

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

WHEREAS, Flint's Pavilion, LLC filed an application on behalf of the property owners, Paradise Gulf Corporation, Goodman Investment Trust and Chaffee 1998 Irrevocable Trust, to rezone a 19.95± acres from Residential Multi-Family (RM-2) to Commercial Planned Development (CPD), in reference to Flint's Pavilion; and,

WHEREAS, a public hearing was advertised and held on November 4, 2009, with the record held open until November 13, 2009, for written submissions, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2008-00017; and

WHEREAS, a second public hearing was advertised and held on February 1, 2010, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

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

SECTION A. REQUEST

The applicant filed a request to rezone 19.95± acres from RM-2 to CPD to allow a maximum of 100,000 square-feet of commercial uses including, but not limited to: Convenience Food and Beverage Store, Fast Food Restaurants, and Vehicle and Equipment Dealers. The maximum height proposed is 35 feet. The applicant has indicated they will provide connections to central water and sanitary sewer. The property is located in the Central Urban 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.

SECTION B. CONDITIONS:

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

1. Master Concept Plan/Development Parameters

The development of this project must be substantially consistent with the 1-page Master Concept Plan (MCP) entitled "Flint's Pavilion, LLC," last revised March 17, 2010, date-stamped "Received Aug 18 2009 Community Development" and attached as Exhibit C, except as modified by the conditions below.

The development is limited to a maximum of 100,000 square feet of commercial uses, of which a maximum of 77,000 square feet may be used for retail uses.

2. Uses and Site Development Regulations

The following Limits apply to the project and uses:

- a. Schedule of Uses
 - Administrative offices
 - Animal clinic or kennel
 - ATM
 - Auto parts store
 - Bait and tackle shop
 - Banks and financial establishments, Group I only
 - Business services, Groups I & II
 - Clothing store
 - Consumption on premises
 - Cultural facilities
 - Daycare
 - Department store
 - Drive-through facility - limited to Banks, Financial Establishments
 - Drugstore
 - Food store, Group I only
 - Golf Course - existing only
 - Golf driving range
 - Hardware store
 - Hobby, toy, or game shop
 - Household and office furnishings, Groups I & II
 - Insurance company
 - Laundromat
 - Laundry or dry cleaning, Groups I & II
 - Lawn and garden supply store
 - Library
 - Medical office
 - Package store
 - Paint, glass, and wallpaper
 - Personal services, Groups I, II, III & IV (excluding Steam or Turkish Baths and Escort Services)
 - Pet services
 - Pet shop
 - Plant nursery
 - Restaurant, fast food - Must be located within a multi-occupancy building
 - Restaurant, Groups I, II & III
 - Signs (in accordance with LDC Chapter 30)
 - Specialty retail shop, Groups I, II, III & IV
 - Supermarket
 - Theater, Indoor
 - Used merchandise store, Group I only

b. Site Development Regulations:

Minimum Lot Width: 100 feet
Minimum Lot Depth: 100 feet
Minimum Lot Area: 100,000 square feet

Minimum Street Setback: 25 feet
Minimum Side Setback: 15 feet
Minimum Rear Setback: 25 feet
Minimum Waterbody Setback: 25 feet

Maximum Height: 35 feet
Minimum Open Space: 10.18 Acres

3. Environmental Conditions:

- (a) Prior to local development order approval the development order plans must delineate a minimum of 10.18 acres of open space for the project.
- (b) Prior to local development order approval the development order plans must delineate a minimum of 4.11 acres of indigenous open space, including credits for the project.
- (c) Prior to local development order approval the development order plans must depict planting of the restoration area around the lake to include:
1. 50% of the trees to be planted must be 10-feet in height, 2 inch caliber with a 4-foot spread;
 2. the remaining trees to be planted must be 6-feet in height;
 3. all trees must be planted 15 feet on center;
 4. shrubs must be a minimum of 3-gallon container size;
 5. shrubs must be planted 3-to-6 foot on center;
 6. trees and shrubs must be 100% native; and
 7. removal of all exotics to include cattails and torpedo grass within the lake maintained in perpetuity.
- (d) Prior to local development order approval the development order plans must depict planting of the 0.33 acre restoration area to include:
1. all trees must be south Florida slash pine (*Pinus elliotti var densa*) and planted at a minimum 12 feet in height;
 2. all trees must be planted 15 feet on center;
 3. shrubs must be a minimum of 3-gallon container size;
 4. shrubs must be planted 3-to-6 foot on center; and
 5. trees and shrubs must be 100% native

- (e) Prior to local development order approval, the development order plans must depict:
 - 1. an enhanced 25-foot ROW buffer planted with South Florida slash pines (*Pinus elliotti var densa*) a minimum 12 feet in height at 10 trees per 100 linear feet; and,
 - 2. the installation of a native double staggered hedge-row planted at 24 inches in height, with a minimum 3 gallon container size within the 25 foot ROW buffer; and,
 - 3. the ROW buffer must include native ground cover a minimum of one gallon container size and planted 3 feet on center.

- (f) Prior to local development order approval, the landscape plan must depict: the dry detention areas to be planted with native herbaceous vegetation planted in a one gallon container size, 3 feet on center; and,
 - 1. the dry detention areas must be planted with scattered cypress (*Taxodium sp.*), red maple (*Acer rubrum*) and/or laurel oak (*Quercus laurifolia*) planted at 10 feet in height, 2-inch caliper with a 4 foot spread and 20 feet on center; and,
 - 2. general tree credits can be applied as per LDC §10-418 (4) for herbaceous vegetation, and a general tree credit on a ratio of one-to-one for the planting of trees in the dry detention; and,
 - 3. The required plantings must be designed to not adversely affect the functions and future maintenance of the water management facilities and must meet the requirements of the South Florida Water Management District.

- 4. Sidewalk required along Joel Boulevard with interconnection to site: A sidewalk, acceptable to Lee County Department of Transportation, is required to be installed along Joel Boulevard. Internal pedestrian connections must be provided to Joel Boulevard.

- 5. Waste management/recycling/dumpsters: As part of any local development order approval for vertical development, the development order plans must include facilities in compliance with LDC §10-261 and Lee County Ordinance #08-10 for the pick-up/disposal of solid waste and recyclables. The minimum area required for and specific locations of these facilities will be determined at the time of development order.

