

Lee County, Florida  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
ZONING SECTION  
STAFF REPORT

Case Number: DCI2023-00028  
Case Name: Rum Road Collective  
Case Type: Minor Planned Development  
Area Affected by Request: ±1.15 Acres  
Sufficiency Date: June 26, 2024  
Hearing Date: September 12, 2024

**REQUEST:**

Michael Roeder has filed an application to rezone 1.15± acres from Two-Family Conservation District (TFC-2) to Commercial Planned Development (CPD) to permit 21,600 square feet of non-residential floor area divided among three separate buildings. The floor areas comprise of 5,900 square feet retail, 4,200 square feet office, 500 square feet medical office, 3,600 square feet civic use, 600 square feet self-storage and 6,800 square feet dedicated to a 10-unit hotel.

The 1.15-acre subject property consists of 3 unrecorded subdivision lots on the island of North Captiva (Commissioner District #1). A legal description of the property is attached as Attachment B of this report.

**SUMMARY:**

The application fails on two separate counts: The requested rezoning is incompatible with adjoining single-family development and is inconsistent with the Lee County Comprehensive Plan, including but not limited to the Outer Islands Future Land Use Category and the North Captiva Island Community Plan guardrails concerning future development of the bridgeless barrier island. In addition, the application is incomplete without a supporting Zoning Traffic Study meeting the minimum requirements established in Lee County Administrative Code (AC) 13-17.<sup>1</sup> Staff recommends **DENIAL** of the request with the findings contained herein.

**HISTORY OF PROPERTY:**

The property is legally described as Lots 44, 45 and 46 of Captiva Palma, an unrecorded subdivision. The property's zoning designation of Two-family Conservation District (TFC-2) originates from Resolution Z-65-026 approved on April 19, 1965 (see Attachment L). The property is vacant and there are no records of development activity on the subject property.

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<sup>1</sup> As required by Land Development Code Section 34-373(a)(7). *Minimum required information for planned development zoning applications.* A waiver from this requirement was requested in connection with this application and denied by staff (see Attachment N).

## CHARACTER OF THE AREA:

The property is located at the dirt and shell road intersection of Rum Road and Bartlett Parkway (non-county maintained local roads). Rum Road currently separates the undeveloped Commercial Planned Development (Grady's Lodge CPD) and Commercial (C-1) North Captiva Island Club from the residential zoning and development west of Rum Road. The island currently has commercial zoning largely surrounding Safety Harbor Sound and linking canals. Residential zoning surrounds the subject property in all other cardinal directions and is depicted in Attachment C of this report. The subject property immediately adjoins similar sized lots of record developed with two-story single-family residences.

### Availability of Public Services

Public Services are defined by the Lee Plan as “*the requisite services, facilities, capital improvements, and infrastructure necessary to support growth and development at levels of urban density and intensity.*” The Policy concerning the property's future land use category accurately summarizes the availability of public services on the bridgeless barrier island per the following citation:

*The Outer Islands are sparsely settled, have minimal existing or planned infrastructure, and are very distant from major shopping and employment centers. Except for those services as provided in compliance with other sections of this plan, they are not expected to be programmed to receive urban-type capital improvements in the time frame of this plan, and as such can anticipate a continued level of public services below that of other land use categories.<sup>2</sup>*

Public water and sewer: The public water and sewer are not available on the island and development will rely on on-site sewage disposal systems and potable water wells.

Paved streets and roads: Dirt and shell paths are utilized for inter-island transportation, including the intersection of Rum Road and Bartlett Parkway.

Public transit and pedestrian facilities: The only modes of general ground transportation are personal golf carts and bicycles along the dirt and shell paths across the island.

Police, fire, and emergency services: Upper Captiva Fire Department Station 191 is located at 4511 Hodgepodge Lane approximately 0.25 miles north of the subject property and has authorized use of conventional EMS and Fire Trucks on the island. The Lee County Sheriff's Office (LCSO) does not have a substation on the island and law enforcement must travel to the island to respond to requests. A permanent LCSO presence on the island should not be expected in the near future under the growth policies underpinning development on the island.

Public Schools/Parks: The requests is not expected to impact school concurrency as it contains limited residential potential. There are no Lee County-owned or operated parks on the island; the majority of the island is state-owned conservation land.

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<sup>2</sup> See Lee Plan Policy 1.4.3

## ANALYSIS:

The request seeks to rezone property designated for one and two-family residential uses on a bridgeless barrier island to Commercial Planned Development (CPD) to permit 21,600 square feet of non-residential intensity on approximately 1.15 acres. The Applicant's request narrative is attached hereto as Attachment E. The proposed inventory of intensity and uses is categorized below:

- **5,900 square feet retail:** Food Stores, Group I, Hobby, Toy and Game Shops, Specialty Retail, Group I & II<sup>3</sup> and Used Merchandise Stores, Group I.
- **4,200 square feet office:** Contractors and Builders, Group I, Insurance Companies, Real Estate Sales Office, Studios.
- **500 square feet medical office:** Medical Office.
- **3,600 square feet civic:** Place of Worship.
- **600 square feet self-storage:** Warehouse, Public.
- **6,800 square feet** dedicated to a **10-unit hotel** [One unit offers accommodations to the LCSO].
- **A Live/Work Unit** is proposed; however, the unit of density requires virtually the entire property to be reserved for residential purposes which is not consistent with the proposed Master Concept Plan design.<sup>4</sup>

While some of the proposed uses provided fall within the specified floor area allocations proposed by this request, individual floor area allocations for the following proposed uses are not clear: Caretaker's Residence, Restaurant, Group II, Schools, Commercial, Personal Services, Group I (limited to ATMs, Barber or Beauty Shops), Repair Shops, Group I<sup>5</sup> and Cleaning and Maintenance Services.

### Prior Commercial Zoning Requests on North Captiva

In 2011, the **Kinsey Inn** (Case Number DCI2011-00048) proposed rezoning of 1.1+/- acres fronting the east side of Safety Harbor from Commercial (C-1) to Commercial Planned Development (CPD) to allow 17 hotel units, a multi-slip docking facility, a pool, pool bar and a 2,600 square-foot lodge building consisting of a meeting room, office, a caretaker's unit, and a visitor unit for Sheriff's Office. The property, which was subject to this request, is located at 4390 Point House Trail within Outer Islands Future Land Use Category.

The case was heard before the Chief Lee County Hearing Examiner (HEX) who issued a recommendation of **DENIAL** based on incompatibility and inconsistency with the Lee Plan, including the Outer Islands Future Land Use and North Captiva Community Plan Goal (see Attachment J). The

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<sup>3</sup> Specialty Retail, Groups I and II include use activities such as gift, novelty and souvenir shops (see LDC §34-622(c)(47)).

<sup>4</sup> The Outer Islands Future Land Use Category limits density to one unit per acre (subject property is 1.15 acres). A Minimum Use Determination approval on an individual lot of unrecorded will not serve as an solution to this as the result of a minimum use determination is the condition that the lot may not be used for any other permitted use pursuant to Lee Plan Chapter XIIIb.2.(1)(d).

<sup>5</sup> Repair Shops, Group are establishments primarily engaged in performing miscellaneous repair work not elsewhere grouped and include use activities such as repair of bicycles/small appliances/hand tools (see LDC §34-622(c)(40)).

case was subsequently withdrawn by the applicant prior to the Lee County Board of County Commissioners hearing. The HEX did not find that the LDC provision exempting planned development approved hotel units from the density equivalencies in the LDC was sufficiently rooted in the Lee Plan and that the regulation's<sup>6</sup> origin in the 1994 Land Development Code was not specifically enabled by the Lee Plan at that time. The HEX acknowledged that a hotel use is a commercial use and is evaluated on intensity; however, she also acknowledged the fact that the LDC established equivalency provisions between hotel units and dwelling units permitted under the Lee Plan for conventional zoning districts. The recommendation found that the Lee Plan should be amended to legitimize these zoning provisions.<sup>7</sup> The Lee Plan remains silent presently with respect to hotel density equivalency and for such exemptions for planned development approvals.

It should be noted that the Kinsey Inn property has been zoned Commercial (C-1) since 1963, and that the property and nearby adjacent property was historically subject to a local development order approval for an 11-unit efficiency motel.<sup>8</sup> However, the motel was not developed and the development order expired.

Seven years prior, **Grady's Lodge** (Zoning Resolution Z-04-029) was approved for a 10-unit hotel consisting of a maximum of 10 cabins on 1.59 acres. The proposed project included a separate allocation for a caretaker's unit consolidated into a 4,200 square foot lodge with minor office, retail and restaurant uses subordinate to the primary use of the hotel (see Attachment K). The project has not been developed. The HEX Recommendation regarding the Kinsey Inn provides key distinguishing features of the Grady's Lodge approval from the Kinsey Inn proposal, most notably that the case predated the North Captiva Community Plan in the Lee Plan.<sup>9</sup> The HEX also found that the former Hearing Examiner's decision erred in their finding of consistency with the Outer Islands Future Land Use and the Grady's Lodge proposal, and that such error had no precedential value in the recommendation for The Kinsey Inn.

In 2013, the **Grady's Lodge** approval was subsequently subject to a rezoning request to include a small Commercial (C-1) zoned parcel into the planned development's acreage (increasing the CPD to 1.97 acres) to promote a new marina development consisting of a 14,640 square-foot boat barn to accommodate 72 dry slips and a boat basin with 27 wet slips (**project name North Captiva Marina**). Resolution Z-12-026 denied this request with prejudice based on inconsistency several Lee Plan provisions attached to the adopted Resolution (see Attachment O).

### Proposed Deviations

*Deviation* means a departure from a specific regulation of the LDC or other applicable regulation or code, when requested as part of a planned development in accordance with LDC Section 34-373(a)(9) and meeting the findings established in LDC Section 34-377(a)(4). Each deviation must enhance the achievement of the objectives of the planned development and preserve and promote

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<sup>6</sup> See LDC §34-1802(4)d.

<sup>7</sup> See bottom of Page 9, Kinsey Inn Hearing Examiner Recommendation (Attachment J).

<sup>8</sup> Project Name: RJ's circa 1990 (Development Order 90-06-002-00.D).

<sup>9</sup> In 2009, Ordinance 09-09 initially adopted the North Captiva Community Plan as Lee Plan Goal 25. The North Captiva Community Plan is currently Goal 26 of the Lee Plan.



the general intent of the LDC to protect the public health, safety and welfare. The applicant has provided a schedule of deviations with justification statements (see Attachment E) containing the following four deviations:

Deviation #1:

Seeks relief from LDC §10-296(e)(3), which establishes the minimum standards for roads with a functional classification of local (i.e paving width and drainage requirements).

Deviation #2:

Seeks relief from LDC §34-2192, which establishes a front setback along roads in conventional zoning districts.

Deviation #3:

Seeks relief from LDC §10-285, which establishes a minimum driveway connection separation standard of 125 feet as measured between proposed and existing driveways.

Deviation #4:

Seeks relief from LDC §10-416(d)(6), which requires a 25-foot-wide buffer with a wall to allow a 15-foot-wide Type C buffer<sup>10</sup> along the western property.

Staff offers no analysis and recommendation with respect to the requested deviations given the recommendation of denial.

Master Concept Plan

The Master Concept Plan (MCP) is attached as Attachment D of this report and depicts each lot of record with a building footprint in the center of each respective lot. Building A includes 6,000 square feet of floor area and Building B includes 3,600 square feet of floor area, with both buildings annotated as two stories above parking. Building C is three stories above parking and comprises 12,000 square feet. As a bridgeless barrier island, North Captiva is exempt from parking standards, including design and the minimum number of parking spaces pursuant to LDC Section 34-2011(c). Golf carts are the primary mode of motorized transportation and golf cart parking and circulation are undefined outside of the proposed buffers on the MCP.

Review Criteria<sup>11</sup>

LDC Section 34-145 establishes the review criteria for rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

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<sup>10</sup> LDC §10-416(d)(4) establishes a Type C Buffer as containing an eight-foot wall with 5 trees and 18 shrubs per 100 linear feet.

<sup>11</sup> See LDC §34-145(d)(4).

- a) Complies with the Lee Plan;
- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide access sufficient to support the proposed development intensity;
- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

For Planned Development rezoning requests, the Hearing Examiner must also find:

- a) The proposed use or mix of uses is appropriate at the proposed location;
- b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
- c) That each requested deviation:
  - 1) Enhances the achievement of the objectives of the planned development; and
  - 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

**a) The request does not comply with the Lee Plan;**

**POLICY 1.4.2:** *The Outer Islands are sparsely settled, have minimal existing or planned infrastructure, and are very distant from major shopping and employment centers. Except for those services as provided in compliance with other sections of this plan, they are not expected to be programmed to receive urban-type capital improvements in the time frame of this plan, and as such can anticipate a continued level of public services below that of other land use categories. The continuation of the Outer Islands essentially in their present character is intended to provide for a rural character and lifestyle, and conserve open space and important natural upland resources. Maximum density is one dwelling unit per acre (1 du/acre). The policy clearly conveys that the character of the Outer Islands is not anticipated to change in the planning horizon. The scale and location proposed by the subject request are out of character with North Captiva Island. The request, if approved, will change the character of the area at this location; therefore, the proposed development is not consistent with Policy 1.4.2.*

**OBJECTIVE 2.1 and POLICY 2.1.1** seeks to promote contiguous and compact growth patterns within designated future urban areas to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, and minimize the cost of services. Staff has concerns regarding the capacity of the Upper Captiva Fire District to service the proposed development in the event of emergency. During sufficiency review, staff requested a letter of availability from the Fire District to demonstrate its ability to service the proposed development to support the applicant's narrative. The applicant did not provide a letter or any evidence that the proposed development had been reviewed by the fire district, arguing that such evidence is appropriate at time of development order review. **Policy 2.2.1** clearly provides for the evaluation of the availability and proximity of fire protection at time of rezoning. Furthermore, **Policy 65.2.1** states that all new development should be located in an established fire district in an area provided with public water. Staff's concerns regarding fire protection have not been addressed and inconsistency with **Policy 2.2.1** remains.

**STANDARD 4.1.2.** requires any new single commercial or industrial development that generates more than 5,000 gallons of sewage per day (GPD) to connect to a sanitary sewer system. The intensity and uses proposed by the subject request has the potential to create wastewater demand in excess of 5,000 GPD. This concern was also raised during the review of the Grady's Lodge request in 2004, which proposed significantly less intensity and use than the subject request. Evidence was presented at the hearing before the HEX demonstrating that the overall size of the project, including the restaurant, would be severely limited because the project would not be permitted to generate more than 5,000 gallons of wastewater a day. When the hotel, caretaker's residence and restaurant were calculated into the expected wastewater demand, the Applicant's expert concluded that the restaurant would be limited to approximately 30-35 seats to avoid breaching the project's maximum permissible wastewater discharge. The fact Rum Road's development program eclipses the intensity approved by Grady's Lodge indicates that the subject request has the potential to exceed 5,000 GPD and requires connection to central sewer, which is not available. Therefore, the request is **INCONSISTENT** with **Standard 4.1.2.** This reinforces the inconsistency with **Policy 1.4.2** and **Objective 2.1** and **Policy 2.2.1.**

**POLICY 5.1.5** aims to protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment and to ensure buffers provided in the Land Development Code are adequate to address potentially incompatible uses in a satisfactory manner or ensure that appropriate conditions are devised through the planned development rezoning process. As noted in the compatibility analysis contained herein, the request proposes uses that are potentially destructive to the character and integrity of the residential environment and sufficient conditions cannot be devised to assure compatibility with surrounding residential uses.

**GOAL 6** promotes orderly and well-planned commercial development at appropriate locations in the county. Policy 6.1.1 requires development approvals for commercial land uses to be consistent with various policies, including screening and buffering, adequacy of

public services, compatibility with surrounding land uses, and proximity to other similar centers. Policy 6.1.4 states that “commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities.” For the same reasons expressed in the analysis of Standard 4.1.2 and Policy 5.1.5, staff finds the request **INCONSISTENT** with **Policy 6.1.1** and **Policy 6.1.4.**

**GOAL 26: NORTH CAPTIVA COMMUNITY PLAN.** *Preserve the character, scale, fragile environment, and way of life in the North Captiva Community Plan area by guiding future land use; transportation and roads; conservation and coastal management; Safety Harbor; shore and water quality, water and waste management; open space, recreation, and quality of life; and citizen participation and community education.* The character of the island is truly remote in comparison to other areas of the County and State. The setting is idyllically natural without paved roads and conventional automobiles and is only accessible by water or air. The lack of commerce on the island is a fundamental characteristic of the island and “way of life”.

**OBJECTIVE 26.1: FUTURE LAND USE.** *Preserve the traditional character, scale, and tranquility of the North Captiva community by continuing to limit the densities and intensities of use and development to sustainable levels that will not adversely impact the natural environment or overburden the existing infrastructure.* To authorize conversion of 1.15 acres of residential lands for 21,600 square feet of intensity in buildings two- and three-stories over parking is wholly contrary to the character, scale and way of life of the North Captiva Community. The proposed concentration of nonresidential land use (approximately 20,000 square feet per acre) is rarely seen at this level of concentration in the most intensive future land use categories. Approval may forge a path for additional proposals to convert residential lots to non-residential uses and hotel intensity, contrary to the densities and intensities forecasted by the Outer Islands Future Land Use Category, which will further burden the limited services and further contravene the purpose and intent of the North Captiva Community Plan.

The request is **INCONSISTENT** with Policies 1.4.3, 5.1.5, **Objective 26.1** and **Goal 26** of the Lee Plan.

**b) Does not meet the Land Development Code and other applicable County regulations;**

As evidenced in this report, the request does not meet the Land Development Code and other applicable County regulations (i.e. Lee Plan and AC-13-17).

**c) Is not compatible with existing and planned uses in the surrounding area;**

Compatible means, *in describing the relation between two land uses, buildings or structures, or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics, or a neutral relationship based on a relative lack of conflict (actual or potential) or on a failure to communicate negative or harmful influences one to another* (LDC Section 34-2).

Lee Plan Policy 5.1.5 requires planned developments provide assurance of satisfactory buffers and conditions to minimize impacts that may be destructive to the character and integrity of the residential environment. This Policy notes that where no adequate conditions can be devised, the application will be denied altogether.

The application proposes that the project be separated from adjoining single-family development with a 15-foot-wide buffer, reduced from the LDC standard<sup>12</sup> with a companion deviation request. Staff cannot support the notion that the proposed reduced buffer serves as a satisfactory buffer between existing single-family uses and two- and three-story commercial buildings built above parking. Further, staff cannot devise any reasonable buffer or other conditions to provide assurances that neutralize the impacts anticipated by this request, and therefore, the request will be destructive to the character of the uninterrupted residential environment west of Rum Road.

Proximity to multi-story single-family residences does not serve as an appropriate transition to foster development of more intensive land uses at equivalent or greater scales without obvious compatibility scrutiny. There is a clear potential to create negative and harmful influences from the encroachment of commercial uses into the abutting residential areas as proposed by this request. Staff cannot devise adequate conditions to mitigate the proposed stark transition from single-family residential uses to an unprecedented development intensity of 20,000+ square-foot multi-level commercial campus.

**Will provide access sufficient to support the proposed development intensity;**

The bridgeless barrier island prohibits the use of conventional passenger vehicles; therefore, access to project would be provided for golf cart, bicycle and pedestrian foot traffic in a sufficient manner.

**d) The expected impacts on transportation facilities will may not be addressed by existing County regulations and conditions of approval;**

The applicant originally requested a waiver from environmental requirements and the Zoning Traffic Study (ZTS) submittal requirements per Land Development Code Section 34-373(a) (see Attachment N). The request to waive the ZTS was denied, and the required information was requested by staff in all subsequent insufficiency responses. Staff believes the proposed use and intensity will generate transportation impacts on off-island roads, including those located on Pine Island, and a ZTS meeting the requirements outlined in AC-13-17 is required to evaluate those impacts.

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<sup>12</sup> (See Deviation #4 on Page 5) LDC §10-416(d)(6) requires roads, drives, or parking areas associated with nonresidential use located less than 125 feet from an existing single-family residential subdivision or single-family residential lots, to be buffered by a solid wall or combination berm and solid wall not less than eight feet in height, which must be constructed not less than 25 feet from the abutting property and landscaped (between the wall and the abutting property) with a minimum of five trees and 18 shrubs per 100 linear feet. Alternatively, a 30-foot-wide Type-F buffer with the hedge planted a minimum of 20 feet from the abutting property may be provided. The applicant proposes to provide an 8-foot-high solid wall in conjunction with a 15-foot-wide Type C LDC Buffer.

The applicant elected to terminate the sufficiency review process by invoking the provisions of LDC Section 373(d)(8) (see Attachment F). This action does not terminate the need for the applicant to meet its burden to prove that the application is consistent with County regulations according to the same section. The Lee County Department of Transportation (DOT) has issued a memorandum (see Attachment H) concerning the transportation analysis provided by the applicant (see Attachment G). In summary, The Level of Service (LOS) analysis for roadway sections and intersections required per AC 13-17 has not been provided. Therefore, it cannot be determined whether the proposed project will not result in adverse impacts to the surrounding roadway network. The applicant has not met the burden of proof to demonstrate compliance with this criterion.

**e) Will not adversely affect environmentally critical or sensitive areas and natural resources; and**

The Applicant's environmental consultant prepared a Florida Land Use, Covers and Forms Classification System (FLUCCS) Map identifying the subject property as partially disturbed and dirt roads. The report also includes a protected species survey and states that no species listed by either the FWS or the FWC were observed on the site during the protected species survey (see Attachment I). Development of the site would be subject to multiple regulatory facets of environmental and natural resource review. Therefore, staff finds the request consistent with this criterion.

**f) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.**

The property is not located in a Future Urban Area.

For Planned Development rezoning requests, the Hearing Examiner must also find:

**a) The proposed use or mix of uses is appropriate at the proposed location;**

As detailed, the proposed mix of uses is out of character with the North Captiva Community Plan and Outer Islands Future Land use category. The proposed mix of uses is inappropriate at the proposed location and does not have adequate supporting infrastructure or services.

**b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and**

**c) That each requested deviation:**

- 1) Enhances the achievement of the objectives of the planned development; and
- 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

## CONCLUSION:

Based upon analysis of the application and the standards for approval, staff finds the request does not meet the approval criteria for a planned development rezoning. The application is incomplete per the LDC requirements without a supporting Zoning Traffic Study prepared in accordance with AC-13-17, and the request is incompatible with surrounding residential uses and inconsistent with the Lee Plan. Staff recommends **DENIAL** of the request to rezone the subject property from Residential Two-Family Conservation District (TFC-2) to Commercial Planned Development (CPD). Denial of the rezoning does not result in an unreasonable use of the subject property for its original residential single-family or duplex purpose. Maintaining the existing residential zoning designation accomplishes a legitimate public purpose by maintaining compatibility with adjoining residential uses, which adequately limits development potential in a manner consistent with the Lee Plan. Further, conditions of approval mitigating the referenced inconsistencies cannot be devised by staff to sufficiently mitigate the basis for denial. Finally, the denial is not considered arbitrary, as the recommendation relies on the outcome of systematic review of the pertinent review criteria.

## Public Correspondence

Staff received a substantial volume of input and interest from members of the public in response to the request. In summary, the concerns are largely related to the project's inconsistency with the North Captiva Goal and the project's impact on the residential areas immediately surrounding the subject property. Staff did receive some letters and emails in support of the request.

## ATTACHMENTS:

- A. Expert Witness Information
- B. Legal Description and Survey Plat
- C. Aerial, Future Land Use, and Current Zoning Maps
- D. Proposed Master Concept Plan
- E. Applicant's Project Narrative
  - Project Narrative
  - Schedule of Deviations
  - Schedule of Uses
  - Property Development Regulations
- F. Applicant's Sufficiency Termination Request
- G. Applicant's Transportation Impact Assessment
- H. Department of Transportation Staff Memorandum
- I. Protected Species Survey and FLUCCS Map
- J. DCI2011-00048 Kinsey Inn
- K. Resolution Z-04-029 Grady's Lodge
- L. Resolution Z-65-026
- M. North Captiva Island Public Information Session Summary
- N. GEN2023-00259 (Signed Application Submittal Waiver)
- O. Resolution Z-12-026 North Captiva Marina

**LEE COUNTY STAFF EXPERT WITNESS INFORMATION  
PROVIDED PURSUANT TO AC-2-6, SECTION 2.2.b(5)(f)3.**

**Case Numbers:** DCI2023-00028

**Project Name:** Rum Road Collective

**Hearing Examiner Date:** September 12, 2024

Adam Mendez, Planner, Senior, Zoning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness in the Lee County Land Development Code, the Lee Plan, zoning, and land use planning. Current resume is on file with the Hearing Examiner.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code, the Lee Plan, and documentation submitted by the applicant as part of the subject application.

Beth Workman, Planner, Principal, Zoning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, the Lee Plan, zoning, environmental and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code, the Lee Plan, and documentation submitted by the applicant as part of the subject application.

Anthony R. Rodriguez, AICP, Zoning Manager, Zoning, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, the Lee Plan, zoning, and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code, the Lee Plan, and documentation submitted by the applicant as part of the subject application.

Marcus Evans P.E., Senior Engineer, Development Services, 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in Traffic Engineering and Transportation Planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include:



the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Brian Roberts P.E., Planner, Planning 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, zoning, civil engineering and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Nic Deflippo, Senior Environmental Planner, Development Services 1500 Monroe Street, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- to be qualified as an expert witness in the Lee County Land Development Code, the Lee Plan, natural resources, environmental and land use planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

ATTACHMENT B

(SEE SHEET 2 OF 2 EXHIBIT A FOR DESCRIPTION TO ACCOMPANY THIS SKETCH)

SKETCH TO ACCOMPANY DESCRIPTION:

LOTS 44, 45 & 46,  
CAPTIVA PALMA,

LYING IN SECTION 5, TOWNSHIP 45  
SOUTH, RANGE 21 EAST, LEE COUNTY,  
FLORIDA.

