet;

THENCE leaving said Westerly right-of-way line run S89°00'20"W a distance of 976.18 feet to the POINT OF BEGINNING.

Containing 6.94 acres, more or less.

Strap Number

16-47-25-00-00010.002A

EXHIBIT IV-F: Master Concept Plan

ZONING MAP

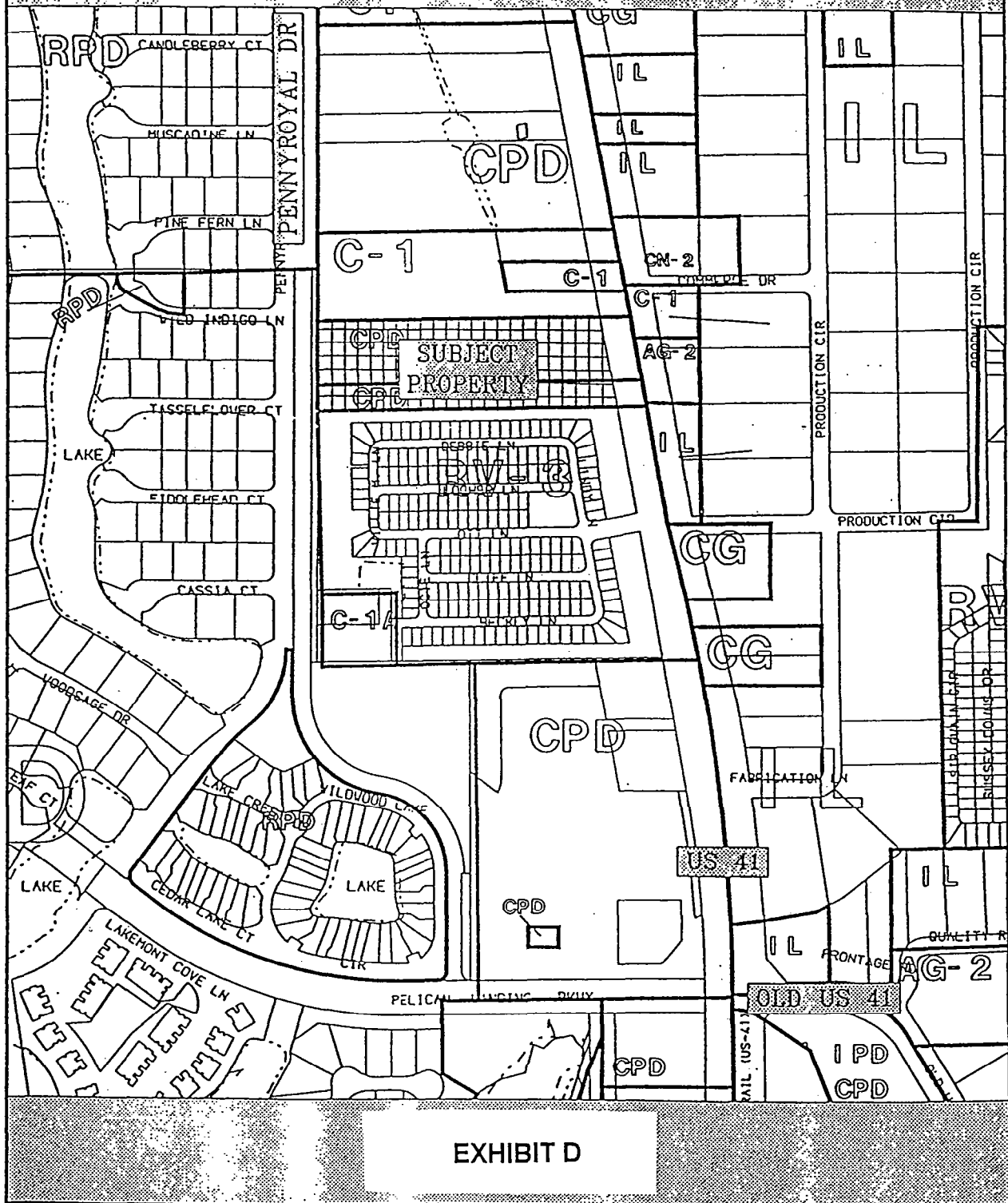
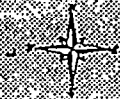


EXHIBIT D