- 6. Potable water and Sanitary Sewer Connections Required: The utility lines for potable water and sanitary sewer must be extended to the site and this development must be connected to those services as part of any development activity on this site.

7. Vehicular/Pedestrian Impacts: Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
8. Lee County Comprehensive Plan Consistency: Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee County Comprehensive Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee County Comprehensive Plan provisions.
9. Concurrency: This project is deemed exempt from the transportation concurrency requirements set forth in LDC Chapter 2 and the Lee County Comprehensive Plan to the extent allowed by the Certificate of Concurrency Exemption issued by Lee County pursuant to the Stipulation and Settlement Agreement dated June 9, 1992, in Lehigh Corporation v. Lee County, Case No. 91-2482 CA in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida. The exemption only vests the subject property with transportation concurrency for a level of service equivalent to or less than the requirement for the RM-2 (residential multiple-family) zoning district. Any additional amount of concurrency necessary for the development must be met pursuant to LDC Chapter 2 and the Lee County Comprehensive Plan.
10. Compliance with the LDC: This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.

SECTION C. DEVIATIONS:

1. Right-of-way Buffer: Deviation (1) seeks relief from the LDC §10-415(b)(1)(b)(5) requirement that projects with greater than five acres in size that abut an arterial or collector road and have existing native trees within 50-feet of the right-of-way must be designed to provide a 50-foot right-of-way buffer for tree preservation, to allow an enhanced 25-foot buffer along the frontage of Joel Boulevard. This deviation is APPROVED. See also Condition 3.(e)
2. Open Space/Indigenous Restoration: Deviation (2) seeks relief from the LDC §10-415(b)(5)(a) requirement that large developments with existing indigenous vegetation provide 50% of their open space requirement as indigenous open space, to allow for indigenous restoration at a ratio of 2:1. This deviation is APPROVED.
3. Intersection Separation: Deviation (3) seeks relief from the LDC §10-285 requirement that a minimum intersection spacing of 660-feet for access points on an arterial road way allow intersection spacing of 287 feet for the proposed eastern access point. 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 (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan

The applicant has indicated that the STRAP number for the subject property is:
34-44-27-00-00001.0140

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - a. meets or exceeds 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;
 - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
 - a. the proposed use or mix of uses is appropriate at the subject location;
 - 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, are, or 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.

Commissioner Frank Mann made a motion to adopt the foregoing resolution, seconded by Commissioner Ray Judah. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 1st day of February, 2010.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Marcia Wilson
Deputy Clerk

BY: T Hall
Tammara Hall, Chair

Approved as to form by:

John J. Fredyma

John J. Fredyma
Assistant County Attorney
County Attorney's Office



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mw
2010 APR -5 PH 12: 33

RHODES & RHODES LAND SURVEYING, INC.

JOHN SCOTT RHODES, P.S. M. THOMAS E. RHODES, P.S. M.
1440 RAIL HEAD BLVD. #1 NAPLES, FLORIDA 34110
PHONE (239) 593-0570 FAX (239) 593-0581

LEGAL DESCRIPTION

A TRACT OF LAND LYING IN SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 34; THENCE NORTH 00°06'48" WEST ALONG THE WEST LINE OF SAID SECTION (AS SHOWN ON THE PLAT OF GOLFVIEW ESTATES UNIT ONE AS RECORDED IN PLAT BOOK 15, PAGE 50 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA) 1405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD (80' RIGHT-OF-WAY); THENCE NORTH 88°58'52" EAST, ALONG SAID RIGHT-OF-WAY LINE 15.80 FEET, TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT; THENCE EASTERLY AND NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE, BEING A CURVE CONCAVE TO THE NORTHWEST, AND HAVING A CENTRAL ANGLE OF 33°52'54", A RADIUS OF 676.78 FEET, ALONG AN ARC LENGTH OF 400.21 FEET TO THE POINT OF TANGENCY; THENCE NORTH 55°05'58" EAST, ALONG SAID RIGHT-OF-WAY, 3728.41 FEET TO THE POINT OF BEGINNING OF THE LAND HEREBIN DESCRIBED:

1. THENCE CONTINUE NORTH-55°05'58" EAST, ALONG SAID RIGHT-OF-WAY LINE, 973.72 FEET, TO THE SOUTHWESTERLY CORNER OF THE FAIRWAYS CONDOMINIUM, PHASE III;
2. THENCE NORTH 34°54'02" WEST, ALONG THE SOUTHWESTERLY PROPERTY LINE OF SAID FAIRWAYS CONDOMINIUM, 293.00 FEET;
3. THENCE SOUTH 55°05'58" WEST, ALONG SAID PROPERTY LINE, 60.00 FEET;
4. THENCE NORTH 34°54'02" WEST, ALONG SAID PROPERTY LINE, 330.00 FEET;
5. THENCE NORTH 71°39'59" WEST, 121.78 FEET;
6. THENCE SOUTH 78°29'03" WEST, 359.35 FEET;
7. THENCE SOUTH 87°45'11" WEST, 248.10 FEET;
8. THENCE SOUTH 10°56'53" WEST, 90.57 FEET;
9. THENCE SOUTH 03°04'50" WEST, 99.22 FEET;
10. THENCE SOUTH 85°48'58" WEST, 150.67 FEET;
11. THENCE NORTH 82°36'12" WEST, 55.00 FEET, TO THE NORTHEAST CORNER OF LEHIGH RESORT CLUB VIII, A CONDOMINIUM, AS RECORDED IN CONDOMINIUM BOOK 8, PAGE 253-256, LEE COUNTY RECORDS;

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JUL 07 2008

Applicant's Legal Checked
by BSJ 7-8-08

RHODES & RHODES LAND SURVEYING, INC.