THIS IS NOT A BOUNDARY SURVEY

PARCEL STRAP#  
05-45-21-16-00002.0000

TO FERRY BOAT DOCK 

*LEGEND:*

R/W	RIGHT OF WAY
CL	CENTERLINE
P.U.E. & D.E.	PUBLIC UTILITY & DRAINAGE EASEMENT
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING

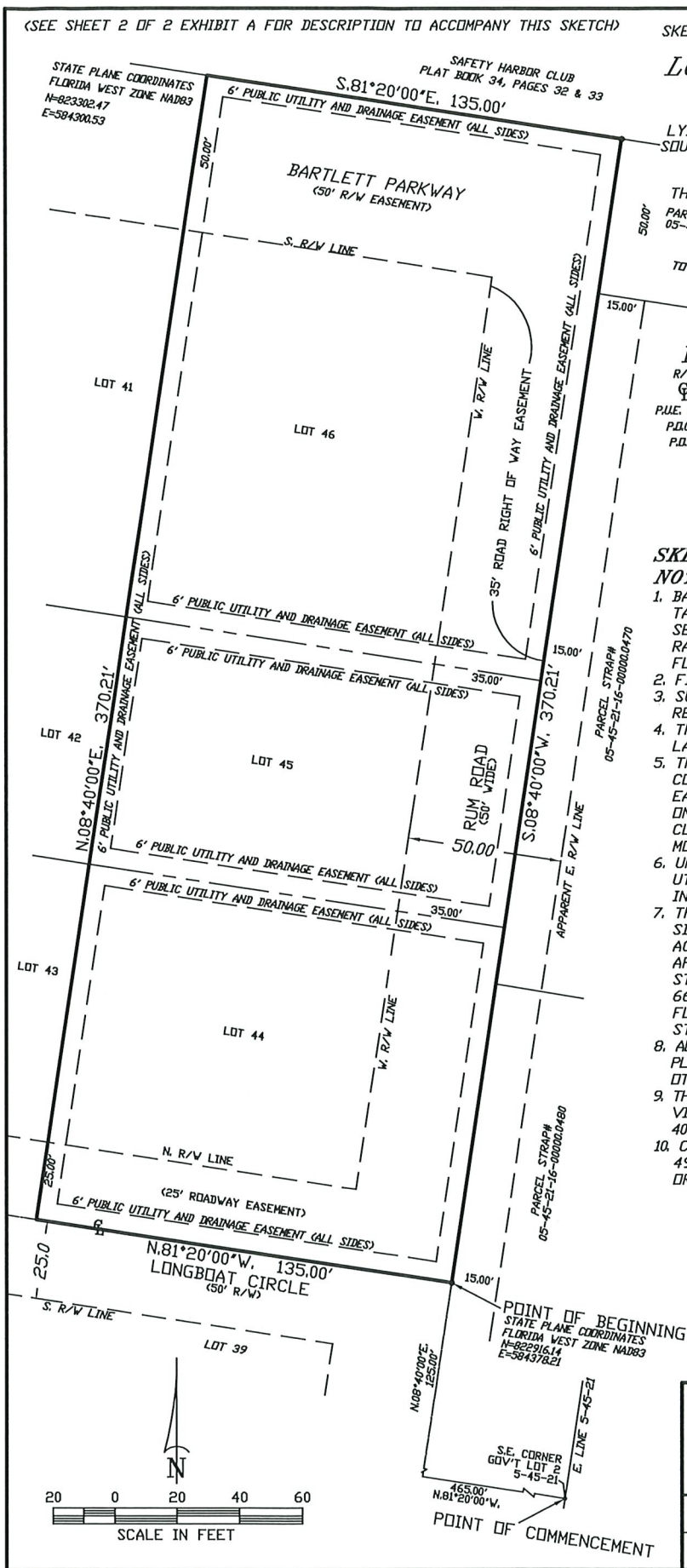
*SKETCH / DESCRIPTION*  
*NOTES:*

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EAST LINE OF SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, LEE COUNTY, FLORIDA AS BEING N.08°40'00"E.
2. FIELD NOTES IN 2023 FILE.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON.
5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN
9. THE SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14", 40 SCALE DRAWING.
10. CONTAINING:  
49,978.73 SQUARE FEET,  
OR 1.15 ACRES

**REVIEWED**  
**DCI/2023-00028**  
**Rick Burris, Principal**  
**Planner**  
**Lee County DCD/Planning**  
**6/18/2024**

PHILLIP M. MOULD P.S.M.  
PROFESSIONAL SURVEYOR AND MAPPER  
LS6515  
8180 GULL LANE  
FORT MYERS, FL. 33967  
(239) 357-2624

DRAWN: PMH	CHECKED: CJ	SCALE 1"=40'	PROJ. # RUM RD ZONING
SKETCH DATE 12/8/23		FILE NO. 45-21-5	SHT.- 1 OF - 2



# EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

(SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY DESCRIPTION)

## LOTS 44, 45 & 46, CAPTIVA PALMA,

(UNRECORDED)

LYING IN SECTION 5, TOWNSHIP 45  
SOUTH, RANGE 21 EAST, LEE COUNTY,  
FLORIDA.

THIS IS NOT A BOUNDARY SURVEY

### DESCRIPTION:

A PLOT OR PARCEL OF LAND KNOWN AS LOTS 44, 45 AND 46, CAPTIVA PALMA  
SUBDIVISION (UNRECORDED), LYING IN A PORTION OF GOVERNMENT LOT 2,  
SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, UPPER CAPTIVA ISLAND, LEE  
COUNTY, FLORIDA, SAID PLOT OR PARCEL BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

FROM A CONCRETE POST MARKING THE SOUTHEAST CORNER OF GOVERNMENT LOT  
2, SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, LEE COUNTY, FLORIDA;  
THENCE RUN NORTH 8°40' EAST 330.15 FEET ALONG THE EAST LINE OF SAID  
SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST; THENCE NORTH 81°20' WEST  
FOR 465.00 FEET; THENCE NORTH 8°40' EAST 125.00 FEET, TO THE POINT OF  
BEGINNING. THENCE NORTH 81°20' WEST 135.00 FEET; THENCE NORTH 8°40' EAST  
370.21 FEET; THENCE SOUTH 81°20' EAST 135.00 FEET; THENCE SOUTH 8°40'  
WEST 370.21 FEET TO THE POINT OF BEGINNING.

CONTAINING: 49,978.73 SQUARE FEET, OR 1.15 ACRES, MORE OR LESS.

REVIEWED  
DCI2023-00028  
Rick Burris, Principal  
Planner  
Lee County DCD/Planning  
6/18/2024

Phillip M Mould,  
LS6515,  
State of Florida

Digitally  
signed by  
Phillip M  
Mould,  
LS6515, State  
of Florida

Date:  
2024.02.05  
10:00:05  
-05'00'

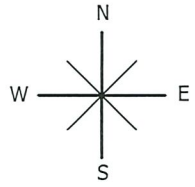
PHILLIP M. MOULD P.S.M.  
PROFESSIONAL SURVEYOR AND MAPPER  
LS6515  
8180 GULL LANE  
FORT MYERS, FL. 33967  
(239) 357-2624

DRAWN: PMM	CHECK: CJ	SCALE 1"=40'	PROJ. # RUM RD ZONING
SKETCH DATE 12/8/23		FILE NO. 45-21-5	SHT. - 2 OF - 2



# ATTACHMENT C

DCI2023-00028



0 1,000 2,000  
US Feet

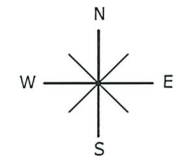




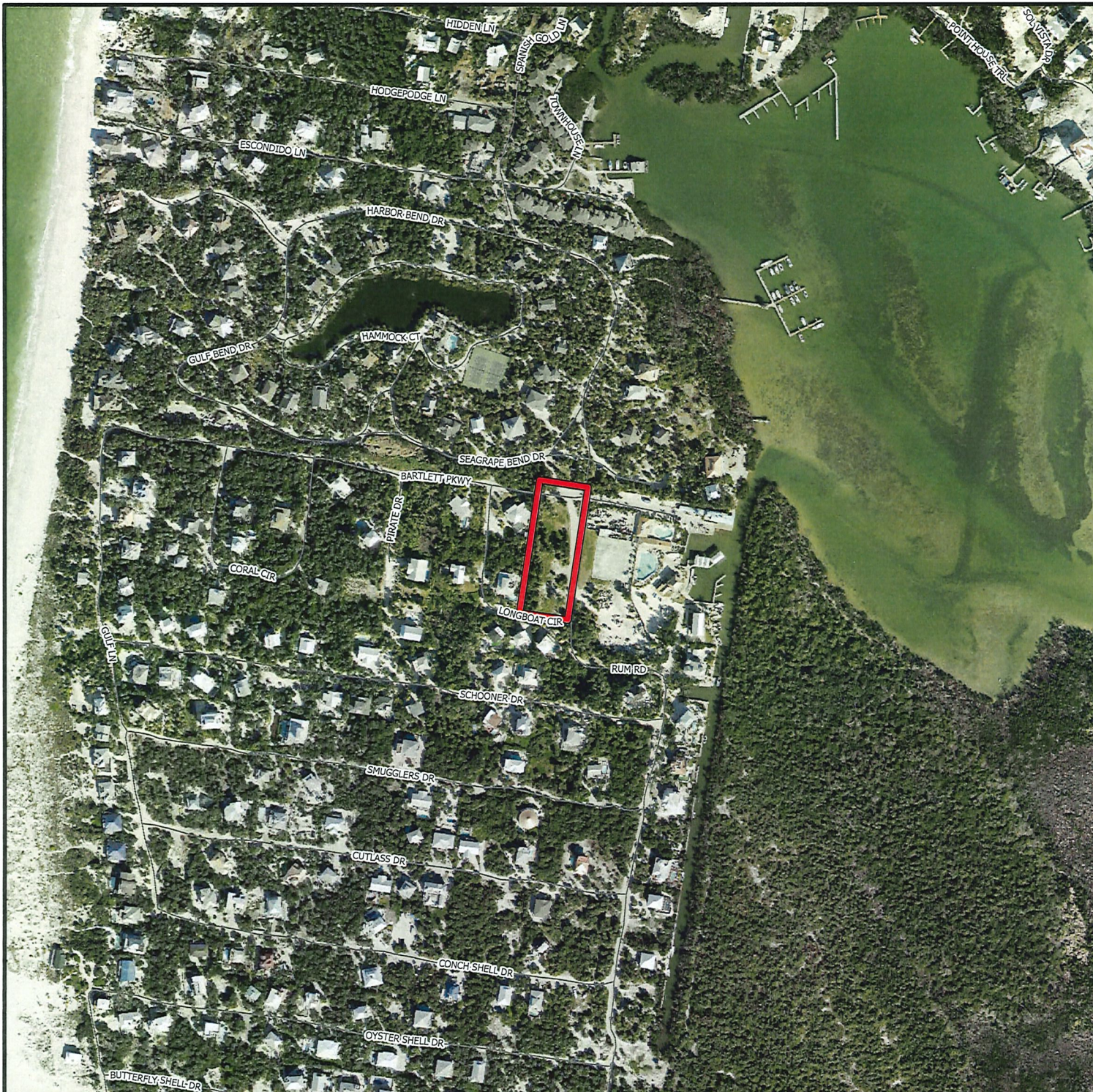
DCI2023-00028

Aerial

 Subject Property



0 500  
Feet

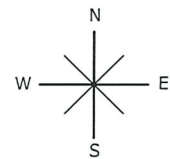




DCI2023-00028

## Future Land Use

-  Subject Property
-  Public Facilities
-  Outer Island
-  Conservation Lands - Upland
-  Conservation Lands - Wetland



0 500  
Feet



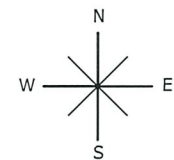
EagleView, Lee County Property Appraiser, Lee County GIS



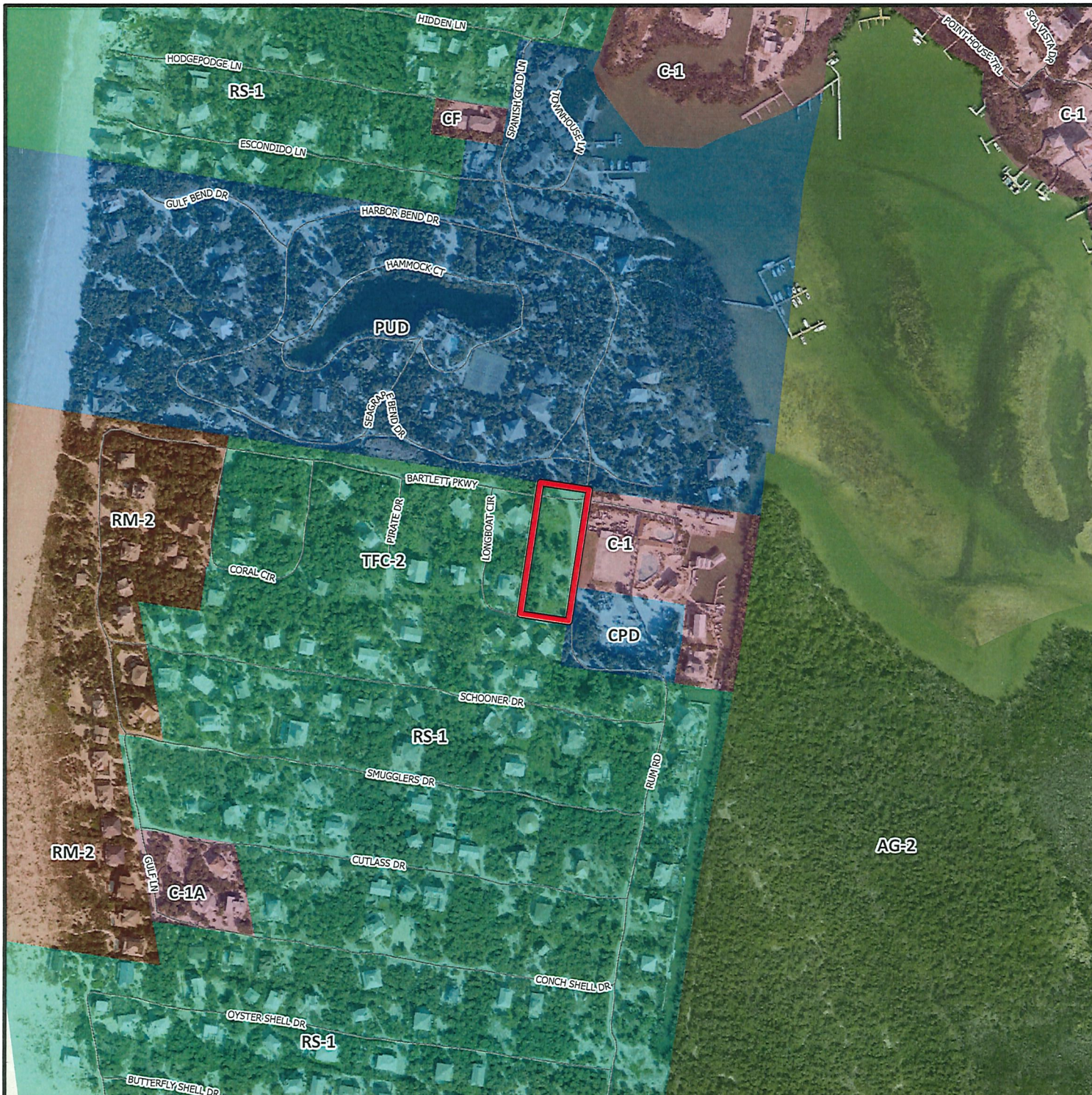
DCI2023-00028

## Zoning

 Subject Property



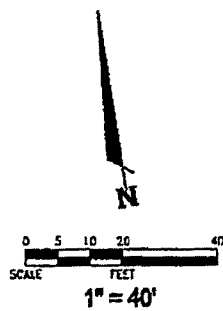
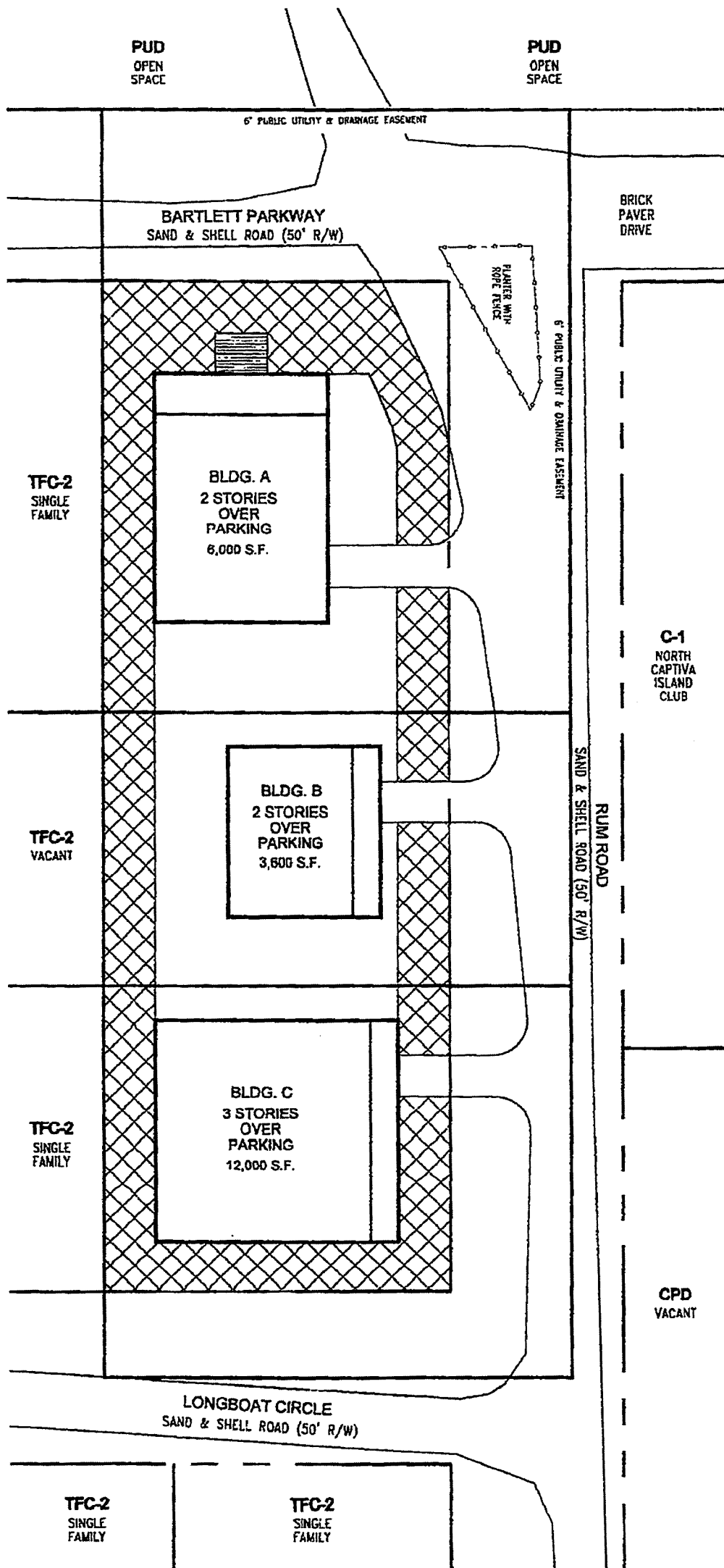
0 500  
Feet











**LEGEND**  
☒ OPEN SPACE AREA

**IMPERVIOUS AREA CALCULATIONS**  
 BUILDING AREA: 0.50 ACRES  
 WALKWAYS & STAIRWAYS 0.04 ACRES  
 TOTAL IMPERVIOUS AREA: 0.54 ACRES

**OPEN SPACE CALCULATIONS**  
 REQUIRED: 1.15 ACRES X 20% = 0.23 ACRES  
 OPEN SPACE PROVIDED: 0.25 ACRES<sup>1</sup>

<sup>1</sup> AREAS HAVING A MINIMUM AREA OF 180 S.F. AND A MINIMUM AVERAGE WIDTH OF 10 FEET.

**INDIGENOUS VEGETATION CALCULATIONS**  
 THERE ARE NO INDIGENOUS VEGETATION AREAS ON SITE.

## ATTACHMENT E

### Narrative for Rum Road Collective

This is a request to rezone three lots on North Captiva Island from TFC-2 to CPD to allow for a mixed use development that will provide many of the facilities and services that are needed on this isolated barrier island. The three lots are 1.15 acres in total and are located adjacent to the North Captiva Island Club, a very popular and active resort that also manages rentals for many of the single family homes on the island. Each of the three lots is separately owned and would have its own building, providing a distinctive mix of uses. These uses would be complementary and would provide a reasonable transition between the relatively intense North Captiva Island Club and the residential platted lots to the west and the south.

The first lot is located at 4471 Bartlett Parkway and is owned by Stephen and Marilyn Ward (the Ward Parcel). This lot is approximately .54 acre and is located at the corner of Bartlett Parkway and Rum Road. A two story building of 6,000 sq. ft. is planned. The primary feature of this building will be a large multi-purpose meeting room that can be used for a variety of functions, including religious services, community meetings, classes of various sorts, weddings and reunions.

In addition to the meeting room, a variety of uses are contemplated such as an internet café, office space for rent, coffee shop, consignment shop, and a room for recognition of island residents and island history, including a library. On the ground floor would be parking for golf carts and bicycles (the only modes of transportation on the island) and storage space for rent to island property owners.

The second parcel is located at 516 Rum Rd. and is owned jointly by the Wards and the 522 Rum Road LLC. The lot is approximately .25 acre, and a two story building of possibly 3600 sq. ft. is planned. The first floor would be a business of some type (e.g. artist studio), while the second floor would be the living quarters, a live/work dwelling. The ground floor would also accommodate golf cart parking and storage, and the yard could accommodate some amenities for the Collective.

The third parcel is located at 522 Rum Rd. and is owned by Michael Swinford. It is located at the corner of Rum Road and Longboat Circle and is approximately .36 acre. A three story building of 12,000 sq. ft. is planned. While a variety of office and specialty retail would be located on the first and second floors, the most distinctive feature of this building would be a ten room "hotel" on the third floor. Hotel is here in parentheses, because this would not be a hotel in any usual sense of the word. It would be strictly intended for longer term stays by people who were working on or had business on the island. There would be no "front desk" or lobby or the usual amenities. One of the businesses on the second floor would be responsible for checking in guests and arranging for housekeeping. There could be a modest lounge/kitchen and a laundry on the second floor for the benefit of these guests. At present there is no accommodation on the island for everyday working people, and it is very inconvenient for them to commute to North Captiva from Pine Island on a daily basis. It is envisioned that the various contractors, tradespeople and restaurant owners on the Island would lease these rooms for their employees on a rotating basis. One of the rooms would be reserved as needed for use by the Sheriff as contemplated by the Community Plan for North Captiva.

In regard to LDC 34-145 (d)(4), the request is consistent with the Lee Plan as described in the Lee Plan Analysis that was submitted with the application. Four deviations are being requested related to the

unusual system of "pathways" on the island in lieu of paved roads. With the required buffers and the anticipated conditions on allowed uses, hours of operation and capacity limits, the request will be compatible with neighboring properties. The proposed location is the most appropriate one for providing access for the proposed uses, and there will be no impact to transportation facilities, since all travel on the island is by golf cart, bicycle or foot. There are no environmentally sensitive areas on the properties, and it is not located in a Future Urban category

## Lee Plan Analysis for Rum Road Collective

North Captiva Island has one of the most unique human settlements in Lee County. It is a bridgeless barrier island, and the southern 2/3 is an environmental preserve that is mostly owned by the State of Florida. The northern 1/3 of the island is comprised of hundreds of mostly single family platted lots, of which approximately 350 have been developed to date. There are a handful of commercial businesses including the North Captiva Island Club adjacent to these three parcels. In addition, there is the private Safety Harbor Club which has its own amenities and clubhouse. But there is no focal point for this community, and the rezoning and development of these three parcels will allow for the creation of some public space that is contemplated in the North Captiva Community Plan. The property is designated Outer Island on the future land use map of the Lee Plan, and the definition of that category follows:

**POLICY 1.4.2:** The Outer Islands are sparsely settled, have minimal existing or planned infrastructure, and are very distant from major shopping and employment centers. Except for those services as provided in compliance with other sections of this plan, they are not expected to be programmed to receive urban-type capital improvements in the time frame of this plan, and as such can anticipate a continued level of public services below that of other land use categories. The continuation of the Outer Islands essentially in their present character is intended to provide for a rural character and lifestyle, and conserve open space and important natural upland resources. Maximum density is one dwelling unit per acre.

While this definition would appear on its surface to discourage most commercial development, it should be borne in mind that the facilities and businesses planned for these three parcels are intended strictly to serve island residents and guests. There are no uses in this request that would generate any stand alone visitation demand from the mainland. By the same token, the public space and individual office and commercial opportunities will meet a growing need on the island for a variety of services. The particular desires of North Captiva are spelled out in the North Captiva Community Plan, and the most relevant portions are as follows:

**GOAL 26: NORTH CAPTIVA COMMUNITY PLAN.** Preserve the character, scale, fragile environment, and way of life in the North Captiva Community Plan area by guiding future land use; transportation and roads; conservation and coastal management; Safety Harbor; shore and water quality, water and waste management; open space, recreation, and quality of life; and citizen participation and community education.

The last phrase of this Goal, speaking to “quality of life, citizen participation and community education” is relevant in this context. There is plenty of natural environment on North Captiva, and a couple of restaurants, but if someone wants to rent office space, go to an internet café or coffee shop, there is nothing available. More importantly, there is no decent public space to hold community meetings, conduct classes or hold religious services.

**OBJECTIVE 26.1: FUTURE LAND USE.** Preserve the traditional character, scale, and tranquility of the North Captiva community by continuing to limit the densities and intensities of use and development to sustainable levels that will not adversely impact the natural environment or overburden the existing infrastructure.

This Objective speaks to limiting densities and intensities to preserve the traditional character, scale and tranquility of the North Captiva Community. We would submit that a commercial development of this very limited size (1.15 acre) would meet that objective, and also provide a convenient location for the residents and guests of North Captiva community to be able to meet and interact with each other.

**POLICY 26.5.2:** The North Captiva community and Lee County will cooperate in the community's efforts to obtain an accessible community facility and library for the purposes of meeting, recreation, and community education.

The proposed building on the Ward parcel is a direct response to this Policy. The second floor is proposed to be dedicated to a general meeting room, with a side room to recognize island residents and history, with a library open to the public.

**POLICY 26.6.2:** Upon request, Lee County will provide educational programs or materials on energy conservation, solid waste management, hazardous waste, surface water runoff, septic maintenance, water conservation, Florida Friendly Landscaping, green building, harbor management, cultural resources, and history. The site for these programs will be located on North Captiva.

Again, there is currently no location on the island from which to conduct these worthy activities. The Lee County Extension Service would be invited to provide educational materials and conduct workshops in the meeting room.

**POLICY 26.7.1:** The North Captiva community will encourage the Lee County Sheriff's Office to be present during special events and during periods of high occupancy on North Captiva. The North Captiva community will work to identify housing and other resources as necessary in support of enforcement activities.

Perhaps the most innovative part of this zoning request is the proposal to have a ten room "hotel" on the third floor of the Swinford Building. A need was identified to provide rental lodging on the island for people who regularly must work on the island in a variety of capacities. The Lee Plan would limit densities for ordinary dwellings to one unit per acre, but would permit a hotel, which must have at least 10 rooms. This use is being requested pursuant to Section 34-1802(4).d of the LDC which reads as follows:

Hotels/motels approved as planned developments are not subject to rental unit size or density requirements set forth above provided all other aspects of the development (height, traffic, intensity of use, etc.) are found to be compatible with the surrounding area and otherwise consistent with the Lee Plan. However, any increase in the number or the floor size of the rental units approved in a planned development will require an amendment to the master concept plan.

It is important to describe this use in more detail. The intent is to only rent to people who have work or business on the island, and then only for longer periods. Since this would be a

licensed hotel and collect the tourist tax, the rental period for any individual guest could not exceed six months. But it is envisioned that various contractors and other employers would rent rooms for an extended period. The rooms would average less than 400 sq. ft. each, although some could be larger and some smaller. And at least one of the rooms would be reserved for use by the sheriff department on an "as needed" basis. There would be no front desk or lobby or amenities on the third floor, with the daily operations being conducted from one of the businesses on the second floor. There could also be a lounge on the second floor with some limited cooking and laundry facilities for the guests of the hotel. The owners believe that this is an important missing feature on the island, and it directly addresses the need described in Policy 26.7.1.

Since this modest commercial/community center would border platted single family lots on two sides, it is important to address Policy 5.1.5 which reads as follows:

**POLICY 5.1.5:** Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in the LDC, Chapter 10, are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The LDC will continue to require appropriate buffers for new developments.

There are three considerations in regard to this policy. The first is that under the existing zoning, there could be three single family homes constructed on these parcels, immediately adjacent to the North Captiva Island Club, which would not be particularly consistent with the intent of Policy 5.1.5. As an alternative, this low intensity commercial and community center would provide a logical transition between the North Captiva Island Club and the neighboring single family properties. Finally, as a planned development, in addition to the required buffers--a Type C buffer with wall and extensive landscaping are proposed for the south and west perimeter--there is the opportunity to condition the zoning approval in regard to types/sizes of uses, and hours of operation. So, as a result of the planned development zoning, the tools are more than adequate to insure compatibility with the adjacent residential properties.

As a final note, the existence in the center of this complex of the live/work unit would provide yet more neighborly reinforcement for the low key operation of the entire development.

## PROPOSED SCHEDULE OF DEVIATIONS

1. A deviation from all applicable requirements of LDC Section 10-296 pertaining to local roadway design standards [including Sections 10-296(b) Table 1, 10-296(d)(4), 10-296(d)(6), 10-296(d)(11) Table 3 and 10-296(e)(3)4.] to allow access from Rum Road, an existing privately maintained local sand/shell roadway within a 35 foot easement.

**Justification:** All of the “roads” on North Captiva are unpaved sand/shell and the North Captiva Community Plan refers to them as “pathways”. Private automobiles are banned per Policy 26.2.3 and all transportation is either by golf cart, bicycle or foot. As a result, this pathway network is perfectly suited to the character of the development on North Captiva. Any requirement to upgrade these pathways would be in violation of Goal 26 which seeks to maintain the character of the island.

2. A deviation from LDC Section 34-2192 which requires a 20 foot setback from a private road to allow for a 15 setback for Building C from Rum Road and Longboat Circle.