JOHN SCOTT RHODES, P.S. M. THOMAS E. RHODES, P.S. M.
1440 RAIL HEAD BLVD. #1 NAPLES, FLORIDA 34110
PHONE (889) 593-0570 FAX (889) 593-0581

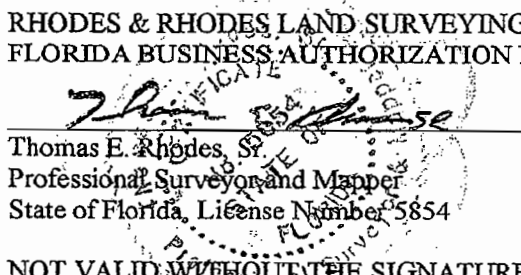
12. THENCE SOUTH 07°17'39" WEST, ALONG THE EAST LINE OF SAID LEHIGH RESORT CLUB VIII, 175.02 FEET, TO THE SOUTHEAST CORNER THEREOF;
13. THENCE SOUTH 06°39'13" EAST, ALONG THE EAST LINE OF LEHIGH RESORT CLUB IX, A CONDOMINIUM, AS RECORDED IN CONDOMINIUM BOOK 14, PAGE 7-10, LEE COUNTY RECORDS, 275.75 FEET, TO THE SOUTHEAST CORNER THEREOF;
14. THENCE SOUTH 57°13'01" EAST, ALONG THE NORTHEASTERLY LINE OF LEHIGH RESORT CLUB X, A CONDOMINIUM, AS RECORDED IN CONDOMINIUM BOOK 16, PAGE 47-51, LEE COUNTY RECORDS, 194.33 FEET, TO THE EASTERLY CORNER THEREOF;
15. THENCE NORTH 67°56'53" EAST, 270.08 FEET;
16. THENCE SOUTH 52°51'39" EAST, 170.00 FEET;
17. THENCE SOUTH 55°05'56" WEST, 147.33 FEET;
18. THENCE SOUTH 34°54'03" EAST, 195.60 FEET, TO THE POINT OF BEGINNING.

SAID TRACT CONTAINING 19.949 ACRES.

SUBJECT TO A 6 FOOT UTILITY EASEMENT RUNNING PARALLEL TO AND ADJOINING THE NORTHWESTERLY RIGHT-OF-WAY OF JOEL BOULEVARD PER OFFICIAL RECORDS BOOK 2321, PAGE 3115 AND 3116 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

BEARINGS ARE BASED ON THE NORTH LINE OF JOEL BOULEVARD (80' RIGHT-OF-WAY), AS BEARING N 55°05'58" E.

RHODES & RHODES LAND SURVEYING, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 6897


Thomas E. Rhodes, Sr.
Professional Surveyor and Mapper
State of Florida, License Number 5854