**Justification:** Both these “roads” are sand/shell pathways. While the setback from the roadway easement is 15 feet, the setback from the actual driving surface is approximately 50 feet.

3. A deviation from the requirement that the connection separation along local streets must be a minimum distance of 125 feet, per LDC Section 10-285(a) Table 1, to allow minimum connection separation distances as little as 55 feet along Rum Road.

**Justification:** This requirement is intended for developments with access on roadways meeting County standards. Given the unique character of North Captiva, where all roadways are an unpaved shell/sand surface and private automobiles are banned, lesser connection separation distances are appropriate.

4. A deviation from the requirement that roads, drives, or parking areas associated with residential subdivisions or with a multifamily or nonresidential uses located less than 125 feet from an existing single-family residential subdivision or single-family residential lots, provide a solid wall or combination berm and solid wall not less than eight feet in height not less than 25 feet from the abutting property and landscaped (between the wall and the abutting property) with a minimum of five trees and 18 shrubs per 100 linear feet or a 30-foot-wide type-F buffer with the hedge planted a minimum of 20 feet from the abutting property, per LDC Section 10-416(d)(6), to allow a 15-foot wide type-C buffer along the western property line.

**Justification:** This deviation would allow the buffer width to be reduced by ten feet from twenty-five feet to fifteen feet and is being requested in order to allow the possibility of providing parking under the proposed buildings. The parking would be limited to golf carts and bicycles. The proposed fifteen foot wide type-C buffer meets the requirement for commercial uses abutting residential uses. This buffer will consist of a solid wall with a minimum height of eight feet and will be landscaped (between the wall and the abutting property) with a minimum of five trees and 18 shrubs per 100 linear feet which also meets the landscape requirements of LDC Section 10-416(d)(6).

Please note that this request may or not be needed because the properties abutting the western property line are all zoned TFC-2 and are therefore not considered single family lots. Furthermore, LDC Section 34-2011(c) exempts all parking requirements on islands without vehicular access to the mainland.

Permitted Uses  
Rum Road Collective

Accessory Uses and Structures

Administrative Offices

Business Services, Group I (limited to Attorneys, Caterers, Clerical Services, Commercial Photography, Art and Graphics, Contractor's Office, Notary Public, Real Estate Agents and Brokers)

Caretaker's Residence

Cleaning and Maintenance Services

Contractors and Builders, Group I

Essential Service Facilities, Group I

Fences, Walls

Food Stores, Group I

Hobby, Toy and Game Shops

Hotel (10 rooms)

Insurance Companies

Live/Work Unit

Medical Office

Personal Services, Group I (limited to ATMs, Barber or Beauty Shops)

Place of Worship

Real Estate Sales Office

Repair Shops, Group I

Restaurant, Group II

Schools, Commercial

Signs in accordance with Chapter 30

Specialty Retail, Group I & II

Storage, indoor only

Studios

Used Merchandise Stores, Group I

Warehouse, Public



## **Property Development Regulations**

Minimum Lot Width:	80 feet
Minimum Lot Depth:	135 feet
Minimum Lot Area:	0.25 acres
Maximum Building Height:	35 feet (3 stories)

### **Minimum Setbacks:**

Street:	15 feet
Side yard:	11 feet
Rear yard:	15 feet
Maximum lot coverage:	40 %
Minimum open space:	20 %

**Knott · Ebelini · Hart**  
Attorneys At Law

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Mark A. Ebelini  
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□ Board Certified Real Estate Lawyer  
+ Board Certified Business Litigation Lawyer

[mroeder@knott-law.com](mailto:mroeder@knott-law.com)

May 31, 2024

Mr. Adam Mendez  
Senior Planner  
Department of Community Development  
P.O. Box 398  
Fort Myers, FL 33902

RE: Rum Rd. Collective (DCI2023-00028)

Dear Adam:

In response to your sufficiency letter dated May 29, 2024, we provide the following response.

**Transportation.**

1. We initially requested a waiver from the TIS because there are no private automobiles allowed on North Captiva, and all of the “roads” are unpaved “pathways.” When this waiver request was denied, the staff indicated they wanted a report that evaluated the impact of traffic generated by the development on Pine Island. It was explained that almost no one would be coming to North Captiva solely as a result of the uses requested by this zoning application. Nevertheless, a TIS was submitted in response that provided the trip generation rates pursuant to the ITE Manual and an estimate of trips on Pine Island. This TIS was also found insufficient, and staff requested a further analysis that included internal capture rates. A second TIS response was submitted that provided this additional information, though with the caveat that internal capture rates had no relevance in this situation. We are at a loss as to understand what additional information could be pertinent in this case, and would therefore invoke LDC34-373(d)(8) to terminate the sufficiency review process.

**Legal Description.**

A PDF version of the survey is being submitted which should be legible.

Adam Mendez  
May 31, 2024  
Page 2

Please let me know if you have any questions.

Best regards,

KNOTT EBELINI HART



Michael E. Roeder

Director of Zoning and  
Land Use Planning

MER/mcl  
Enclosure

## ATTACHMENT G

### Rum Road Collective TIS

9/6/23

The Rum Road Collective development on North Captiva is a unique project on a very unique island. North Captiva Island is a bridgeless barrier island for which the only access is either by boat or airplane. All of the “roads” on the island (designated pathways by the Community Plan) are unpaved shell/dirt roads, and private automobiles are prohibited by Policy 26.2.3. All transportation is by golf cart, bicycle or foot. As a consequence, developing a standard TIS is very problematic. Our understanding is that the staff wants the traffic impact on Pine Island to be analyzed.

North Captiva Island contains 368 single family homes, 8 condos in the Safety Harbor Club, and one mobile home. There are 297 vacant single family lots that can still be developed. The only commercial establishments on the Island are the bar/restaurant/sundries shop of the North Captiva Island Club and the Mainstay North Captiva Restaurant and Bar (which is currently closed). There is also a restaurant at the private Safety Harbor Club. The intent of the Rum Road Collective MPD is to create a modest community focal point for the island, adjacent to the North Captiva Island Club, where some public facilities and commercial space can be created for the benefit of island residents and visitors.

There are three separate parcels involved in this rezoning, and each one would have its own building, with complementary uses and design. There are only three uses that are definitely anticipated at this time: the public meeting space/library/island memorial at 4471 Bartlett Parkway, the live/work unit at 516 Rum Road, and the 10 unit “hotel” at 522 Rum Road. Of these three uses, the only one that would definitely generate some traffic on Pine Island would be the one live work unit. Presumably the resident of that unit would own their own boat and would periodically travel to Pine Island for shopping and other needs. They would likely have a car there or possibly use an Uber. These trips would not occur more than once a week, probably much less, and there really is no way to predict when or where they would happen.

The public meeting space/library at 4471 Bartlett is for meetings, classes, religious services, and weddings/reunions. All of these functions would be for the benefit of people who were already residing or visiting the island. There is a small possibility that someone attending a wedding might come over from somewhere on Pine Island for just the day, but again there would be no methodology to predict the frequency or timing of this occurrence. Or from where they would access the island. The ten room “hotel” is intended strictly for longer term stays by people who were either working on the island or had business on the island. Since these people would otherwise be commuting to the island every day, this use would reduce traffic on Pine Island and not increase it.

The buildings at 4471 Bartlett Parkway and 522 Rum Road are also proposed to contain space for some limited commercial and office uses, all dependent on market demand. It is not possible to predict with any certainty which of the many possible uses that have been submitted would actually materialize, but

it is possible to make some educated guesses. It is likely that a small breakfast/lunch and/or pizza shop would be established. Although the ITE manual (11<sup>th</sup> ed.) would indicate an average daily trip generation rate of 93.08 trips per 1000 sq. ft. for this type of use, it is unlikely that this café would be any larger than 1000 sq. ft., and it is a certainty that no one would travel from the mainland solely to eat there. It would be provisioned by the daily ferry service that supports the North Captiva Island Club. (Most visitors to the island without their own boat normally go by van and ferry from either the Island Club terminal on Doug Taylor land or Pineland Marina, where they park.) Another likely commercial venture would be a small convenience store for daily necessities. The ITE manual would indicate a trip generation rate of 54.45 per 1000 sq. ft., but again, no one from the mainland would travel to the island to shop there. A resale shop could easily be expected, or maybe a walk in business center. Possibly a small beach apparel/accessory store with some fishing gear. A barber shop/beauty salon? Everything would depend on market demand.

It is hard to imagine any commercial venture that would attract customers from off the island. The application listed a possibility of 5900 sq. ft. of retail, but that is a very long term optimistic number. Based on the questionable ITE formula of 54.45 per 1000 sq. ft., this could theoretically generate 321 daily trips. But again, these would be trips by golf cart or bicycle. To the extent that any of these businesses could replace a trip to the mainland, that would be an additional reduction in traffic on Pine Island.

In regard to office use, most of the possible tenants would be part time professionals such as attorneys, accountants, engineers, contractors and builders. The ITE would specify a trip generation of 10.84 per 1000 sq. ft., but again, no one from the mainland would travel to the island solely for these services. One exception that could draw some traffic from off the island might be a realtor specializing in North Captiva. One could imagine that some people could come to the island just for that information, but in this day of the internet and telephone, even that is not very likely. In any event, it would be impossible to predict the time of such a visit. The list of permitted uses includes medical office, and it is possible that a clinic/EMS desk of limited availability could be established, depending on demand. And some island residents may want to rent office space to conduct their business remotely. Again, no Pine Island traffic generated. The application listed a possibility of 4200 sq. ft. of office and possibly 500 sq. ft. of medical office. Again, the ITE formulas (10.84 for office, and 36 for medical office per 1000 sq. ft.), if even applicable, would indicate a trip generation of 64 daily trips, which would be by golf cart or bicycle.

The bottom line is that the uses being proposed for this property might conceivably generate on average 8-10 new trips per month on Pine Island, although it is quite difficult to predict where they would come from and from where they would access the boat or air conveyance to the island. The North Captiva Community Plan would strongly discourage any significant improvements to the existing pathways on the island (Goal 26 and Objective 26.1).



## DEPARTMENT OF TRANSPORTATION

# Memo

To: Adam Mendez, Planner, Senior

From: Pakorn Sutitarmontr, Project Manager

Date: August 8th, 2024

**Subject: Rum Road Collective, CPD (DCI2023-00028) Transportation-Related Analysis**

### **Proposed Development**

This application requests approval to rezone  $\pm 1.5$ -acres from Residential Two-Family Conservation District (TFC-2) to Commercial Planned Development (CPD) to permit 21,600 sq. ft. of building area as follows: 5,900 sq. ft. retail, 4,200 sq. ft. office, 500 sq. ft. medical office, 3,600 sq. ft. civic use, 600 sq. ft. self-storage and 6,800 sq. ft. dedicated to a 10-unit hotel.

### **Site Location**

The proposed development is located at the southwest quadrant of the Rum Rd and Bartlett Pkwy in Upper Captiva.

### **Site Access**

North Captiva Island is a bridgeless barrier island. The only access to the island is by boat or airplane.

### **Trip Generation Review**

No information on the trip generation calculations for the proposed development meeting the Institute of Transportation Engineer's (ITE) Trip Generation 11th Edition Report as required in AC-13-17: Traffic Study Guidelines for Planned Development Rezoning has been provided.

### **Roadway Section & Intersection Traffic Operation Level of Service Analysis**

The Level of Service (LOS) analysis for roadway sections and intersections as per AC 13-17 has not been provided.

### **Conclusion**

It cannot be determined whether the proposed project will not result in adverse impacts to the surrounding roadway network.

ATTACHMENT I

**Rum Road Parcels**

Section 05, Township 45 South, Range 21 East  
Lee County, Florida

**Protected Species Assessment**

**September 2022**

Prepared for:

**Knott- Ebelini- Hart, Attorneys at Law  
1625 Hendry Street Suite 301  
Fort Myers, Florida 33901**

Prepared by:

**Atwell  
4470 Camino Real Way, Suite 101  
Fort Myers, FL 33966  
(239) 334-3680**

## INTRODUCTION

The 1.15± acre project is located within a portion of Section 05, Township 45 South, Range 21 East, Lee County, Florida. The parcel is bordered to the west by single family homes, to the east by Rum Road and North Captiva Island Club, to the north by Safety Harbor Club, and to the south by Longboat Circle and single family homes.

## SITE CONDITIONS

The majority of this site has been disturbed in the past and used as storage. During or site inspection Brazilian pepper (*Schinus terebinthifolius*) was actively being cleared and mulched on the southern portion of the lot.

## VEGETATIVE CLASSIFICATIONS

The predominant vegetation associations were mapped in the field on 2022 digital 1" = 60' scale aerial photography. The approximate property boundary was obtained from the Lee County Property Appraiser's web site and inserted into the digital aerial. The property boundary was not staked in the field at the time of our site inspection and was, therefore, estimated based on the overlay of the approximate boundary on the aerial photography. Two vegetation associations were identified using the Florida Land Use, Cover and Forms Classification System (FLUCCS). Figure 1 depicts the approximate location and configuration of these vegetation associations and Table 1 summarizes the acreages by FLUCCS Code. A brief description of each FLUCCS Code is also provided below.

Table 1. Acreage Summary by FLUCCS Code

FLUCCS CODE	DESCRIPTION	ACREAGE
740	Disturbed Land	0.82
814	Dirt Roads	0.33
Total		1.15

### FLUCCS Code 740, Disturbed Land

The southern portion of this area contained a dense coverage of Brazilian pepper which was being cleared and mulched during our site inspection. The remainder of the lot has been disturbed in the past and vegetated by scattered cabbage palm (*Sabal palmetto*), areca palm (*Dypsis lutescens*), and strangler fig (*Ficus aurea*). Ground cover species include beggar tick (*Bidens* sp.), frog fruit (*Phyla nodiflora*), crow's foot grass (*Dactyloctenium aegyptium*), ragweed (*Ambrosia artemisiifolia*), and morning glory (*Ipomoea* sp.).



SECTION: 05  
TOWNSHIP: 45 S  
RANGE: 21 E



FLUCCS	Description	Acreage
740	Disturbed Land	0.82 ac.
814	Dirt Roads	0.33 ac.
		Total 1.15 ac.

Notes:

1. Property boundary is approximate and was obtained from the Lee County Property Appraiser's Website.
2. Mapping based on photo interpretation of 2022 aerial photography and ground truthing in September 2022.
3. Protected species assessment conducted on September 6, 2022.

October 05, 2023 10:58:12 a.m.  
Drawing: KEH-1 PLAN.DWG

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Protected Species Assessment Map

Rum Road Parcels



#### FLUCCS Code 814, Dirt Roads

Dirt roads used for golf cart use are located along the north and east portion of the property. A maintained landscaped area is located near the northeast corner of the lot.

### **SURVEY METHOD**

Lee County Protected Species Ordinance No. 89-34 lists several protected species of animals that could potentially occur on-site based on the general vegetative associations found on the subject parcel. Each habitat type was surveyed for the occurrence of these and any other listed species likely to occur in the specific habitat types. The survey was conducted using meandering linear pedestrian belt transects. This survey methodology is based on the Lee County administratively approved Meandering Transect Methodology. As part of this survey all live trees and snags were inspected for the evidence of cavities that could potentially be used as roosts by the Florida bonneted bat (*Eumops floridanus*). In order to provide at least 80 percent visual coverage of habitat types listed in Ordinance No. 89-34, the transects were spaced approximately 25 feet apart. The approximate locations of all direct sighting or signs (such as tracks, nests, and droppings) of a listed species were denoted on the aerial photography. The 1" = 60' scale aerial Protected Species Assessment map (Figure 1) depicts the approximate location of the survey transects and the results of the survey. The listed species survey was conducted during the mid-morning hours of September 6, 2022. During the survey the weather was warm and sunny.

Species listed as endangered, threatened, or species of special concern by the Florida Fish and Wildlife Conservation Commission (FWC) or the United States Fish and Wildlife Service (FWS) that could potentially occur on the subject parcel according to the Lee County Protected Species Ordinance are shown in Table 2. This list from the Lee County Protected Species Ordinance is general in nature, contains species that were subsequently delisted by the state, does not necessarily reflect existing conditions within or adjacent to the 1.15± acre property, and is provided for general informational purposes only. The bald eagle (*Haliaeetus leucocephalus*) (which has been delisted by the FWC and FWS but is still protected by other regulations), the Florida black bear (*Ursus americanus floridanus*) (delisted in 2012 and still protected by the Florida Black Bear Management Plan), and the Florida bonneted bat (*Eumops floridanus*) (which was listed by the FWS after Ordinance No. 89-34 was adopted by Lee County) were also included in the survey.

Prior to conducting the protected species survey, a search of the FWC listed species database was conducted to determine the known occurrence of listed species in the project area. This search revealed no known protected species occurring on or immediately adjacent to the site.

Table 2. Listed Species That Could Potentially Occur On-site

FLUCCS CODE	Percent Survey Coverage	Species Name	Present	Absent
740	80	Gopher Tortoise ( <i>Gopherus polyphemus</i> )		√
814	80	None		

## SURVEY RESULTS

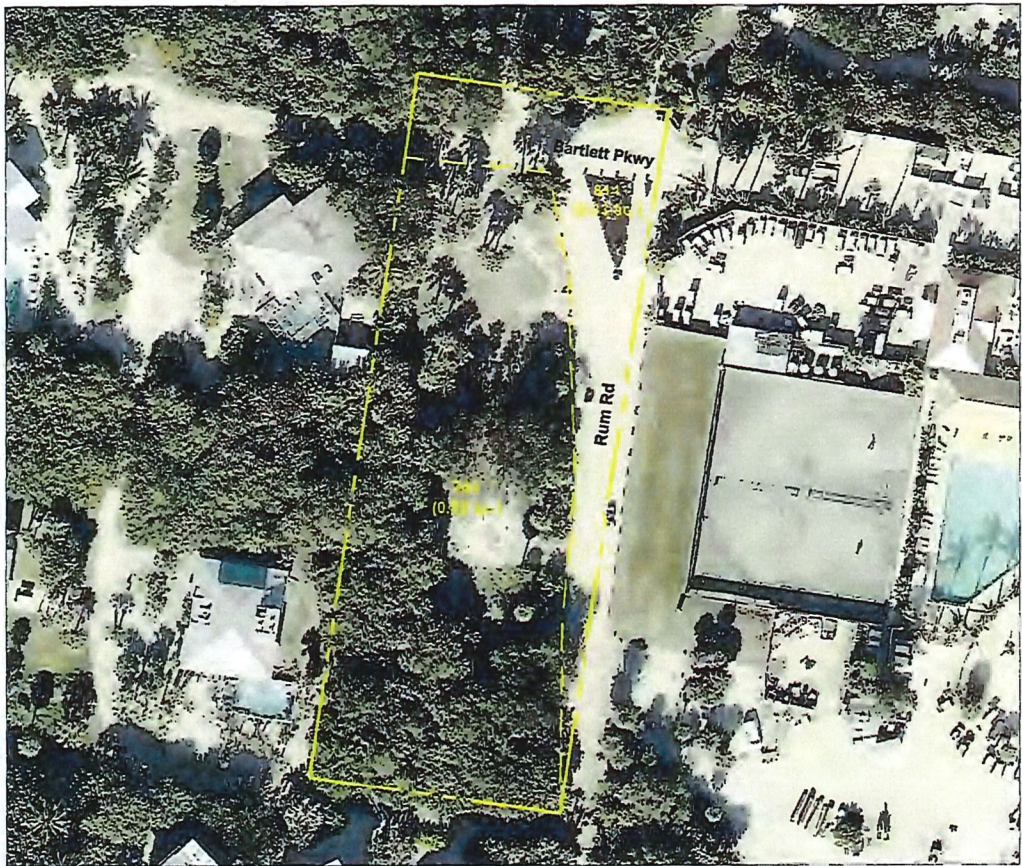
No species listed by either the FWS or the FWC were observed on the site during the protected species survey. In addition to the site inspection, a search of the FWC species database revealed no known protected species within or immediately adjacent to the project limits.

### Florida Bonneted Bat

No dead trees containing potential cavities entrances were identified. No live trees with cavities or artificial structures were observed on-site.



SECTION: 05  
TOWNSHIP: 45 S  
RANGE: 21 E



FLUCCS	Description	Acreage
740	Disturbed Land	0.82 ac.
814	Dirt Roads	0.33 ac.
		Total 1.15 ac.

- Notes:
- 1. Property boundary is approximate and was obtained from the Lee County Property Appraiser's Website.
  - 2. Mapping based on photointerpretation of 2022 aerial photography and ground truthing in September 2022.

October 05, 2023 10:58:12 a.m.  
Drawing: KEH-1 PLAN.DWG  
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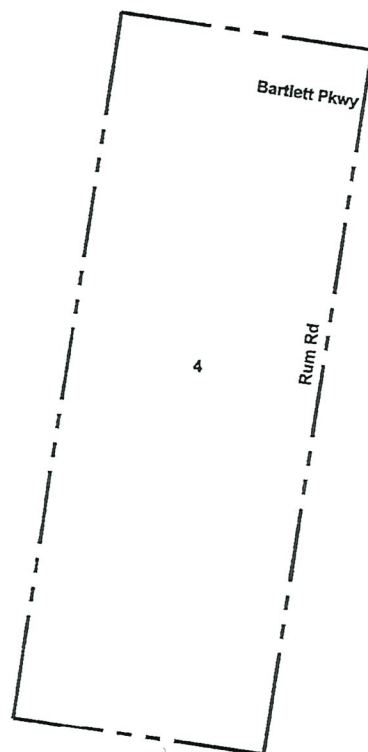
Vegetation Map

Rum Road Parcels



**ATWELL**  
866.850.4200 [www.atwell-group.com](http://www.atwell-group.com)  
4870 CALIANO REAL HWY, SUITE 101  
FORT MYERS, FL 33908  
238.334.8800

SECTION: 05  
TOWNSHIP: 45 S  
RANGE: 21 E



<u>Map Unit</u>	<u>Soil Name</u>	<u>Acreage</u>
4	Canaveral Fine Sand - Urban Land Complex	1.15 ac.

Notes:

1. Property boundary is approximate and was obtained from the Lee County Property Appraiser's Website.
2. Mapping based on photointerpretation of 2022 aerial photography and ground truthing in September 2022.
3. Soils information obtained from the NRCS Web Soil Survey.

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Drawing: KEH-1 PLAN.DWG

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Soil Map

Rum Road Parcels



ATTACHMENT J

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

DATE: October 18, 2012

TO: Board of County Commissioners      FROM: Diana M. Parker  
Chief Lee County Hearing Examiner

RE: Hearing Examiner Recommendation

Enclosed you will find the following Hearing Examiner Recommendation:

HEARING DATES: SEPTEMBER 5, 2012

DCI2011-00048      ROBERTA A. KINSEY & PHILIP KINSEY, in reference to  
THE KINSEY INN

The above referenced Hearing Examiner Recommendation has been rendered as of this date. The Development Services Division has advised that the BOCC Zoning Hearing is tentatively scheduled for **Monday, November 19, 2012**. Development Services will forward a copy of the Recommendation to the Board prior to that time in the pink zoning notebooks.

An Official transcript was obtained as the record in the hearing before the Hearing Examiner (in lieu of the usual summary presentation). Copies of those transcripts (along with an advance copy of the Recommendation) are being forwarded to you at this time. **Please retain this copy since additional copies of the transcript will not be contained in your zoning notebook.**

If you have any questions concerning this or any other procedure, or need additional information, please let our office know.

cc: Donna Marie Collins / County Attorney's Office  
Susan Henderson / County Attorney's Office  
Jamie Prining / Community Development  
Pam Houck / Division of Zoning  
Nettie Richardson / Community Development  
Matt Noble / Community Development  
Andy Getch / LCDOT  
Sue Noe / Economic Development  
Anura J. Karuna-Muni / Natural Resources

**OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA  
HEARING EXAMINER RECOMMENDATION**

**REZONING:** DCI2011-00048  
**APPLICANT:** ROBERTA KINSEY & PHILIP KINSEY, In reference to  
THE KINSEY INN  
**HEARING DATE:** SEPTEMBER 5, 2012

**I. APPLICATION:**

This matter came before the Lee County Hearing Examiner as an Application for a Rezoning to a Commercial Planned Development (CPD) pursuant to the Lee County Land Development Code (LDC).

Filed by ROBERTA KINSEY & PHILIP H. KINSEY TRUST, 2583 First Street, Fort Myers, FL 33901 (Applicants/Owners); ROBERT HUTCHERSON PLANNING SERVICES, LLC c/o ROBERT HUTCHERSON, AICP, 1712 SE 8<sup>th</sup> Terrace Cape Coral, Florida 33900; THE LAW OFFICE OF MATTHEW D. UHLE, c/o MATTHEW D. UHLE, 1671 Hendry Street, Suite 411, Fort Myers, Florida 33902; and WILSONMILLER-STANTEC c/o CRAIG SCHMITTLER, 12801 Westlinks Blvd., Fort Myers, Florida, 33913 (Agents).

Request is for a rezone of 1.1+/- acres from Commercial (C-1) to Commercial Planned Development (CPD), to allow 17 hotel units, a pool, pool bar and lodge building which will consist of a meeting room, office, a caretaker's unit and a unit for the Sheriff's Department etcetera. The development will be served by a well and septic system.

The subject property is located at 4390 Point House Trail, Captiva Planning Community, Lee County, FL. Planning Community, Section 4 Township 45 South, Range 21 East, and Section 5, Township 45 South, Range 21 East, Upper (aka North) Captiva Island, Lee County, FL. (District #1)

**II. STAFF REPORT AND RECOMMENDATION: APPROVE WITH CONDITIONS**

The Department of Community Development Staff Report was prepared by Nettle M. Richardson. The Staff Report is incorporated herein by this reference.

**III. RECOMMENDATION OF HEARING EXAMINER:**

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners (BOCC) **DENY** the Applicant's request for a rezone to Commercial Planned Development to allow 17 hotel units for the real estate described in Section IX., Legal Description, as being inconsistent with the Lee Plan, particularly Policy 1.4.2 and Goal 25, and incompatible with the surrounding uses.

IF, HOWEVER, the BOCC finds that the request is consistent with the Lee Plan and is compatible with the surrounding uses, the Hearing Examiner recommends that the BOCC approve the Applicant's request, WITH THE FOLLOWING CONDITIONS AND DEVIATIONS.