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JUL 07 2008

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

R&R FILE NO. 2008-15
DATE: 02/12/08

DCI 2008-00017

Zoning Map

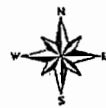
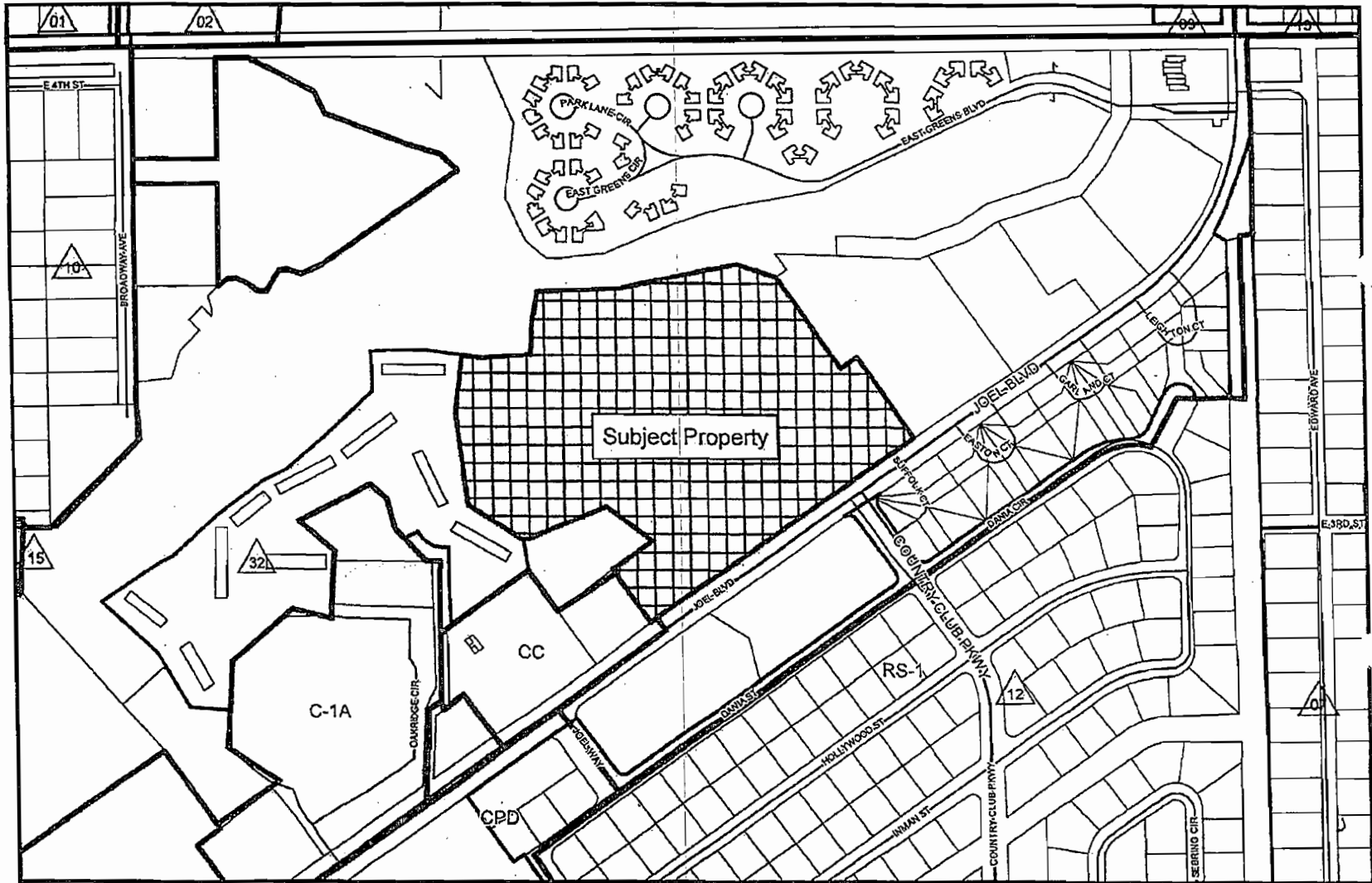
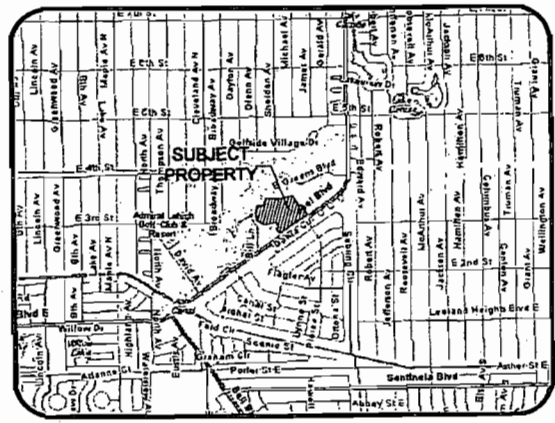
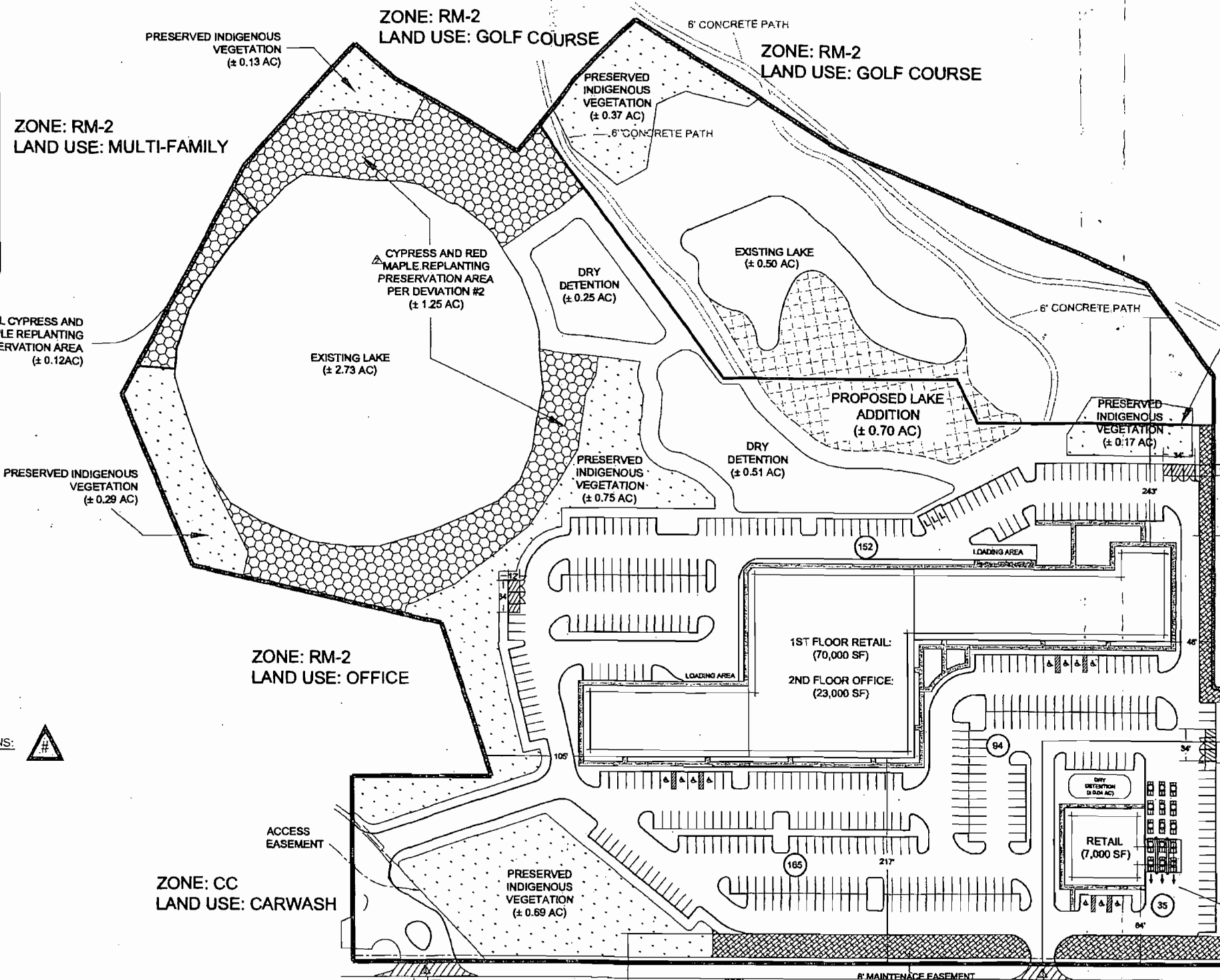


EXHIBIT "B"





LOCATION MAP NTS



LEGEND

- LANDSCAPE BUFFERS
- INDIGENOUS PRESERVE AREAS
- REPLANTED INDIGENOUS AREAS

Approved as Exhibit C
MCP Page 1 of 1
Resolution # Z-09-035

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AUG 10 2009

COMMUNITY DEVELOPMENT

OUTPARCEL (±1.05 AC)

SITE / LAND USE SUMMARY

USE	ACRES	% OF SITE
IMPERVIOUS		
BUILDING AREA	1.77 ACRES	8.87%
PAVEMENT/SIDEWALKS	4.77 ACRES	23.91%
LAKES	3.93 ACRES	19.70%
TOTAL IMPERVIOUS AREA	10.47 ACRES	52.48%
PERVIOUS		
GOLF COURSE/MISC. OPEN SPACE	4.31 ACRES	21.80%
LANDSCAPE BUFFERS	0.40 ACRES	2.01%
INDIGENOUS PRESERVE AREA	2.39 ACRES	11.98%
REPLANTED PRESERVE AREA	1.58 ACRES	7.92%
DRY DETENTION AREAS	0.80 ACRES	4.01%
TOTAL PERVIOUS AREA	9.48 ACRES	47.52%
TOTAL SITE AREA	19.95 ACRES	100.00%

OPEN SPACE REQUIREMENTS

	REQUIRED	PROVIDED
OPEN SPACE (30% of TOTAL SITE)	5.99 ACRES	10.18 ACRES
GOLF COURSE/MISC. OPEN SPACE	-	4.31 ACRES
LANDSCAPE BUFFERS	-	0.40 ACRES
INDIGENOUS PRESERVE AREA	-	2.39 ACRES
REPLANTED INDIGENOUS AREAS	-	1.58 ACRES
LAKES: 25% PER LDC 10-415(D)(2)(C)	-	1.50 ACRES

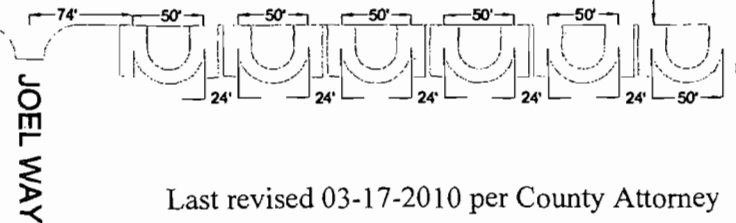
NATIVE PRESERVATION REQUIREMENTS

	REQUIRED	PROVIDED
PRESERVATION (50% of OPEN SPACE)	3.00 ACRES	4.11 ACRES
INDIGENOUS PRESERVE AREA	-	2.39 ACRES
REPLANTED INDIGENOUS AREAS	-	1.58 ACRES*
ROW INDIGENOUS AREA CREDIT	-	0.14 ACRES**

* AREA CALCULATED DOES NOT INCLUDE 0.12 ACRES REPLANTED AREA ON THE WESTERN BOUNDARY OF THE LAKE. THIS AREA DOES NOT CARRY TOWARDS THE NATIVE PRESERVE AREAS DUE TO ITS INSUFFICIENT WIDTH.
** CREDIT FOR 0.14 AC PROVIDED ALONG JOEL BLVD.

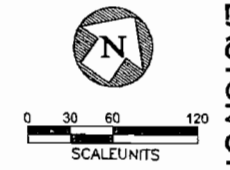


DEVIATIONS:



Last revised 03-17-2010 per County Attorney

DCI 2008-00017



Z:\Active Projects\Flint's Pavilion CPD\07-0083-Flint's Pavilion CPD(J).dwg 7/20/2009 1:52:09 PM EDT

CLIENT:
FLINT'S PAVILION, LLC
27499 RIVERVIEW CENTER BLVD., SUITE 101
BONITA SPRINGS, FL 34134
PHONE: (239) 992-0001

REV.	DATE	DESCRIPTION	BY:
7/1/08		PER COMMENTS RECEIVED 5/7/08	FEH
2/5/09		PER COMMENTS RECEIVED 7/24/08	FEH
4/29/09		PER COMMENTS RECEIVED 3/3/09	FEH
6/8/09		PER COMMENTS RECEIVED 5/19/09	FEH
7/7/09		PER COMMENTS RECEIVED 6/15/09	FEH

DE DAVIDSON ENGINEERING, INC.
3530 KRAFT ROAD, SUITE 301 NAPLES, FLORIDA 34105
PHONE (239) 434-6060 FAX (239) 434-6084
DAVIDSON ENGINEERING COMPANY ID. NO. 00009496

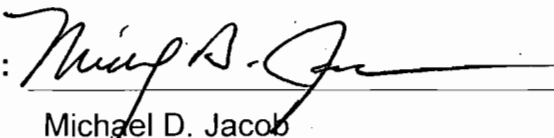
FLINT'S PAVILION CPD REZONE
EXHIBIT D-7-M.2: MASTER CONCEPT PLAN
DRAWN BY: FEH PROJECT: 07-0083 SURVEY: BY OTHERS
DESIGNED BY: FEH SCALE: AS NOTED FILE NO.: 07-0083
APPROVED BY: TLH DATE: JUL 7, 2009

SHEET
1
OF
3

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: March 30, 2010

To: Carmen Salome
Executive Assistant to
Commissioner Tammara Hall

FROM: 
Michael D. Jacob
Assistant County Attorney

RE: **BOCC ZONING RESOLUTION FROM THE FEBRUARY 1, 2010 MEETING**
ZONING RESOLUTION: Flint's Pavilion (Z-09-035)

Attached is an amended resolution adopted by the Board at the February 1, 2010 zoning meeting. The resolution is correcting a scrivener's error relating to the year it was adopted on the signature page. This resolution has been reviewed and approved as to form and is ready for the Chairwoman's signature. After the Chairwoman signs the resolution, please forward it to the Minutes Department for attestation and further processing.

By copy of this memorandum to Minutes, we request that the signature page be substituted and redistributed.

Thank you for your assistance with respect to the above. Should you have any questions, please do not hesitate to contact me.

MDJ/tlb
Attachment

cc via e-mail only:

Jamie Pringing, Administrative Assistant, DCD/Administration & Support
Lisa L. Pierce, Minutes Office Manager, Lee County Clerk of Courts
Billie J. Jacoby, Administrative Support Supervisor, DCD

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2010 APR -5 AM 11:15

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OF LEE COUNTY, FLORIDA

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0201.02E

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Department store
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Drugstore
Food store, Group I only
Golf Course - existing only
Golf driving range
Hardware store
Hobby, toy, or game shop
Household and office furnishings, Groups I & II
Insurance company
Laundromat
Laundry or dry cleaning, Groups I & II
Lawn and garden supply store
Library
Medical office
Package store
Paint, glass, and wallpaper
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Pet services
Pet shop
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6. trees and shrubs must be 100% native; and
7. removal of all exotics to include cattails and torpedo grass within the lake maintained in perpetuity.

(d) Prior to local development order approval the development order plans must depict planting of the 0.33 acre restoration area to include:

1. all trees must be south Florida slash pine (*Pinus elliotti var densa*) and planted at a minimum 12 feet in height;
2. all trees must be planted 15 feet on center;
3. shrubs must be a minimum of 3-gallon container size;
4. shrubs must be planted 3-to-6 foot on center; and
5. trees and shrubs must be 100% native