A. CONDITIONS:

1. Master Concept Plan/Development Parameters

The development of this project must be consistent with the one-page Master Concept Plan entitled "Kinsey Inn Commercial Planned Development," stamped received June 27, 2012 (**Exhibit B**), except as modified by the conditions below. This development must comply with all requirements of the Lee county LDC at time of Local Development Order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. Uses and Site Development Regulations

The following limits apply to the project and uses:

This development is limited to a total of 10 hotel/motel units, with pool, pool bar and a 2,600-square-foot lodge building containing a caretaker's residence, meeting room, and office. One of the units will occasionally be provided to the Sheriff's Department or other governmental agencies when an overnight stay is needed. The 10 hotel/motel units will consist of 7 single room units (300 square feet) and 3 double room units (2 units @ 625 square feet and 1 unit @ 840 square feet). The typical hotel/motel unit must be in substantial compliance with the architectural rendering attached hereto as **Exhibit C**.

a. Schedule of Uses

Accessory uses and structures

Clubs, commercial, only within the lodge building

Clubs, fraternal, only within the lodge building

Essential Services

Hotel/Motel (maximum of 10 units) and the following accessory uses:

Administrative offices, only within the lodge building

Caretaker's apartment, only within the lodge building

Consumption on Premises (2-COP beer & Wine) within lodge building and pool area

Pool Bar, only within the pool area

Recreational facilities, private on-site (pool, boardwalk, multi-slip docking facility)

Rental and leasing Establishments, Group I, only under the lodge building and limited to bicycles and non-motorized boat, kayak and canoe rentals for the guests of the Inn

Signs in accordance with Chapter 30



b. Site Development Regulations

Minimum Lot Dimensions

Minimum Lot Area: 1.1± acres

Minimum Lot Width: 75 feet

Minimum Lot Depth: 100 feet

Minimum Setbacks:

North (Sea Air Road): 15 feet

East (Pine Island Sound): 50 feet

South (side property line): 20 feet

South (Safety Harbor): 139 feet

West (side property line): 15 feet

Maximum Height: 35 feet above flood elevation

Maximum Lot Coverage: 40 percent

3. Environmental Conditions

a. Prior to issuance of a vegetation removal permit, an updated protected species survey must be submitted to the Division of Environmental Sciences. If any species are found, an appropriate species management plan must be reviewed and approved by the Division of Environmental Sciences.

b. A lighting plan must be reviewed and approved by the Division of Environmental Sciences:

- lighting and
- 1) Prior to Development Order approval for the site and dock
  - 2) Prior to building permit approval for the building lighting

The plan must comply with the lighting requirements in LDC Sections 14-76 and 34-625.

c. Prior to Local Development Order approval, the project must delineate a minimum of 14,389 square feet of open space.

d. Prior to Local Development Order approval, the project must delineate a minimum of 12,632 square feet (0.29 acres) of indigenous open space. The well easement in the southeast corner of the project must be removed from the indigenous open space.

e. Prior to Local Development Order approval, an Indigenous Maintenance Plan must be submitted for review and approval by ES staff per LDC 10-415(b)(4). The Management Plan will prohibit any trimming or reduction in height of any vegetation within the indigenous preserve area and the natural waterway buffers along both Pine Island Sound and Safety Harbor.

f. No construction material or construction activities for the hotel/motel/lodge (i.e. scaffolding, building materials, and storage) can occur within the indigenous preserve area. A 5-foot minimum building setback from the preserve must be provided on the Development Order plans. If any encroachment or intrusion of machinery, personnel or materials into the preserve occurs during the construction of the hotel/motel/lodge, Applicant must report such encroachment/intrusion, cease construction immediately and amend the MCP and corresponding permits to address the matter.

g. All proposed dock and shoreline structures must meet the requirements of Lee County Land Development Code (LDC) Chapter 26.

h. The location and configuration of the dock as shown on the MCP is conceptual and subject to design criteria, and will be finalized prior to the Development Order approval.

i. The installation of In-water facilities in Pine Island Sound is prohibited. The dock for this property is limited to six (6) wet slips in Safety Harbor only.

j. Prior to approval of the Development Order, the application must include a bathymetric survey of the mooring slip areas and a riparian survey sealed by a Professional Surveyor and Mapper (PSM), certified to Lee County illustrating the proposed dock's location.

k. A Dock and Shoreline Permit must be obtained from the Division of Environmental Sciences for the proposed dock.

4. Hurricane Condition

Prior to the issuance of Local Development Order, the Applicant must provide a Hurricane Evacuation Plan to Lee County Emergency Management for approval. Literature and brochures for Hurricane Awareness/Preparedness describing the risks of natural hazards must be available, on-site, for the guests of the Inn.

5. Utilities

Prior to the issuance of Local Development Order, the Applicant must demonstrate compliance with all State requirements for the septic system.

6. Prior to the issuance of Local Development Order, the Applicant must provide proof that the hotel is registered with the Department of Revenue.

7. Consumption on Premises (COP)

a. COP is allowed inside the hotel/motel units.

b. Outdoor COP is limited to a 2-COP liquor license (beer and wine), which is restricted to pool and pool bar area, substantially as shown on the Kinsey Inn Master Concept Plan, stamped received June 27, 2012.

c. No live musical entertainment is allowed in the outdoor pool area; however "background" music may be piped in, at a reduced volume, so that patrons may maintain a normal level of conversation. Background music is prohibited before 10:00 am and after 6:00 pm, Monday through Sunday.

d. Any temporary expansion of the COP use beyond the limits of the pool area must obtain a Temporary Permit from Lee County.

e. The hours of operation for the outdoor pool and bar area, in conjunction with the service of alcohol (COP), are limited from 10:00 am to 6:00 pm daily. This does not prohibit the consumption within the hotel rooms or the meeting room of the lodge.

f. Lighting on the proposed pool and pool deck must be designed in accordance with LDC Sections 14-76.

8. The 10 hotel/motel units cannot be outfitted with kitchens or cooking facilities or appliances (stove, cook top, grill, microwave, hot plate, etc.).

9. At time of building permit submittal, the Inn must be designed in accordance with Florida Green Lodging Program.

10. Lee 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 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 Plan provisions.

11. Compliance to 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.

12. Solid Waste Management

As part of any Local Development Order approval for vertical development, the Development Order plans must include facilities, in compliance with LDC Section 10-261 and Solid Waste Ordinance # 11-27, for the pick-up/disposal of solid waste and recyclables. The minimum area required for, and specific locations of, these facilities will be reviewed at the time of Local Development Order application.

13. Tall Structures

Applicant must comply with all FAA regulations, relating to encroachment of protected air space, during the construction and maintenance of this project.

**B. DEVIATIONS:**

**Deviation 1** seeks relief from Lee County Land Development Code (LDC) Section 10-291(2), which states all development must abut and have access to a public or private street designed, and constructed or improved, to meet the standards in Section 10-296 (a category "A" road), to allow access to the existing shell/gravel street system.

Justification: The LDC typically requires a commercial development to have access to a street designed and constructed in accordance with Section 10-296. This Section requires a right-of-way between 40 feet to 60 feet in width, including a 1.5-foot-thick asphalt pavement, 8 inches of road base and 12 inches of sub-grade material, and including either swales or pipes, depending on the type of construction. This deviation allows the Applicant to construct the development without paving the roads, where there is no car or truck traffic. The Island has prohibited gasoline powered vehicles on the Island; therefore, the approval of the deviation serves to enhance the development by the elimination of unnecessary impervious area. The request will also provide for protection of the public health, safety and welfare as residents of the Island have banned automobile traffic. Staff recommended approval of the deviation.

The Hearing Examiner recommends **APPROVAL** of Deviation 1.

**Deviation 2** seeks relief from Lee County Land Development Code (LDC) Section 10-416(d)(4), which requires either a 15-foot-wide Type "C" or 30-foot-wide Type "F" buffer between commercial and residential uses. The Type "C" must be 15 feet wide with an 8-foot-high wall, 5 trees per 100 linear feet, and a double hedge row planted at 24" in height. The Type "F" must be 30 feet wide with 10 trees and a double hedge row planted at 48" in height, to allow a Type "F" buffer with a width of 20 feet.

Justification: The property abuts a single family residence to the east, and there are other single-family residences to the south and east. The Applicant has chosen to provide a Type "F" buffer, but are asking to reduce the 30-foot width to 20 feet. The west portion of the south boundary is comprised of the Indigenous preserve area and the natural waterway buffer will provide adequate screening for that portion of the development. The Type "F" buffer is only required along the south boundary – outside the indigenous preserve – and there will be the required number of plants and trees in a narrower width, which should help to intensify the buffer. Applicant believed that this deviation will enhance the development. ES Staff recommended approval of this deviation, with two conditions.

The Hearing Examiner recommends **APPROVAL** of Deviation 2, **SUBJECT TO** the following conditions:

- A. Prior to Local Development Order approval, the landscape plans must demonstrate a 20-foot-wide Type "F" buffer along the east buffer. The buffer plantings must comply with the Type "F" requirements identified in LDC 10-416(d).

B. Prior to Local Development Order approval, the landscape plans must demonstrate that all required plantings must be salt tolerant.

Deviation 3 seeks relief from Lee County Land Development Code (LDC) Section 34-935(b)(f), which requires a 20-foot setback from a street or road easement, to allow a 15-foot setback from SeaAir Lane (north property line).

Justification: This setback requirement applies only along the north portion of the property line where the 15-foot-wide road easement (SeaAir Lane) is located. The MCP shows the 15-foot setback to the most northern structure from the easement, and a 15-foot-wide Type "D" buffer will be located within the 15-foot setback. This reduced setback helps the Applicant preserve the mangrove buttonwood wetland to the west. ES Staff recommended approval of this deviation.

The Hearing Examiner recommends **APPROVAL** of Deviation 3

Deviation 4 seeks relief from Lee County Land Development Code (LDC) Section 10-415(b)(1)c., which requires a minimum setback of 20 feet from indigenous vegetation areas, to allow a 5-foot setback from the indigenous area on the south side of the upland area.

Justification: This deviation is to allow the location of the lodge as shown on the MCP abutting the indigenous preserve area. The lodge will be constructed on pilings, not at grade, which the Applicant asserted would mean there would be no fill or slabs in close proximity to the preserve area. Since the buildings will utilize fire sprinklers and the indigenous area is accessible from the north and south, there is plenty of access for the fire department in the event of a brush fire. Also, the smaller setback does not create a fire hazard to the surrounding structures. Placement of the lodge building at this location allows for a useable courtyard/pool area and provides for the space necessary to maintain the 50-foot setback from Pine Island Sound and the 139-foot setback from Safety Harbor.

Environmental Sciences' Staff also reviewed this deviation and is concerned that the preserve will be impacted during the construction of the buildings, if the setback is reduced to this narrow width. They, however, recommended approval, with a condition requiring all possible measures be taken to ensure no impact on the preserve.

The Hearing Examiner recommends **DENIAL** of Deviation 4, noting that the reduced number of hotel/motel units reduces the footprint and area necessary for this development, such that the Applicant can easily comply with the required 20-foot setback.

IF, however, the BOCC approves this Deviation, the Hearing Examiner recommends that it be approved, SUBJECT TO the following condition:

No construction materials, construction activities or maintenance activities (i.e. scaffolding, building materials, and storage) can occur within the indigenous preserve area. A 5-foot minimum building setback from the preserve must be provided on the Development Order plans.

**Deviation 5** seeks relief from Lee County Land Development Code (LDC) Section 10-416(d)(9), which requires a 50-foot-wide vegetative buffer from a natural water body, to allow the existing 15-foot-wide road easement for Point House Trail to remain.

**Justification:** The Applicant is providing the 50-foot-wide natural waterway buffer, as required. The deviation is to allow that waterway buffer to include the existing 15-foot-wide easement for Point House Trail. The road easement is existing and the only access to residential properties to the south of the project. No additional improvements are proposed for the existing easement. Granting this deviation will promote the existing development on the Island. ES Staff recommended approval of this deviation, with a condition, noting that the easement has existed across the indigenous area for many years.

The Hearing Examiner recommends **APPROVAL** of Deviation 5 SUBJECT TO the following condition:

Prior to Local Development Order approval, the plans must demonstrate the natural waterway buffers will comply with LDC Section 10-416(d)(9). Management and maintenance of the natural waterway buffer areas must be included in the indigenous maintenance plan provided for the site.

a. For Pine Island Sound: A planting plan must be submitted to the Division of Environmental Sciences for review and approval to meet the vegetation density requirements of LDC 10-416 (d)(9). The planting must be suitable for survival in a coastal environment (salt tolerant vegetation) and consist of native species currently found on North Captiva Island.

b. For Safety Harbor: The approved plans must demonstrate the 50-foot-wide natural waterway buffer; the buffer can be permitted to include the existing 15-foot-wide road easement.

#### **IV. HEARING EXAMINER DISCUSSION:**

This is a request to rezone a 1.1-acre parcel, located on the east side of the Safety Harbor waterbody on Upper Captiva, from C-1 to CPD to allow development of a 17-unit hotel, with caretaker's quarters, and meeting rooms. The subject property is an irregularly shaped parcel, with about 145 feet of shoreline on Pine Island Sound (to the east), and about 155 feet of shoreline on Safety Harbor (to the south). It is abutted on the southeast by other C-1 zoned properties, developed with single-family homes, and on the west by two vacant C-1 zoned properties. To the northwest is the Island's private airstrip (zoned AG-2) that cuts across the north end of the Island and then other single-family residential properties zoned C-1A and TFC-2 at the north tip of the Island. The

property is designated Outer Islands (Policy 1.4.2) and has an existing Community Plan – Goal 25 in the Lee Plan.

#### POLICY MATTER

The main issue in this case involves LDC regulations relating to hotels and the determination of the "density" allowed for hotels in conventional and planned developments zoning districts. LDC Section 34-1801, et. seq., was adopted to establish an equivalency calculation between hotel rooms and dwelling units. That provision requires all hotels to register with the Department of Revenue (DOR) and to pay the County's tourist tax. Hotels that are not registered with the DOR or are not paying the tourist taxes are subject to the density limitations of the land use category in which they are located, and Section 34-1802(4)b establish a conversion or equivalency factor for hotels subject to density requirements. On the other hand, Section 34-1802(4)d exempts hotels that are approved as planned developments, from having to comply with the density limitations of the land use category. No explanation is provided for the "exemption."

Staff relied on those LDC provisions in recommending approval of this request for 17 hotel rooms and a caretaker's apartment in the Outer Island land use category, and in finding the request to be consistent with the Lee Plan.

The question facing the Hearing Examiner is where Staff obtained the authority to set up the Section 34-1801, et. seq., "density" compliance provisions for hotels. She has been unable to find anything in the Lee Plan that equates, or authorizes the equation of, hotel rooms to dwelling units. The Hearing Examiner understands that efficiency hotel rooms are more akin to dwelling units under the definition in the LDC, and could be treated as dwelling units for purposes of determining intensity of use or potential impacts. However, LDC Section 34-1801, et. seq., does not distinguish between residential hotels and non-residential hotels; it merely distinguishes between hotels in a planned development or in a conventional zoning district. It even contains provisions for hotels that are in land use categories that do not have established density requirements, i.e., certain Interchange and Industrial districts.

If there is no Lee Plan provision authorizing the provisions in LDC Section 34-1801, et. seq., the Hearing Examiner is unable to find that Applicant is "entitled" to the approval of this request, as the request is inconsistent with the Lee Plan.

**IT IS NECESSARY FOR THE BOCC DETERMINE IF THE PROVISIONS IN LDC SECTION 34-1801, et. seq., RELATING TO THE DENSITY CALCULATIONS AND EXEMPTIONS FOR HOTELS, SHOULD BE RETAINED AND APPLIED, AS HAS BEEN DONE FOR THE PAST 19 YEARS. IF THE BOCC DETERMINES THESE PROVISIONS ARE IN THE PUBLIC'S BEST INTERESTS, THEY NEED TO DIRECT STAFF TO AMEND THE LEE PLAN TO LEGITIMIZE THESE PROVISIONS.**

*Additional discussion below under Hearing Examiner Analysis*



### Issues

There were no outstanding issues between Staff and Applicant with regard to this request.

However, eight of the Island's residents and the Upper Captiva Civic Association raised several issues in their objections to this request, and submitted numerous letters or emails from other residents also objecting to the request.

- Their predominant argument was that the request was not consistent with the provisions and intent of their Community Plan (Goal 25) or with the other lower density – lower intensity uses on the Island. The purpose of their Community Plan is to preserve the peace and tranquility of living on this barrier Island and to protect the environment and natural resources that are so special to the Island.
- They felt the hotel would jeopardize their way of life, because the transient hotel would attract a type of visitor that was not compatible with the lifestyle of this Island.
- They also asserted the hotel would not provide for the cooking or entertainment needs of their guests, as is provided by the single-family homes that are rented as vacation homes. They believed that would place a strain on the Island's resources and Island's property owners.
- They were concerned that the hotel would not have a multi-day minimum stay, as do the other rental properties on the Island. Those private homes have a minimum rental of 7 days, while the hotel's minimum would be one night. Those properties also set a maximum number of guests that could occupy the house at one time; the hotel's head count will only be restricted by the number of rooms it has to offer. Given that short-term stay potential, the residents believed the hotel would result in a detrimental annual increase in the visitors coming to the Island and utilizing the Island's amenities.
- The Upper Captiva Civic Association argued that Applicant's request is actually for 18 units on this small parcel. That would be 17 hotel rooms and the permanent caretaker's apartment in the lodge building. That number of units is totally inconsistent with the one unit per acre maximum density set out in Lee Plan Policy 1.4.2.
- They believed that the proposed development plan with the high number of units and potential number of guests, if each room is filled, would be incompatible with the abutting and nearby single-family residential uses. They asserted that the impacts from this project would adversely affect those families or their guests, and would disrupt the peace and tranquility of the area and the Island.
- There is no central sewer or potable water on the Island, so each parcel must provide its own septic and water facilities. That is done by having an on-site well and septic system. They were concerned about the size of the on-site septic system necessary to accommodate the needs of at least 18 bathrooms, particularly its potential to pollute their abutting and other nearby water wells.
- The waters of Safety Harbor and Pine Island Sound – abutting both sides of the subject property – are within the Pine Island Sound Aquatic Preserve – which are subject to special state and federal water quality protections.



- Septic system 12/12/11  
with island's Dept  
to 2007-2011*
- In addition, there is a large mangrove wetland lying between the waters of Safety Harbor and the upland area of this parcel, where the septic system would have to be installed. That mangrove area is required to be preserved and is also subject to special water quality protections, as it is tidally inundated from Safety Harbor.
  - The members/owners of the Island's airstrip were concerned about the encroachment of construction equipment and machinery into the protected air space around the airstrip.
  - Those same members were also concerned that the hotel's guests would use the shoreline/beach area right at the east end of the airstrip, noting that planes landing and taking off fly very, very low over that beach. Anyone in that area when a plane is attempting to land or take off will jeopardize their own safety, as well as that of the pilots and their passengers.

### Background

This request is to allow the development of a 17-unit hotel, with pool and pool bar, and a 2,600-square-foot lodge building, containing a caretaker's apartment, meeting rooms and office on 1.1 acres. The subject property is irregularly shaped – generally resembling a "boot". At the top of the boot is a small beach area on Pine Island Sound and the east end of the private air strip. The entire bottom of the boot, and part of the shaft, is a tidally inundated mangrove wetland on Safety Harbor. A 15-foot-wide easement runs parallel to Safety Harbor across the bottom of these mangroves, and provides access to the numerous single-family homes to the southeast of the site. The small middle portion of the boot is the upland area, on which the hotel and lodge will be constructed.

Applicant's Master Concept Plan (MCP) depicts 11 12-foot by 25-foot buildings, two 2-story 25-foot by 25-foot buildings, one 2-story 20-foot by 42-foot building and one 2-story 20-foot by 65-foot building (lodge). These buildings loosely form a triangle, with the lodge being located at the south end abutting the mangrove wetland. They must be elevated to meet FEMA requirements, and will be connected by an elevated network of decks, which provides access to each of the units and the lodge. Applicant is designing the structures to resemble the historic "fish houses" found in the local waters.

The pool and pool bar are depicted - essentially, at grade – in the open triangular area, between the sides of the triangle. Applicant has also requested a consumption on premises (COP) use for the pool and pool bar area. A multi-slip docking facility is shown into Safety Harbor at the south end of the property, and a raised walkway traverses the mangrove preserve to provide access to the docking facility from the hotel/lodge. Access to the hotel/lodge is shown both from south boundary, via the elevated walkway, and from the north corner of the property, where it abuts SeaAir Lane. The septic drainfield is to be located on the northwest side of the structures, but no location is shown for the water well or the actual septic tank.

Applicant will meet the required 50-foot natural waterbody setback for Pine Island Sound and Safety Harbor. The setback from Safety Harbor, another natural waterbody, will be about 139 feet, because of the mangrove wetland. The project is required to provide 9,593 square feet of open space, and Applicant will be providing the 14,389-square-foot

preserve area and 1,757 square feet in the buffers. The southeast buffer is shown as a 20-foot-wide Type F buffer (no wall), separating this commercial use from the abutting residential uses. This narrower buffer (20 feet instead of 30 feet) is the subject of Deviation 2.

Applicant explained that, some time ago, a development order was issued for an 11-unit efficiency motel for this parcel and the two vacant C-1 zoned parcels to the west. However, that motel was never developed and the development order expired. They assert that the subject property was intended for a hotel use, from its initial rezoning to a commercial district in 1963, and pointed out that a hotel/motel use was specifically allowed in the C-1 zoning district.

They agreed with Staff's assessment that the requested hotel/motel use – even at 17 units – was a "downzoning," when looking at the other possible uses for the site. They cited to such uses as: bar & cocktail lounge and nightclubs; boat parts, sales, repair, storage, and rentals; food stores; convenience food and beverage store; health care facilities; flea market; department store; impound yard; marina; banks; laundromat; specialty retail; and restaurants. They stressed that those types of uses would have greater impacts on the adjacent residential uses than would the hotel/motel use.

Applicant advised that the hotel will be a Florida Green Lodging facility. The Florida Green Lodging program is a voluntary program overseen by the Florida Department of Environmental Protection, with the purpose of recognizing facilities that will commit to preserve and protect natural resources. Their facility will provide educational materials for visitors, recycle waste, and use rain bowls/barrels/cisterns for water conservation and irrigation. The buildings are designed to make use of cross-ventilation for cooling, instead of relying solely on air conditioning.

Applicant asserted that they needed 17 units for a couple of reasons. First, the LDC requires a hotel to have a minimum of 10 units. Secondly, the additional units will help to ensure the viability of this commercial venture. They pointed out that their request – which calculates out to about 7 units per acre using the conversion criteria – is not that much higher than the actual density on the Island. They noted that the residential density for the Island is predominantly 4 units per acre, but the LDC does not restrict the number of bedrooms that could be built in a single-family home on one of those quarter-acre lots. They provided a computer researched exhibit that showed several Island properties that advertise 5 or 6 bedrooms, and limit the number of guests to 10 to 15 per visit. Most of the other properties on that exhibit had between 2 and 4 bedrooms and allowed between 4 and 10 guests per visit.

They argued that there would be no difference between the impacts associated with their project and the impacts associated with the rental of a 6-bedroom home for 15 people. There would be the same noise issues, the same activity issues, the same use of golf carts on the roadways and use of other Island facilities and beaches.

Applicant cited the 2004 approval of the Grady's Lodge rezoning as support for their request, noting that it was a request for a hotel/motel with 15 rooms and a small restaurant on 1.59 acres. The Grady's Lodge parcels are located adjacent to the Safety

Harbor Club commercial facilities, in an upland area, separated by roadways from residential uses and lots on the other three sides.

Applicant requested 5 Deviations with this MCP. The first Deviation was from the LDC requirement that commercial developments have access to a Category "A" roadway, noting that all the roads on North Captiva are shell/gravel and will not meet the Category A criteria. Since golf carts are the primary means of transportation, it is not necessary – nor desired – to improve the road adjacent to the subject property to a Category A level.

The second Deviation was a request for a 20-foot-wide, instead of a 30-foot-wide, buffer along the east boundary line, between this commercial use and the adjacent single-family residences. The mangrove preserve will operate as a buffer for the bottom portion of the site, but the upland portion must be buffered. Applicant explained that they will provide the required number of trees and shrubs for the Type F buffer – It will just not be as wide, because they need the extra 5 feet for the upland development area. They believed that the narrower width would make the buffer denser and, eventually, more opaque.

Deviation 3 was a request to have only a 15-foot setback, instead of the required 20-foot width, from SeaAir Lane along the north property line. Applicant wanted this Deviation, even though the MCP sets out a 15-foot building setback from the north property line, and a 15-foot-wide Type D buffer along that property line. Staff recommended that this Deviation be withdrawn, since the CPD's development regulations show a 15-foot street setback. However, Applicant doesn't want to withdraw it without some assurances that the CPD's development regulations control over the general LDC requirement.

Deviation 4 was a request for a 5-foot, instead of the required 20-foot, setback from the mangrove wetland preserve area. Applicant stated that, per the MCP, the 2-story elevated lodge structure will be set back about 5 feet from the indigenous preserve boundary line. They asserted that, since the hotel and lodge are elevated structures, there will be no impacts on the preserve area. They indicated they needed the additional area to allow for a useable pool and pool bar area and it allows them to keep the 50-foot setback from the Sound.

The fifth Deviation was a request to allow the existing 15-foot-wide road easement for Point House Trail to remain as located within the 50-foot-wide setback from Safety Harbor. They recognized that natural waterbody setbacks do not allow roadways through them, but Point House Trail has been located along the Safety Harbor shoreline for many years, and provides the only golf cart access to the homes at the end of the point.

Staff recommended approval of the CPD rezoning request, with conditions, finding that the request, as conditioned in the Staff Report, was consistent with the Lee Plan and Land Development Code, and was compatible with the surrounding uses and the general nature and lifestyle of the Island. They found that this use was consistent with the Objective 25.1, finding that the intensity of this development was at a "sustainable level" that would protect the natural environment of the Island. They also found that the

design of the 17-unit hotel and lodge was consistent with the North Captiva character and environment, which made it consistent with Goal 25.

It was Staff's opinion that this request was actually a "downzoning," given the other more intensive uses that were allowed in the C-1 zoning district. They noted that Applicant could have come in for a development order, at any time, to develop the site with one of the more intense and less compatible uses in that list. They even noted that this site could have similar uses to the more industrial-type storage and waste collection sites to the north of Barnacle Phil's restaurant. Those uses would have been totally incompatible with the abutting and adjacent residential uses, whereas the hotel use would not be.

Staff asserted that this use, as conditioned, would actually "buffer" the residential uses from the activities taking place at the storage and waste collection sites. It would provide a "transition" between those more industrial-type uses and the single-family residential uses along the point, thereby protecting those residents and their quality of life.

Staff recommended approval of Deviations 1, 2, 4, and 5, finding that these Deviations would enhance the proposed project, and would promote and protect the public health, safety and welfare. They recommended that Deviation 3 be withdrawn by Applicant, but expressed no objection to it, when Applicant refused to withdraw it. Staff just thought it was unnecessary.

#### Public

The public hearing was attended by several Island residents and property owners, the vast majority of which disagreed with the request for the reasons provided in the Issues section above. Only a couple of property owners/residents were in favor of the request, noting that it would bolster the economy of the Island businesses.

#### Hearing Examiner Analysis

The undersigned Hearing Examiner cannot concur with Staff's analysis, findings or recommendation of approval of the 17-unit hotel and lodge facility, finding that the request does not meet the criteria for approval set out in LDC Section 34-145, as it is not consistent with the Lee Plan nor the Upper Captiva Community Plan. The Hearing Examiner finds that the requested use, even as conditioned in the Staff Report, is not consistent nor compatible with the surrounding uses, and will be detrimental and injurious to the lives of the abutting and nearby property owners. The Hearing Examiner also finds that the 17-room hotel is not consistent with the intensity of use in the area, and will create adverse impacts on the nearby residential uses.

As noted above ("Policy Matter"), the Hearing Examiner is unable to find the request, even as conditioned in the Staff Report, to be consistent with Lee Plan, because the Lee Plan does not contain any provisions authorizing the equivalency comparison between hotel rooms and dwelling units. She understands that these provisions have been around for almost 20 years and have been applied in many cases over those years. However, no explanation was given to the Hearing Examiner, during the hearing, for

establishing a density equivalent requirement for some hotels but exempting others from complying with those criteria or the density set out in the land use category.

These provisions were found in the 1993 Zoning Ordinance, in which Section 514 allowed transient hotels on 2 acres to have a maximum of 25 units per acre. When the Zoning Ordinance was converted to the Land Development Code in 1994, this Section became Section 34-1801, et. seq., with some changes to the density allowance and calculation procedures. Section 34-1801, et. seq., contains the following provisions:

- A hotel must have a minimum of 10 rooms; anything less is not a hotel.
- Specific room sizes and the density equivalency for those room sizes were established. [34-1802(4)b]
- Hotels were required to register with Department of Revenue and pay the County's tourist development tax. If not registered or paying tax, then hotels must abide by density limitations. [34-1801]
- Conventional zoning district – hotels are required to comply with established room sizes and with the density limitation of the land use category. [Section 34-1802(4)b]
- Planned development zoning district – hotels exempted from complying with room size or density requirements, "provided all other aspects of the development (height, traffic, intensity of use, etc.) are found to be compatible with the surrounding area and otherwise consistent with the Lee Plan." [34-1802(4)d]
- Zoning districts without density limitations – number of units will be determined by design and compliance with land development regulations (open space, setbacks, height restrictions, etc.). [34-1802(4)c]

The Hearing Examiner understands that hotels are commercial uses, which are typically evaluated on intensity – not density. However, LDC Section 34-1801, et. seq., has created provisions that equate, or provide for conversion of, the number and size of hotel rooms to a measure of density – but only in conventional zoning cases and for hotels not registered with the DOR or paying the tourist tax.

When questioned about these provisions, Staff advised that they have been using them for many, many years, without objection from the Hearing Examiners or the BOCC. Neither Staff nor Applicant cited to Lee Plan provisions that authorized this comparison between hotel rooms and density, nor any provisions that could serve as the basis or genesis for the equivalency factor or its exemption in certain cases. At the request of the Hearing Examiner, Staff provided Staff Reports for 14 "similar" cases going back as far as 1996. After reviewing those Staff Reports, the Hearing Examiner found that the Staff Reports – at best – just generally discussed the application of Section 34-1801, et. seq., without any reference to enabling provisions in the Lee Plan. Nevertheless, those Staff Reports then contained the finding that, because the request was consistent with Section 34-1801, et. seq., it was consistent with the Lee Plan.