- (e) Prior to local development order approval, the development order plans must depict:
1. an enhanced 25-foot ROW buffer planted with South Florida slash pines (*Pinus elliotti var densa*) a minimum 12 feet in height at 10 trees per 100 linear feet; and,
 2. the installation of a native double staggered hedge-row planted at 24 inches in height, with a minimum 3 gallon container size within the 25 foot ROW buffer; and,
 3. the ROW buffer must include native ground cover a minimum of one gallon container size and planted 3 feet on center.
- (f) Prior to local development order approval, the landscape plan must depict: the dry detention areas to be planted with native herbaceous vegetation planted in a one gallon container size, 3 feet on center; and,
1. the dry detention areas must be planted with scattered cypress (*Taxodium sp.*), red maple (*Acer rubrum*) and/or laurel oak (*Quercus laurifolia*) planted at 10 feet in height, 2-inch caliper with a 4 foot spread and 20 feet on center; and,
 2. general tree credits can be applied as per LDC §10-418 (4) for herbaceous vegetation, and a general tree credit on a ratio of one-to-one for the planting of trees in the dry detention; and,
 3. The required plantings must be designed to not adversely affect the functions and future maintenance of the water management facilities and must meet the requirements of the South Florida Water Management District.
4. Sidewalk required along Joel Boulevard with interconnection to site: A sidewalk, acceptable to Lee County Department of Transportation, is required to be installed along Joel Boulevard. Internal pedestrian connections must be provided to Joel Boulevard.
5. Waste management/recycling/dumpsters: As part of any local development order approval for vertical development, the development order plans must include facilities in compliance with LDC §10-261 and Lee County Ordinance #08-10 for the pick-up/disposal of solid waste and recyclables. The minimum area required for and specific locations of these facilities will be determined at the time of development order.
6. Potable water and Sanitary Sewer Connections Required: The utility lines for potable water and sanitary sewer must be extended to the site and this development must be connected to those services as part of any development activity on this site.

7. Vehicular/Pedestrian Impacts: Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
8. Lee County Comprehensive Plan Consistency: Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee County Comprehensive Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee County Comprehensive Plan provisions.
9. Concurrency: This project is deemed exempt from the transportation concurrency requirements set forth in LDC Chapter 2 and the Lee County Comprehensive Plan to the extent allowed by the Certificate of Concurrency Exemption issued by Lee County pursuant to the Stipulation and Settlement Agreement dated June 9, 1992, in *Lehigh Corporation v. Lee County*, Case No. 92-2482 CA in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida. The exemption only vests the subject property with transportation concurrency for a level of service equivalent to or less than the requirement for the RM-2 (residential multiple-family) zoning district. Any additional amount of concurrency necessary for the development must be met pursuant to LDC Chapter 2 and the Lee County Comprehensive Plan.
10. Compliance with the LDC: This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.

SECTION C. DEVIATIONS:

1. Right-of-way Buffer: Deviation (1) seeks relief from the LDC §10-415(b)(1)(b)(5) requirement that projects with greater than five acres in size that abut an arterial or collector road and have existing native trees within 50-feet of the right-of-way must be designed to provide a 50-foot right-of-way buffer for tree preservation, to allow an enhanced 25-foot buffer along the frontage of Joel Boulevard. This deviation is APPROVED. See also Condition 3.(e)
2. Open Space/Indigenous Restoration: Deviation (2) seeks relief from the LDC §10-415(b)(5)(a) requirement that large developments with existing indigenous vegetation provide 50% of their open space requirement as indigenous open space, to allow for indigenous restoration at a ratio of 2:1. This deviation is APPROVED.
3. Intersection Separation: Deviation (3) seeks relief from the LDC §10-285 requirement that a minimum intersection spacing of 660-feet for access points on an arterial road way allow intersection spacing of 287 feet for the proposed eastern access point. 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 (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan

The applicant has indicated that the STRAP number for the subject property is:
34-44-27-00-00001.0140

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - a. meets or exceeds 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;
 - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
 - a. the proposed use or mix of uses is appropriate at the subject location;
 - 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, are, or 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.

Commissioner Frank Mann made a motion to adopt the foregoing resolution, seconded by Commissioner Ray Judah. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 1st day of February, 2009.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Patricia DeRosa*
Deputy Clerk

BY: *Tammara Hall*
Tammara Hall, Chair

Approved as to form by:

John J. Fredyma
John J. Fredyma
Assistant County Attorney
County Attorney's Office



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RHODES & RHODES LAND SURVEYING, INC.

JOHN SCOTT RHODES, P.S. M. THOMAS E. RHODES, P.S. M.
1440 RAIL HEAD BLVD. #1 NAPLES, FLORIDA 34110
PHONE (239) 593-0570 FAX (239) 593-0581

LEGAL DESCRIPTION

A TRACT OF LAND LYING IN SECTION 34, TOWNSHIP 44 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 34; THENCE NORTH 00°06'48" WEST ALONG THE WEST LINE OF SAID SECTION (AS SHOWN ON THE PLAT OF GOLFVIEW ESTATES UNIT ONE AS RECORDED IN PLAT BOOK 15, PAGE 50 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA) 1405.40 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF JOEL BOULEVARD (80' RIGHT-OF-WAY); THENCE NORTH 88°58'52" EAST, ALONG SAID RIGHT-OF-WAY LINE 15.80 FEET, TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT; THENCE EASTERLY AND NORTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE, BEING A CURVE CONCAVE TO THE NORTHWEST, AND HAVING A CENTRAL ANGLE OF 33°52'54", A RADIUS OF 676.78 FEET, ALONG AN ARC LENGTH OF 400.21 FEET TO THE POINT OF TANGENCY; THENCE NORTH 55°05'58" EAST, ALONG SAID RIGHT-OF-WAY, 3728.41 FEET TO THE POINT OF BEGINNING OF THE LAND HEREIN DESCRIBED:

1. THENCE CONTINUE NORTH 55°05'58" EAST, ALONG SAID RIGHT-OF-WAY LINE, 973.72 FEET, TO THE SOUTHWESTERLY CORNER OF THE FAIRWAYS CONDOMINIUM, PHASE III;
2. THENCE NORTH 34°54'02" WEST, ALONG THE SOUTHWESTERLY PROPERTY LINE OF SAID FAIRWAYS CONDOMINIUM, 293.00 FEET;
3. THENCE SOUTH 55°05'58" WEST, ALONG SAID PROPERTY LINE, 60.00 FEET;
4. THENCE NORTH 34°54'02" WEST, ALONG SAID PROPERTY LINE, 330.00 FEET;
5. THENCE NORTH 71°39'59" WEST, 121.78 FEET;
6. THENCE SOUTH 78°29'03" WEST, 359.35 FEET;
7. THENCE SOUTH 87°45'11" WEST, 248.10 FEET;
8. THENCE SOUTH 10°56'53" WEST, 90.57 FEET;
9. THENCE SOUTH 03°04'50" WEST, 99.22 FEET;
10. THENCE SOUTH 85°48'58" WEST, 150.67 FEET;
11. THENCE NORTH 82°36'12" WEST, 55.00 FEET, TO THE NORTHEAST CORNER OF LEHIGH RESORT CLUB VIII, A CONDOMINIUM, AS RECORDED IN CONDOMINIUM BOOK 8, PAGE 253-256, LEE COUNTY RECORDS;