Staff and Applicant based their arguments that this case was consistent with the Lee Plan on the 2004 approval of the Grady's Lodge case. They acknowledged that the 2004 approval preceded the adoption of the Upper Captiva Community Plan, but



asserted that the findings of Lee Plan consistency from that case should serve as precedent for the findings in this case.

The undersigned Hearing Examiner concedes that these provisions have been applied for a number of years and regrets that the issue did not arise sooner. However, the Hearing Examiners committed errors of law when they found the application of Section 34-1801, et. seq., to the hotels in those 14 cases to be consistent with the intent and provisions of the Lee Plan. Now that it is known there is no corresponding basis in the Lee Plan for the equivalency/conversion factors or the other provisions of Section 34-1801, et. seq., the Hearing Examiners cannot continue to find this type of request consistent with the Lee Plan, even if the proposed planned development is consistent with other provisions of the Plan.

Even if the Lee Plan contained provisions allowing the application of Section 34-1801, et. seq., to hotel requests, the Hearing Examiner cannot find the request, even as conditioned in the Staff Report, to be consistent with the intent and provisions of Lee Plan Goal 25 – the Upper Captiva Community Plan.

In this case, using the density equivalent calculation for the C-1 conventional zoning district, Applicant would be entitled to a maximum of three rooms – if less than 425 square feet in size, as those three rooms equate to one dwelling unit. The density in the Outer Island land use category is one unit per acre, and the property is approximately 1.1 acres in size. Applying the same room size equivalency factors to this request, Applicant is asking for the equivalent of 7 units on this 1.1-acre property – that is 7 times the density allowed on this barrier island, and this calculation does not include the permanent caretaker's apartment.

Applicant argued that this request – at an equivalency ratio of 7 dwelling units – was still consistent with the Lee Plan. They asserted that the actual density on Upper Captiva is 4 units per acre, even though the land use category limits it to 1 unit per acre. They also argued that several of the homes on the Island have 5 or 6 bedrooms, which can be rented out to 10 to 15 guests at a time. They did not feel the number of guests that they could have on this site would create any more adverse impacts on the neighborhood or the Island than would the 10 to 15 guests in one of those larger homes.

Given the testimony and evidence, it is the opinion of the Hearing Examiner that the requested hotel/lodge is not compatible with the nearby residential uses, given the number of guests that could be housed on the site at one time. Allowing two occupants per single room, four occupants per double room (625 square feet) and six occupants in the 2-story, 840-square-foot room, Applicant could have at least 42 guests at the hotel at one time. This number does not include the members of the caretaker's family, who will be permanent residents on the site. Thus, this hotel/lodge could have between 40 and 50 persons on this 1.1-acre site, one-quarter of which is a mangrove preserve.

The Hearing Examiner finds there is a significant impact difference between 15 guests in a 6-bedroom single-family home and 42+ guests in this 17-unit hotel, particularly given the location of this property between two protected natural waterbodies. In addition, the Hearing Examiner noted that, of the 14 cases provided by Staff, only one case (Grady's

Lodge) was in a "rural" low density/low intensity land use (Outer Island) category. The other 13 cases were for hotels located in the urban land use categories:

- Seven were in the Urban Community (max 10 units per acre);
- Three were in Suburban (max 10 units per acre);
- One in Central Urban (max 15 units per acre);
- One in Intensive Development (max 22 units per acre); and
- One in General Interchange (no density allocated).

The Hearing Examiner understands that both Staff and Applicant relied heavily on the 2004 approval of the 15-unit hotel and restaurant in the Grady's Lodge case. She points out, however, there are several distinctions between the Grady's Lodge case and the case herein.

- The 2004 approval pre-dated the adoption of the Upper Captiva Community Plan.
- The Grady's Lodge property was not abutted on two sides by waters of the Pine Island Sound Aquatic Preserve.
- The Grady's Lodge property was all uplands, and did not have any mangrove wetlands or other environmentally significant lands requiring special protection or preservation.
- The Grady's Lodge property lies in the commercial "node" created by the Safety Harbor Club commercial and recreational areas, and was consistent and compatible with the existing commercial uses in that area.

Given the above discussion, the Hearing Examiner finds that the Grady's Lodge case:

- does not establish a precedent for the finding of consistency with the Policy 1.4.2, because that finding by that Hearing Examiner was an error of law that has no precedential value in this case; and
- does not provide a basis for approval, given the distinctions listed above.

Finally, the Hearing Examiner disagrees with Staff's characterization that the hotel/lodge use is a "downzoning" from the other potential commercial uses allowed in the C-1 district, which makes it compatible with the abutting and nearby single-family residential uses. Many of the uses in the C-1 category relate to automobile, truck and bus service needs, which do not apply to the "traffic" on this Island and would have no place on this Island. Many of the other uses they cited as being incompatible with the adjacent residential uses could not be developed on this site, due to its small size and environmental constraints.

The Hearing Examiner finds that the conditions recommended in the Staff Report do not adequately address the impacts of the proposed development on the surrounding residential uses, and will not protect the public health, safety and welfare.

**IF, HOWEVER,** the BOCC finds the request is consistent with the Intent and provisions of the Lee Plan, the Hearing Examiner recommends that they only approve the hotel for

10 rooms. Reducing the number of units would reduce the footprint of the facility, reduce the potential for adverse impacts on the adjacent single-family residential units, and reduce the possibility of encroachment into the wetland preserve. In that event, she would also recommend that the BOCC approve Deviations 1, 2, 3 and 5 – but deny Deviation 4 as Applicant should be able to meet the required 20-foot setback from the mangrove preserve, with the smaller number of rooms.

**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 not proven entitlement to this request, as conditioned, as the requested use and "density" is not consistent with the intent of the Lee Plan, or with Policy 1.4.2 and Goal 25 and the provisions thereunder. However, the request, as conditioned in the Staff Report, is consistent with the provisions of LDC Section 34-1801, et.seq.
- B. That the requested use, as conditioned in the Staff Report, will not meet all performance and locational standards set forth for that use.
- C. That the requested CPD, as conditioned in the Staff Report, is not consistent with the densities or intensities set forth in Lee Plan Policy 1.4.2.
- D. That the requested CPD, as conditioned in the Staff Report, is not compatible with existing or planned uses in the surrounding area.
- E. That approval of the request, 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 requested CPD, as conditioned in the Staff Report, will not adversely affect environmentally critical areas and natural resources.
- G. That the proposed hotel and lodge uses, as conditioned in the Staff Report, are not appropriate at the subject location, as they are incompatible with the abutting and nearby single-family residential uses.
- H. That the recommended conditions, in the Staff Report, to the Master Concept Plan are rationally related to the impacts anticipated from the proposed development, but will not provide sufficient safeguard to the public interest.
- I. That, if the CPD is approved, the Deviations, as conditioned in the Hearing Examiner's Recommendation, will enhance the objective of the proposed development, and will promote the protection of the public health, safety and welfare.



J. That urban services (particularly central sewer and water) are not available to serve the proposed use on this barrier island, and the proposed use will increase the demand for fire protection, public protection (Sheriff's Office) and other health care needs.

**VI. LIST OF EXHIBITS:**

**STAFF'S EXHIBITS**

1. Master Concept Plan prepared by Robert Hutcherson Planning Services, LLC, dated Dec. 2011, date stamped RECEIVED JUN 27 2012 COMMUNITY DEVELOPMENT (1 page - 24"x36")
2. Architectural rendering of proposed structures (1 page -- 11"x17")[color]
3. Two aerial photographs on one page outlining the subject property and the current zoning designation (8.5"x11")[color]
4. Revised language to Deviation 2, Condition A (1 page -- 8.5"x11")
5. E-mails sent to Nettie Richardson, a Planner with Community Development, from members of the public against the request (multiple pages -- 8.5"x11")
6. E-mails sent to Robert D. Hutcherson from members of the public in support of the request (multiple pages -- 8.5"x11")
7. Résumé for Abby Henderson, an Environmental Planner with Community Development (1 page -- 8.5"x11")
8. A letter from Pam Houck, Director of the Department of Community Development - Division of Zoning, to Michael E. Roeder, with Knott, Consoer, Ebellni, Hart, dated December 9, 2011, approving the extension of the Master Concept Plan (1 page -- 8.5"x11")
9. A memorandum to Diana Parker, Chief Hearing Examiner, from Nettie Richardson, Principal Planner, dated September 12, 2012, submitting previous Staff Reports on cases involving the interpretation & application of the LDC Section 34-1802 (multiple pages -- 8.5"x11")

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

**APPLICANT'S EXHIBITS**

1. List of uses for the Commercial (C-1) zoning district (4 pages -- 8.5"x11")

- 2(a) Aerial photograph "FLUCCS Map" prepared by Stantec Consulting Services, Inc. (1 page - 11"x17" & 1 page – 24"x36")
- 2(b) Aerial photograph "FLUCCS Map" prepared by Stantec Consulting Services, Inc. (1 page - 11"x17" & 1 page – 24"x36")
3. Lee Plan Narrative prepared by Robert Hutcherson Planning Services (multiple pages – 8.5"x11")
4. Three e-mails to Matthew Uhle, Esquire, from property and business owners in support of the request, dated 9/4/2012 (8.5"x11")
5. Rental properties information for Upper Captiva (multiple pages – 8.5"x11")[color]
6. Aerial photograph (1 page – 11"x17")
7. Design Standards Compliance Narrative prepared by Robert Hutcherson Planning Services (4 pages – 8.5"x11")
8. Aerial photograph depicting the Grady's Lodge site (1 page – 8.5"x11")[color]

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

#### **OTHER EXHIBITS**

##### **Brazik**

1. An e-mail from Robert Pritt dated August 27, 2012 (2 pages – 8.5"x11")

##### **Kelley**

1. Five photographs (8.5"x11")[color]

##### **Upper Captiva Civic Association**

1. A memorandum from Marilyn W. Miller, with Fowler White Boggs Attorneys at Law, to the Diana Parker, Chief Hearing Examiner dated September 4, 2012

##### **Anders**

1. Résumé for Kristie Seaman Anders (1 page – 8.5"x11")
2. Map of Pine Island Sound Aquatic Preserve created February 2005 (1 page – 8.5"x11")

3. Google aerial photographs depicting the subject property (4 pages – 8.5"x11")
4. Photograph of Grady's Lodge site (8.5"x11")[color]
5. Five photographs depicting the subject property and air field (8.5"x11")[color]

**Schmidt**

1. FAR Part 77 Imaginary Surfaces (3 pages – 8.5"x11")
2. A letter from the Managers of Salty Approach, LLC, to the Hearing Examiner, dated September 4, 2012 (multiple pages – 8.5"x11")

**DeTure**

1. Two photographs, Kinsey Inn Commercial Planned Development, aerial depicting the subject property – from the Lee County Spatial Information System, and a letter from Linda DeTure, with attachments (multiple pages – 8.5"x11" & 2 photographs - 6"x4")

**VII. PRESENTATION SUMMARY:**

See Official Court Reporting Transcript

**VIII. OTHER PARTICIPANTS AND SUBMITTALS:**

**ADDITIONAL APPLICANT'S REPRESENTATIVES:**

NONE

**ADDITIONAL COUNTY STAFF:**

1. Susan Henderson, Assistant County Attorney, P. O. Box 398, Fort Myers, Florida 33902
2. Craig Brown, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902
3. Abby Henderson, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902

**PUBLIC PARTICIPATION:**

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

**For:**

1. Charles Brazik, 14862 Crescent Cove Drive, Fort Myers, Florida 33908

2. Cheryl Bredin, 3580 Rita Lane, Saint James City, Florida 33956
3. Louls W. Boudreau, 1753 Cascade Way, Fort Myers, Florida 33917
4. Daniel Davenport, 3190 Aloe Street, Punta Gorda, Florida 33982

**Against:**

1. Sue Ann Cousar, P. O. Box 2247 Pineland, Florida 33945
2. Hart Kelley, P. O. Box 474, Pineland, Florida 33945
3. Linda DeTure, P. O. Box 609, Bokeelia, Florida 33922
4. Peter Jeffers, P. O. Box 536, Pineland, Florida 33945
5. Kristie Anders, c/o Sanibel Captiva Conservation Foundation, P. O. Box 839, Sanibel, Florida 33957
6. Marilyn W. Miller, 2235 First Street, Fort Myers, Florida 33901
7. Richard Schmidt, 15151 Flightline Ct, Fort Myers, Florida 33905
8. Peggy Apgar Schmidt, 15151 Flightline Ct, Fort Myers, Florida 33905

**General:** NONE

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

**For:** NONE

**Against:**

1. Sam Horsley, 4300 Point House Trail, North Captiva, Florida 33924
2. Bev Horsley, 4300 Point House Trail, North Captive, Florida 33924
3. Steve Glynn, 6565 N. Green Bay Avenue, #113, Glendale, WI 53209
4. Katie Walsh, P. O. Box 2226, Pineland, Florida 33945
5. Glen Prater, 4405 Centerfield Drive, Crestwood, KY 40014
6. Shirley Prater, 4405 Centerfield Drive, Crestwood, KY 40014

7. June Kelley, P. O. Box 474, Pineland, Florida 33945
8. Francis DeTure, P. O. Box 609, Bokeelia, Florida 33922

**General:**

1. Ross Webb, 18356 Deep Passage Lane, Fort Myers Beach, Florida 33931
2. Stephanie Webb, 18356 Deep Passage Lane, Fort Myers Beach, Florida 33931

**IX. LEGAL DESCRIPTION:**

See Exhibit A (scanned legal description).

**X. UNAUTHORIZED COMMUNICATIONS:**

Unauthorized communication (Hearing Examiner) means communication in any form, whether written, verbal, or graphic, with the Hearing Examiner or the Hearing Examiner's staff, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed, anticipated, or pending matter relating to appeals, variances, special permits, rezonings, special exceptions or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for discussion or recommendation, except as permitted in the County Administrative Code. Communications regarding procedural aspects of a proceeding are not deemed unauthorized.....[LDC Section 2-191(a)]

No person may communicate with a Hearing Examiner or the Hearing Examiner's staff regarding the substance (non-procedural aspects) of a pending rezoning action or appeal to be considered by the Hearing Examiner under Sections 2-420 through 2-429, or 34-145.....[LDC Section 2-191(b)(2)]

Penalties. Any person who intentionally makes or attempts to initiate an unauthorized communication to or with a Hearing Examiner, a member of the Hearing Examiner's staff, a County Commissioner or an Assistant to a County Commissioner, or any Hearing Examiner or County Commissioner who fails to publicly disclose and report an unauthorized communication or an attempt to initiate an unauthorized communication, may be subject to the following penalties: [LDC Section 2-291(c)]

Revocation, suspension or amendment of any permit, variance, special exception or rezoning granted as a result of the Hearing Examiner action that is the subject of the unauthorized communication.....[LDC Section 2-191(c)(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. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:**

A. This Recommendation is made this 18<sup>th</sup> day of October, 2012 Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

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.

C. The Board of County Commissioners will hold a hearing at which they will consider the record made before the Hearing Examiner. The Department of Community Development will send written notice to all hearing participants of the date this hearing before the Board of County Commissioners. Only participants, or their representatives, will be allowed to address the Board. The content of all statements by persons addressing the Board shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

D. The original file containing the original documents used in the hearing before the Hearing Examiner will be brought by the Staff to the hearing before the Board of County Commissioners. Any or all of the documents in the file are available on request at any time to any County Commissioner.

**XII. COPIES OF TESTIMONY AND TRANSCRIPTS:**

A 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.



DIANA M. PARKER  
LEE COUNTY CHIEF HEARING EXAMINER  
1500 Monroe Street, Suite 218  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: 239/533-8100  
Facsimile: 239/485-8406

ATTACH MAP A  
ATTACH SITE PLAN (if approved)

# Sketch/Survey

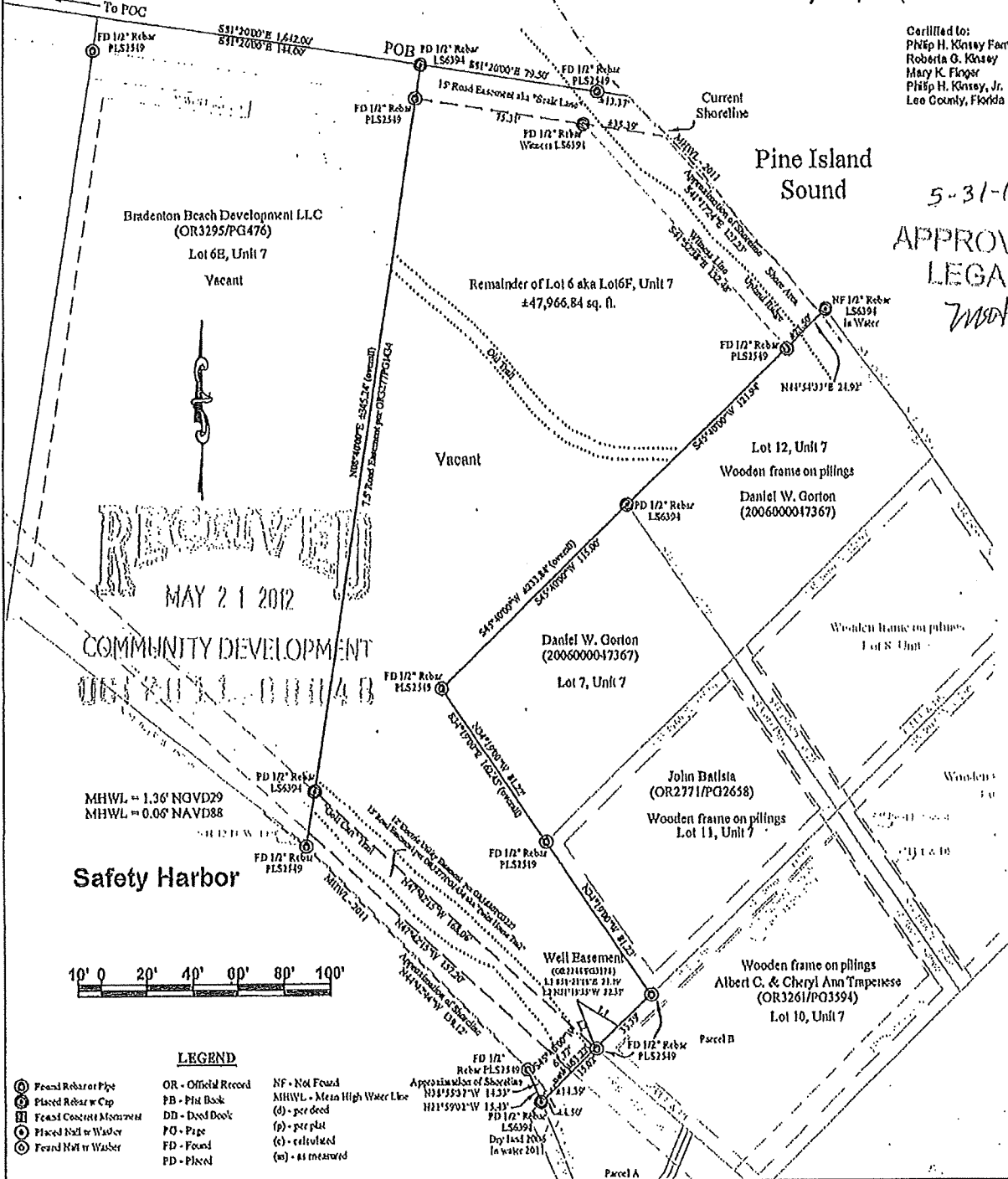


Surveying, OAD, Photogrammetry,  
and LIDAR Services

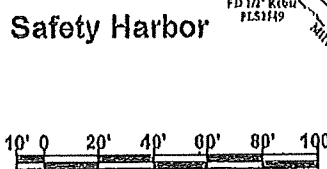
Not a State  
Professional Surveyor and Mapper  
Usual in Florida and Ohio  
S.D. Eubank, PLS 15394  
(352) 844-4115  
11111 W. 1st St., Suite 100  
Fort Lauderdale, FL 33301

Carried for:  
Philip H. Kinney Family Trust  
Roberta G. Kinney  
Mary K. Finger  
Philip H. Kinney, Jr.  
Lee County, Florida

Sally Approach Limited  
(OR1753/PO3149)



RECEIVED  
MAY 21 2012  
COMMUNITY DEVELOPMENT  
UNITED STATES OF AMERICA



## LEGEND

- |                              |                      |                             |
|------------------------------|----------------------|-----------------------------|
| ① Found Rebar or Pipe        | OR - Official Record | NF - Not Found              |
| ② Piled Rebar w/ Cup         | PB - Plot Book       | MHWL - Mean High Water Line |
| ③ Found Concrete Measurement | DB - Dredge Book     | (d) - per deed              |
| ④ Piled Rebar in Water       | PO - Page            | (sp) - per plat             |
| ⑤ Found Nail in Water        | FD - Found           | (c) - calculated            |
|                              | PD - Plotted         | (m) - as measured           |

SCALE: 1"=40'

CAD FILE: A1stmp

DWG NO: Sketch/Legal

Page  
1 of 2

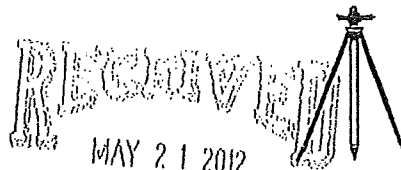
4390 Point House Trail  
Upper (North) Captiva Island,  
Florida 33924

Section 4, Township 45 South, Range 21 East

- NOTES:
1. Survey of boundaries from PLSS, NAD83, Florida West Zone.
  2. The land is shown as owned and recorded in the Public Records of Lee County, Florida.
  3. The land is shown as owned and recorded in the Public Records of Lee County, Florida.
  4. Property is located in a "V" Zone area, which is a V Zone area as defined by the Florida Department of Environmental Protection.
  5. The survey is based on the best available information and is not a warranty of title.
  6. The survey is based on the best available information and is not a warranty of title.
  7. The survey is based on the best available information and is not a warranty of title.
  8. The survey is based on the best available information and is not a warranty of title.
  9. The survey is based on the best available information and is not a warranty of title.

S.D. Eubank, PLS 15394

Exhibit A-1



Surveying, QAD, Photogrammetry,  
and LIDAR Services

Bill Eubanks  
Professional Engineer in Civil  
License No. 12454 and 12455

Bill Eubanks Associates, Inc.  
(239) 691-4194  
11111 E. Palm Pkwy.  
Fort Myers, FL 33903

COMMUNITY DEVELOPMENT  
301 2013 011148

## Legal Description

Lot 6F, Unit 7 as recited in Notice of Lot Split Approval recorded in Official Record Book 3277, Page 1434, being a part of Lot 6, Unit 7, Jose's Hideaway, an unrecorded subdivision in Government Lot 1, Section 4, Township 45 South, Range 21 East, and in Government Lot 1, Section 5, Township 45 South, Range 21 East, Upper (aka North) Captiva Island, Lee County, Florida

Commencing at a concrete post on the South line of Government Lot 1, Section 5, Township 45 South, Range 21 East, Upper (aka North) Captiva Island, Lee County, Florida, being approximately 226 feet East of the mean high water line of the Gulf of Mexico; thence South  $81^{\circ}20'00''$  East for 835.00 feet along the South line of said Government Lot 1 to a concrete post; thence North  $08^{\circ}40'00''$  East for 205 feet to a concrete post; thence North  $08^{\circ}40'00''$  East for 1,050 feet; thence South  $81^{\circ}20'00''$  East for 1,642.00 feet along the North line of Units 5, 6 and 7 of Jose's Hideaway, the South line of an airstrip, and being also a line 65.59 feet South of and parallel to the North line of Sections 4 and 5, Township 45 South, Range 21 East and the Point of Beginning of the herein described parcel:

Thence continuing South  $81^{\circ}20'$  East a distance of 92.87 feet more or less to the mean high water line of Pine Island Sound; thence South  $41^{\circ}17'24''$  East a distance of 127.23 feet along the mean high water line of Pine Island Sound to the North line of Lot 12, Unit 7 of said Jose's Hideaway; thence South  $45^{\circ}40'$  West a distance of 233.84 feet along Lots 12 and 7 to the Northwesterly corner of Lot 7; thence South  $34^{\circ}19'$  East a distance of 162.45 feet along Lots 7 and 11 to the Southwest corner of Lot 11; thence South  $45^{\circ}40'$  West a distance of 63.22 feet more or less to the mean high water line of Safety Harbor along the Northerly line of Lot 10; thence North  $38^{\circ}55'37''$  West a distance of 14.33 feet, along the mean high water line of Safety Harbor; thence North  $44^{\circ}42'44''$  West a distance of 139.12 feet, along the mean high water line of Safety Harbor to a point South  $8^{\circ}40'$  West of the Point of Beginning; thence North  $8^{\circ}40'$  East a distance of 345.24 feet more or less along Lot 6E, returning to the Point of Beginning, containing approximately 1.13 acres.

5.51.12

APPROVED  
LEGAL

Subject to a 15 foot easement on the North side for public road right of way purposes, a 12 foot easement for the transmission and distribution of electricity and communications to Lee County Electric Co-operative as recorded in Official Record Book 1880, Page 3277, a private well easement as recorded in Official Record Book 2244, Page 3178, and a 15 foot road easement as recorded in Official Record Book 3277, Page 1434.

Certified to:  
Philip H. Kinsey Family Trust  
Roberta G. Kinsey  
Mary K. Finger  
Philip H. Kinsey, Jr.  
Lee County, Florida

SCALE: N/A	4390 Point House Trail Upper (North) Captiva Island, Florida 33924	<b>NOTES:</b> 1. Part of the original Plat, MAP 11, The City of Lee. 2. The City of Lee is a part of the State of Florida and is a part of the County of Lee. 3. The City of Lee is a part of the State of Florida and is a part of the County of Lee. 4. The City of Lee is a part of the State of Florida and is a part of the County of Lee. 5. The City of Lee is a part of the State of Florida and is a part of the County of Lee. 6. The City of Lee is a part of the State of Florida and is a part of the County of Lee. 7. The City of Lee is a part of the State of Florida and is a part of the County of Lee. 8. The City of Lee is a part of the State of Florida and is a part of the County of Lee.	 S.D. Eubanks, P.E., L56394
CAD FILE: A1r1p1			
DWG NO: Sketch/Legal			
SHEET 2 OF 2	Section 4, Township 45 South, Range 21 East	Exhibit A-2	



REVISION 1: SUFFICIENCY RESPONSE 05/11/2012  
REVISION 2: ADD DEVIATION 05/15/2012

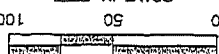
CHANGED JUN 27 2012

84000-102190

- [illegible]

## ଅଭ୍ୟାସ

SCALE IN FEET



1" = 60'

KINBEY INN COMMERCIAL PLANNED DEVELOPMENT  
4700 DOWNTOWN RD. #100  
DOWNTOWN, CA 94612  
415.398.1111  
www.kinbeyinn.com

4390 POINT HOUSE TRAIL  
NORTH CAPTIVA ISLAND

FLORIDA 35924

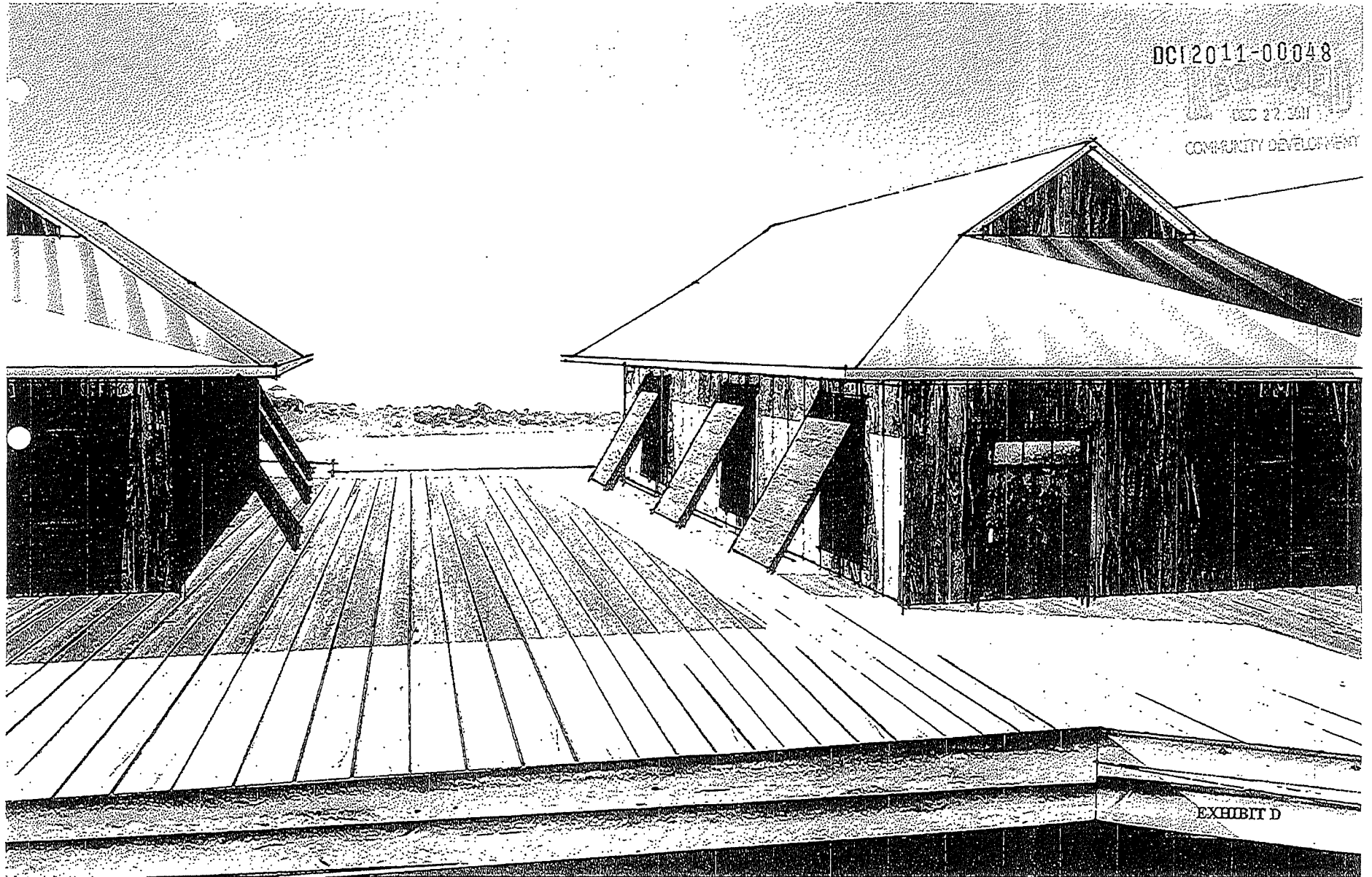
**Robert Hutcherson**  
Planning Services, LLC

Robert Hutcherson, AtCP  
(239) 850-3232  
hutch23@earthlink.net

EXHIBIT B



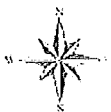
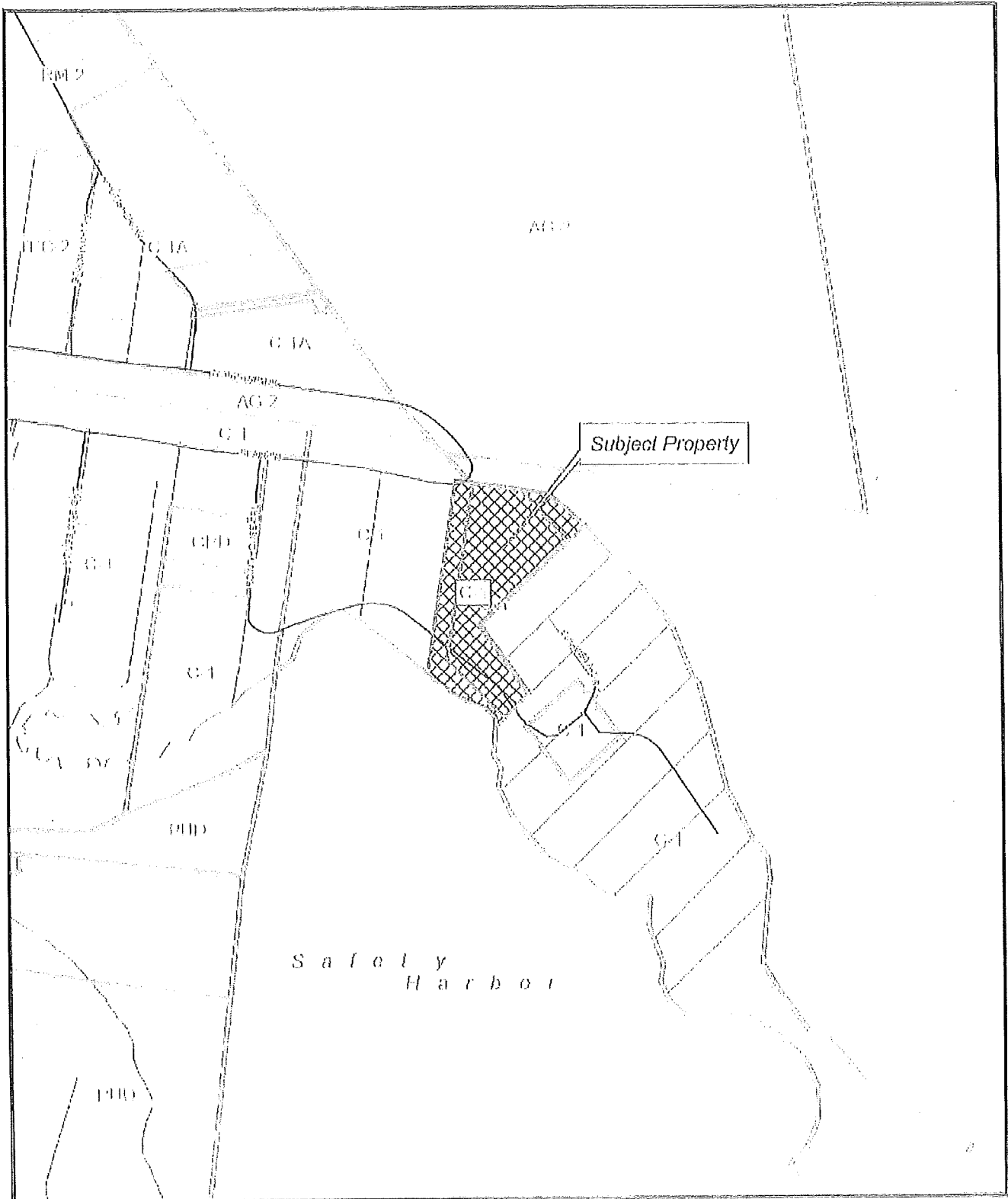
EXHIBIT C



# Attachment "B" Zoning Map

DCI2011-00048

7/31/2012



# Sketch/Survey



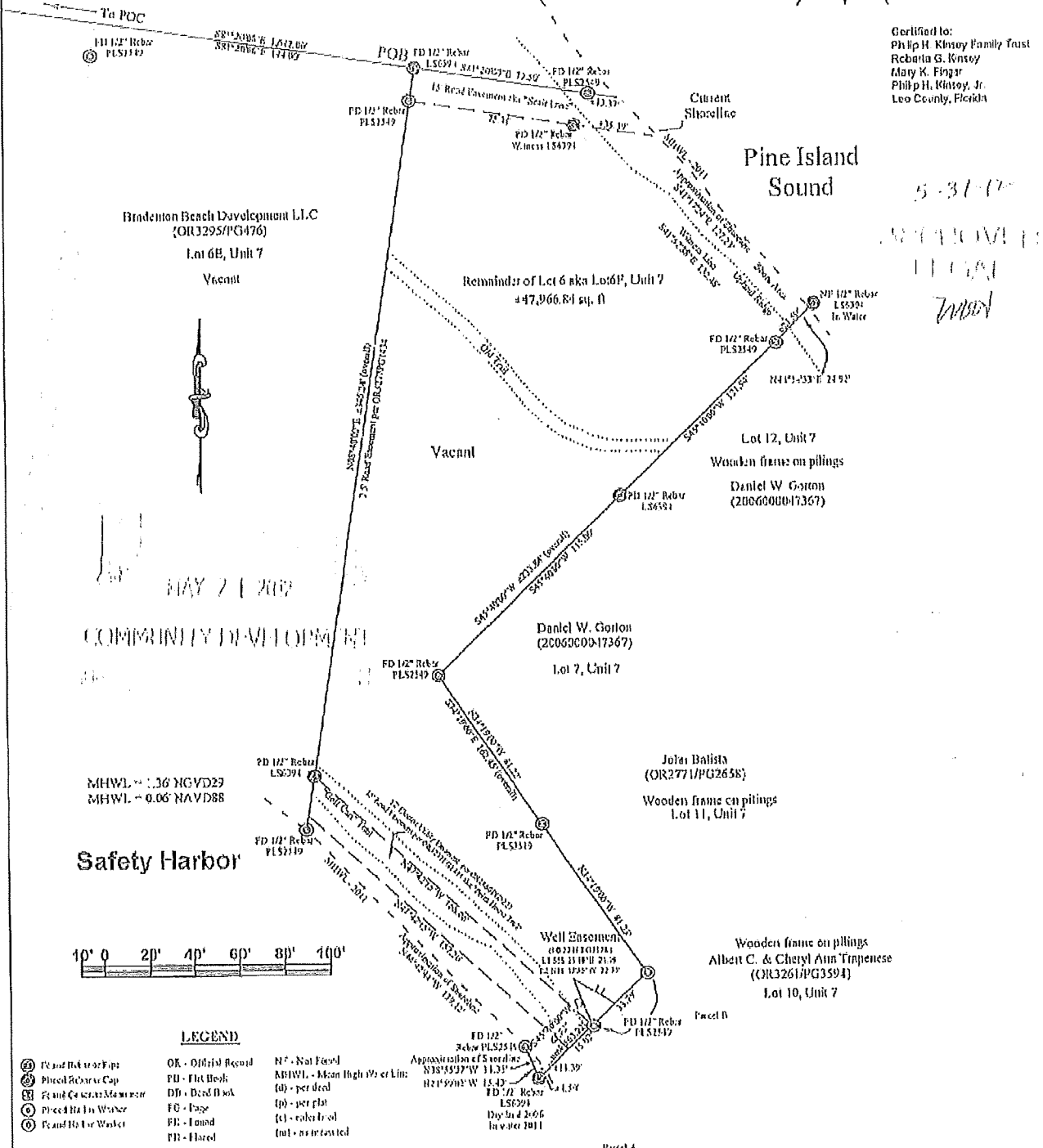
Surveying, OAD, Photogrammetry,  
and LIDAR Services

8 x 10 mile  
Precision: 1/10000 ft  
Horizontal: 1/10000 ft

8 x 10 mile  
Precision: 1/10000 ft  
Horizontal: 1/10000 ft

Certified to:  
Philip H. Kinsey Family Trust  
Robert G. Kinsey  
Mary K. Kinsey  
Philip H. Kinsey, Jr.  
Levy County, Florida

Salty Approach Limited  
(OR1751/PG3149)



MAY 21 2012  
COMMUNITY DEVELOPMENT

MHWL = 1.36 NGVD22  
MHWL = 0.06 NAVD88

Safety Harbor

10' 0 20' 40' 60' 80' 100'

## LEGEND

- |                          |                      |                             |
|--------------------------|----------------------|-----------------------------|
| ① Piled Rebar in Pipe    | OK - Official Record | N <sup>2</sup> - Not Found  |
| ② Piled Rebar in Cap     | FD - Flat Head       | MHWL - Mean High Water Line |
| ③ Piled Rebar in Manhole | DB - Dead End        | (b) - per deed              |
| ④ Piled Rebar in Water   | FG - Flag            | (p) - per plot              |
| ⑤ Piled Rebar in Water   | FL - Found           | (c) - color of soil         |
|                          | FD - Flared          | (int) - as intended         |

SCALE: 1" = 60' CAD FILE: AutoCAD DRAWING: Sketch/Survey Date: 10/2/12	<b>4390 Point House Trail</b> Upper (North) Captiva Island, Florida 33924 Section 6, Township 45 South, Range 21 East	NOTES: 1. This is a sketch/survey of the property shown on the attached map. 2. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 3. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 4. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 5. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 6. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 7. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 8. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 9. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633. 10. The survey was conducted on 10/2/12 by S. D. Elmore, PSM, L.S. 15633.	10/16/2012 S. D. Elmore, PSM, L.S. 15633
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## EXHIBIT A







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

WHEREAS, an application was filed by the property owner, Graydon W. Scott, to rezone a 1.59+/- acre parcel from commercial (C-1) to commercial planned development (CPD), in reference to Grady's Lodge; and,

WHEREAS, public hearings were advertised and held on April 22, 2004, May 14, 2004 and July 14, 2004, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #2003-00080; and

WHEREAS, second public hearings were advertised and held on October 18, 2004 and December 6, 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 rezone a 1.59+/- acre parcel from C-1 to CPD, to permit a 15 unit hotel/motel in the form of 10 one and two unit cabins, not to exceed a maximum height of 35 feet. The property is located in the Outer Islands 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. The development of this project must be consistent with the one (1) page Master Concept Plan entitled "GRADY'S LODGE," stamped received by the permit counter on FEB 02 2005 and attached hereto as **Exhibit C**, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:
  - a. Schedule of Uses

ESSENTIAL SERVICES



EXCAVATION, water retention (dry retention only)  
HOTEL/MOTEL (maximum of 10 cabins), including the following accessory uses  
(which can only operate if the hotel/motel has received a Certificate of  
Occupancy):

ADMINISTRATIVE OFFICE, only within the lodge building  
CARETAKERS RESIDENCE, only within the lodge building  
CONSUMPTION ON PREMISES, within the lodge building and including  
the outdoor seating area and pool bar  
FOOD STORE, Group I, only within lodge building  
REAL ESTATE OFFICE, only within lodge building  
RECREATIONAL FACILITIES, private on-site  
RENTAL AND LEASING ESTABLISHMENTS, Group I, only within the lodge  
building and limited to bicycles, golf carts, and boat rentals for the  
guests of the lodge  
RESTAURANTS, Group II and III, only within the lodge building  
SIGNS, in accordance with Chapter 30, of the LDC  
SPECIALTY RETAIL, Groups I and II, only within the lodge building

b. Site Development Regulations

Minimum Lot Area and Dimensions:

Area: 1.59 acres  
Width: 100 feet  
Depth: 100 feet

Minimum Setbacks:

Street: 20 feet

Side: 15 feet  
Rear: 15 feet

Development perimeter: 15 feet

Maximum Height: 35 feet (maximum two (2) stories,  
lodge only)  
20 feet for the 10 cabins

Maximum Lot Coverage: 40 percent

Minimum Building Separation: 10 feet

3. This development is limited to a 4,200-square-foot lodge building containing a caretakers residence and commercial retail and/or office uses, with a 1,125-square-foot covered porch and an outside 300-square-foot pool bar, as depicted on the Master Concept Plan. The development is also limited to a maximum of 10 hotel/motel units (cabins) having a maximum size of 750 square feet for five (5) cabins and a maximum size of 400 square feet

for the remaining five (5) cabins, excluding the optional porches. The typical cabin must be in substantial compliance with the attached artist renderings attached hereto as **Exhibit D**. The caretaker's residence, within the lodge building, is in addition to the 10-unit hotel/motel.

4. Prior to local development order approval, the landscape plan must delineate the existing native trees to be preserved and any Sabal palms to be relocated on site. These native trees may be used to meet the LDC landscaping requirements with the credits allowed in LDC § 10-420(h).
5. Enhancement of the Type "D" buffer is as follows:
  - a. A minimum 15-foot-wide buffer with a double row hedge of native shrubs (minimum four foot height at planting) installed four foot on center and five trees per 100 linear feet along the west, south, and east property boundaries. Existing trees and native shrubs may be used toward the required buffer plantings; and
  - b. At the time of local development order approval, the placement of the vegetative buffer along the south and east property lines must be coordinated with the Upper Captiva Fire Department to ensure fire department personnel have access to the rear of the most southerly and easterly cabins.
6. Consumption on Premises:
  - a. The outdoor seating area and pool bar are limited to the cross-hatched area as shown on Grady's Lodge Master Concept Plan stamped received by the permit counter on January 20, 2004; and
  - b. No live musical entertainment, is allowed in the outdoor seating area; however, "background" music may be piped in, at a reduced volume, so that patrons may maintain a normal level of conversation. Background music is prohibited before 10:00 a.m. and after 6:00 p.m., Monday through Sunday; and
  - c. The hours of operation for the outdoor seating area, in conjunction with the consumption of alcoholic beverages, are limited from no earlier than 10:00 a.m. to no later than 10:00 p.m.; and
  - d. The consumption on premises alcoholic beverage license series is to be used only in conjunction with a Group II or III restaurant and in conjunction with the pool bar and outdoor seating area; and
  - e. The hours for consumption on premises for inside the restaurant shall be limited to 10:00 a.m. to 11:00 p.m.; and
  - f. Lighting on the proposed pool deck must be designed so as to prevent direct glare, light spillage or hazardous interference with vehicular and pedestrian traffic on abutting streets and all abutting properties.

7. The Applicant must provide, through Lee County Emergency Management, literature and brochures for Hurricane Awareness/Preparedness describing the risks of natural hazards.
8. 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.
9. 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), 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 Plan provisions.
10. The 10 hotel/motel units cannot be condominiumized nor can separate long term leases be granted for more than 30 days per calendar year. Prior to local development order approval, these restrictions must be recorded in the public records of Lee County.
11. The 10 hotel/motel units cannot be outfitted with kitchens or cooking facilities.
12. The developer must prove that the project will be served by an adequate water supply prior to any development order approvals.
13. Golf cart batteries may not be stored outdoors.
14. The exact location of building footprints, accessory uses, septic drainfields, driveways, and golf cart parking areas will be adjusted as necessary to avoid the unnecessary destruction of indigenous vegetation. No indigenous vegetation will be removed outside of these designated areas.
15. Developer agreed to make a voluntary contribution for impacts to the road system on North Captiva in the amount of \$4,000.00.
16. Administrative amendments to the rezoning approval are prohibited.
17. Developer must plant Green Buttonwood trees three to four feet apart and staggered around south and west the boundaries in addition to the four foot hedge abutting the property line in order to create an acceptable sight and sound barrier. Developer may plant indigenous vegetation in excess of the minimum required buffer without the consent of neighbors. The buffer must be installed as soon as irrigation can be provided, and prior to the commencement of any construction on the site. Developer must maintain the buffer in good condition, replanting dead vegetation within a reasonable time.
18. Placement of Air Conditioning units shall be located along the side walls of the proposed lodge. There shall be no A/C units on walls or footings along the rear of the structures (excluding the Main Lodge) that would direct noise outward of the development toward the residential zone. Additionally all A/C units shall be surrounded by a three sided barrier, to a height of not less than 18" above the top of the A/C unit, constructed of solid wood and

lined with concrete board or foam panels as a noise abatement barrier. Such barriers shall be placed so that the open side faces the side of the unit, which will create the maximum reduction of noise surrounding the development. Approximate locations of the A/C units are depicted on the Master Concept Plan.

19. Trash dumpsters shall be located and fully screened so that they are not seen from either the roadway or surrounding residents.
20. Major construction, i.e. sinking of the pilings, framing and roofing (but excluding work on the pool, planting of vegetation buffer, site retention and infrastructure, interior work and less noisy exterior work), shall only be conducted and limited to the less populated, out-of-season months from May 15<sup>th</sup> thru December 20<sup>th</sup>. The only exception during this period would be the Thanksgiving Holiday weekend when no construction shall take place. Any other site work that is not specifically covered in this section shall be mutually agreed upon by the parties in advance of any construction.

#### SECTION C. DEVIATIONS:

1. Deviation (1) seeks relief from LDC § 10-291(2), which requires that all development must abut and have access to a public or private street designed, and constructed or improved, to meet the standards in § 10-296 (a Category "A" road), to allow golf cart access to the existing shell/gravel road. 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: The Master Concept Plan
- Exhibit D: Artist's renderings for cabins

The applicant has indicated that the STRAP number for the subject property is:  
05-45-21-16-00000.0480

#### 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; 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 will be served by streets with the capacity to carry traffic generated by the development; and,
  - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
- a. the proposed use or mix of uses is appropriate at the subject location; and
  - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
  - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, 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.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Janes, 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	Nay
Tammy Hall	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 6<sup>th</sup> day of December 2004.

ATTEST:  
CHARLIE GREEN, CLERK

BY: Michelle S. Cooper  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: [Signature]  
Chairman

Approved as to form by:

[Signature]  
County Attorney's Office



CASE NO. DC2003-00080

RECEIVED  
MINUTES OFFICE

2005 MAR -1 PM 2:19

Z-04-029  
Page 6 of 6

LEGAL DESCRIPTION:

PARCEL A

COMMENCING AT THE SOUTHEAST CORNER OF GOVERNMENT LOT 2, SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, NORTH CAPTIVA ISLAND, LEE COUNTY, FLORIDA; THENCE N8°40'00" EAST 330.15 FEET ALONG THE EAST LINE OF SAID GOVERNMENT LOT 2; THENCE N81°20'00" WEST 151.00 FEET ALONG THE SOUTH LINE OF LOT 2, NORTH END OF CAPTIVA ISLAND (PLAT BOOK 1, PAGE 61) TO THE POINT OF BEGINNING; THENCE CONTINUE N81°20'00"W 319.00 FEET; THENCE N8°40'00"E 125.00 FEET; THENCE S81°20'00"E 5.00 FEET; THENCE N8°40'00"E 96.70 FEET; THENCE S80°37'52"E 310.23 FEET; THENCE S4°27'55"W 107.30 FEET; THENCE S12°29'25"W 61.02 FEET; THENCE S8°40'00"W 50.00 FEET TO THE POINT OF BEGINNING. CONTAINING 1.59 ACRES MORE OR LESS. SUBJECT TO EASEMENTS, RESTRICTIONS & RESERVATIONS OF RECORD.

EASEMENTS

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ROADWAY PURPOSES OVER AND ACROSS A PORTION OF RUM ROAD, UPPER CAPTIVA ISLAND, DESCRIBED AS FOLLOWS: FROM THE SE CORNER OF GOVERNMENT LOT 2, SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, RUN N8°40'E 330.15 FEET ALONG THE EAST LINE OF SAID SECTION 5-45-21; THENCE N81°20'W 151 FEET ALONG THE SOUTH LINE OF LOT 2 OF THE NORTH END OF CAPTIVA ISLAND (PLAT BOOK 1, PAGE 61) TO THE POINT OF BEGINNING. THENCE N81°28' W 319 FEET; THENCE N8°40'E 125 FEET; THENCE S81°20'E 5.0 FEET; THENCE N8°40'E 320.21 FEET TO THE SOUTH R/W LINE OF BARTLETT PARKWAY; THENCE S81°20'E 15 FEET; THENCE S8°40'W 295.21 FEET; THENCE S25°01'24"E 36.06 FEET; THENCE S8°40'W 80 FEET; THENCE S81°20'E 279 FEET; THENCE S8°40'W 40 FEET TO THE POINT OF BEGINNING.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ROADWAY PURPOSES OVER AND ACROSS THE FOLLOWING DESCRIBED PARCEL: FROM THE SE CORNER OF GOVERNMENT LOT 2, SECTION 5-45-21, RUN N8°40'E 330.15 FEET ALONG THE EAST LINE OF SAID SECTION 5-45-21; THENCE N81°20'W 151 FEET ALONG THE SOUTH LINE OF LOT 2 OF NORTH END OF CAPTIVA ISLAND (PLAT BOOK 1, PAGE 61); THENCE N8°40'E 40 FEET TO THE POINT OF BEGINNING. THENCE N8°40'E 10 FEET; THENCE N12°29'25"E 61.02 FEET; THENCE N4°27'55"W 107.30 FEET; THENCE N80°37'52"W 20.07 FEET; THENCE S4°27'55"E 107.62 FEET; THENCE S12°29'25"W 70.97 FEET; THENCE S81°20'E 20.71 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF RUM ROAD TO THE POINT OF BEGINNING. BEING AN ACCESS EASEMENT 20 FEET IN WIDTH LYING IN LOT 2 OF THE NORTH END OF CAPTIVA ISLAND, AND BEING PART OF AN UNRECORDED SUBDIVISION OF SAID LOT 2, KNOWN AS CAPTIVA PALMA.

Applicant's Legal Checked  
by [Signature] Jan/22/2004.

**RECEIVED**  
NOV 12 2003

PERMIT COUNTER **DEL**

2003-00080

EXHIBIT A



08000-1002

# BOUNDARY SURVEY WITH ELEVATIONS

RUM ROAD  
PARCEL OF LAND KNOWN AS PARCEL "A" AND  
PARCEL KNOWN AS A.K.A. OF CAPTIVA PALMA  
SUBDIVISION (UNRECORDED)

SHOW IN REFERENCE TO BEING MADE IN THE  
OFFICE OF THE SURVEYOR, THE FOLLOWING:



NOTE:  
PARCEL "A" HAS A BRIDGE AREA OF LAND AREA  
OF 85,725.30 SQ. FEET AND A NET AREA FROM  
NORTH PROPERTY LINE TO ROAD RIGHT OF WAY  
IS 1.71 ACRES OF 46,944.22 SQUARE FEET.  
PARCEL "B" CONTAINS 0.38 ACRES OR 16,514.51  
SQ. FEET

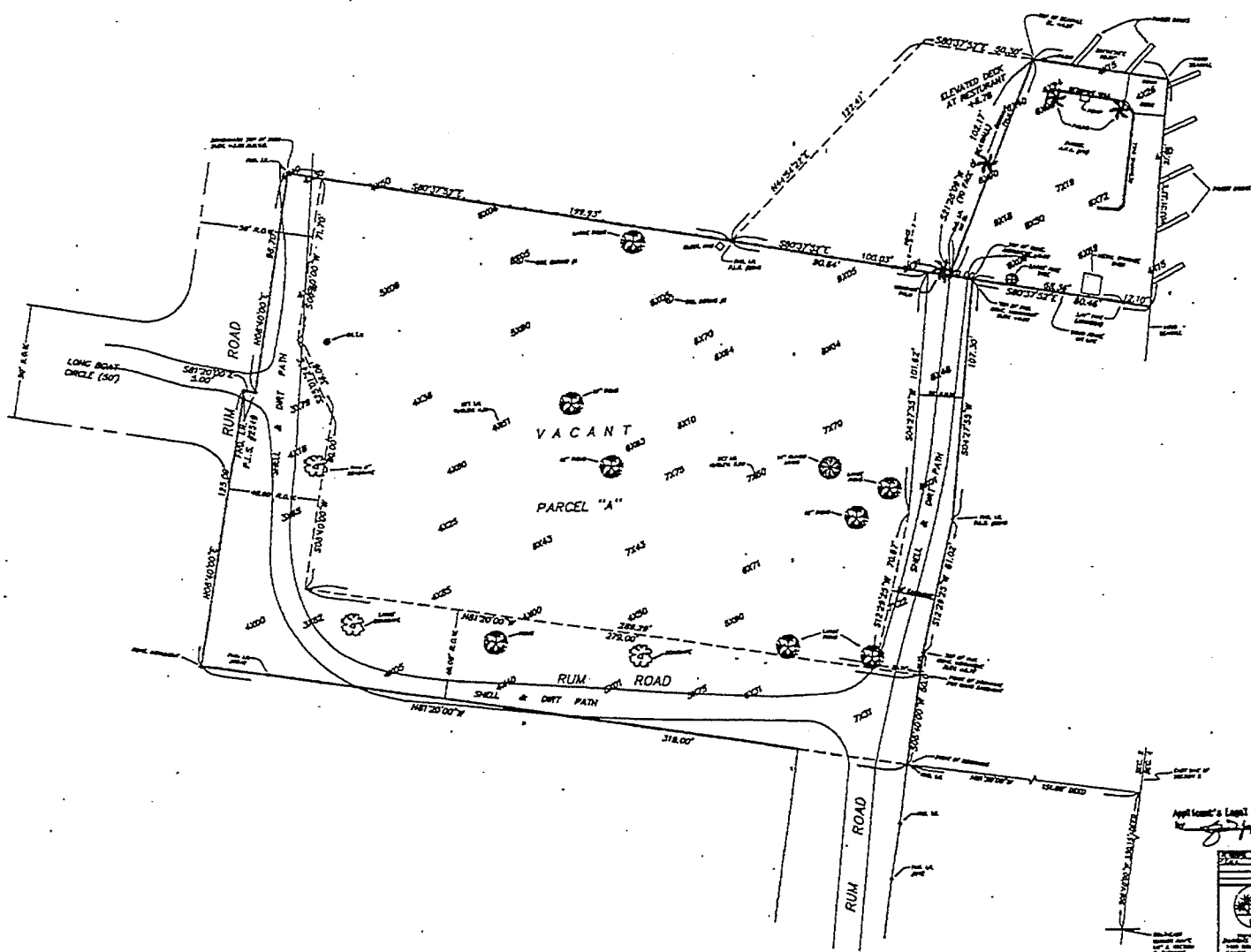
NO.	DESCRIPTION	AREA	PERCENT
1	PARCEL "A"	85,725.30	100.00
2	PARCEL "B"	16,514.51	19.19
3	TOTAL	102,239.81	119.19

THE FOLLOWING IS A SUMMARY OF THE SURVEY AND THE RESULTS THEREOF:  
1. The survey was conducted on the 15th day of May, 1964, by the undersigned, a duly qualified and licensed Surveyor of the State of Florida.  
2. The survey was conducted in accordance with the provisions of Chapter 34, Florida Statutes, and the rules and regulations of the State Board of Surveying.  
3. The survey was conducted in accordance with the provisions of the Florida Surveying and Mapping Act of 1961, as amended.  
4. The survey was conducted in accordance with the provisions of the Florida Surveying and Mapping Act of 1961, as amended.  
5. The survey was conducted in accordance with the provisions of the Florida Surveying and Mapping Act of 1961, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office, this 15th day of May, 1964, at Tallahassee, Florida.