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Applicant's Legal Checked
by BSJ 7-8-08

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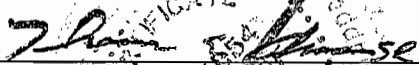
12. THENCE SOUTH 07°17'39" WEST, ALONG THE EAST LINE OF SAID LEHIGH RESORT CLUB VIII, 175.02 FEET, TO THE SOUTHEAST CORNER THEREOF;
13. THENCE SOUTH 06°39'13" EAST, ALONG THE EAST LINE OF LEHIGH RESORT CLUB IX, A CONDOMINIUM, AS RECORDED IN CONDOMINIUM BOOK 14, PAGE 7-10, LEE COUNTY RECORDS, 275.75 FEET, TO THE SOUTHEAST CORNER THEREOF;
14. THENCE SOUTH 57°13'01" EAST, ALONG THE NORTHEASTERLY LINE OF LEHIGH RESORT CLUB X, A CONDOMINIUM, AS RECORDED IN CONDOMINIUM BOOK 16, PAGE 47-51, LEE COUNTY RECORDS, 194.33 FEET, TO THE EASTERLY CORNER THEREOF;
15. THENCE NORTH 67°56'53" EAST, 270.08 FEET;
16. THENCE SOUTH 52°51'39" EAST, 170.00 FEET;
17. THENCE SOUTH 55°05'56" WEST, 147.33 FEET;
18. THENCE SOUTH 34°54'03" EAST, 195.60 FEET, TO THE POINT OF BEGINNING.

SAID TRACT CONTAINING 19.949 ACRES.

SUBJECT TO A 6 FOOT UTILITY EASEMENT RUNNING PARALLEL TO AND ADJOINING THE NORTHWESTERLY RIGHT-OF-WAY OF JOEL BOULEVARD PER OFFICIAL RECORDS BOOK 2321, PAGE 3115 AND 3116 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

BEARINGS ARE BASED ON THE NORTH LINE OF JOEL BOULEVARD (80' RIGHT-OF-WAY), AS BEARING N 55°05'58" E.

RHODES & RHODES LAND SURVEYING, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 6897


Thomas E. Rhodes, Sr.
Professional Surveyor and Mapper
State of Florida, License Number 5854

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

R&R FILE NO. 2008-15
DATE: 02/12/08

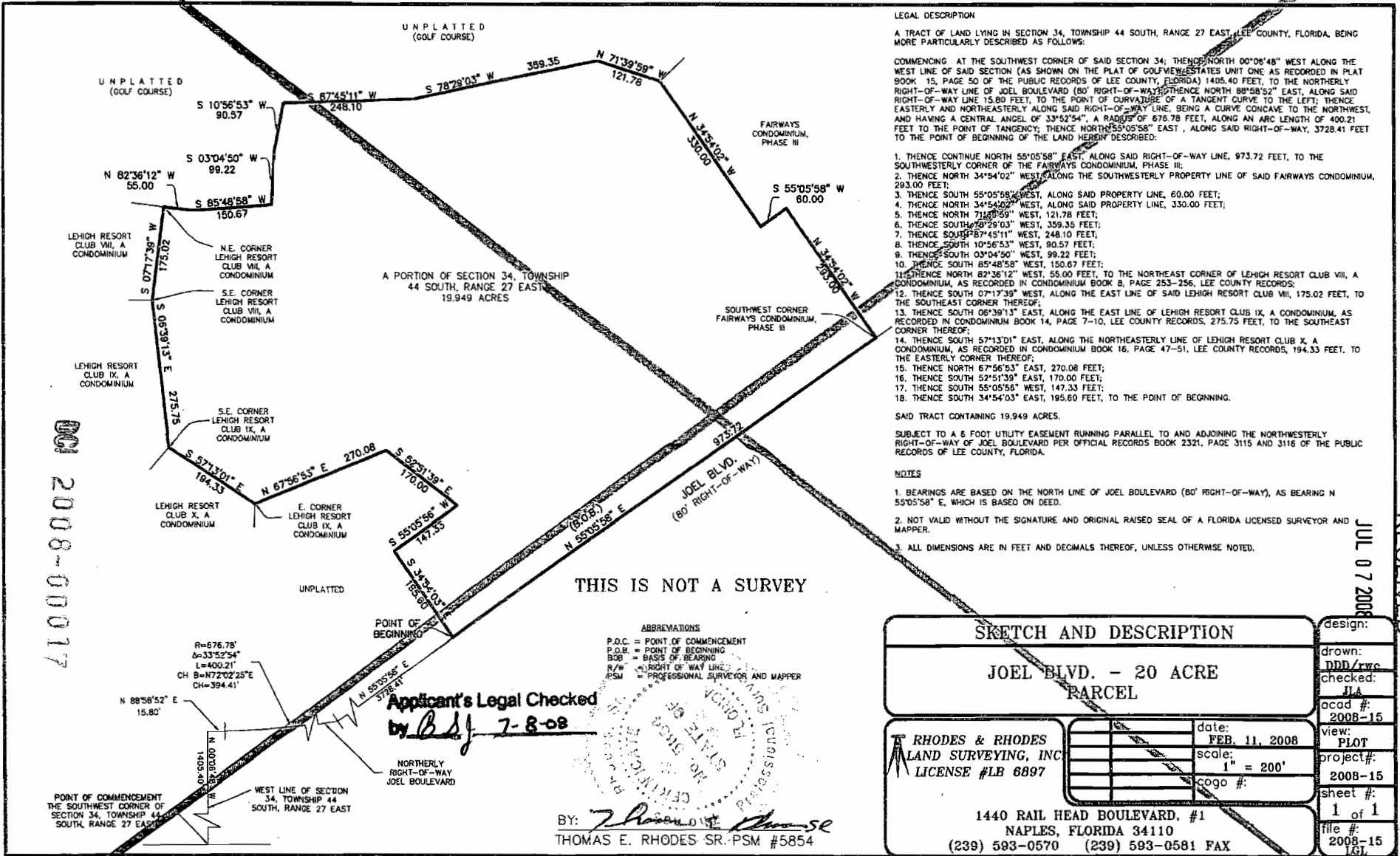
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- NOTES
1. BEARINGS ARE BASED ON THE NORTH LINE OF JOEL BOULEVARD (80' RIGHT-OF-WAY), AS BEARING N 55°05'58" E, WHICH IS BASED ON DEED.
 2. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
 3. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF, UNLESS OTHERWISE NOTED.