Applicant's Legal Checked  
*[Signature]*

Surveyor's Seal  
*[Seal]*



3/29/2004

# ZONING INTAKE MAP

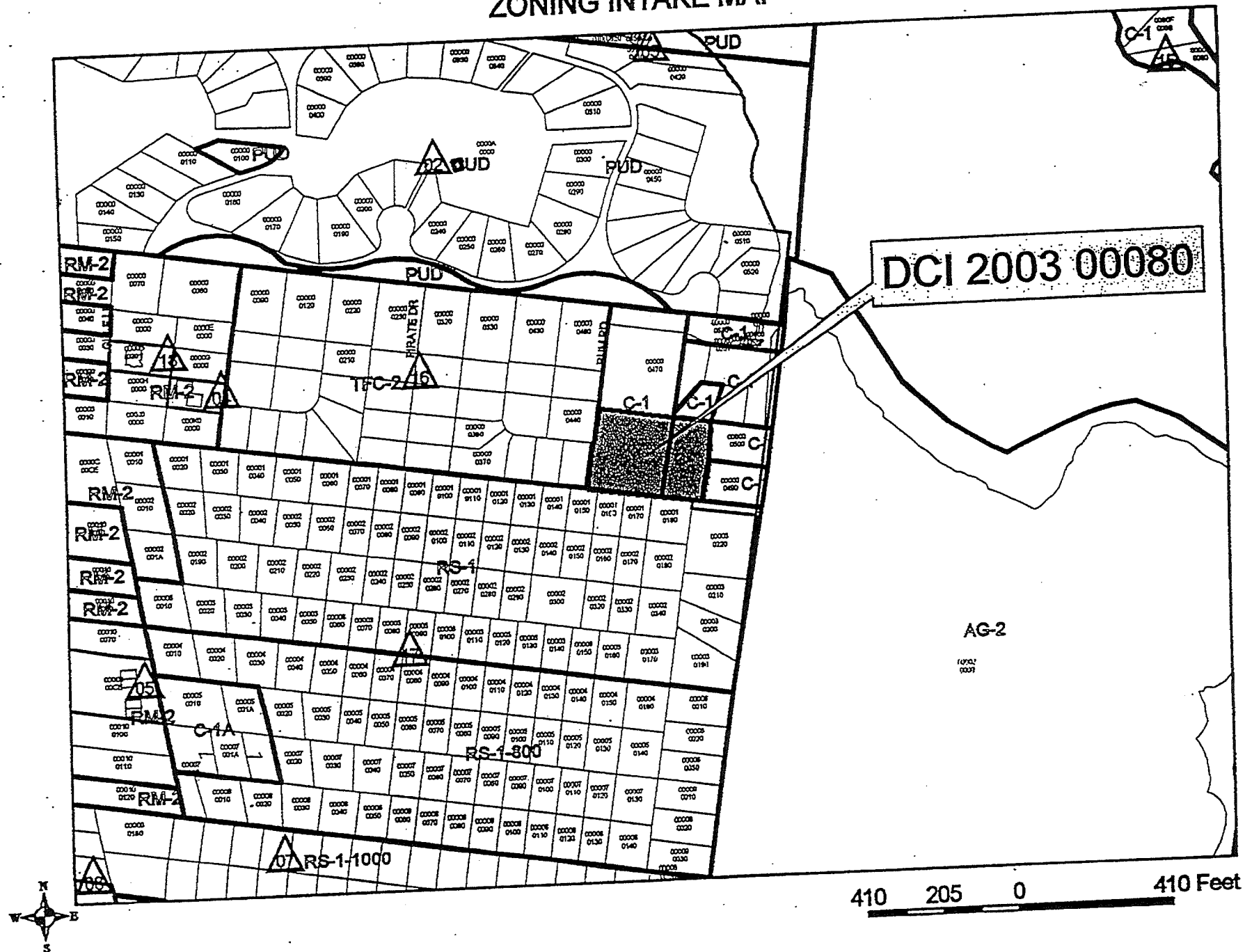


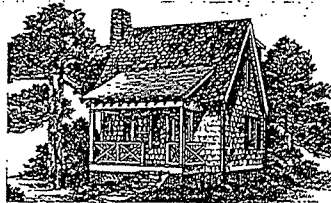
EXHIBIT B



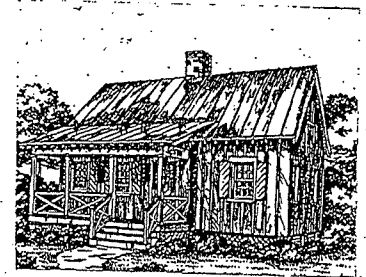
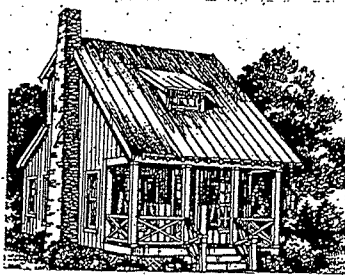
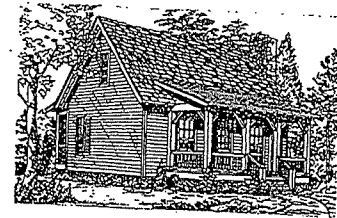
RECEIVED  
MAR 11 2004  
ZONING

# Grady's Lodge

North Captiva Island  
*An Old Florida Style Fishing Lodge*



*Displayed here are artist renderings to illustrate  
the Old Florida Style and architectural designs,  
which will be used in the proposed  
Main Fishing Lodge and  
One and Two Bedroom Cottages  
(for illustration only, not to exact design or scale)*



ATTACHMENT L

RESOLUTION NO. Z 65-26

The following resolution was offered by Commissioner P.A. Geraci,  
seconded by Commissioner Kenneth Daniels, and upon poll of members  
present the vote was as follow:

Julian Hudson	aye
Herman Hastings	aye
P. A. Geraci	aye
Kenneth Daniels	aye
Bruce J. Scott	aye

WHEREAS, Captiva Palma, Inc. has applied for a zone change from GU to  
BU-1 and RU-2 on the following described property located on Upper Captiva:  
BU-1: (1) The West 220 feet of the East 470 feet of Lot 2, North End  
of Captiva Island, as recorded in Plat Book 1, Page 61. LESS the N 50 ft.  
(2) Lot 2 of the North end of Captiva Island, Plat Book 1, Page 61,  
LESS the East 1480 feet, and Less the North 50 feet of the West 310  
feet of the East 1790 feet.

RU-2: The West 1010 feet of the East 1480 feet of Lot 2, the North  
End of Captiva Island, Plat Book 1, Page 61. LESS the North 50 feet.

WHEREAS, a public hearing of the Lee County Zoning Board was advertised  
and held, as required by law, and after hearing all parties of interest and  
considering adjacent areas, the Zoning Board recommended that said request  
be approved, and

WHEREAS, this Board after reviewing the records and recommendations  
of the Zoning Board and having given an opportunity for interested persons  
to be heard, and upon due and proper consideration having been given to this  
matter, does hereby deny the Zoning Board's recommendations;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners,  
Lee County, Florida, that the decision of the Zoning Board be denied,  
and after considering the request the property was zoned as follows:

- BU-1: The west 220 feet of the East 470 feet of Lot 2, North End of  
Captiva Island, as recorded in Plat Book 1, page 61. Less the  
North 50 feet.
- RU-3: Lot 2 of the North end of Captiva Island, Plat Book 1, page 61,  
Less the East 1480 feet, and less the North 50 feet of the West  
310 feet of the East 1790 feet.
- RU-2: The West 1010 feet of the East 1480 feet of Lot 2, the North  
End of Captiva Island, Plat Book 1, Page 61. LESS the North 50 feet

The Zoning Director is hereby directed to make the necessary notations upon the maps and records of the Lee County Building and Zoning Department.

PASSED AND ADOPTED this 2nd day of June, 1965.

Heard 4-19-65

65-4-10



## ATTACHMENT M

### Notes from the Public Meeting on the Rum Road Collective Rezoning Application

Safety Harbor Clubhouse, October 7, 2023

An informational meeting was held on October 7, 2023, to review and discuss the application of the Rum Road Collective for a rezoning of three properties to MPD, located at Bartlett Parkway and Rum Road on North Captiva Island. The meeting was held at the clubhouse of the Safety Harbor Club and approximately 62 people were in attendance (please see the attached sign in sheet). Representing the applicants were Steve Ward, Michael Swinford, Tom Harner (owners), Mike Roeder and Gary Muller. Steve Ward opened the meeting shortly after 10:00 and explained that it was being held as required by Section 33-1702 of the Land Development Code, one of the many requirements of Lee County's zoning process.

Steve proceeded with a power point presentation that covered the details of the request. He first explained the steps involved in obtaining approval for a rezoning in Lee County. This application was submitted on July 31, 2023 and was now in "insufficiency jail." The staff had issued a sufficiency letter on September 7 with many questions that must be answered before the application can be found "sufficient." There could be more rounds of sufficiency review, but the current deadline for responding is December 7 (actually December 26). After the application is found to be sufficient, the case is forwarded to the Hearing Examiner (HEX) with a staff report and recommendation, for the purpose of scheduling a public hearing.

Once the HEX public hearing is scheduled, all property owners within 500' of the subject property will receive a written notice of the hearing, with the date, place and time. This public hearing is the most important time for anyone with an opinion on the request to make their views known, in person. The HEX will hear a presentation by the applicant, then the staff recommendations, and then testimony from interested citizens. After taking all of this information under consideration, the HEX prepares a report for the Board of County Commissioners with a recommendation of approval with conditions or denial. The Board of County Commissioners has the final say on the request, and normally their hearing will take place six to eight weeks after receiving the recommendation of the HEX. Only people who speak at the HEX hearing are allowed to address the Board of County Commissioners, and comments are limited to 3 minutes. This whole process can take from 9-12 months.

A slide was then shown which displayed the current zoning on the island and the breakdown of land uses. There are 368 single family homes on the island and 8 condos. There are also 297 vacant residential lots, and approximately 37 lots that are currently zoned commercial. Of those commercially zoned lots, many already have homes on them, and the remainder are either too small or poorly located. The property that is the subject of the current request is three lots totaling 1.15 acres, located immediately west of the North Captiva Island Club, and at the intersection of Bartlett Parkway and Rum Road.

In terms of the chronology, Steve Ward had presented the idea of constructing a Community Center on the property at 4471 Bartlett Parkway to the Upper Captiva Community Association (UCCA) in the fourth quarter of 2019, and he purchased the property from the North Captiva Island Club (NCIC) in April of 2020. Ed and Susan Brown bought the property at 516 Rum Road from NCIC in May of 2021 with the intention of constructing a live/work artist studio and gallery. Steve Ward began to work on the rezoning of his property in May of 2022, and Rum Road LLC (Michael Swinford) bought the property at 522 Rum Road in that same month. In June of 2022, the Wards, the Browns and Rum Road LLC agreed to cooperate on a joint planned development zoning application.

Unfortunately, in September of that year, the Browns suffered such an economic loss from Hurricane Ian that they could no longer afford to continue with the rezoning and construction of their live/work studio. In March of 2023, the Wards and Rum Road LLC purchased the Brown's property, but decided to continue with the request for a live/work unit on the lot. The application for MPD zoning was filed on July 31, 2023 for the three properties.

Steve explained that there were actually more commercial businesses on North Captiva in 2000 than there are today, with more restaurants and more shops (this is correct even pre-Ian). He said that the requested zoning was designed to provide some needed commercial and public space for the island. He mentioned that many of the single-family homes on the island were operated as rental businesses, with advertising for groups of ten or more occupants now common. While new homes are being built every year, there is no place on the island for public meetings, classes, religious services, or weddings and reunions. While his original intention was to operate the Community Center as a non-profit, that did not provide a business plan that would pay the costs of construction and operation. Hence the idea to provide space for offices, low intensity commercial uses and storage. He pointed out that the Upper Captiva Community Plan identified a need for such public spaces, while having many policies to protect the character of the Island with required buffers and height limits.

He then described the proposed uses for the building at 4471 Bartlett Parkway. It would be two stories over golf cart parking, with a total of 6,000 sq. ft. The main feature of this building would be a large public meeting space that would be available at no charge for music and theater performances, classes and religious services. It would also be available for rent to private parties for weddings, reunions, business meetings, etc. There would be office space to rent, and small commercial spaces for businesses such as a coffee shop, consignment shop, hair/nail salon, personal trainer. He said that he was not planning to run any of these businesses himself but rent space to interested parties. There would also be storage areas for rent. Finally, there would be a room for a public library and a hall to feature island history and recognition of island pioneers. There was a color rendering by Ed Brown showing the style of buildings anticipated.

Steve then briefly described the live/work unit at 516 Rum Road. Originally intended as an artist studio and gallery, it would consist of two levels of approximately 3600 sq. ft. over cart parking, with the business on the first floor and living quarters on the second floor. The eventual business owner could buy or lease the property, and that person could possibly be the manager for the whole complex.

Michael Swinford then described his plans for the building at 522 Rum Road, which would be 12,000 sq. ft. in three levels over parking. On the first level would be a variety of specialty retail and office space to be determined by market demand. The second level would also have office and retail space, including an office for the Sheriff's Department. The third level would be a ten unit "hotel" intended strictly for

people who were working on the island or had business on the island. There would be none of the normal amenities of a hotel, and the manager would have an office on the second floor, possibly with some laundry and kitchen facilities for the people staying in the hotel. There is no affordable place for workers and employees to stay on the island any longer, and this would eliminate the need for daily commuting.

Steve Ward then addressed the question of what would happen to the property if the zoning was not approved. He said that they would most likely sell the property, and new owners would either seek a different type of commercial zoning, or build three single family homes. He said that if it was denied it would not be the end of the world, and they intended to remain on the island and stay friends with all of their neighbors. He pointed out that in this location, someone would almost certainly build large houses for rent to large groups, with new homes of 6 or 7 bedrooms now very common on the island for short term rentals. He showed the floor plan from a house at Thunder Lake Lodge in Minnesota that he has stayed in that has 12 bedrooms and six bathrooms.

Steve then opened the floor for Q&A and asked that everyone limit their comments/questions to 3 minutes until everyone had a chance to speak once.

Approximately twenty-five people spoke with most expressing objections and/or concerns. The most prevalent concern was that the approval of this would set a precedent and generate other zoning requests on the island. A related question was why the owners did not use some property on the island that was already commercially zoned. It was responded that, as previously noted, all of the existing commercially zoned land either had homes built on them, were too small, or were located where it would make no sense to create a community center. The one exception to this was the North Captiva Island Club, and it was possible that some cooperative effort could be explored. On the other hand, a couple of people questioned the financial feasibility of the concept and said there was not enough business on the island to make the project financially feasible.

Some people suggested that the only purpose of the zoning was so that the owners could "flip" the property for a quick profit. They expressed the view that new owners with deep pockets could come in and easily do something much more intense. It was explained that the planned development zoning approval would be linked to this very specific site plan and would come with many conditions which could only be changed pursuant to a new zoning application with new public hearings. There would be size and height limits, conditions relating to hours of operation and capacity, and requirements for buffering and walls. The applicants were asked if there had been conversations about selling the property, and all responded that they have had no conversations with potential purchasers.

There was a rendering of the proposed buildings in the PowerPoint presentation, and some asked what assurance the island had that the buildings would look like that. It was explained that the rendering was not exact but was intended to give a sense of the style of architecture intended. The County does have design standards for commercial buildings, and they would be bound by those. A related question was how the various conditions and rules would be enforced. These would be part of the zoning approval and it would be a code violation if not followed. In addition, there was a sheriff's deputy in attendance, and he said they were always available, even at night and on weekends, if there was ever any disturbance (e.g. from a wedding reception.)

Someone questioned the fire implications of the request, and it was recounted that the building plans would be reviewed by the County and the Upper Captiva fire department. There was a complaint about the hotel renting rooms to contractors and the possible implications. There are a lot of temporary workers on the island after Hurricane Ian, but that trend has mostly declined. The hotel would be intended for locally based workers and employees. A few people just said they were opposed to any commercial zoning, and some said they like the island just the way it is. A member from the Safety Harbor said that a survey had been taken of their members and that 84% were opposed, 11% neutral and 5% in favor.

A few people expressed some support for the request and said that many people who were in favor were unlikely to go public given all the negative comments on Facebook. One said that he could be in favor depending on the final details, and another said it was better to have local island residents involved than people from outside like Safe Harbor Marina. Someone suggested that it could be more acceptable if there were deed restrictions that put conditions on the property. The applicants indicated they would be willing to consider this option (although deed restrictions are enforced in court as opposed to zoning conditions that the County would enforce.)

Steve Ward thanked everyone for coming and sharing their opinions and suggestions. He reminded them that when the HEX hearing was finally scheduled, everyone with property within 500' would receive a written notification from the County, and it was necessary to attend that hearing in person and speak if someone wanted to address the hearing before the Board of County Commissioners, who would make the final decision.



# Rum Road Collective Rezoning – Informational Meeting Attendees

October 7, 2023

Name	Island Address	Email or Phone
STEVE & MARJORIE WARD	4580 ORO PESOS	414.659.2451
MICHAEL BOONEN	2929 BOWTIE ST FM	239-980-7513
GARY MULLER	1482 ARGYLE DR. FM	239-565-6712
Kerry Williams	45905 Smugglers Dr.	713-305-4897
Lee & Candi Highsmith	4630 Oro Pesa	817-521-8893
HOMER & JANET ZOOKS	4510 SEA GRAPES BEACH LN.	636-4482346
PEGGY & JON FLYTE	161 White Pelican	capnaregg@icloud.com
Tim & Rachel Powell	4481 Bartlett	Tim.Powell@yahoo.com
Alex Murphy	406 Gulf Bend Drive	aeMurphy4@outlook.com
Erica Ullasz	424 Gulf Bend Dr.	elm140@aol.com
David & Teresa Bolme	201 Hummingbird	615-653-6291 or 5240
ALICE WILLIAMS	4590 Smugglers	713 825 3933
DAVID & MARIE WILCOX	400 Gulf Bend Dr.	239-634-8600
Ray & Karen Wundzinski	4420 Harbor Bend Dr 449	239 395 2409
Ed & Jo	4531 Schooner Dr	239-241-3452
Jennifer Kules-Ditt	4531 Schooner	239-241-3453
JD & Lesley Porter	370 Townhouse Ln #54	404-422-1406
Linda McDonald	4111 Oro Pesa	203 570 5955
Van Hammond	539 Longboat	303-817-0796
Sara Ham	201 White Pelican	239-910101
ROA: KATHLEEN DELVAFENT	4470 SEABOARD	954-232-2504
Matt Wykes	581 Rum	783 693 7098
A. A. Bricker	4471 Panama Shell	410-598-4444
Debbie Renner	57 Townhouse	508-332-9926
Rich & LOAN GROSS	4501 HARBOR BEND	201-658-1900
TOM MURPHY	466 GULFBEND DR	temurphy@bellsouth.net
Eric Peterson	4481 Conch Shell	eric@thepetersonfamily.com
Susie Peterson	4481 Conch Shell	petersonfamily.com
MARY JO AFCHAK	4511 Bitter Melon	239-823-6790
Berry/Cindy Sutton	4540 Seagrape Bend Drive	615-948 7662

## Rum Road Collective Rezoning – Informational Meeting Attendees

**October 7, 2023**

[illegible]



## Rum Road Collective Rezoning – Informational Meeting Attendees

**October 7, 2023**

[illegible]

**Rum Road Collective Rezoning – Informational Meeting Attendees**  
**October 7, 2023**

[illegible]

If you want to provide input “for”, “against”, or “don’t care” for the meeting summary going to county staff....

Send an email to:

[mroeder@knott-law.com](mailto:mroeder@knott-law.com)

All feedback will be included to the county staff summary document as well as replies on how any concerns raised by citizens will be addressed. Anyone in attendance who is a property owner on North Captiva Island can provide input even if they did not voice a verbal opinion at the in-person informational meeting on October 7, 2023.

## Michael E. Roeder

---

**From:** Mel Balk <mwbaclam@gsinet.net>  
**Sent:** Saturday, November 11, 2023 1:03 PM  
**To:** Michael E. Roeder  
**Subject:** Upper Captiva Zoning

Dear Attorney Roeder. As a person who has had a home on upper Captiva for over 25 years, we strongly object to those that are trying to rezone residential property to commercial property.

We understand there are commercial parcels unused that are still available and to zone a residential lot for financial gain, is shortsighted, and would be detrimental to the future of the island and all of the people that live out there.

We emphatically do not endorse as change as residential zoning should stay residential, and commercial is what should be used for development purposes.

Thank you for your consideration.

Melvin Balk  
741 Rum Road  
North Captiva Island, FL

Mel Balk DVM DACLAM  
Executive Director- ACLAM

December 7, 2023

Subject: Proposed Re-Zoning on North Captiva aka "Rum Road Collective" Case #DCI2023-00028

To Whom It May Concern;

My name is Erica Maynard-Uljasz and my husband and I have owned a home in Safety Harbor on North Captiva for several years. I have lived in Fort Myers since 2005 and have visited and worked on the island since 2006. I have seen Fort Myers and North Captiva change dramatically over the 18 years I have lived here, more people, more development, busier roads, less trees and less animals. I have a Masters of Science in Biology and I am a Professional Wetland Scientist and have worked as a consultant in environmental biology and permitting for years.

***I am STRONGLY AGAINST the re-zoning of the three parcels on North Captiva.*** North Captiva is a fragile barrier island with limited resources, limited space and several threatened and endangered species that call North Captiva their home. Re-zoning these parcels to allow for an un-needed commercial development would not only bring more people to the island but bring more trouble, more crime, more drugs and more than likely raise our taxes due to the need for additional Lee County Sheriff services. It would stress our already busy and maxed out fire department and EMS staff. The fragile environment and species would be affected and the endangered species would slowly disappear and the fragile environment would continue to break.

North Captiva is one of the last few places in Southwest Florida that is still somewhat sleepy. People buy homes on the island to get away from the hustle and bustle of everyday life. We did not buy a home there so that we can go to a store to get a coffee, get a haircut or make copies in the proposed "computer/office space". We purchased a home on the island to get away. We don't need the proposed commercial services. The majority of the island homeowners are very upset with the fact that this re-zoning could happen. No one wants or needs these services and it feels like this commercial development is being pushed down our throats. The one owner that is part of the re-zoning group told us at the October 7, 2023 meeting he didn't care if we like the re-zoning or not. It's sad because the island is a small community of like-minded individuals that wants the island to remain as is, not become a resort island.

The proposed re-zoning should be denied for the following reasons:

- 1. Greed**-It appears the three owners are doing this for a quick buck and many islanders worry that once the re-zoning occurs, they will sell the three lots for millions of dollars to allow for some huge development or hotel to come to the island, destroying our peaceful way of life. We bought on North Captiva for a reason and it wasn't to be near development.
- 2. Precedent**-By allowing the re-zoning of the three residential lots, Lee County would be setting a dangerous precedent for the island. The Lee Plan (2023) Objective 1.4, Policy 1.4.2 states, *"The Outer Islands are sparsely settled, have minimal existing or planned infrastructure, and are very distant from major shopping and employment centers.....The continuation of the Outer Islands essentially in their present character is intended to provide for a rural character and lifestyle, and conserve open space and important natural upland resources. Maximum density is one dwelling*

unit per acre." The proposed re-zoning is not in harmony with this policy and would be a direct violation of the Lee Plan Objective for the Outer Islands as it would destroy our rural character and lifestyle, disrupt open space and quickly utilize our islands natural resources if a large development or "hotel" type feature were approved. It would also encourage other lot owners to re-zone their lots to create more commercial space for commercial development.

3. Policy 6.1.4-The proposed re-zoning is in direction violation of Lee Plan (January 2023) Policy 6.1.4 which states, *"Commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities."* The only adjacent existing commercial property is a marina with a small restaurant and store which are situated down the road. The three lots are surrounded by residential homes and homeowners that do not want to be backed up to a commercial hotel, stores and offices.

4. Future Land Use Goal 26-The re-zoning is also not in harmony with the Future Land Use (January 2023). The North Captiva Community Plan Goal 26 for Future Land Use states, *"Preserve the character, scale, fragile environment, and way of life in the North Captiva Community Plan area by guiding future land use; transportation and roads; conservation and coastal management; Safety Harbor; shore and water quality, water and waste management; open space, recreation, and quality of life; and citizen participation and community education."* This proposed re-zoning will adversely impact the environment and overburden the existing infrastructure. It will change the character, scale and impact the fragile environment and way of life. It is the duty of the County to limit the densities and intensities of use and development, thus Lee County is required to deny the proposed re-zoning since it goes against the Future Land Use Goals.

5. Future Land Use Policy 26.1.1-Per the Future Land Use policy January 2023 Policy 26.1.1; *"Variances should be limited to unique, specifically authorized circumstances and be allowed only in situations where unnecessary hardship would otherwise occur; i.e. where all of the five criteria are met"*. Although this is re-zoning and not a "variance", it would still be a major change that the owners must seek permission from the County to change. The five criteria that must be met are:

- A. The hardship cannot be corrected by other means allowed in the land development regulations-**FAIL**, the owners can construct a single-family home on the lot, turn the lot over to make it conservation land or allow it to sit undeveloped.
- B. Strict compliance with the applicable regulations allows the property owner no reasonable use of the property-**FAIL**, the owners can construct a single-family home on the lot, turn the lot over to make it conservation land or allow it to sit undeveloped. The lots were just recently purchased, they made a choice to purchase these lots, no one forced them to do it.
- C. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties located on the same street and within the same Future Land Use category, unless denial of the variance would allow no reasonable use of the property-**FAIL**, if the re-zoning was allowed, it would grant the owners special privilege due to all the other lots surrounding them being residential allowing these three owners a different use of their lot. The proposed re-zoning is inconsistent with the Future Land Use category. The owners can still reasonably use their lot without re-zoning.
- D. The applicant did not cause the need for the variance-**FAIL**, the owners DID create the need for the variance. They want to re-zone the lots to create a hotel and other commercial businesses when all surrounding lots are residential.