THIS IS NOT A SURVEY

ABBREVIATIONS
 P.O.C. = POINT OF COMMENCEMENT
 P.O.B. = POINT OF BEGINNING
 B.B. = BASIS OF BEARING
 R/W = RIGHT OF WAY LINE
 PSM = PROFESSIONAL SURVEYOR AND MAPPER

Applicant's Legal Checked by *B.S.J.* 7-8-08



BY: *Thomas E. Rhodes Sr.*
THOMAS E. RHODES SR. PSM #5854

SKETCH AND DESCRIPTION
 JOEL BLVD. - 20 ACRE PARCEL

RHODES & RHODES
 LAND SURVEYING, INC.
 LICENSE #LB 6897

1440 RAIL HEAD BOULEVARD, #1
 NAPLES, FLORIDA 34110
 (239) 593-0570 (239) 593-0581 FAX

design:
 drawn: DDD/rwc
 checked: JLA
 acad #: 2008-15
 view: PLOT
 project #: 2008-15
 sheet #: 1 of 1
 file #: 2008-15
 (JL)

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Zoning Map

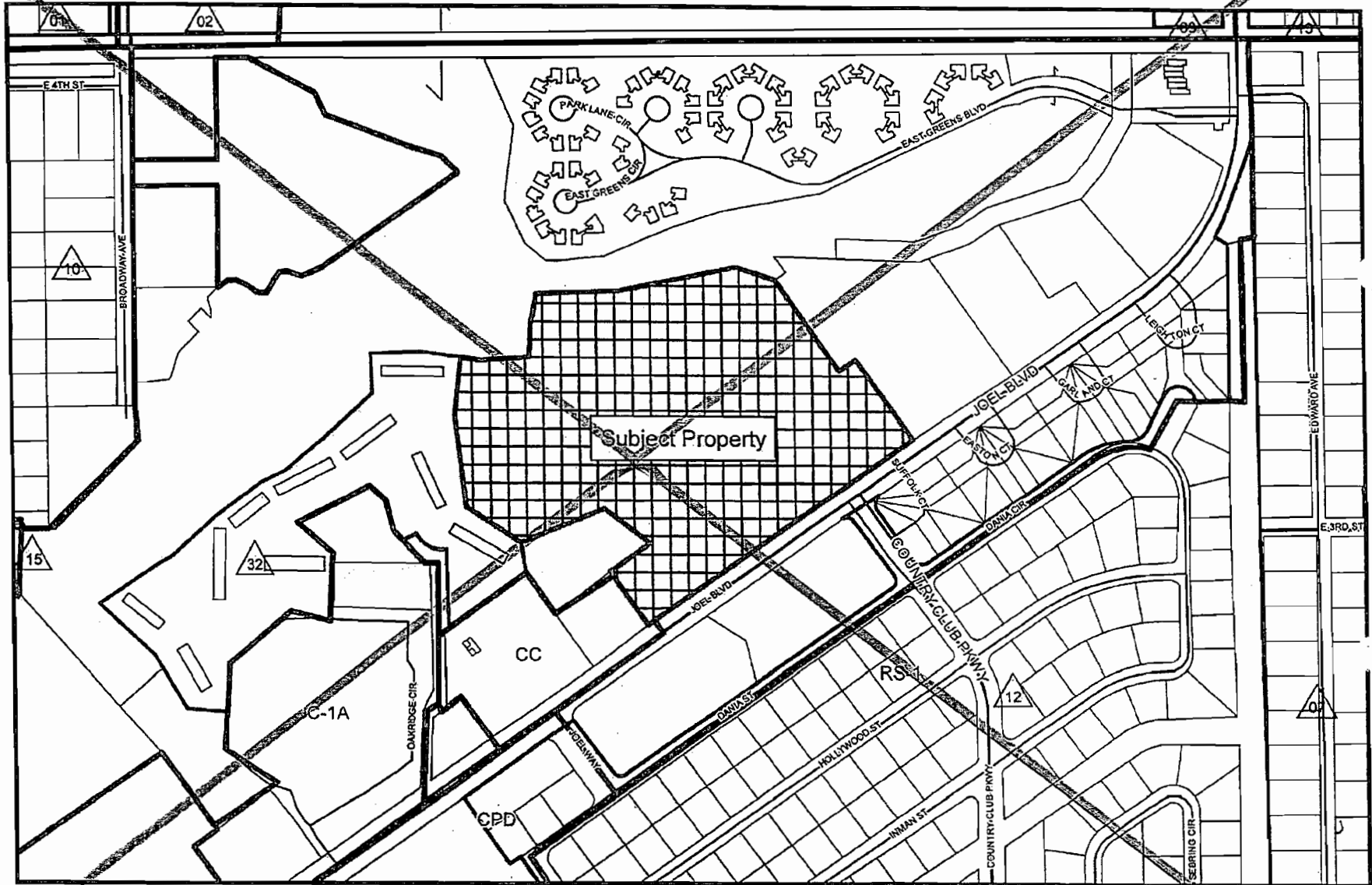


EXHIBIT "B"



**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: March 18, 2010

To: Carmen Salome
Executive Assistant to
Commissioner Tammara Hall

FROM: 
Michael D. Jacob
Assistant County Attorney

RE: **BOCC ZONING RESOLUTIONS FROM THE FEBRUARY 1, 2010 AND MARCH 1, 2010 MEETINGS**
ZONING RESOLUTIONS: Flint's Pavilion (Z-09-035) and T-Mobile/13990 McGregor Blvd (Z-09-036)

Attached are the original resolutions adopted by the Board at the February 1, 2010 and March 1, 2010 zoning meetings. The resolutions have been reviewed and approved as to form and are ready for the Chairwoman's signature. After the Chairwoman signs the resolutions, please forward them to the Minutes Department for attestation and further processing.

Thank you for your assistance with respect to the above. Should you have any questions, please do not hesitate to contact me.

MDJ:tlb
Attachments

cc via e-mail only:

Jamie Prancing, Administrative Assistant, DCD/Administration & Support
Lisa L. Pierce, Minutes Office Manager, Lee County Clerk of Courts
Billie J. Jacoby, Administrative Support Supervisor, DCD

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