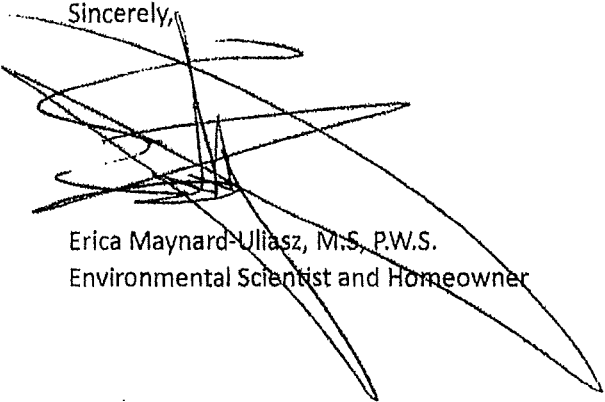
E. The variance is not contrary to the spirit of the LDC-FAIL, the re-zoning is not in harmony with the Lee Plan 2023 or the Future Land Use 2023.

6. **My Choice**-My taxes for my home on North Captiva are \$2,500+ more than for my home in South Fort Myers which is twice the size as the house on the island, yet, North Captiva doesn't benefit from paying a butt-load of taxes. We have to pay out of our own pockets to have trash removed, repair the roads, and donate money for the fire department/EMS so they have the equipment they need. Our flood and homeowners insurance policies are higher, our electricity goes on and off randomly and the roads flood during high high tides or large storms so there is no way to get around the island. But we chose to own homes and live out on the barrier island. This was our choice. We pay extra for these things because we chose to live in an area out of the way, not near development and not near the conveniences of everyday life. It was a choice. Homeowners do not want Lee County telling us to do something that the islanders don't want when we don't benefit from our tax dollars paid to Lee County. The way I see it, Lee County doesn't really help us even though we pay through the nose in taxes so Lee County should listen to what the majority of the islanders want since we will be the ones affected, not the general public. **THE ISLANDERS DO NOT WANT THIS RE-ZONING!**

I am respectfully requesting that this re-zoning project be denied. The majority of the islanders are against this re-zoning and the commercial development that is proposed. It is not needed and not necessary and it will destroy our sleepy, quiet island and its environmentally fragile state.

Just because we can, doesn't mean we should. Lee County should NOT approve the re-zoning of these three lots, the majority of the islanders DO NOT want this re-zoning to occur.

Sincerely,



Erica Maynard-Ullasz, M.S., P.W.S.  
Environmental Scientist and Homeowner



REQUEST FOR  
SUBMITTAL REQUIREMENT WAIVER  
FOR UNINCORPORATED AREAS ONLY

Upon written request, the Director may modify the submittal requirements for Public Hearings, Development Orders, Limited Review Development Orders and other Administrative Action Applications where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the Director's written response must accompany the application submitted and will become a part of the permanent file.

APPLICATION FOR WAIVER OF REQUIRED SUBMITTAL ITEMS  
(Indicate the appropriate application type)

- ☐ Public Hearing - General Requirements (34-202)
- ☐ Public Hearing - Mining Excavation Planned Development (12-110)
- ☐ Public Hearing - Additional Requirements for:
  - ☐ Development of Regional Impact (34-202(b)(1))
  - X ☒ Planned Developments (34-202(b)(2))
  - ☐ Planned Development Amendment (34-202(b)(2))
  - ☐ Rezoning other than Planned Developments (34-202(b)(3))
  - ☐ Special Exceptions (34-202(b)(5))
  - ☐ Variances (34-202(b)(6))
  - ☐ Limited Amendment to Existing Mine Zoning Approval [12-121(j)]
  - ☐ Private Recreational Facilities Planned Development (34-941(g))
- ☐ Development Order - Submittal Requirements (10-152)
  - ☐ Application Form and Contents (10-153)
  - ☐ Additional Required Submittals (10-154)
- ☐ Limited Review Development Order - Submittal Requirements (10-152)
  - ☐ Required Submittals (10-175)
- ☐ Administrative Action Application Requirements [34-203]  
State the Type of Administrative Application: \_\_\_\_\_

PLEASE PRINT OR TYPE:

STRAP Number: 05-45-21—16-00000.0460, .0450 & .0440  
Name of Project: Rum Road Collective

Name of Agent: Michael Roeder  
Street Address: 1625 Hendry St.  
City, State, Zip: Ft. Myers, FL 33901  
Phone Number: 239-334-2722 Email Address: mroeder@knott-law.com

Name of Applicant\*: Steve Ward (Michael Roeder)  
Street Address: 14985 Woodbridge Rd.  
City, State, Zip: Brookfield, WI 53005  
Phone Number: Email Address: wardfisv2@aol.com

\*If applicant is not the owner, a letter of authorization from the owner must be submitted.

LEE COUNTY COMMUNITY DEVELOPMENT  
P.O. BOX 398 (1500 MONROE STREET), FORT MYERS, FLORIDA 33902  
PHONE (239) 533-8585

A. SPECIFIC SECTION(S) AND REQUIREMENT(S) FOR WHICH A WAIVER IS SOUGHT:

	Section Number	Requirement
#1	34-373(a)(7)	TIS
#2	34-373(a)(4)(b)iii	Rare and Unique Upland Habitat
#3	34-373(a)(4)(b)v	Existing and Historic Flowways
#4		
#5		
#6		
#7		
#8		
#9		

B. SCOPE OF PROJECT AND REASON(s) FOR REQUEST:

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver(s) should be approved. Use additional sheets if necessary and attach to this application form. (Please print or type)

This is a request to rezone three platted lots on North Captiva totalling 1.15 acres from TFC-2 to MPD to allow for minor commercial and community/civic uses. Since motorized vehicles are prohibited on North Captiva, there is no need for a TIS. The three vacant platted lots are in the midst of existing development so there is no potential for rare habitat or flowways.

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

  
Signature of Applicant

5/23/23  
Date

.....  
FOR STAFF USE ONLY  
.....

DIRECTOR'S DECISION:    ☒ Request Denied #1  
                                      ☒ Request Approved #2, #3  
                                      ☐ Request Approved Per Attached Comments

Electronically signed on 7/7/2023 by  
Anthony R. Rodriguez, AICP, CPM, Zoning Manager  
Lee County Department of Community Development

Director Signature

Date

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

WHEREAS, Mike Roeder filed an application on behalf of the property owner, North Captiva Marina Group, LLC., to rezone a 1.97± acre parcel from Commercial Planned Development (CPD) and Commercial (C-1) to CPD in reference to North Captiva Marina; and

WHEREAS, a public hearing before the Lee County Zoning Hearing Examiner, Laura B. Belflower, was advertised and held on October 24, 2012. The case was continued by the Hearing Examiner and heard on the following days: November 2, 2012, November 14, 2012, November 16, 2012, November 30, 2012, December 14, 2012, and January 4, 2013; and,

WHEREAS, the Hearing Examiner gave full consideration to the evidence in the record for Case #DCI2011-00023 and recommended APPROVAL of the Request; and

WHEREAS, a second public hearing was advertised and held on April 1, 2013, before the Lee County Board of Commissioners; and,

WHEREAS, the Lee County Board of Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

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

SECTION A. REQUEST

The applicant filed a request to rezone a 1.97± acre parcel from CPD and C-1 to CPD, to allow a marina with 28 wet boat slips and a boat storage building with a maximum building height of 35 feet to house 72 dry boat slips. The existing restaurant and ship store are to remain

The property is located in the Outer Islands Future Land Use Category and is legally described in attached Exhibit A. The request is **DENIED WITH PREJUDICE**, based on Staff's findings and conclusions.

SECTION B. EXHIBITS:

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: Lee Plan Considerations

### SECTION C. FINDINGS AND CONCLUSIONS:

Based upon an analysis of the application and the standards for approval of planned development rezonings, staff makes the following findings and conclusions.

1. The applicant has not proven entitlement to the rezoning to Commercial Planned Development (CPD). This request is not in compliance with several of the Lee Plan Goals, Objectives and Policies as listed under Lee Plan Consideration section from the staff report and attached hereto as Exhibit C.
2. The requested CPD zoning:
  - a) does not meet all performance and locational standards set forth in Lee Plan Policies 5.1.5 and 128.5.10 for the potential uses allowed by the request; and
  - b) is not consistent with the densities, intensities and general uses set forth in the Lee Plan Objective 2.1; and
  - c) is not compatible with existing or planned uses in the surrounding area as required in Policies 5.1.5 and 6.1.4 of the Lee Plan; and
  - d) will adversely affect environmentally critical areas or natural resources as required by Objective 25.1 and Policies 107.2.10, 128.5.2, 128.5.7 and 128.5.8 of the Lee Plan.
3. Approval of the request will place an undue burden upon existing or planned infrastructure facilities (Lee Plan Objective 25.1).
4. Urban services, as defined in the Lee Plan Objective 2.2 are not available and adequate to serve the proposed land use.
5. The proposed use is not appropriate at the subject location per Policies 107.2.10 and 128.5.8 of the Lee Plan.

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

John Manning	<u>Aye</u>
Cecil L Pendergrass	<u>Aye</u>
Larry Kiker	<u>Aye</u>
Tammara Hall	<u>Aye</u>
Frank Mann	<u>Aye</u>

DULY PASSED AND ADOPTED this 1<sup>st</sup> day of April 2013.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

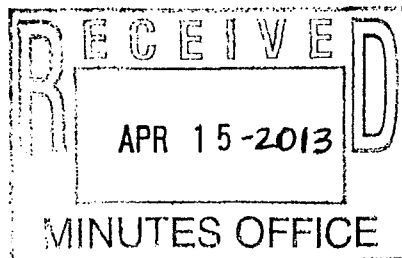
BY: Marcia Wilson  
Deputy Clerk

BY: [Signature]  
Cecil L Pendergrass, Chair



Approved as to form by:

[Signature]  
Michael D. Jacob  
Assistant County Attorney  
County Attorney's Office





## SHEET 1 OF 2

\*THIS IS NOT A BOUNDARY SURVEY\*

PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
1918 LOYOLA AVE  
LEHIGH ACRES, FLORIDA 33972  
PHONE (239) 845-1348  
EMAIL: philipmould@live.com  
LS # 6515

RECEIVED  
DEC 29 2011

COMMUNITY DEVELOPMENT DCI 2011-00023

## DESCRIPTION TO ACCOMPANY SKETCH:

COMMENCING AT THE EAST QUARTER (E.1/4) CORNER OF SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, UPPER CAPTIVA ISLAND, LEE COUNTY, FLORIDA, THENCE ALONG THE EAST LINE OF SAID SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, UPPER CAPTIVA ISLAND, LEE COUNTY, FLORIDA, RUN N.08°40'00"E. 330.47'; THENCE RUN N.81°20'00"W. 151.00' ALONG THE SOUTH LINE OF A PARCEL DESCRIBED AND SHOWN AS "LOT 2" IN THAT CERTAIN SUBDIVISION KNOWN AS "NORTH END OF CAPTIVA ISLAND" AS RECORDED IN PLAT BOOK 1 AT PAGE 61 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED SUBJECT PARCEL.

FROM SAID POINT OF BEGINNING THENCE RUN N.81°20'00"W. 319.00'; THENCE RUN N.08°40'00"E. 125.00'; THENCE RUN S.81°20'00"E. 5.00'; THENCE RUN N.08°40'00"E. 96.70'; THENCE RUN S.80°37'52"E. 199.93'; THENCE RUN N.44°54'22"E. 122.41'; THENCE RUN S.80°37'54"E. 110.30'; THENCE RUN S.04°17'28"W. 100.00'; THENCE RUN N.80°37'52"W. 80.00'; THENCE RUN S.4°27'55"W. 107.30'; THENCE RUN S.12°29'25"W. 61.02'; THENCE RUN S.8°40'W. 50.00' TO A POINT ALONG THE SOUTHERLY LINE OF SAID PARCEL DESCRIBED AND SHOWN AS "LOT 2" IN THAT CERTAIN SUBDIVISION KNOWN AS "NORTH END OF CAPTIVA ISLAND" AS RECORDED IN PLAT BOOK 1 AT PAGE 61 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE POINT OF BEGINNING.

CONTAINING: 84,743.94 SQ. FT± OR 1.95 ACRES±

SUBJECT TO AN INCLUSIVE EASEMENT FOR INGRESS, EGRESS, ROADWAY, UTILITIES AND DRAINAGE FURTHER DESCRIBED AND SHOWN HEREON:

COMMENCING AT THE EAST QUARTER (E.1/4) CORNER OF SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, UPPER CAPTIVA ISLAND, LEE COUNTY, FLORIDA; FROM SAID POINT OF COMMENCEMENT ALONG THE EAST LINE OF SAID SECTION 5, TOWNSHIP 45 SOUTH, RANGE 21 EAST, UPPER CAPTIVA ISLAND, LEE COUNTY, FLORIDA, RUN N.08°40'00"E. 330.47'; THENCE RUN N.81°20'00"W. 151.00' ALONG THE SOUTH LINE OF A PARCEL DESCRIBED AND SHOWN AS "LOT 2" IN THAT CERTAIN SUBDIVISION KNOWN AS "NORTH END OF CAPTIVA ISLAND" AS RECORDED IN PLAT BOOK 1 AT PAGE 61 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED EASEMENT. FROM SAID POINT OF BEGINNING THENCE RUN N.81°20'00"W. 319.00'; THENCE RUN N.08°40'00"E. 125.00'; THENCE RUN S.81°20'00"E. 5.00'; THENCE RUN N.08°40'00"E. 96.70'; THENCE RUN S.80°37'52"E. 15.00'; THENCE RUN S.08°40'00"W. 71.17'; THENCE RUN S.25°21'24"E. 36.06'; THENCE RUN S.08°40'00"W. 80.00'; THENCE RUN S.81°20'00"E. 258.29'; THENCE RUN N.12°29'25"E. 70.97'; THENCE RUN N.4°27'55"E. 107.62'; THENCE RUN S.80°37'52"E. 20.07'; THENCE RUN S.4°27'55"W. 107.30'; THENCE RUN S.12°29'25"W. 61.02'; THENCE RUN S.8°40'00"E. 50.00' TO A POINT ALONG THE SOUTHERLY LINE OF SAID PARCEL DESCRIBED AND SHOWN AS "LOT 2" IN THAT CERTAIN SUBDIVISION KNOWN AS "NORTH END OF CAPTIVA ISLAND" AS RECORDED IN PLAT BOOK 1 AT PAGE 61 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE POINT OF BEGINNING.

SEE SHEET 2 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION.

APPROVED  
LEGAL

This "Description and Sketch" is in compliance with the minimum technical standards as set forth in Florida Department of Agriculture and Consumer Services Code, 5J-17.050-5J-17.052. This "Description and Sketch" is not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper.

\*THIS IS NOT A BOUNDARY SURVEY\*

GRADYS LODGE  
FOR: BRYAN BRILHART / NCIC  
JOB # 11-0014 F. B. PM1

PHILLIP M. MOULD  
PROFESSIONAL SURVEYOR AND MAPPER  
#6515 - STATE OF FLORIDA

DATE: DEC 29, 2011

DATE: DEC 29, 2011

DATE: DEC 29, 2011

EXHIBIT A

[illegible]

1/9/2012  
APPROVED  
LEGAL

2011-00023

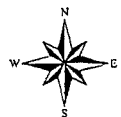
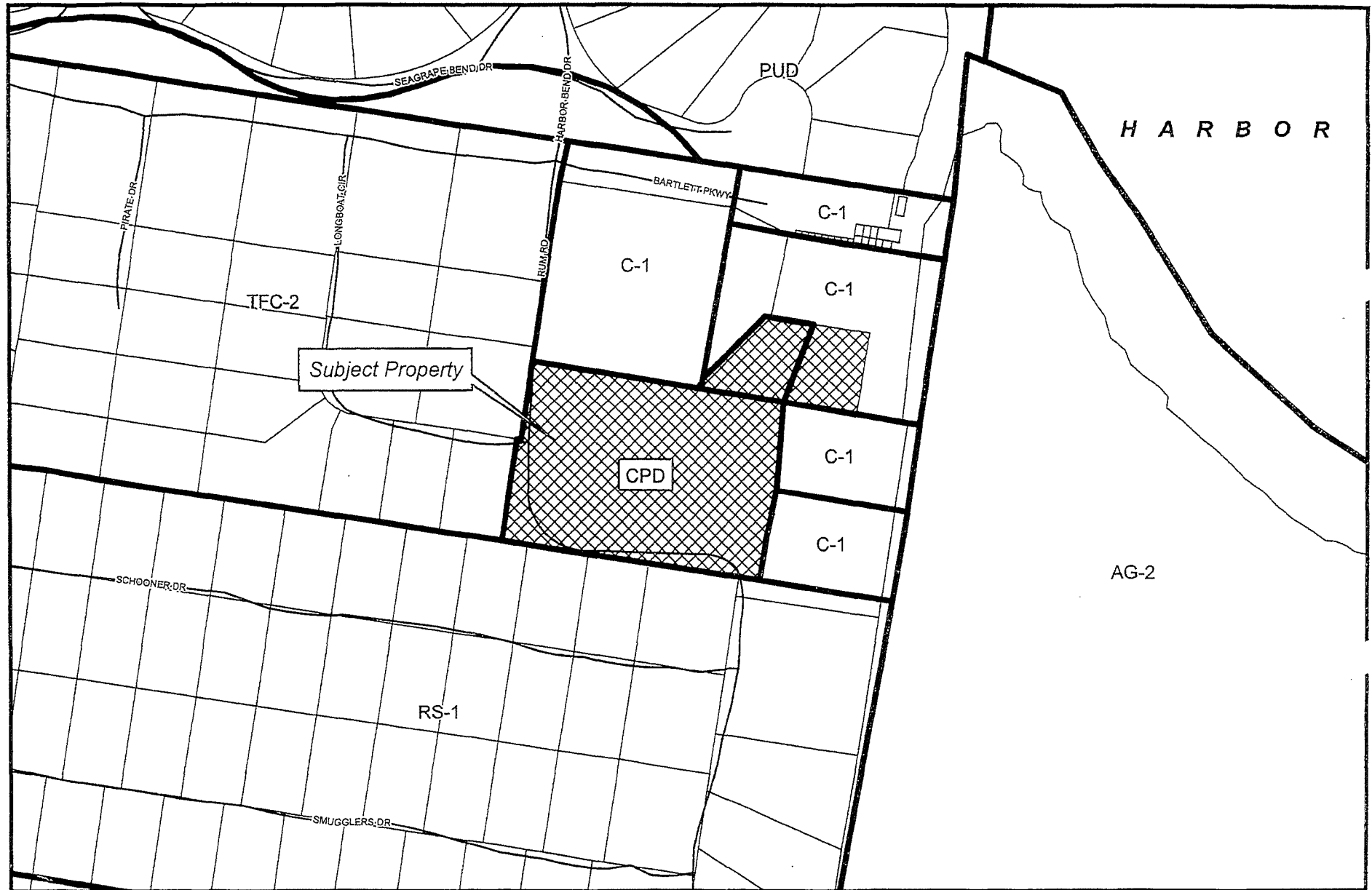
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COMMUNITY DEVELOPMENT

FOR: BRYAN BRILHART / NCIC  
JOB # 11-0014 F. B. PM1

# Zoning Map

EXHIBIT B



## Exhibit C

### Lee Plan Considerations

**POLICY 1.4.2:** *The Outer Islands are sparsely settled, have minimal existing or planned infrastructure, and are very distant from major shopping and employment centers. Except for those services as provided in compliance with other sections of this plan, they are not expected to be programmed to receive urban-type capital improvements in the time frame of this plan, and as such can anticipate a continued level of public services below that of other land use categories. The continuation of the Outer Islands essentially in their present character is intended to provide for a rural character and lifestyle, and conserve open space and important natural upland resources. Maximum density is one dwelling unit per acre (1 du/acre).*

Outer Islands are intended for rural lifestyle with minimal urban type services. Marinas and boat docks are a necessary part of island living; however, staff has not received any indication that boat mooring facilities are in short supply on the island. Outer Islands are not intended be developed with large commercial or industrial uses, but rather minimum necessary for the residents. Due to its scale, the proposed use will not be in keeping with the intent of this Policy.

**OBJECTIVE 2.1: DEVELOPMENT LOCATION.** *Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.*

This request may cause over development of this island, which will cause sprawl and damage to natural resources and the fragile environment of the island.

**OBJECTIVE 2.2: DEVELOPMENT TIMING.** *Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. Development orders and permits (as defined in F.S. 163.3164(7)) will be granted only when consistent with the provisions of Sections 163.3202(2)(g) and 163.3180, Florida Statutes and the county's Concurrency Management Ordinance.*

Adequate public facilities do not exist on the island. This facility will provide for easier access to the island by allowing people to have a place for their boat. However, there is no evidence of a shortage of docks on the island and there are places more suited for a marina on the island than this property. This property is surrounded on almost three sides by low intensity residential use and is located at entrance to a dead-end and narrow canal mostly used by residential property owners fronting on the canal.

**POLICY 2.2.1:** *Rezoning and development-of-regional-impact proposals will be evaluated as to the availability and proximity of the road network; central sewer and water lines; community facilities and services such as schools, EMS, fire and police protection, and other public facilities; compatibility with surrounding land uses; and any other relevant facts affecting the public health, safety, and welfare.*

Upper Captiva Fire and Rescue District is ill prepared to properly fight a major fire emanating from the proposed development. The fire district lacks a large ladder necessary to fight this

potential fire from the air. For this reason, the applicant had agreed to have dry hydrants around the building, which will be using water pumped from the canal to fight fire.

**POLICY 5.1.5:** *Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in Chapter 10 of the Land Development Code are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The Land Development Code will continue to require appropriate buffers for new developments.*

This marina will alter the character of its existing residential surroundings. Residential buildings on the island are elevated due to flood hazard, and no planting can adequately buffer over 14,000 square feet of metal roof area. The character of the residential neighborhood will also be altered by introducing commercial and industrial noise to the area.

**POLICY 6.1.4:** *Commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities.*

A large building for the storage of boats will not be compatible with the adjacent existing residential uses. Most of the vacant lots are also zoned for residential uses that will be negatively impacted by this commercial/industrial use.

**GOAL 25: NORTH CAPTIVA (Upper Captiva).** *The North Captiva Community seeks to preserve its character, scale, fragile environment, and way of life by guiding future land use; transportation and roads; conservation and coastal management; Safety Harbor; shore and water quality, water and waste management; open space, recreation, and quality of life; and citizen participation and community education. (Added by Ordinance No. 09-09)*

The subject property is located in the North Captiva Planning Community. Goal 25 seeks to preserve its character. One may argue that building a marina on an inhabited barrier island is in keeping with the island character; however, the location of this marina is not appropriate as it is surrounded by residential uses and zoning. A marina in this location will negatively impact quality and way of life for residents in the vicinity of the marina. Due to the narrowness of the canal and the shallowness of its depth, it may even damage its fragile marine environment.

**OBJECTIVE 25.1: FUTURE LAND USE:** *Preserve the traditional character, scale, and tranquility of the North Captiva community by continuing to limit the densities and intensities of use and development to sustainable levels that will not adversely impact the natural environment or overburden the existing infrastructure.*

This marina, by its scale and nature, will generate noise in excess of what is expected in a residential area and will disturb the tranquility of the Island. The size and shape of the building will not be in keeping with traditional character and scale of the Island.

**POLICY 107.2.10:** *Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas must protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.*

The proposed project is inconsistent with Lee Plan Policy 107.2.10. The proposed development is near an aquatic preserve that will be negatively impacted, by the increased volume of boat traffic coming and going from the proposed facility. As boats leave and enter the mouth of the canal there are marked channels for navigation through Safety Harbor to Pine Island Sound or other destinations of North Captiva. Although these channels are marked, there are shallow areas with established sea grass beds. Evaluating these sea grass beds by Lee County Division of Environmental Sciences using Lee GIS, it is evident that many of the sea grass beds have been impacted by prop scaring. The increased volume of boat traffic will increase impacts to the existing sea grass beds. A portion of Cayo Costa State preserve is located on the east side of the canal across from the subject site. Increased activity on the site may also impact or harm the preserves' ability to function as wildlife habitat.

**OBJECTIVE 128.5: MARINE FACILITIES SITING CRITERIA.** *The county will consider the following criteria in evaluating requests for new and expanded marinas, other wet slip facilities, dry slip facilities with launches, and boat ramps in order to make efficient use of limited shoreline locations and to minimize environmental impacts.*

**POLICY 128.5.1:** *Proposed boat access facilities (and expansion of existing facilities) in the following areas face a variety of technical, legal, or environmental obstacles which must be addressed during the review process:*

- Aquatic Preserve (DEP)
- Outstanding Florida Waters (DEP)
- Class I Waters (DEP)
- Marine or Estuarine Sanctuaries (NOAA)
- Manatee Sanctuaries or Critical Manatee Habitats (DEP, USFWS, USACE)
- Approved or conditionally approved shellfish harvesting areas (DEP)
- Federal navigation channel setbacks (USCG, USACE)
- Bridge/road right-of-way easement (County DOT, State DOT)
- Other Endangered/Threatened Species Habitat (USFWS, DEP, USACE)

*Extra caution and consideration will be given prior to authorizing use of areas with high environmental values.*

This marina is located very close to a very shallow aquatic preserve (Pine Island Sound Aquatic Preserve) with large seagrass beds. The only access to the canal where the marina is located is through that aquatic preserve. There is a concern for potential damage caused to the sea grass beds by increased boat traffic through this preserve.

**POLICY 128.5.2:** *Cumulative effects of several boat access facilities in a small area will be considered in the review of proposed projects.*

Lee County Division of Environmental Sciences staff is concerned with the potential amount of boats that will use this narrow canal for boat access. There are four lots north and 13 lots south of the subject property; 6 of the lots contain dwelling units. In looking at aerial photos of the canal, ES staff estimates there to be between 70 and 75 boat slips available should all of lots be developed and boat slips be created, currently the canal contains approximately 60 boat slips. The count of the existing slips and potential slips is a conservative estimate, because in a man-made canal there is not a slip restriction in the LDC, so individual properties may have as many



boats as permitted dockage will accommodate. Given that the applicant is proposing an additional 12 wet slips and the 72 dry slips on this narrow canal the proposal appears to adversely impact navigation, increase erosion, and negatively impact existing habitat.

***POLICY 128.5.5:*** *New boat access facilities must be designed to avoid erosion on adjacent shorelines.*

The marina is across the canal from State of Florida owned preserve land, and there are properties on the same side of the canal that are privately owned and some do not contain seawall. Due to the narrowness of the canal, even at slow speed, there is a potential for shoreline erosion on adjacent properties.

***POLICY 128.5.7:*** *Boat access facilities, including multi-slip docking facilities and boat ramps which would disturb or destroy wetlands or grassbeds must demonstrate a pressing need for the proposed facility and must provide for continued use by the general public.*

The project is not consistent with Lee Plan Policy 128.5.7, which requires the project not destroy wetlands or sea grasses, unless the applicant can demonstrate a pressing need and the facility be for use by the general public. This facility is for use by private ownership only, which is not consistent with this Lee Plan requirement. Staff supports the notion that there are a limited number of wet slips throughout the island. However, there are a number of concerns with the proposed project as it relates to the in water components. Navigation to and from the proposed facility will be via an existing 50' wide canal easement which leads to and from Safety Harbor.

Staff is concerned that the increased volume of boat traffic will increase impacts to the existing sea grass beds which is contrary to Lee Plan Policy 128.5.7. Also, because of the narrowness of the canal boats traveling to and from the marina are likely to cause erosion to private property and state lands by undermining existing mangroves. ES staff is recommending denial due to these environmental impacts and inconsistencies with the Lee Plan. The fact that the applicant has requested to create a basin from the existing uplands (2,700 Cubic Yards) suggests that the use and the amount of slips proposed for this site is not appropriate for this location.

***POLICY 128.5.8:*** *Boat access facilities should be located in areas of maximum physical advantage (e.g. adequate water depth). Adequate existing water depths between the proposed facility and any navigational channel, inlet, or deep water, are preferred, as new dredging is discouraged.*

The request is inconsistent with Lee Plan Policy 128.5.8, which states new dredging is discouraged. The proposed project is not located in an area with adequate water depth (deep water) hence why the dredging proposed is crucial to the applicant's request.

***POLICY 128.5.10:*** *Boat access facility construction in dead-end canals are discouraged due to difficulty in meeting state water quality standards.*

This marina with its boat launching facility will be located in a dead-end canal, which is discouraged by this Lee Plan Policy. Dead-end canals do not flush as well as other waterways. They tend to trap pollutants. A marina located at the entrance to a dead-end canal will have negative impact on the water quality of the canal.